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Record No. 5076

In the Supreme Court of Appeals of Virginia at Richmond

SHARON EMANUEL DURRETTE

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF NELSON COUNTY

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5076

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 6th day of October, 1959.

SHARON EMANUEL DURRETTE, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Nelson County

Upon the petition of Sharon Emanuel Durrette a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Nelson County on the 4th day of May, 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

* * * * *

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* * * * *

To the Sheriff or Police or Probation Officer of the County of Nelson:

I COMMAND YOU, In the name of the Commonwealth of Virginia, that you summon Sharon Emanuel Durrett, child or minor 15 years of age, to appear before the Juvenile and Domestic Relations Court of Nelson County, Va. on the 5th day of September 1958, at 10 o'clock A. M., and that you likewise summon Joseph Manuel Durrett, his father, Avon, Va., and Marie Frances Durrett, his mother, Avon, Va. to appear with the said child or minor at the place and time above stated each of them there and then to show cause why the said child or minor should not be dealt with according to the provisions of the Juvenile and Domestic Relations Court law of 1950.

And this you shall in no wise omit, and have then there this writ, with your return thereon.

Given under my hand, this 9th day of August, 1958.

JOHN W. WHEELER, Judge
Juvenile and Domestic Relations Court.

DETENTION ORDER.

It appearing from the petition filed concerning the above-named child or minor that said child or minor may come within the purview of the Juvenile and Domestic Relations Court law of 1950, or that the welfare of the above-named child or minor requires that his custody be immediately assumed by the Court, it is hereby directed that the officer serving the above summons shall forthwith take said child or minor into his custody and produce *his* before my said Court, or commit said child or minor to the Nelson County Jail, there to be detained until the time specified unless otherwise ordered by the Court.

Given under my hand, this 9th day of August, 1958.

JOHN W. WHEELER, Judge.

(on back)

Executed in the County of Nelson, Virginia, on the 12 day of August, 1958 by delivering a true copy of the within summon in writing, to Sharon Emanuel Durrette, Joseph Manuel Durrett, Marie Frances Durrett, in person.

F. D. WOOD
Sheriff, Nelson County, Va.

* * * * *

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Commonwealth of Virginia:

In the Juvenile and Domestic Relations Court of the County of Nelson.

PETITION.

Commonwealth of Virginia
In *re*

Sharon Emanuel Durrett, Avon, Va.
Child or minor of 15 years of age (born 24 day of August, 1942)
To the Honorable John W. Wheeler Judge:

NAME ADDRESS

Your Petitioner, Trooper W. C. Hart, Lovingston, Va. a law enforcement officer—reputable person, respectfully represents unto your Honorable Court as follows:

NAME	W-C	ADDRESS (if unknown so state)
That Sharon Emanuel Durrett whose parents are	C	Avon, Va.

NAME	W-C	AGE	ADDRESS
Father Joseph Manuel Durrett	C	57?	Avon, Va.
Mother Marie Frances Durrett	C	47	Avon, Va

or whose guardian/custodian/person having control and supervision, or nearest known relative is

NAME	W-C	AGE	ADDRESS
.....		....	.....

is in need of the care and protection of the State in that he/she comes within the purview of the Juvenile and Domestic Relations Court law of 1950 and is in need of the care and protection of the State in that within the said City or County of Nelson, said minor stands charged with felonious assault and attempted rape, in violation of laws of State of Virginia That conditions are such that his/her welfare demands that custody be immediately assumed by the Court:

WHEREFORE, your petitioner prays:

That summons may issue to said child or minor;
That his/her custody be immediately assumed;
And that the said parents/guardian/custodian/person having control and supervision be summoned to appear before your Honor's Court and show cause why said child or minor should not be dealt with according to the provisions of the above mentioned law, and that the Court have the necessary investigations made and hear and determine the matters herein set forth and shall enter such judgments and orders as will best conserve the welfare of said child or minor.

Given under my hand, this 9th day of August, 1958.

TROOPER WALTER C. HART,
Petitioner.
Lovingston, Va. (Address)

State of Virginia, to-wit:

This day personally appeared before me, John W. Wheeler, Judge of the aforesaid Court, the above-mentioned petitioner, and made oath (affirmation) that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand, this 9th day of August, 1958.

JOHN W. WHEELER, Judge.

I have reviewed the above petition and direct the following:

1. [ ] Petition denied.
2. [x] Investigation ordered returnable 5th day of September, 1958.
3. [x] That detention order be issued and served on the child or minor and the matter set for hearing on the 5th day of September, 1958.
   Also parents, witnesses, etc., be summoned to appear.

Date August 9th, 1958.
By order of JOHN W. WHEELER, Judge.

(on back)

Juvenile Docket No. 399

Juvenile Case

JUVENILE AND DOMESTIC RELATIONS COURT OF THE County Nelson.

COMMONWEALTH OF VIRGINIA

In *Re*:
Sharon Emanuel Durrett

Petition of Trooper W. C. Hart
Received and filed August 9, 1958 Date

FLORENCE DAWSON, Clerk.

Petition referred to Judge August 9, 1958 Date
Petition Granted August 9, 1958 Date
Investigated ..... Date

.....
Probation Officer.

Docketed for hearing 9-5-58
August 9, 1958 Date
Detention order issued August 9, 1958.

DISPOSITION: See Juvenile and Domestic Relations Docket, page .... year ....

....., Clerk.

Commonwealth of Virginia:

In the Juvenile and Domestic Relations Court of the County of Nelson.

Upon the hearing on the within petition, duly held, it appearing to the Court that the said Sharon Emanuel Durrett is present in Court with his counsel and with the said parents of said minor, Joseph Manuel Durrett and Marie Frances Durrett; it is ordered that said minor is certified to Circuit Court of said County for proper criminal proceedings.

Given under my hand, this 5th day of Sept., 1958.

JOHN W. WHEELER, Judge.

Filed in the Clerk's Office the 22 day of Sept., 1958.

AUSTIN EMBREY, Clerk.

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C. G. QUESENBERY, Judge.

• • • • •

The prosecution of the Commonwealth against this young man has given me a lot of trouble. I have gone back and forth over the case for considerable time and there are certain points that disturb me right much but I don't see how this Court could set aside a verdict of the jury because of these matters. Now I was concerned about the identification of this young man for one thing. The fact that the prosecutrix lives a few hundred yards of this young man and has lived there all of her life and said that she never saw him and didn't know him. It seems a strange thing to me. Of course, it was a question of fact and to the jury apparently it seemed normal and they have resolved that question and I don't see how the Court could disturb it.

There are several other points in the case that worried me a lot and about which I have given a lot of thought. There are no authorities on the statute dealing with the points which were raised in the trial. Now one point raised, I

believe, by Counsel was the question of transportation of this young man. While Title 16.1-196 is the section concerned with transportation. In interpreting any statute, I believe the Court must do so on the basis that the legislature must have known of the existence of conditions throughout the State and with that in mind the statutes were page 39 } enacted. Now the Section I have just mentioned says that a juvenile shall not be conveyed in a police patrol wagon. Of course, the legislature knew when they passed this statute that the police and the sheriff's offices, particularly in the rural counties and small towns, have no way except through their usual police cars to transport children. I don't think the legislature had in mind that every jurisdiction in the State would have to provide a special mode of transportation for juveniles. I think this statute was intended to cover the cities principally where they have what is known as a "black maria", and the social-minded people in the legislature and outside who brought about the passage of this law had that in mind and I think that is what the legislature meant when they put this prohibition in the statute. However, that may be. Such transportation doesn't seem to me to take away any of the young man's rights. He would be treated contrary to the statute but I don't know if that fact alone would reprive him of any rights under the Constitution or under the laws which would vitiate the decision of the jury.

Now the point that bothered me most, I think, was this Section 16.1-197 which provides for a method by which an officer should take a juvenile into custody and the evidence as I recall and as I noted here in the trial was to the effect that this young man was brought into the sheriff's office or an office adjoining the court room somewhere and that page 40 } the juvenile court judge came to the door and his attention was directed at this young man as having been taken into custody. Now there was no formal court order entered by Mr. Wheeler, the juvenile judge, and as a matter of fact, my observations throughout many of the Circuits of Virginia, the juvenile courts are run on a rather informal basis and I doubt whether many of them draw formal orders directing the arrest or the detention of a juvenile. However, that may be the action of the officers and the courts may in the opinion of some fall short of the statutory requirements.

Mr. Wheeler, the juvenile court judge, is a layman, as you know, not versed in the laws and I doubt whether he has undertaken to study the Title 16 as most of the lawyers would and, of course, there are some very important matters con-

tained in this Title about which the juvenile courts should be fully conversant; however, I doubt whether Mr. Wheeler has had much experience with this sort of thing and had probably no advice on how to proceed. I don't know that here again that this is sufficient to say that the jury findings should be set aside; however, I think that possibly on both points and possibly one other raised by Counsel dealing with the Title 16 I think that the matter should be settled by a court of last resort so that all of us throughout the State will know just how far to go on these matters and just what the statute does mean.

page 41 } On the facts, as I said in the beginning, there was some doubt in my mind about the question of identity; however, that has been resolved by the jury and I can't go behind that.

The other point which is of considerable importance I think to the defendant was the question of the confession. I resolved that in favor of the confession. I don't think that it had been obtained illegally, and so ruled. Now I did do something that is not usually done. I instructed the jury on the question of the confession. This, I think, was probably improper. I think that under the decisions, it is the court's responsibility; however, I think that the error, if any, would be more favorable to the defendant than to the Commonwealth and that it would be harmless error. The fact that it gave the defendant another chance to have someone say, namely the jury, that the confession was not a legal valid one was more favorable to him than he was entitled to have so I think that error, if any, is a harmless error; otherwise, I don't know of any other points in the case that have any merit.

There are a number of issues and where you have a multitude of them it sometimes is almost overpowering; however, when you break them down piecemeal and analyze them separately, actually they don't amount to too much, except for this point raised under Section Title 16.1-197. That is the Section about taking children into custody. That troubles me a good deal but on the other points, I didn't

page 42 } seem to have any difficulty; however, on the whole I think the jury's verdict will have to stand and that this young man will have to take his problem elsewhere.

Filed in the Clerk's Office the 4 day of May, 1959.

AUSTIN EMBREY, Clerk.

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* * * * *

Circuit Court for the County of Nelson, on Monday, the fourth day of May, nineteen hundred and fifty-nine.

* * * * *

This day came the Commonwealth by her attorney as well as the said Sharon Emanuel Durrette, who was brought into Court in custody of the jailer and set to the bar. Also came E. C. Wingfield, attorney for the accused.

And the Court, having considered the motion of the defendant to set aside the verdict of the jury in this case on various grounds, doth over-rule the said *n*otion of the defendant for reasons orally stated in open court.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced 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 Sharon Emanuel Durrette be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of 27 years, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Sharon Emanuel Durrette its costs by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the the entry of this order the prisoner be removed and safely conveyed according to law from the jail of this court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit for all time *spend* in jail awaiting trial. The Court certifies that at all times during the trial of this case the accused was personally present.

And the prisoner is remanded to jail.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Nelson County, Virginia:

Counsel for the defendant, Sharon Emanuel Durrette, in the above entitled action in the Circuit Court of Nelson County, Virginia, hereby gives notice of appeal from the Order entered in this action on May 4, 1959, and sets forth the following assignments of error:

1. That the defendant's constitutional rights were violated in that the law with respect to the arrest, custody, trial, transportation and other requirements of the law with respect to juveniles, was not complied with; and
2. That the Court erred in admitting as evidence written and oral confessions allegedly made by the defendant; and
3. That the Court erred in permitting the Attorney for the Commonwealth to give oral evidence before the jury and to remain on the case as counsel thereafter; and
4. That the Court erred in failing to strike the evidence at the conclusion of the Commonwealth's evidence in so far as the charge of attempted rape was involved; and
5. That the Court erred in failing to strike the evidence at the conclusion of all of the evidence in the case in so far as the charge of attempted rape was involved; and
6. That the Court erred in giving Instructions 1, 2 and 3 and in refusing to give each of the Instructions marked E, F, H, J and K; and
7. That the Court erred in refusing to set aside page 48 } the verdict and grant a new trial on the ground that the verdict was contrary to the law and the evidence, and the refusal to give Instructions E, F, H, J and K offered for the defendant and for giving Instructions 1, 2 and 3 offered by the Commonwealth, and in admitting the introduction of evidence which should not have been admitted, and in failing to declare a mistrial because the laws with respect to juveniles was not complied with.

E. C. WINGFIELD
Counsel for Sharon Emanuel Durrette

Filed in the Clerk's Office the 26th day of June, 1959.

AUSTIN EMBREY, Clerk.

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Circuit Courtroom, Nelson County Courthouse, Lovingston, Virginia. Monday, October 27, 1958, Tuesday, October 28, 1958, and Wednesday, October 29, 1958.

The above-entitled matter came on for trial by 12-man Jury at 9:30 a. m., each day.

Before Honorable C. G. Quesenbery, Judge.

Appearances: Robert C. Goad, Esquire, Lovingston, Virginia Attorney for the Commonwealth;
E. C. Wingfield, Esquire, Charlottesville, Va., Counsel for the Defendant.

The Court Reporter and the Jury were duly sworn.

page 2 } W. C. HART,

Virginia State Trooper, a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are State Trooper W. C. Hart, of Lovingston?

A. Yes, sir.

Q. How long have you been here in this County, Mr. Hart?

A. Since the Spring of 1953.

Q. Did you receive a call to investigate this case?

A. Yes, sir.

Q. Go ahead and tell the Court and Jury about your investigation.

A. It was around approximately 6:30 or 7:00 o'clock—probably later than that, around 8:00 o'clock I received a call to go to Avon that there was some trouble over there.

I contacted Mrs. Annie Ferguson at her home around 9:00 o'clock in the morning.

Q. After you got the call did you go right straight down there?

A. I went straight down there. I called Deputy Sheriff Whitehead at his home and he met me at Martin's Store, and we went directly to Avon to Mrs. Ferguson's home.

page 3 } Q. You got to Mrs. Ferguson's home about 9:00?

A. We got there around 9:00 o'clock. And we interviewed Mrs. Ferguson.

Q. Of course you can't tell what Mrs. Ferguson told you, but did you get a description of the man who she said did this from her?

W. C. Hart.

A. Yes, sir, I did. I talked to Mrs. Ferguson and to Mrs. George Henderson.

Q. Did you get the name of the man who did this?

A. Yes, I did.

Q. Who did you get the name from?

A. I got the name from Mrs. George Henderson.

Q. But you got the description from Mrs. Ferguson?

A. From Mrs. Ferguson and also from Mrs. Henderson.

Q. All right, with that information, what was done, Mr. Hart?

A. I attempted to find this Sharon Durrette. Mrs. Henderson knew his last name. She told me—

Mr. Wingfield: I object to what she told him.

A. Well, the name I had was Herman or Sherman Durrette. From that description I looked for Sharon Durrette and went to his home, which is just a short distance North of Mrs. Ferguson's home, and did not find him.

Later I was joined by several other Police officers.
page 4 } Sgt. Gaunce came over from Waynesboro. Trooper Lightman came over.

Around 11:00 o'clock I had to leave and come to Court in Lovingston.

Q. When you had to leave to come to Court the Defendant still had not been arrested?

A. He had not been arrested, no, sir.

Q. What was the next thing that you did. Did you go back down there?

A. I didn't go back to the scene until later on that afternoon, after he was arrested.

Q. What was the next thing that you know about the investigation that you made?

A. I, along with Deputy Sheriff Dixon and Deputy Sheriff Whitehead, carried Sharon back over to the scene, back over to the Ferguson home.

Q. At that time he had been arrested and put in jail?

A. Yes, sir.

Q. And this was that afternoon?

A. That was the same afternoon, after I got out of Court. We carried him back over there to the scene and he was identified there by Mrs. Ferguson.

Q. In your presence?

A. In my presence, yes, sir. He also at that time
page 5 } told us about the rock. He stated at first that he had hit her with a plank. We talked to him on the way over there and he later said that he used a rock.

Q. Did you start questioning him that afternoon when you got back into the case, after you had been in Court?

A. Yes, sir. I didn't—

Mr. Wingfield: If the Court please, sir, with reference to any statements he made, I want to object to those statements unless he is going to—I think, probably, the Jury should be excluded. I'd like to cross examine with reference to those statements.

The Court: All right. The Jury will go out and take a smoke for about five or ten minutes.

Jury out.

The Court: All right, Mr. Wingfield.

Mr. Goad: Your Honor, I think I would be entitled to lay the foundation.

The Court: Yes. Go ahead and lay the foundation.

By Mr. Goad:

Q. Trooper Hart, you have told us how you got the description and got a name that morning. Then you had to leave before the arrest was made?

page 6 } A. Yes, sir.

Q. The arrest in the meantime was made by other officers, is that correct?

A. Yes, sir, that's correct.

Q. And the Defendant had been brought to Lovingston?

A. Yes, sir.

Q. Then you went back into the—helping in the investigation?

A. Yes, sir.

Q. What time was that in the afternoon, do you recall?

A. It was in the afternoon, I'd say approximately 3:00 or 4:00 o'clock. It was after dinner.

Q. Well, did you commence questioning the accused at that time?

A. I questioned him generally at that time.

Q. Now, when you commenced questioning him, was he advised that he didn't have to make any statements?

W. C. Hart.

A. Yes, sir, he was advised that he did not have to make a statement, that he had a right to an attorney.

Q. In fact, one attorney had already been to the jail to see him, hadn't he?

A. Yes, sir.

Q. Before you questioned him that afternoon?

page 7 } A. Yes, sir, one attorney had already talked to him before I questioned him at all.

Q. Did you see the attorney go out to the jail?

A. Yes, sir.

Q. Who was it?

A. Mr. Whitehead, Robert Whitehead.

Q. Were any threats or promises made?

A. No, sir, he was not threatened or promised anything at all. And during the entire time that I talked to him and in my presence everything was done on a very friendly basis.

Q. Now, with that background, will you tell us what statements he made to you that afternoon?

A. On the way over there—

Q. Let me ask you this. What was the purpose of going back, taking him back over to Avon, over to the scene?

A. The purpose of identification, for Mrs. Ferguson to identify him. Also wanted Mrs. Henderson to see him. Secondly, he stated that he would help us find the weapon that he used to strike Mrs. Ferguson with.

Q. Up to that time as far as you knew the weapon had not been discovered?

A. No, sir, as far as I knew it had not been. He stated that it was a plank, or a board. I've forgotten exactly which he said.

page 8 } Q. So then you started proceeding towards the scene near Avon. Tell what happened after that.

A. You mean after we got over there?

Q. Just tell everything that happened.

A. Well, he was identified, as I said before, by Mrs. Henderson and by Mrs. Ferguson. And it was then that he also admitted using the rock, or striking Mrs. Ferguson with a rock.

Q. Was that the first time that he had admitted the rock?

A. Yes, sir, that's the first time that he had said anything about the rock. We didn't question him thoroughly. We just more or less talked to him about the thing, on the way over there and back.

We stopped in Lovingston down at the State Police office. I told him that I would like to take a statement. He gave us

a statement in the presence of Deputy Sheriff Dixon—he was there, and possibly Deputy Sheriff Whitehead, at that time.

Q. Well now, the statement he made, was it a voluntary statement?

A. Yes, sir, the statement he made was voluntary. I wrote it out in longhand and read it to him, asked him if it was correct, and then I typed it up. And after typing it page 9 } up. I read it to him again before I asked him to sign it.

Q. Did he sign it voluntarily?

A. Yes, sir.

Q. Of his own free will?

A. Yes, sir.

Q. After having been advised of his rights?

A. Yes, sir.

Q. Was the statement he made the same thing that he had admitted to you orally?

A. Yes, sir.

Q. Previous to that?

A. Yes, sir, the same thing.

Mr. Goad: That's all I want to question him on at this time, Your Honor.

The Court: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Did you have a warrant for the boy?

A. I did not issue the warrant in the case.

Q. When was the warrant issued?

A. I don't know.

Q. Was there ever a warrant issued on that particular day?

A. Well, I did not arrest the accused. I didn't issue the warrant.

page 10 } Q. You carried him back the home of Mrs. Ferguson, didn't you?

A. That's correct, yes, sir.

Q. And Mr. Bob Whitehead had told you not to do it, hadn't he?

A. No, sir, he had not.

Q. You knew that this boy was fifteen years old?

A. I knew that he was fifteen or sixteen.

Q. And he was in the jail?

W. C. Hart.

A. That's correct.

Q. Were you present when Mr. Bob Whitehead came in the jail?

A. I wasn't present when he came in the jail but I went out there.

Q. Well, were you present when Mr. Whitehead was over there?

A. Yes, sir.

Q. Did you hear the boy make a statement of having been beaten?

A. Yes, sir. I don't know whether he said he had been beaten or not. I think he said he had been hit.

Q. Did he—in Mr. Whitehead's presence did he point to the man that had struck him and accused him of strik-
page 11 } ing him?

A. I am not absolutely positive. Mr. Whitehead asked us, generally, if one of us had hit him. And I told Mr. Whitehead that I had not hit him.

Q. And did he point to Officer Dixon and say that he was the man that had struck him?

A. I can't be positive about that. There was some reference to Deputy Sheriff Dixon but I can't be positive whether he pointed to him and said that or not.

Q. And did he say that he had been told by Officer Dixon when Officer Whitehead and I believe you were the one, had stepped out of the room and left him alone with Officer Dixon that he would get what the boy had gotten down in Mississippi or Alabama? Do you remember him making that statement?

A. No such statement was made in my presence, no, sir, absolutely not. When I talked to him—I was never out of his presence, never.

Q. You were there about 3:00 o'clock in the evening, you say, when you saw him again?

A. Between 3:00 and 5:00 o'clock. I would say it was around 3:00 o'clock when we carried him back over to Avon, and then of course we had to come back. That took probably about an hour or so. We came back to the State Police office.

Q. This all happened on the same day that Mr.
page 12 } Robert Whitehead had been down to the jail and given this advice about what the officers should do, didn't it?

A. Mr. Whitehead didn't advise us. Of course, he doesn't tell us what to do. He advised the boy.

Q. What did he tell you was right? What did Mr. Whitehead tell you was right?

W. C. Hart.

A. I don't exactly understand the question. What do you mean?

Q. Had the boy at that time been carried before the Juvenile and Domestic Relations Justice of Nelson County?

A. Not to my knowledge. As I say, I didn't arrest him. He had probably been arrested at least two hours before I saw him.

Q. How many hours would you say it was before you saw him?

A. Well, I left and came to County Court at around 11:00 o'clock and it was probably an hour or so later that he was arrested, that I had word that he was arrested, heard that he was arrested. Now, exactly what time he was incarcerated I don't know because I did not incarcerate him.

Q. Do you remember giving testimony before the Trial Justice, the Hearing Officer, in this case, at which time you said you saw Sharon at jail at 12:00 o'clock Noon? "I didn't question him. He fitted the description almost
page 13 } perfectly." Do you remember making that statement?

A. I probably did. I don't remember saying 12:00 o'clock. But I don't hardly believe it was that soon because, as I said, I left Avon at around 11:00. I would think it would have been after 12:00 o'clock because we had some cases in County Court.

Q. Well, Trooper Hart, do you know when he was first ever carried before the Juvenile and Domestic Relations Justice of the City—I mean, County?

A. I did not arrest him and I did not incarcerate him, sir.

Q. But you were the one that took him out of the jail and carried him back down to the scene?

A. Very definitely, with Deputy Sheriff Dixon and Mr. Whitehead, I did carry him back to the scene.

Q. Now, you were the one that directed that that be done, weren't you?

A. We went in my automobile. I don't know that I directed it, but I asked Sharon if he would go back with us and he stated that he would. And that was done on a voluntary basis. He agreed to go back with us. There was no force whatsoever.

Q. Well now, if he had been complaining and had called Mr. Whitehead to the jail over the treatment that he
page 14 } had received and had made these accusations, what changed his mind about, at his request—or his consenting to go?

W. C. Hart.

A. I have no knowledge that he called Mr. Whitehead about any treatment.

Q. But you did say that you knew he leveled some accusations at Trooper Dixon and knew something of some charge of having been hit?

A. I only know what he said at the jail. I don't know why Mr. Whitehead—I do know, but I can't—It is hearsay. I know why Mr. Whitehead was there. It's hearsay.

Q. Well now, can you tell us, by reference to any papers in this case, or anything, as to when any warrant was issued?

A. No, sir. As I have already stated two or three times, I did not arrest him; I did not incarcerate him; and I did not issue the warrant in the case.

Mr. Wingfield: May I have the warrant in the case, Mr. Goad?

Q. Do I understand that you did not have him arrested? You did not procure the issuance of the warrant?

A. I don't remember—I don't remember issuing the warrant. No, sir, I don't.

Q. Well, let me read you from the Court papers.

A. The only—I filled out some papers, the page 15 } Juvenile papers. I signed my name to the Juvenile papers, Mr. Goad, in the office.

Q. Well, let me read to you what appears to be a warrant in this case and see if you have any recollection.

It appears here that there is a warrant dated the 7th day of August, 1958, which starts out, "Whereas, Trooper W. C. Hart has this day made complaint and information on oath before me, J. R. Campbell, Justice of the Peace, that Sharon Emanuel Durrette on the 7th day of August, 1958, unlawfully and feloniously did commit an assault upon Mrs. Mildred Ferguson with intent to main, disfigure, or kill the said Mrs. Mildred—" Milford, I believe. "Mrs. Milford Ferguson."

Charge No. 2, "Did unlawfully and feloniously attempt to have carnal knowledge with the said Mrs. Milford Ferguson, in Nelson County."

Is that warrant signed by J. R. Campbell true or not true?

A. May I see it, sir? Yes, sir.

Q. When did you get the warrant?

A. I don't remember. I honestly do not know exactly what time it was issued.

Q. Did you at any time have the permission—by the way,

who is the Juvenile and Domestic Relations Judge of this County?

A. Judge Wheeler.

page 16 } Q. Did you see Judge Wheeler that day?

A. I can't positively say whether I saw Judge Wheeler that day or not.

Q. Was this fifteen-year old boy produced at any time before Judge Wheeler that day, or the next day, or the next day?

A. The papers were drawn up. I don't know whether it was that afternoon or whether it was the next morning. Of course, I'm not—These papers have to be drawn up in the Juvenile Court and were drawn up by Mr. Goad and Judge Wheeler signed them. I believe I had to sign them. I am not too familiar with that form.

Q. When was that done?

A. I'm not sure when it was done, but the date should be on it, sir. It was either done that afternoon or the next day, I would think.

Q. And you said you had something done along that line, signed some papers?

Mr. Goad: Your Honor, the papers speak for themselves. I don't know.

The Court: I thought we were going to cross examine his recollection about this thing.

Mr. Goad: What I am trying to do is to lay the

page 17 } foundation for this statement.

Mr. Wingfield: I am laying the foundation for it, too, about his recollection about what statements were made to him.

The Court: He has a right to test his memory.

Q. Did you sign any papers before Judge Wheeler?

A. That yellow or that blue paper you have there was signed.

Q. Show me, if you will, where you signed it and will you state the date of it?

A. The 9th of August, 1958.

Q. When?

A. The 9th of August.

Q. Did you sign it?

A. Yes, sir.

Q. Where is your signature on it?

Note: The witness indicates his signature.

W. C. Hart.

Q. Do you know what was done after you signed this petition with Judge Wheeler?

A. Judge Wheeler signed it.

Q. After you signed it what was done with the boy?

A. The boy was in jail.

Q. Was he ever carried before Judge Wheeler at the time you signed it?

A. When that paper was signed?

page 18 } Q. Yes, sir.

A. No, sir.

Q. And do you know what day he was first carried before Judge Wheeler?

A. No, sir, I don't know when he was carried before Judge Wheeler.

Q. The boy has stayed in jail continuously, *his* been in jail ever since, is that right?

A. Yes, he has been in jail.

Q. Well now, why didn't you, after this boy was in jail, or you found he was in jail, why didn't you carry him before Judge Wheeler instead of carrying him back down to the scene of the offence?

A. Well, we were still investigating the case.

Q. But you said the boy had already been arrested.

A. Well, he was in jail. It is reasonable to assume that he had been arrested, yes, sir.

Q. You hadn't gotten the warrant for him when he was in jail?

A. I had not issued any warrant up to that time. Of course, that warrant was issued by me that day—I don't recall—

Q. Well now, if I understood correctly, you had not gotten any warrant up until 3:00 o'clock?

page 19 } A. I can't state that positively, Mr. Wingfield. I can't be definite about that. There is a possibility that the warrant was served on him and I went up to the jail and Mr. Whitehead was there. I cannot be definite. I honestly do not remember the exact time that the warrant was issued.

Q. What's wrong with your memory, Mr. Hart, if you can't remember that how can you remember all those statements?

A. There were a lot of things, of course, to remember that day. There was a lot going on. I don't remember the time that the warrant was issued. I never pay any attention to the time that I issue a warrant because it is not even stated on the warrant.

W. C. Hart.

Q. Whose Court were you in that day? You said you had to appear in Court.

A. I was in County Court.

Q. Who was the Judge that day?

A. Judge Wheeler.

Q. The same Judge that is the Judge of the Juvenile and Domestic Relations Court?

A. That's correct.

Q. And you were in his Court and Judge Wheeler was here in the Courthouse on that day and you did not carry this boy before him after he had been put in jail?

A. If he was carried before Judge Wheeler at that time I have no knowledge of it, no, sir.

page 20 } Q. And in spite of the fact that the boy was in jail here and you were here in Court, and the boy was in jail, you didn't carry him before Judge Wheeler as the law directs?

A. I didn't realize that the law directed you to carry them before Judge Wheeler, in a felony case. I understood that he could be put in jail and a warrant obtained.

Q. Did you ask Judge Wheeler for permission to get a warrant?

A. I can't state one way or the other.

Q. He was available and you wouldn't have had any trouble getting him, would you?

A. I assume that he was available, yes, sir.

Q. Was Judge Wheeler here during the afternoon?

A. I don't know.

Q. Where does Judge Wheeler live with reference to the Courthouse?

A. Judge Wheeler lives at Arrington.

Q. And how far is that from the Courthouse?

A. About nine miles, nine or ten, I think.

Q. Why did you wait from the 7th of August until the 9th of August to sign this petition before Judge Wheeler, Trooper Hart?

A. I didn't realize that I had to sign that petition. Mr. Goad called me up there, because I think that pe-

page 21 } tition is something on this new law. And he called me up there and I had the papers drawn up.

Q. I believe that some considerable time after August 7th there was what purported to be a hearing before Judge Wheeler, a preliminary hearing?

A. Yes, sir, there was a preliminary hearing.

Q. And I believe you were at that Courtroom?

W. C. Hart.

A. That's correct, yes, sir.

Q. And, as a matter of fact, was I permitted to call Mrs. Ferguson to the witness stand?

A. No, sir, you did not call Mrs. Ferguson.

Q. Didn't I call her and didn't Mr. Goad and others refuse to permit her to testify?

A. I remember Judge Wheeler felt that it was unnecessary at that time.

Q. Didn't he ask Mr. Goad if he should and Mr. Goad said that I didn't have any right to call her to the witness stand? There was a lot of discussion between Mr. Goad—

Mr. Goad: Your Honor, I object to that.

The Court: Well, I think it would tend to show the background attitude of the officers. I think it is proper.

Q. Trooper, was Officer Dixon there that day?

A. No, sir.

page 22 } Q. Was there any actual hearing that day or was it just simply going on to the Grand Jury, the Grand Jury would take care of it?

A. There was a preliminary hearing. We testified.

Q. As a matter of fact, didn't I call another Trooper to the witness stand for the purpose of getting him to call Mrs. Ferguson and testified that Mrs. Ferguson was there?

A. You called Mr. Delk, the Jailer, to the stand.

Q. And Mrs. Ferguson was there, wasn't she?

A. I did not see her, no, sir.

Q. Well, you know she was there, don't you? You had seen her before and you were right there and you do know she was there?

A. I don't remember seeing her that morning, no, sir. I saw her later on in the day.

Q. Well, you knew she was right there standing outside the door and was told that at the time, didn't you?

A. I did not know she was outside of the door, no, sir. I did not. I did not call Mrs. Ferguson because the Court did not direct me to call Mrs. Ferguson.

Q. I want to ask you—

A. Had the Court asked me to call Mrs. Ferguson I would have done so, but not until the Judge told me to do it.

Q. The Judge would not because he asked Mr.

page 23 } Goad if he should. Is that true, sir? Didn't he ask Mr. Goad if he should call her?

A. I don't remember every bit of the conversation that

was carried on in the preliminary hearing in the County Court.

Q. Now, Officer Dixon wasn't there that day, was he?

A. No, he was not.

Q. Now, I want to ask you if at any time that day Officer Dixon was alone with Sharon Durrette, in a room alone with him?

A. Not at all, no, sir, not after I came in the case that afternoon he was not.

Q. And you don't think now that you got in that case until after—until after 3:00 o'clock in the afternoon except for talking to them in the morning?

A. I don't know exactly what time I got out of Court. After we got out of Court I went to dinner. And it was then that Deputy Sheriff—I don't know that of my own knowledge, I can't tell you whether—

Q. Well, let me ask you. Where were you when this confession was signed? Where were you when that was signed, Trooper? The so-called confession?

A. The statement that he made was made in the State Police office.

page 24 } Q. Where is the State Police office?

A. That's in the basement of the Health Center.

Q. Now, for the benefit of the record, the Health Center is not a building connected with the Courthouse, is it?

A. No, sir, it is not.

Q. It is not a building connected with the jail?

A. It is not, no, sir.

Q. And that is what distance would you say from the Courthouse? It's in another block, isn't it?

A. Right across the road out here.

Q. Across the road?

A. Yes, sir.

Q. In another block?

A. Well, yes.

Q. Did you have any permission from any Court to take that boy from jail after he was put in jail to take him to the State Police office?

A. No, sir, I have never gotten permission from the Court to interrogate a subject.

Q. Not even a fifteen-year old boy?

A. In the commission of a felony we have always interrogated them and we never had anybody object to it.

Q. Now, you were the one that obtained a statement?

W. C. Hart.

A. Yes, sir.

page 25 } Q. And you were the one that had him sign the statement?

A. Yes, sir.

Q. Now, I understand you first wrote it up in longhand?

A. That's correct.

Q. And then you typed it and had him sign it?

A. Yes, sir.

Q. Did you ask him if he could write?

A. I don't remember asking him if he could write. I am sure I asked him if he could read. We always do.

Q. Why didn't you ask him to write out what had happened instead of you writing it out and typing it up for him?

A. I have just never taken a statement that way. I talked to him and wrote the statement out and then, of course, read it to him, because so often if you have a statement you write it out in longhand and you type it up and ask him to sign it. If there is something he wants to change you have to turn around and type it all over again.

Q. When you told him to sign it how many people were in the room?

A. Deputy Sheriff Dixon was present to witness

page 26 } the statement.

Q. Where was Deputy Sheriff Whitehead?

A. Deputy Sheriff Whitehead may or may not have been there at that time.

Q. Don't you know?

A. I am not positive, no, sir. It is rather difficult for me to keep up with everybody.

Q. Who else was there?

A. No one that I remember.

Q. Now, I want to ask you if it wasn't perfectly apparent to you at the time that boy did what writing he did on that paper, that he was scared to death of Officer Dixon?

A. I don't think so at all. Officer Dixon was with us when we went to Avon. The boy said he wanted a drink and we stopped back by the service station and bought him a soft drink. I think everything was done on a pretty friendly basis.

And I have been a Police Officer a little over seven years and I have never frightened anybody into signing a statement.

Q. How did it happen that after you had heard the statement that the boy had made to Mr. Robert Whitehead and Mr. Whitehead had been in conference with him that you

didn't consult Mr. Whitehead or have Mr. Whitehead present when that statement was signed?

A. I understood later that Mr. Whitehead was
page 27 } not representing him. I saw no reason to call Mr.
Whitehead any more than I should call Mr. Tucker.

Q. Well, you didn't know at that time—Mr. Whitehead had been to the jail and had talked to the boy and advised you that you had no right to take that boy out of jail. And I want to ask you if that isn't so.

A. That is incorrect, incorrect, sir.

Q. And that he had been down there—

A. He did not advise me that we had no right to take him out of the jail. He advised the boy that—he advised the boy not to go back with us to reconstruct the scene, not to go back to the scene for identification.

Q. He told the boy not to go back?

A. Yes, sir.

Q. But the boy didn't have any say so about it, he was taken back, wasn't he?

A. The boy did have a say so. I asked the boy and as I say he went back voluntarily.

Q. In other words, you thought at first—I mean, it was the thought of the officers that she had been hit with a piece or wood, wasn't it?

A. We knew she had been hit with something.

Q. Well, you thought at first it was a piece of wood, didn't you?

page 28 } A. He said at first it was a slab of wood.

Q. But the officers told him it was a slab of wood, didn't they? And later they told him it was a rock?

A. Nobody told him it was a slab of wood in my presence.

Q. As a matter of fact, don't you know, Trooper Hart, that from the moment that boy was in that day that he would have signed anything in the world or you could have gotten him to say anything in the world that you wanted him to say?

A. I don't feel that's true at all, no, sir.

Mr. Wingfield: That's all.

Mr. Goad: That's all.

The Court: Well, I will allow the confession at this time.

Mr. Wingfield: You are going to allow it, sir?

The Court: Yes, sir.

Mr. Wingfield: If the Court please, I may want to put on

other evidence in reference to it. And I'd like to put the boy on to show you what happened.

Could I see if Mr. Robert Whitehead is available?

The Court: Yes, sir.

page 29 } The Court: As I understand, this witness is called for the purpose of explaining or describing what occurred when this alleged confession was obtained.

SHARON EMANUEL DURRETTE,

the Defendant, being first duly sworn, was examined and testified in his own defense, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:

Q. Sharon, what is your age?

A. Sixteen.

Q. How old were you on the 7th day of August, 1958?

A. Fifteen.

Q. When did you become sixteen?

A. August 24th.

Q. Were you arrested on the 7th day of August, 1958?

A. Yes, sir.

Q. Was that at the home of John Jackson?

A. That's right.

Q. Who was the Officer that arrested you? Do you know his name?

A. No, I don't.

Q. When you were arrested was any warrant

page 30 } served to you?

A. No, I had no warrant.

Q. And what time was it when you were arrested? Do you know the time?

A. No, I don't.

Q. Was it before you had had your dinner in the middle of the day?

A. Yes, I had eaten dinner.

Q. You had eaten dinner?

A. Yes, sir.

Q. When you were arrested where were you carried?

A. I was carried to Hebron Church.

Q. When you were first arrested you were carried to Hebron Church?

A. Yeah, Hebron Church.

Sharon Emanuel Durrette.

Q. Was it the Trooper there that just testified, the one that just testified, was he there at the time?
A. Yeah, he was there.
Q. Well now, before you went to Hebron Church were you brought to Lovingston?
A. No, I wasn't.
Q. But the Trooper that had arrested you carried you there, carried you to Hebron Church, the Trooper that arrested you?
A. No, he didn't carry me.
page 31 } Q. Who carried you?
A. It was a State Trooper named Gaunce.
Q. Well, the man that arrested you, what ever happened to him?
A. He turned me over to Dixon.
Q. To Mr. Dixon?
A. Yeah.
Q. Did Mr. Dixon carry you there? Was he present at Hebron Church?
A. Yeah, he was there.
Q. At that time did you see Mrs. Ferguson, or the lady you understood was Mrs. Ferguson?
A. Yeah, I seen her.
Q. Did you see her mother?
A. No, I didn't see her mother.
Q. And then where were you carried from there?
A. They carried me—they brought me on to the jail.
Q. And how long were you in jail?
A. I reckon I was there about two hours.
Q. While you were in jail did Mr. Robert Whitehead come to the jail?
A. Yes, he did.
Q. Did you make any statement in jail about anybody having hit you, or made any accusations against you,
page 32 } or threaten to do anything to you?
A. I told Mr. Whitehead that Dixon hit me and all that.
Q. Well now, I want you to go back and tell about the hitting. Where were you when he hit you and what happened?
A. He hit me down there at the Police Department down there.
Q. Where is the Police Department?
A. In the bottom of the Health Center.
Q. Was that before you had been brought to jail or was it later when he hit you?

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A. Before.
Q. Before you were brought to jail?
A. Yeah, before.
Q. Who was present there when he hit you? Just tell the Court just what happened.
A. Well, they started questioning me. I told Mr. Robert Whitehead—told them I would see my lawyer first.
Q. I am talking about down here, when you were down in the Health Department. What Officers were present there with you?
A. Dixon and Trooper Hart. That's all I can remember.

Q. Do you know whether Officer Whitehead was
page 33 } there?

A. Yeah, he was there.
Q. Officer Whitehead?
A. Yes, he was there.
Q. What happened down there?
A. Well, I told them I wasn't going to answer no questions until they get my lawyer, Mr. Whitehead. They started beating on me then.
Q. Who struck you?
A. Dixon.
Q. Who beat you? Who was present when he struck you?
A. Bill Whitehead, and another State Trooper.
Q. Were they in the room with you when he struck you?
A. No, they went out.
Q. Well, who was in the room with you when you were struck?
A. Dixon and Bill Whitehead.
Q. Just those two?
A. Yes, sir, those two.
Q. And what statements did they make to you?
A. They said that if I don't answer their questions that they were going to kill me, take a board and hit me on the head with it.

page 34 } Q. You were told that?

A. Sir?
Q. Who told you that?
A. Dixon.
Q. Well, did he hit you with a board?
A. No, he didn't hit me with it.
Q. Did he hit you with anything?
A. Yeah, he hit me with his fist.
Q. Where did he hit you?

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A. Hit me in the stomach and then he hit me in my face.
Q. Did you tell him that you had been down to the place?
A. Yes, sir.
Q. Why did you tell him?
A. Because he told me if I would tell him I had been down there he won't kill me. I just told him that.
Q. Well now, what about any confession that you signed? Did you sign any confession?
A. Yeah, I signed a piece of paper.
Q. Why did you sign that?
A. Because he made me sign it.
Q. Who made you sign it?
A. Dixon.
page 35 } Q. Were you present in the room when Trooper Hart wrote down what he wrote down on the paper?
A. Yes, he were in there.
Q. Who did the talking to you, Dixon or Trooper Hart?
A. Dixon.
Q. Did Trooper Hart ask you any questions?
A. Naw, he didn't ask me nothing.
Q. Were you afraid of Officer Dixon?
A. Yeah, I was a little bit scared.
Q. Well, was the reason you signed it because you were scared?
A. That's right.
Q. Were you in the room when Trooper Hart typed it up?
A. Yeah, I was in the room.
Q. Now, was that before or after you had seen Mr. Whitehead?
A. That was after.
Q. Well, were you down at that office twice?
A. Yeah, I was there twice.
Q. They had you down there in the morning?
A. Yeah, they had me there in the morning then took me back that evening.
page 36 } Q. And carried you back that evening?
A. That's right.
Q. Whose words were they at first that you had hit her with a piece of board? Were they your words *of* somebody else's words?
A. They was Dixon's words.
Q. Who was it that made the statement that you hit her

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with a rock? Were they your words *of* somebody else's words?

A. I said it, but I didn't mean it, though. He told me if I didn't tell that he was going to hit me in the face and I just went on and said it.

Q. Was going to hit you in the face?

A. He was going to hit me in the face.

Q. Is that the reason you signed the confession?

A. Yes, sir.

Q. Do you remember the day that I was up here and we went upstairs before Judge Wheeler?

Q. Between the time that you were put in jail and that day, were you carried at any time before Judge Wheeler?

A. No, I wasn't carried to him.

Q. That's the only time you saw Judge Wheeler?

A. That's the only time I seen him.

page 37 } Q. You hadn't seen him before?

A. No, I hadn't seen him before.

Q. Had never seen him until the day when they had the preliminary hearing?

A. That's the only time I seen him.

Mr. Wingfield: You may ask him, Mr. Goad.

CROSS EXAMINATION.

By Mr. Goad:

Q. Trooper Hart wrote this statement out at first in longhand, didn't he?

A. Yes, he did.

Q. Did he read it to you?

A. Yes, he read it once.

Q. Then did he type it up?

A. Yes, he typed it.

Q. Then he read it to you again?

A. Yes, he read it once.

Q. And after he read it to you he asked you if that was the truth?

A. No, he didn't ask me that.

Q. Well, the last thing in the statement is, "This statement is the truth to the best of my knowledge." Do you remember him reading you that?

A. He must have added that on there because I

page 38 } didn't see it.

Q. Well, you signed the statement, didn't you?

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A. Yes, I signed it.
Q. And you say now it is not the truth?
A. No, not true.
Q. You didn't go to the house that day?
A. No, I didn't.
Q. The house of Mrs. Ferguson?
A. No, I didn't.
Q. Well, you were down on the road close to the house that day, weren't you?
A. Not there, down by the Church, Union Baptist.
Q. Well, that's just a short distance down the road, isn't it?
A. Yeah, a little bit farther.
Q. You admit you were that close to the house?
A. Yeah, I was.
Q. After you were arrested, I believe you said by Officer Gaunce down at John Jackson's house—you don't know what time that was?
A. No, I don't.
Q. You were brought down to Hebron Church and Mrs. Ferguson came out there and saw you, didn't she?
A. Yes, she did.
page 39 } Q. And did you hear her identify you as the one that had been to her house?
A. She said that.
Q. And what time was that?
A. I don't know.
Q. Wasn't it somewhere around the middle of the day?
A. Yeah, almost about the middle of the day.
Q. Then you were brought to Lovingston, were you?
A. Yeah, I was brought to Lovingston.
Q. And then a short time later you were brought back to Avon?
A. That's right.
Q. Now, on the way back to Avon you were telling them all about it, weren't you, early in the afternoon?
A. No, I didn't tell them nothing then.
Q. On the way back to Avon you told them first, you admitted that you had struck—at first you said it was a plank and then—
A. I told them but I didn't mean it.
Q. What?
A. I told them that but I didn't mean it.
Q. You told them that but you didn't mean it?
A. Yeah.

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Q. In the car coming along from Lovingston
page 40 } back to Hebron Church you told them you hit her
with a plank?

A. Yeah, I told them that but I didn't mean it.

Q. And then later on when you got down there and they found out about a rock being found on the back porch you admitted that you hit her with a rock, didn't you?

A. No, I didn't tell them I hit her with a rock.

Q. Didn't you admit after you got back to Hebron Church on that second trip back from Lovingston, didn't you admit that you hit her with a rock?

A. No, I didn't.

Q. You didn't admit it at that time?

A. No, I didn't.

Q. From the time of this trip back from Lovingston to Avon and all the rest of the afternoon it was an admitted thing? You told them the whole story, didn't you?

A. I didn't tell them the whole story.

Q. What was the whole story? What was it you didn't tell them?

A. They say I hit her and I say I didn't hit her.

Q. But you admitted that you were there on the porch, that you were the one that went up on the porch?

A. No, I didn't. I never did tell them that.

Q. You stated a minute ago that you admitted hitting her
with a plank?

page 41 } A. I didn't tell you I hit her with no plank.

Q. I said, didn't you tell the Officers you hit her with a plank?

A. No, I didn't tell the Officers I hit her with a plank. Told was a plank on that desk.

Q. Said what?

A. There was a plank on their desk I said I hit her with.

Q. Did you tell the Officers on this trip back to Avon that you hit Mrs. Ferguson with a plank or a piece of wood?

A. Yes, I told them that but I didn't mean it.

Q. All right, you told them that. So, when you told them that you were admitting that you had done it up on the back porch, didn't you?

A. I didn't do it, though.

Q. You admitted it at that time? That was early in the afternoon?

A. Yeah, early afternoon.

Q. Well, nobody was threatening you in the car, were they?

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A. No, Dixon said had a little house he was going to carry me to that and kill me, like that.

By the Court:

page 42 } Q. I didn't understand what you said.

A. I said, Dixon said he was going to carry me to a house on the side of the road and was going to kill me in there.

By Mr. Goad: (Continuing)

A. Did Trooper Hart ever make any such statement as that?

A. No, he didn't.

Q. Dixon is the only one that you claim made any statements of that nature, is that right?

A. Yeah, that's right.

Q. And Deputy Sheriff Whitehead was present?

A. Yes, he was.

Q. All the time. Trooper Hart was present?

A. Except one time. They took me in that big room for something. Then Dixon in there by himself.

Q. Where do you claim Dixon hit you?

A. He hit me in the stomach once and then he kept on hitting me in the face with his hand.

Q. With his hand or his fist?

A. With his fist.

Q. Well, was there one mark on your face?

A. Sir?

Q. Did you ever point out any one mark on your

page 43 } face to anybody?

A. Point out a mark?

Q. Yes. Was there any mark made on your face by all this assaulting business you are telling us about?

A. No, there wasn't.

By the Court:

Q. You don't claim that Trooper Hart ever did anything to you, do you?

A. No, he never did do nothing.

Q. Well now, if he didn't hit you or intimidate you in any way, why did you make this statement to him if it isn't true?

A. Sir?

Q. Why did you make this statement to Trooper Hart if it isn't true and if he didn't do anything to you?

A. Because they just kept on hitting, hitting me.

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Q. You mean in Trooper Hart's presence?
A. Sir?
Q. Was Trooper Hart present when they hit you?
A. Yes, he was present once, then he went out the door once.
Q. Who hit you when he was present?
A. Dixon.
Q. Where did he hit you that time?
A. He hit me in the face then. I was sitting in page 44 } the chair and he hit me in the face.

By Mr. Goad: (Continuing)
Q. You mean a big man like Dixon with a fist about twice as big as mine hit you in the face and didn't leave a single, solitary mark?
A. That's right.
Q. As a matter of fact, Sharon, didn't the Officers tell you this. Didn't the Officers tell you that they really protecting you because the community—

The Court: Let me see that file. Go ahead.

Q. Didn't the Officers tell you several times during the day that they were really protecting you because the community down there was mighty upset about this thing that had happened? Weren't they really protecting you instead of doing anything to you?
A. Well, they kept on slapping me in the face.
Q. Who, Dixon?
A. Yeah.
Q. Nobody else?
A. Nobody else but Dixon.
Q. With his fist?
A. Yeah, with his fist.

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

RE-DIRECT EXAMINATION.

page 45 } By Mr. Wingfield:
Q. When he hit you with his fist was his hand open or was it a fist, his hand clenched?
A. He had them clenched up.

Mr. Wingfield: That is all.

The witness stands aside.

Mr. Wingfield: If the Court please, I think that that boy was being illegally transported; that he was being illegally held; and I think under that Statute itself that any statement made by him while he was being held illegally, that they did not follow that Statute. And if it is true that he was held illegally then that would render inadmissible the alleged confession.

The Court: I'll say this, Mr. Wingfield, I am more concerned about what appears to have been maybe a failure to comply with the Statute than I am about the confession.

So far as Mr. Hart is concerned, he is well known to the Court. He has been a Trooper here and he is an
page 46 } honorable man. His record here has been excellent.

It's a conflict in the evidence, but I think there is enough evidence to go ahead with the confession.

Now, as to this other matter, of course, I can pass on that later. I am a bit concerned about it. I will say to the Commonwealth's Attorney that under the very strict manner in which the Court of Appeals dealt with the Tilton case, which was a horrible affair, as all of you know, and the strict compliance that they required in that case, I am not too sure that this matter hasn't been handled in an illegal manner, but this is a new Statute. It was all rewritten this year and I won't pass on that at this time.

Mr. Wingfield: If the Court please, before the Jury comes back; although I know it is a question as to the admissibility, I believe that I am still entitled to show to the Jury the circumstances under which the—

The Court: Oh, yes, and you are entitled to an instruction on it, and it must be a free and voluntary thing.

page 47 } Mr. Wingfield: All right, sir. Now, with reference to certain things—I know the Officer has testified, but I don't know how I am going to get the benefit of that. Would there be anything wrong about, with reference to the Officer's testimony, being played back so that the Jury can hear it?

The Court: No, I think you would have to recall them and question them about this.

All right, call the Jury back.

Mr. Wingfield: Your Honor, before it is introduced I can take it over on cross examination?

The Court: Where were we before we sent the Jury out?

Mr. Goad: I was about to introduce it, Your Honor.

The Court: Well, I think now you would have the right to cross examine before it actually comes in.

Mr. Goad: I take it that I may go ahead with my examination?

The Court: Yes, because I am admitting it,
page 48 } and then you cross examine on it and bring out those points.

Jury in.

TROOPER W. C. HART,
resuming the witness stand, testifies further as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Trooper Hart, I show you a statement headed, "Lovington Office, August 7, 1958, 5:45 p. m."

Mr. Wingfield: If the Court please, may it be noted, with reference to my exception, in the record that I didn't give the ground but may I make that later without the Jury being excluded again?

The Court: Yes, sir. Well, you have been objecting and excepting to it. I think for the purpose of the record that you can state your grounds in the absence of the Jury later on, Mr. Wingfield.

Mr. Wingfield: Thank you, sir.

Q. (Continuing) A statement purporting to have been signed by Sharon Emanuel Durrett and witnessed by you, Trooper W. C. Hart, and also by Deputy Sheriff H. M. Dixon.

A. Yes, sir.

page 49 } Q. Is that the statement that Sharon E. Durrette, the Defendant, made at that time and place?

A. Yes, sir, it is.

Note: At this time the aforementioned paperwriting is received in evidence and marked and filed Commonwealth's Exhibit No. 1.

Q. Now, Trooper Hart, at the time this statement was taken I believe you have already testified that you first wrote out the statement in longhand?

A. Yes, sir.

Q. Then did you read it over to the Defendant?

Trooper W. C. Hart.

A. Yes, sir.

Q. Then did you type up this particular statement you hold in your hand?

A. Yes, I did.

Q. Did you read that back to him?

A. Yes, sir.

Q. So you read the statement back to him twice?

A. Yes, sir.

Q. Was this statement, on his part, a free and voluntary statement?

A. Yes, sir, it was. It was conducted on a friendly basis.

Q. Had there been any difficulty between you and the accused the whole day?

page 50 } A. None whatsoever, no, sir. He was most cooperative.

Q. Cooperated with you all the way?

A. Yes, sir.

Q. Now will you read the statement, please?

A. "I, Sharon Emanuel Durrette, hereby make the following statement to Trooper W. C. Hart and Deputy Sheriff H. M. Dixon. I make this statement on my own free will. I have not been promised anything, nor have I been threatened in any manner.

"I am fifteen years of age and live at Avon, Virginia. I make this statement because it is the truth.

"I left home around 8:00 a. m. I walked on down to the main road. I was figuring on going out to the Church. McKee Jackson always picks me up there to go to work. I was working for him at that time, helping him haul pinewood. I waited there at the Church for about ten minutes and then I decided to walk up the road to Hebron Church. I walked from Union Baptist Church to Hebron Church.

"Then I decided to go up to Mrs. Ferguson's. I knew that Mr. Ferguson worked in the daytime and that he was not at home. I decided to try to screw Mrs. Ferguson but did not plan to knock her in the head at first.

"When I got outside of the house I picked up a rock. I was just going to hit her on the head a little bit.

page 51 } I knocked at the screen door and didn't no one answer. Then I went to the main door and knocked but nobody come. After a while she come on in. I told her that I wanted a dozen eggs. She didn't say nothing but that she didn't have none.

"She held the screen door open. When she did I hit her

with the rock. The rock was in my right hand. She fell down on the porch on the bucket of water. I caught her by the hand and tried to pull her into the kitchen. She hollered three or four times.

"I took and ran out the door and across the road near where I come in at. I took and jumped across the bank and went on up into the field. Then I took and came back through the field back to the Union Baptist Church. I had just got back there when McKee Jackson picked me up.

"This statement is the truth to the best of my knowledge. Signed, Sharon Emanuel Durrette."

Witnessed by Deputy Sheriff Dixon and myself.

Q. Trooper Hart, did you go back to the scene of this case and take pictures?

A. Yes, I did.

Q. Will you look at that picture and tell what it represents?

A. That is the back porch of the Ferguson home. This is the outside screen door going into the porch, and this is the inside door leading into the house.

page 52 } By the Court:

Q. Is that the way it was *arrange* on this particular day?

A. Well, of course, the door arrangements are the same, but the furnishings on the porch, I couldn't be positive about that, no, sir.

Mr. Goad: I would like to introduce that, Your Honor. I will give you all of these in order.

Note: At this time the above-mentioned photograph is received in evidence and marked and filed Commonwealth's Exhibit No. 2.

Q. I show you the next picture, Trooper Hart, and ask you if that is the outside view looking towards the Ferguson back porch?

A. Yes, sir.

Q. With the screen door open and showing the inside door leading into the house?

A. Yes, sir.

Note: The abovementioned photograph is now received in evidence and marked and filed Commonwealth's Exhibit No. 3.

Trooper W. C. Hart.

By Mr. Wingfield:

Q. Trooper, will you establish when these pictures were taken?

page 53 } By Mr. Goad: (Continuing)

Q. When did you take them?

A. I'm not sure. They were taken—I'm not positive when they were taken. They were taken approximately two weeks ago. It may not have been quite that long.

Q. They were taken recently?

A. They were taken recently.

Q. Now I show you picture No. 3 here, the next picture, and ask you if that is a close-up picture from the outside looking into the Ferguson back porch?

A. Yes, sir.

Q. Showing the screen door open and showing the inside door closed?

A. Yes, sir. The bottle was put there to prop the door open.

Note: Photograph No. 3 is now received in evidence and marked and filed Commonwealth's Exhibit No. 4.

Q. Picture No. 4. I show you that and ask you if that is a view looking from the Ferguson back yard—this being the Ferguson house—over to the next door house of Mr. and Mrs. George Henderson, right there, showing the back yards of the two houses?

A. Yes, sir.

The Court: That's Exhibit No. 5 and the page 54 } 4th picture.

Mr. Goad: Yes, sir.

Note: Photograph No. 4 is received in evidence and marked and filed Commonwealth's Exhibit No. 5.

Q. Now I show you the next picture and ask you if that is a picture of the Ferguson house looking at it from the Henderson back yard?

A. Yes, sir.

Q. Now, is this the Hebron Baptist Church cemetery in the distance over here?

A. Yes, sir, that's right.

Trooper W. C. Hart.

Q. Is this the next house on the north side of Hebron Baptist Church?
A. Yes, sir.

Note: The abovementioned photograph is received in evidence and marked and filed Commonwealth's Exhibit No. 6.

Q. Now I show you a picture and ask you if that was—where that was taken?
A. That was taken standing right at the edge of the Ferguson's yard.
Q. On the line between the Ferguson's yard and the Henderson's yard?
A. Yes, sir.
page 55 } Q. Now I will ask you what that steeple is coming up right there?
A. That's the colored Church.
Q. Is that Union Baptist Church?
A. Yes, sir.
Q. Now I will ask you what that house is right there in the distance?
A. That's the Durrette home.
Q. Is that where the Defendant lives?
A. Yes, sir.

Mr. Goad: Your Honor, I am now asking leave to introduce one more picture that Mr. Wingfield objects to.

Note: The abovementioned photograph is now introduced and marked and filed Commonwealth's Exhibit No. 7.

Mr. Goad: Take the witness.

CROSS EXAMINATION.

By Mr. Wingfield:
Q. Trooper Hart, you don't remember when you took the pictures?
A. They were developed last Thursday night.
Q. Do you remember what day of the week it was you took them?
A. I may be able to look back in my notes some-
page 56 } where. I didn't make a notation of it. I do know it was a weekday.

Trooper W. C. Hart.

Q. Do you remember getting the warrant in this case?

A. I don't recall exactly when the warrant was issued.

Q. Well, do you have any recollection of ever getting a warrant?

A. No, sir. All I know is the warrant was issued sometime that afternoon.

Q. As a matter of fact, you didn't know until your memory was refreshed that you had even, that you had been the procurer, the Officer that procured the warrant?

A. I did not remember that I swore out the warrant. You see, he had been arrested a couple of hours before that.

Q. But it did develop that you were the Officer that got the warrant?

A. Yes, sir, I issued the warrant.

Q. And do you remember what time of day it was that you issued the warrant?

A. No, sir, I haven't the slightest idea. I never pay any attention to the exact time of day that I issue warrants.

Q. You don't have a very good memory, do you, Mr. Hart?

A. I think I have a right good memory but, of course, in this particular case there was a lot going on. I
page 57 } don't remember every thing that happened. I don't remember the exact time of the warrant. As I didn't arrest him—I did not remember getting it. I was going more or less on the assumption that they had procured the warrant before I went out there.

Q. But it does develop that you were the one that did get the warrant?

A. Yes, sir, I do remember that the warrant was issued by me, but I don't know what time.

Q. Had he been arrested when you obtained this so-called confession? Had he been arrested then?

A. Yes, sir, he had been arrested and the warrant had been served on him.

Q. But you had not arrested him?

A. No, sir, I didn't arrest him.

Q. And you hadn't seen him until—What time did you see him that day? What time did you see him?

A. It was after lunch. I don't know exactly what time.

Q. Well, had you gotten the warrant then? He was already in jail, wasn't he?

A. Yes, sir, he was put in jail while I was in County Court up here.

Trooper W. C. Hart.

Q. They didn't have any warrant when they put him in jail, did they?

page 58 } A. Not that I know of, but I did not arrest him nor did I put him in jail.

Q. And you were not the one that arrested him?

A. I did not, no, sir. I served the warrant on him.

Q. Well now, when did you serve the warrant on him?

A. That afternoon. I don't know exactly what time.

Q. Was it before or after the so-called confession?

A. That was before, also before he was taken back to the scene.

Q. That you served the warrant on him?

A. Yes, sir.

Q. Well, having procured the warrant, you did not do so with the consent and approval of Mr. Campbell, the Juvenile and Domestic Relations Judge, did you? Mr. Wheeler, I mean.

A. No, sir, I was not aware that I had to in a case of a felony and issued the felony warrant.

Q. You are aware of that fact now, aren't you?

A. I won't say positively that Mr. Wheeler was not consulted. I feel sure that Mr. Goad was consulted, because—I am positive that I talked with Mr. Goad. I may have talked with Mr. Wheeler but I won't say definitely.

Q. This is a very serious case and those matters would be very important. What is wrong with your memory, Mr. Hart?

page 59 } A. What are you referring to?

Q. As to whether you did talk to Judge Wheeler that day before you got the warrant, or any time that day, referring to this case?

A. Well, in the case of a felony I don't always talk to the Judge before issuing the warrant.

Q. I am talking about your memory and your recollection now?

A. Well, I just answered your question, sir. I said I don't always consult the Judge before issuing a warrant.

Q. Well, did you consult him on this occasion with reference to a fifteen-year old boy, as you know now the law directs you to do?

A. I cannot say definitely that he was consulted.

Q. Then your memory—

A. I would say that in all probability that he was.

Q. Then your memory is faulty?

A. I don't remember that exactly, no, sir. I have already testified to that about four or five times and possibly more.

Q. Well, you haven't before the Jury.

A. Well, about twice before the Jury, sir.

Q. Now, Mr. Hart, were you the one that had put this boy in the County Jail?

A. No, sir, I did not put him in the County jail.

page 60 } Q. Were you the one who took him out of the County jail in the afternoon?

A. Yes, sir. I was accompanied by Deputy Sheriff Dixon and Deputy Sheriff Whitehead. Yes, sir, he was taken out of jail and placed in my car.

Q. While you were in jail, I want to ask you if Mr. Robert Whitehead was in jail, was visiting in the jail over there?

A. Yes, sir, Mr. Whitehead was in the jail.

Q. I want to ask you if—I don't mean that Mr. Robert Whitehead was there as a prisoner—

A. He was not there as a prisoner.

Q. —I mean he was there—so he could leave when he wanted to?

A. Yes, sir.

Q. And while Mr. Robert Whitehead was there, I want to ask you if Sharon Durrette here did not tell Mr. Whitehead that Trooper Dixon had struck him and had forced him to do certain things?

A. I heard no reference about forcing him to do anything. Mr. Whitehead—

Q. Well, how about Sharon—

A. If you will allow me I will answer your question.

Q. All right.

A. Mr. Whitehead made a general statement to

page 61 } the Police Officers that were present at that time.

Mr. Goad: Your Honor, I object to any statement that Mr. Whitehead made.

The Court: Why? He was in the presence of the accused.

Q. Was Sharon Durette present with the Officers and Mr. Robert Whitehead?

A. Yes, he was present.

Q. I am asking you now what statements this boy made to Mr. Robert Whitehead about how the Officers were treating him?

Trooper W. C. Hart.

A. I don't recall any statement made by this boy. The only statement I recall was made by Mr. Whitehead when he asked us the question, if somebody had struck him or who had struck him, or something of that nature, that general nature. And Durrette indicated that Dixon had hit him.

Q. Well, he pointed—

A. Mr. Whitehead—

Q. He accused Officer Dixon of having hit him, didn't he?

A. There was a reference made to it. Whether he pointed at him and accused him of striking him I don't know. However, Mr. Whitehead asked Dixon the question, Deputy Sheriff Dixon. And Deputy Sheriff Dixon acknowledged doing it.

page 62 } Q. Did you know at that time that Officer Dixon, along with another Officer—to be exact I believe it has been pointed out as being Officer Whitehead—had had this fifteen-year old boy down here in a room in the Health building alone. Did you know that then?

A. Not of my own knowledge, no, sir. I was in County Court upstairs and I knew nothing about it until I heard over the telephone that he had been apprehended.

Q. Well, that is where the striking was supposed to have been, wasn't it?

A. I know nothing about the striking, sir. It was certainly not in my presence. No one has ever been hit in my presence when they were being interrogated.

Q. But from that time on, I want to ask you if it isn't true that instead of you Officer Dixon had this boy under his hand and control and if he wasn't the one that dictated the statement as to what took place?

A. What are you referring to, what time?

Q. I ask you—

A. What time are you referring to? Are you referring to 11:00 o'clock in the morning or are you referring to the—

Q. On the day—

The Court: One of you talk at a time here.

page 63 } Q. I am talking about from the time you took him out of jail, or from the time you had him in jail, if Officer Dixon wasn't with you at all times after that—or, with the boy?

A. Yes, sir, Officer Dixon was with me at all times, as

well as I remember. However, he did not conduct the interrogation solely.

Q. But he stood over the boy, didn't he?

A. No, sir.

Q. He at no time left Sharon, did he?

A. I don't know whether he left him or not. I at no time left him.

Q. Well, now, whose words are these in this statement?

A. The first part of the statement is a general paragraph that we usually include in a statement in advising them of their rights and so forth. The body of the statement is his.

Q. Why didn't you put it in quotation marks?

A. I don't know, sir. I just wrote the statement as he gave it to me.

Q. You say they were his words?

A. Yes, sir.

A. Were they exactly his words, or some of them his words and some of them your words?

page 64 } A. Well, I don't say that they are his words verbatim, no, sir. I wouldn't say that. The statement is what he told us and the statement was written as he told it to us and read back to him.

Q. Was anything said about what had happened to a colored boy down there in Mississippi?

A. Absolutely not, sir, not in my presence.

Q. Did you step out?

A. I did not.

Q. Or did you step out of the room at one time and leave this boy alone with Officer Dixon and Officer Whitehead?

A. No, sir, he wasn't alone during the time that I interrogated him and when I took the statement from him.

Q. Now, a few days later, or on August 9th, you did go to Mr. Wheeler, didn't you—Judge Wheeler?

A. Mr. Wheeler signed the papers on that date, yes, sir.

Q. And you went to him—You signed the complaint on which the warrant was issued, and two days later you signed a petition after the boy had been held in jail for those two days?

A. The petition was signed on the 9th, the morning of the 9th, yes, sir.

Q. And so far as you know this boy was never carried before Judge Wheeler? So far as you know this boy

page 65 } was never produced before Judge Wheeler, the Juvenile and Domestic Relations Judge of this

Trooper W. C. Hart.

County until a date when a hearing which was called, a preliminary hearing, on a felony was had, was he?

A. Yes, sir.

Q. He was carried before him?

A. He was carried before him at the preliminary hearing.

Q. And that was the first time from the time that he was put in jail on the morning of the 7th until that day—What day was that?

A. What day was what, sir?

Q. When they held the preliminary hearing.

A. I don't know, sir.

Q. Well, how long after August 7th was it?

A. I don't know the date, sir. I might look it up on my records, but I don't remember the Court day.

Q. Was it one week, or two weeks, or three weeks?

A. I don't remember, sir.

Q. Well, can you tell us whether it was a month or not.

A. I don't know the date of the preliminary hearing, sir. I don't remember. I could look it up possibly.

The Court:

Mr. Wingfield: I am testing his memory, sir, page 66 } about the things that he recollects.

Q. I believe you made a statement previously that the boy first said that he had hit her with a board or plank.

A. Board or plank, yes, sir.

Q. I want to ask you if this particular rock that has been referred to—I've seen it—but it has been referred to by Mr. Goad and appears to be laying on the counter—on his desk over there —if that rock had been found at that time?

A. The rock was not found by me, sir.

Q. You don't know anything about the rock having been found, do you?

A. Yes, sir, I know that the rock was found.

Q. You said—

A. I did not find it.

Q. Well, when did the Defendant first say that he had hit her with a plank or a board? I understood him to say that he had told you that at first, that he had hit her with a plank or a board?

A. When did I first have knowledge of that?

Q. Yes, when did you hear him make that statement, that he hit her with a plank or a board?

A. On the way over to Avon.

Trooper W. C. Hart.

Q. Did you know at that time that Officer Dixon had a board that had been carried away from the Fergu-
page 67 } son home and brought, apparently, and laid on a table or desk in a room in which they had the boy down in the Health building?

A. I know nothing of anything like that, no, sir.

Q. But that statement was changed from a board to a rock after the rock was found?

A. The accused changed it himself. He stated that it was a rock that he used.

Q. When did he say that?

A. Over at the scene.

Q. Was that after the rock had been found?

A. I don't know exactly when the rock was found. I didn't find it.

Q. His statement certainly didn't ring true if he said on the way down, "I hit her with a board," and on the way back, "I hit her with a rock"? One of them was wrong, wasn't it?

A. Well, it wasn't on the way back that he admitted hitting her with a rock. He admitted hitting her with a rock after he got down there.

Q. Well, regardless of when he said it, one of them was wrong, wasn't it?

A. Yes, sir, I suppose it was.

Q. You didn't put that statement in here about hitting her with a board?

A. Well, sir, he said he didn't use a board.

page 68 } Q. So that the Jury will know about the statement, this doesn't purport to be all that took place? This is just the paper that you prepared and took it to him to sign?

A. Not exactly like that, Mr. Wingfield.

Q. You did type it, didn't you?

A. Yes, sir.

Q. He didn't type it?

A. No, sir. I didn't prepare it and tell him to sign it like that. I prepared it and he was advised of his rights before it was prepared. It was written by me and it was read over to him. It was then typed up and read again before he signed it. He understood what he was signing and the whole thing was conducted on a friendly basis.

Q. When you say he was advised of his rights, you don't mean that, do you, Trooper Hart?

Trooper W. C. Hart.

A. I advised him that he had a right to an attorney; I advised him that he did not have to make a statement.

Q. Wasn't it his right to have been immediately, when he was brought in here, instead of being put in jail to have been carried before Judge Wheeler, who was right here in the Courtroom on that particular day? Wasn't that his rights?

A. I didn't bring him in here, sir.

Q. Well, when you got the warrant against him—when you said you got the warrant—wasn't it his rights then to be immediately carried before Judge Wheeler?

page 69 } A. I didn't know that he hadn't been immediately carried before Judge Wheeler at that time.

Q. But it was his rights and you know that now, don't you? So he wasn't advised of his rights, was he?

A. This had to be drawn up. Of course, it was done later on.

Q. You don't say now that he was advised of his rights, from what you know now, do you?

A. Well now, in reference to the statement—You were talking about the statement—in reference to the taking of the statement, he was advised of his rights, yes, sir.

Q. I'm talking about that, too, that he be taken before the very man that the law says about what he shall serve, the very Judge, and you didn't do it, sir. Wasn't I right, you didn't do it?

A. I did not arrest him.

The Court: That's a question of the validity of the arrest, Mr. Wingfield, rather than the validity of the—

Mr. Wingfield: But he said he was advised of his rights and I think that was his rights under the law, sir. And it was purely with reference to that question that I asked him.

page 70 } The Court: With reference to that, but not with reference the statements. You were speaking of statements at the time.

Q. Well, you said he had been advised of his rights?

A. In regard to the statement, yes, sir.

Q. Did you ask him if he could read and write?

A. I am sure I did not ask him if he could—

Q. Well, as I understand—

A. I am sure I did ask him if he could read.

Q. You are sure that he could write?

A. I am sure that I did not ask him if he could write. I

assumed he could write. He wrote his name. I did ask him if he could read.

Q. Did he read it?

A. Yes, sir, he read it with me. I read it over and asked him to read it over with me.

Q. Did you read it aloud to him?

A. Yes, sir, twice.

Q. The same typewritten paper to him?

A. No, sir.

Q. You mean you changed it?

A. No, sir. It was written in longhand first of all. As I was taking the statement I took it in longhand.

Q. Can I see the longhand statement that you wrote out in longhand, sir?

A. I do not have that.

page 71 } Q. Where is it, sir?

A. I don't have the slightest idea. It was thrown away. I didn't keep it because—I write it out in longhand. The main reason is if I type it out in a finished statement to begin with, then after they read it over so many times they say something should be changed, or this should be changed, and then I have to turn around and type it all over again. I am not an expert typist and so I write it out in longhand and read it over to them and then if it is correct I can type it up and have him sign it.

Q. Well now, if you had to write it down in longhand and you knew he could read, and you thought he could write because you got him to sign his name, if it was going to be his statement why didn't you let him write it?

A. Well, I never do. Usually when you take a statement and you are talking to an accused, you take a statement and you write down what he has to say and type it up. I mean, that's the same reason I didn't ask him to type it.

Q. What do you mean, usually?

A. Well, I always. I have never gotten—I've been a Police Officer for seven years and I don't ever remember giving a man a piece of paper and say write down a statement.

Q. Getting a confession is an unusual thing. You don't have a chance to get many confessions, do you?

A. We get quite a few.

page 72 } Q. How many confessions would you say that you have taken and typed up in the past year?

A. That would be hard to count, sir. How many statements?

R. C. Gaunce.

Q. Yes. I am not talking about your reports. I am talking about statements of people charged with a crime that they sign. How many occasions have you had to get a statement?

A. Just about every case that I have worked. I have never had any problem getting statements from people.

Q. You don't have any problem?

A. No, sir, it isn't a problem. No, sir, very seldom.

Q. In connection with automobile accident or in connection with felonies?

A. I am talking about, well, felonies, yes, sir.

Q. You thought this case was pretty serious, didn't you?

A. Yes, sir, I feel it is.

Q. And the Officers were anxious to make an immediate arrest and get the thing sewed up, weren't they?

A. No, sir, I am never anxious to sew things up so that I will overlook anything. We try to be fair.

Q. And this confession, alleged confession, was signed in a room in the Health building, not on the Courthouse grounds?

page 73 } A. It was signed in the State Police office, which is a very normal place for us to take statements, sir.

Q. Was the Commonwealth's Attorney present?

A. No, sir, he was not.

Mr. Wingfield: That is all.

The witness stands aside.

Note: At this time luncheon recess is had, 12:15 p. m. until 1:15 p. m.

AFTERNOON SESSION.

1:15 p. m.

R. C. GAUNCE,

Virginia State Trooper, a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are State Police Sgt. R. C. Gaunce?

R. C. Gaunce.

A. Yes, sir.

Q. I believe you are stationed over in Augusta County?

A. Yes, sir.

page 74 } Q. But you are the Sergeant as far as these Officers in Nelson County are concerned?

A. Yes, sir.

Q. Within your jurisdiction?

A. Yes, sir.

Q. How many counties do you have?

A. Three counties, Highland, Augusta and Nelson.

Q. How long have you been with the State Police?

A. Twenty years.

Q. Sgt. Gaunce, did you assist in the investigation of this case?

A. Yes, sir, I did.

Q. Tell about your part in the investigation.

A. Well, on the morning of the 7th, shortly after 8:00 I heard through the Police radio of this incident. And I was coming to Lovingston to Court that morning anyway, so I came directly on to Avon and assisted.

I got to Avon shortly before 9:00 and found Trooper Hart talking with Mrs. Ferguson who was the victim in this case. She left before I had a chance to talk to her very much and was taken on to Waynesboro. I spent some time there looking for this young man and had to leave to come to Court.

I came on to Court and got back up there about 11:00 o'clock, and arrested him about 11:30.

Q. Were you given a description or a name, or

page 75 } what information did you have?

A. I had a description and a name, although the name didn't mean as much to me as the description. Mrs. Ferguson had described the man that attacked her as a young negro in his teens.

She said that he was wearing blue dungarees and a tan shirt, that he had thick lips and two buck teeth in front. She also said that his clothing had a lot of resin on them.

There was some question about the first name. It was not established. It was thought that the boy's last name was Durrette, but there are, of course, a lot of people in that neighborhood by that name and I went primarily by the description.

Q. All right. Now tell about the arrest. You are the one that actually made the arrest?

A. Yes, sir. I found him at the home of—I call him Key

R. C. Gaunce.

Jackson. J. R. I believe are his initials. And that is just South of the Avon postoffice.

I drove up to the house and this boy was just getting in the car and I called him over to the car and arrested him there. First I told him that I was going to bring him down to Hebron Church. I wanted him to go down there with me. And when we got there, which is about a mile South, at that page 76 } location, after talking with him a few minutes and Mrs. Ferguson coming I arrested him.

Q. Well now, when you found him at the home of John Jackson—I think they call him Key, don't they?

A. That's the name I know him under, Key Jackson. I don't know if that is his correct name or not but that's the name I know him under.

Q. His name is on the main highway, is that right, going North?

A. On Route 151.

Q. About how far is the home of John Jackson North from the Hebron Baptist Church? Do you know?

A. I would say between a half and a mile, possibly closer to a mile from the Hebron Church.

Q. You say when you first saw the Defendant he was getting in a car preparing to leave?

A. There were two or three cars there and he was standing by the door and just getting in the car.

Q. How was he dressed at that time?

A. He was dressed as he had been described by Mrs. Ferguson, identically.

Q. Did he have Pine resin on his pants?

A. He did.

Q. Did you get information that he had been working in pulpwood?

A. Yes, sir. I knew, of course, before I arrested page 77 } him where he had been. I had made some investigation and I found that he had just come back to that neighborhood, having been away an hour or two earlier.

Q. Now, when you first found him there at Jackson's home, you didn't place him under arrest at that time?

A. No, sir.

Q. What was your conversation with him at that time?

A. I called him to the car and asked him to get in the automobile and he made no comment. I told him we were going down to Hebron Church. And he shut the door and there was not a word spoken until we got to Hebron Church.

Q. He didn't resist?

R. C. Gaunce.

A. Oh, no.

Q. Never said a word?

A. No, sir. Didn't ask what we were going for and I didn't tell him. No comment one way or another.

Q. Now, when you got to Hebron Church tell us exactly what happened there.

A. Well, I told him that I wanted to talk with him about the eggs he bought this morning or tried to buy, and I wanted Mrs. Ferguson to see him and to see if he was the man that came to her house this morning.

One or two of the other Officers were there. Trooper Layman and Dixon and Whitehead, that I recall. And Mrs. Ferguson came over to the car and said that this page 78 } was the man that was at her home this morning.

Q. How close did she come over to the car?

A. She was standing right by it. He was sitting in the car so I asked him to get out of the car. He got out and she again said that it was him.

Q. How far were they apart when she identified him?

A. A very short distance, about five or six feet, something like that. At that time Durrett said that he did not go to that house, that it was not him.

We stayed there possibly twenty minutes, or about 12:00. I left and went back to Court in Waynesboro.

Q. You did not bring the Defendant direct to Lovingston?

A. No, he came on with Mr. Dixon, Deputy Sheriff Dixon. They left about 12:00 or a few minutes after and I went back to Waynesboro.

Q. And you made the arrest at what time? What time did you find him there at John Jackson's house?

A. 11:30.

Q. Now, from 8:00 o'clock that morning, or from the time you got over there at 9:00 o'clock until 11:30, what were the Officers of the law doing down there in that neighborhood? What was going on down there.

A. Of course, we were trying to find this young page 79 } man.

Q. Were there several Officer down there looking for him?

A. Yes, sir, there was. I think I could name them all. The first person I saw was Hart and then I later talked to Dixon, Trooper Layman, Trooper Nance, Mr. Moon, and Mr. Whitehead. They were all there during the course of the morning. Some of us left, of course, to come to Court in Lovingston, some stayed. Most all of us had Court, had to

R. C. Gaunce.

be here, but some stayed and some came on and as soon as those got back the others came.

Q. You say you left Durrette in the hands of the other Officers there at Avon, at Hebron Church?

A. Yes, sir.

Q. And you went back to Waynesboro?

A. Yes, sir, I went back to Waynesboro. When I got to Waynesboro there was a call came from Mr. Farr's store asking me to come back to the Ferguson home.

Q. Did you go back to the Ferguson home that afternoon?

A. Yes, sir, I did.

Q. About what time?

A. I got there between 2:00 and 2:30.

Q. Tell what you found in further investigation when you got back there.

A. Well, on the way back I had radio communi-
page 80 } cation with Trooper Hart. I told him that I was coming back to the Ferguson home. I had found a rock there that I thought was used that morning. And he was in Lovingston when he received that message and he told me that he knew about the rock, that this boy had told him that it was there.

So I went on and found Mr. and Mrs. Ferguson there and they had not moved the rock. It was laying behind a bucket that she had dropped that morning.

Q. Sgt. Gaunce, I ask you if that is the rock you found at the Ferguson home?

A. Yes, sir, that's the rock.

Q. Now, will you show us in this picture of the back porch—I will ask you first, where did you find it?

A. I found it on the back porch on the north side, to the right of the door as you were leaving the porch.

Q. Point out in this picture of the back porch where you found the rock. Here is the screen door.

A. This door would be facing north towards Afton and the rock was found just to the right of the door.

Q. Where was the bucket?

A. There, also.

Q. Which was closer to the outside wall, the bucket or the rock?

A. Well, the way the bucket was sitting you couldn't see the rock. I mean, you had to—unless you would walk
page 81 } around and look behind.

R. C. Gaunce.

By the Court:
Q. In other words, the bucket was in front of the rock?
A. The bucket was in front of the rock, yes, sir.

By Mr. Goad: (Continuing)
Q. Well, was the rock between the bucket and the wall?
A. Between the bucket and the wall, yes, sir.
Q. This wall right here?
A. Yes, sir.

Note: At this time the rock referred to above is introduced in evidence and marked and filed Commonwealth's Exhibit No. 8.

Q. Did you notice any resin or anything on this rock when you first found it?

Mr. Wingfield: I object to that question as leading.
The Court: Objection sustained.

Q. Well, did you notice anything on the rock other than the rock?

Mr. Wingfield: I object to that as leading, Your Honor.

By the Court:
Q. What was the appearance of the rock when
page 82 } you found it?
A. The rock had hair on it.
Q. What?
A. The rock had hair on it.

By Mr. Goad: (Continuing)
Q. Could you tell by observation that it was hair?
A. Yes, sir, what appeared to be hair.
Q. What color was the hair?
A. Dark brown, the best I could tell.
Q. Was there anything else about the appearance of the rock that showed any other matter, other than would be natural to the rock?
A. No, sir.
Q. There is one loose piece that has been attached to the rock by scotch tape, one little splinter. Did you notice any splinter there that day?

R. C. Gaunce.

A. No, sir, I didn't notice the splinter there that day.

Q. Now, did you talk to this Defendant any time later that day?

A. Yes, sir. I talked to him—not that day—on a Friday. This was on Thursday and I talked to him on Friday afternoon.

Q. Will you tell what conversation you had with him on that afternoon?

page 84 } Mr. Wingfield: If the Court please, I would like to object to this testimony on the ground that at that time under the Statute the boy was being illegally held and any conversation that he had while so being illegally held would be inadmissible.

The Court: Objection overruled.

Mr. Wingfield: We except to the Court's ruling, sir.

The Court: All right.

The conversation with him on Friday—I was not questioning him and it was very informal. I happened to be in the jail on another occasion and saw him.

I said, "Sharon, I understand that the case turned out just like Mrs. Ferguson said." Because, when I had seen him the day before he denied any connection there and that was my reason, I guess, that I approached him in that manner, and his answer to it was, "Yes, that's right."

That's all that was said. I went on about my business and no other question were asked him or anything said.

Mr. Goad: All right, Mr. Wingfield.

By the Court:

Q. One question about this rock. It was broken. There is a little chip that is being held on here by scotch
page 85 } tape. Was it in one piece when you found it?

A. The scotch tape, of course, was not on it and the chip—I didn't see any chip. I mean, I know about the chip but actually I didn't see it at that time.

Q. Did you find the chip?

A. No, sir, I didn't.

Q. You don't know where the chip came from of your own knowledge?

A. No, sir.

Q. Did you later acquire the chip from anybody?

A. I didn't, no, sir.

Q. All right.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Sergeant, you took the rock in charge, I suppose, when you got there at 2:30?

A. Between 2:30 and 3:00, that's right.

Q. And you said that there was hair on the rock?

A. Yes, sir.

Q. Wouldn't the hair be as much evidence as the rock?

A. Would the hair be as much evidence—

Q. As much evidence as the rock.

A. I assume it would be.

Q. The rock was preserved, was it not?

page 86 } A. Yes, sir.

Q. Where is the hair?

A. I don't know. As a matter of fact, several days later I wrapped the rock up very carefully and it's on the envelope what day it was turned over with the other evidence and I didn't see the hair.

Q. Well, in your Police work you are taught that anything pertaining to any offense is right important to preserve evidence, isn't it?

Q. And wouldn't you consider now on looking on it that the hair would be more evidence than the rock?

A. Well, I thought, to be very truthful, Mr. Wingfield, that I had preserved the hair but I didn't see the hair the next day or two. I thought that I had it wrapped up so that it would be there.

Q. Normally, wouldn't you have put the hair in an envelope and marked it that that was the hair you had had? Wouldn't that be the normal Police procedure?

A. I thought I had it wrapped up with the rock so I could keep it.

Q. How much hair was it?

A. Two small pieces.

Q. Was it human hair?

A. I don't know, sir. I don't know that it was

page 87 } hair. It looked like hair as far as I could tell.

Q. But you don't know what it was?

A. No, I don't know what it was. It looked like hair to me.

Q. So you are not prepared then to say that there was hair on the rock? That it was hair that was on the rock?

R. C. Gaunce.

A. Well, I could call it hair until I knew otherwise. I mean, that's what I would do.

Q. Now, I think when you got there—you have mentioned that *Office* Nance was there, and Officer Dixon, and Officer Whitehead. And I believe you mentioned another Officer. Did it strike you as being peculiar that at a scene of an offense or the scene of a crime that had occurred some seven hours before that they were rather late in finding that rock?

A. You will have to go back and ask that question over. I can't answer that question—

Q. Well, let me see. Of course, the Officers had been informed it had taken place, where the offense had taken place?

A. I was, yes, sir, that morning.

Q. And was any search made that morning to see what the nature of the weapon was that had been used?

A. Yes, sir, I was there.

Q. Where was the rock when you were there that morning looking for the weapon?

page 88 } A. I don't know. I didn't see it then.

Q. And you looked, didn't you? You looked carefully, didn't you?

A. I thought I did, yes, sir.

Q. And you looked around the bucket and you saw the bucket that morning?

A. I saw the bucket, yes, sir.

Q. And there wasn't anything to conceal that rock from open view if you had looked that morning, looking for the evidence of what had struck her? If that rock had been there, as a matter of fact, as careful as you State Troopers are and with other Officers looking there, too.—You weren't by yourself—You would have found it, wouldn't you?

A. Mr. Wingfield, I testified that the *road* was between the bucket and the wall and the position it was found in it would have been very easily missed, and I did miss it.

Q. The bucket was right against the wall?

A. Yes, sir, close against it. Well, close against the wall, about that far and the rock was between the bucket and the wall. Of course, the bucket was much bigger than the rock. If you looked at the bucket you wouldn't see it for the—I mean, look at the rock you wouldn't see it for the bucket.

Q. Sergeant, you did find a board there that morning, didn't you?

page 89 } A. No, sir, I never heard anything about a board until this morning.

R. C. Gaunce.

Q. Or a stick of wood or a board or something there?
A. I never heard anything about it until this morning.
Q. You never heard of that?
A. No, sir, I never heard of that.
Q. Did you find any other rocks around similar to this rock?
A. That looks—I haven't touched it. If I could, sir?
Q. Is that the general type of the rock around that vicinity?
A. Yes, sir, they are all—
Q. Could you point out about the place where you saw the hair that you referred to? Where was it on the rock?
A. I would say it was on this sharp edge where I saw the hair, on this side.
Q. Is there anything to cause hair to stick to the rock, or tear, any little cuts or anything?
A. No, sir. I thought I had the hair preserved with the rock. There were two hairs on the rock.
Q. I notice here that there has been taped, and it has been referred to and it appears from this rock that two ends have been broken off of it, apparently. Was there any
page 90 } of the other parts there?
A. No, it was just like this. When I found the rock it was just like it is here except the piece right there.
Q. You don't know where that came from?
A. No, sir, I don't know where it came from. I didn't find it.
Q. Personally you don't know?
A. No, sir.
Q. Personally you don't know except what somebody has told you?
A. That's right.
Q. If I understood you correctly, you went to the home of Key Jackson and there you found Sharon Durrette?
A. Yes, sir.
Q. Was it about lunch time?
A. 11:30.
Q. Do you know whether he had had any lunch or not, whether he had already eaten lunch or not?
A. I don't know. I hadn't.
Q. And then you told him to come with you and he got in the car with you?
A. That's right.
Q. Was anybody in the car with you besides you and Sharon?

R. C. Gaunce.

A. I was by myself then. There had been some-
page 91 } one with me.

Q. As a matter of fact, you had picked up that morning John Russell Jackson, hadn't you? Isn't that true?

A. Key's boy. I don't know if that is his first name.

Q. Well, is he a teenager?

A. Right little. I don't believe he was a teenager. He may have been but he was rather small.

Q. How was he dressed?

A. He had on work clothes.

Q. And had you had him up at Hebron Church or at Mrs. Ferguson's home.

A. No, sir.

Q. He was with you and you carried him home, didn't you? You carried him to Key Jackson's home, didn't you?

A. I don't believe he stays there. I think he stays over at some other relative's in Orchard Town.

Q. After he had ridden around with you that day and you had him in the car you carried him to Key Jackson's home and that's where he got out, didn't he? In other words, you went to Key Jackson's home to carry John Russell Jackson there, didn't you?

A. No, sir, I didn't.

Q. Well, was he with you when you got there?

A. There was a Jackson boy with me. I don't
page 92 } know if that was his name or not.

Q. Well, the Jackson boy, does he have buck teeth? Do his upper teeth protrude?

A. No, he doesn't fit the description at all.

Q. Well, was he in your car and did he leave your car at the home of Key Jackson?

A. Yes, sir, that's right.

Q. And it was while you were there and he got out that you saw Sharon Durrette, wasn't it?

A. I saw him there, yes, sir.

Q. Yes. And you saw Sharon Durrette and you told him to come get in the car, didn't you?

A. That's right.

Q. And he came and got in the car with you, didn't he?

A. That's right.

Q. And then you drove off and you told him you were going—He asked you where you were going, didn't he?

A. I told him we were going to Hebron Church.

Q. And you were going to Hebron Church?

A. Yes, sir.

Q. And when you got to Hebron Church, while he was still sitting in the car, you called Mrs. Ferguson over to the car, didn't you, and asked if that was the boy?

A. I didn't call her but she came over and said

page 93 } that was the one, yes, sir.

Q. And he was the only colored person in the car at the time?

A. That's right.

Q. And he was sitting in the car at the time she came over and said that was the boy? He hadn't gotten out, is that right?

A. That's right.

Q. And then you told him to get out?

A. That's right.

Q. And again she says that's the boy?

A. Yes, sir.

Q. And there was nobody else there in the way of a line-up for her to select anybody from, was there?

A. No, sir.

Q. In other words, just the one person?

A. You mean like the Police line-ups? Is that what you are referring to?

Q. Well, it is a customary method—I will ask you if it isn't customary for the Police in identification to put the accused or the person under suspicion, or anybody, in line with several other persons and let them make an identification or select the person from that line. Isn't that true?

A. No, sir.

Q. Well, that wasn't done in this instance, was

page 94 } it? In other words, he wasn't with anybody else

she *she* said that was the man?

A. He was by himself, yes, sir.

Q. By himself?

A. Yes, sir.

Q. Then I understood you to say you questioned him about eggs? I believe you said you questioned him about eggs, what he had done with some eggs?

A. No, I didn't question him about eggs.

Q. You didn't say anything to him about eggs, nothing to him about eggs at all?

A. I told him we were going down to where he bought the eggs this morning.

Q. What did he say about eggs?

A. What did he say about eggs?

R. C. Gaunce.

Q. Yes.
A. He didn't say anything about them.
Q. Did Mrs. Ferguson accuse him of having struck her?
A. There?
Q. Yes.
A. Yes, sir.
Q. I want to know if the boy knew what it was all about when you had him there?
A. Yes, sir, he knew what it was all about.
page 95 } Q. And knowing what it was all about, what did he say about it there to you?
A. He denied it emphatically.
Q. Denied it emphatically?
A. That's right.
Q. And there wasn't any question about his denial? And he made it very clear? When he was first approached about it he denied it?
A. He just said he wasn't the man, that he hadn't been there.
Q. That he hadn't been there, that he wasn't the man?
A. That's right.
Q. Who placed this boy under arrest?
A. I did.
Q. And when you placed him under arrest what did you do with him? What did you do with him after you placed him under arrest?
A. Gave him to Mr. Dixon to bring back.
Q. Now, Mr. Dixon is not a State Trooper, is he?
A. No, sir.
Q. He is a County Officer?
A. That's right.
Q. You did not turn him over to Mr. Hart who was a State Trooper?
page 96 } A. Hart was in Court at that time.
Q. How about Mr. Nance?
A. He wasn't there at the time either.
Q. When did you tell Sharon that he was under arrest?
A. There at the Church.
Q. At approximately what hour?
A. Close to 12:00.
Q. And when you turned him over to Dixon was it with any instructions as to what he was to do with him?
A. He was to bring him to Lovingston, yes, sir, and put him in jail.
Q. Those were your instructions?

R. C. Gaunce.

A. Well, I wanted him moved from up there, then and there. Quick.

Q. Did you serve the warrant?

A. No, sir, I didn't. Didn't have a chance to. It wasn't any place I could have gotten it unless I came to Lovingston that afternoon.

Q. Having placed him under arrest, did you contact Judge Wheeler at any time?

A. No, sir, I did not.

Q. Turning him over to Mr. Dixon ended your responsibility for him in so far that he was your prisoner was concerned, is that true?

page 97 } A. Well, I had to go back to Court in Waynesboro and I turned him over to Mr. Dixon to be brought here. I presumed that he and Hart, and maybe myself, later on when we had time would go through the normal routine that we do.

Q. But except for your statement to him the next day and his statement to you that was all that you did?

A. I went back and talked to his mother.

Q. I am talking about so far as he is concerned?

A. Well, as far as he is concerned, that's right. I talked with his mother shortly after that.

Q. And you haven't appeared anywhere nor taken any part in it from that day, so far as he is concerned, until today? Is that true, sir.

A. No, sir, it is not the truth.

Q. Did you appear at the preliminary hearing?

A. No, sir.

Q. Did you sign any papers or appear before Judge Wheeler anywhere in connection with it, or this Court in connection with it?

A. No, sir.

Q. Or a Grand Jury in connection with it?

A. (Witness shakes head indicating in the negative.)

Q. What was your answer?

A. No, sir, I didn't appear before the Grand Jury.

Mr. Wingfield: That's all.

RE-DIRECT EXAMINATION.

page 98 } By Mr. Goad:

Q. You say you told Dixon to bring him on to Lovingston quick. What did you mean by that?

Trooper W. C. Hart.

The Court: I don't think that is a proper question, Mr. Goad.

Mr. Goad: All right, it doesn't make any difference.

That's all, Sgt. Gaunce.

The witness stood aside.

TROOPER W. C. HART,
upon being recalled by the Commonwealth, testifies further, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Trooper Hart, have you seen this rock before?

A. Yes, sir.

Q. Tell what you know about this rock. Who did you get it from?

A. I got that from Sgt. Gaunce.

Q. And you have kept it since then?

A. Yes, sir, I have kept it since then.

Q. Did you examine out there in the yard around
page 99 } the Ferguson house to see if there were any other types of rock around?

A. Yes, sir, I did.

Q. What did you find?

A. That type of rock there is somewhat the rock around the house there. There is a pile of rock right there near—out from the back door, that is the same type.

Q. Was there any construction going on in the back yard or any activities back there?

A. There was some type of construction, something being dug out there. There are some rocks out there.

Q. How far from the back door?

A. Approximately twenty or twenty-five feet.

Q. And the rock formation is similar to this rock?

A. Yes, sir.

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

Mr. Wingfield: I may want to cross examine him further. I'd like to reserve that right, with reference to his part when other witnesses arrive.

The witness stood aside.

page 100 } H. M. DIXON,

Deputy Sheriff, a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are Nelson County Deputy Sheriff H. M. Dixon?

A. Yes, sir.

Q. I believe you live at Gladstone?

A. Yes, sir.

Q. How long have you been a Deputy Sheriff?

A. Since 1950.

Q. A little over eight years?

A. Yes, sir.

Q. Now, did you help investigate this case?

A. Yes, sir, I did.

Q. Will you tell the Court and Jury what part you took in the investigation?

A. About 8:00 a. m. on the 7th day of August I received a call from the Appomattox Police Headquarters. I was approximately sixty miles from the scene at that time.

Q. Where were you when you got the call?

A. I was in the mountains searching for a car.

Q. Where were you when you got the call?

A. I was in the mountains near Riverville, Virginia, Nelson County. I asked Appomattox to contact some of

page 101 } the other Officers if possible, that I was busy. At that time they did not have contact and I immediately started to Avon, the Church—They gave me the name of a Church, that some lady had been beaten there.

I arrived on the scene, after disposing of a few of the matters there that I had to dispose of, at approximately 9:15 a. m. I met Sgt. Gaunce at the intersection of this Church. He was the only officer at that time that I saw.

He filled me in on a few details, which I don't remember what it was, and told me to question Mrs. Ferguson's mother. That was my first assignment.

I talked to Mrs. Ferguson on different matters that had taken place, an identification that she gave me. And in talking back and forth on the radio to Hart and Bill Whitehead, which at that time was at the Jackson—was at Durrette's home.

I left the yard of Mrs. Ferguson's home—

Q. Let me ask you this. Did you get a description of the person who committed this crime from Mrs. Ferguson?

H. M. Dixon.

A. Sgt. Gaunce told me the—

Mr. Wingfield: Your Honor, I object. That is hearsay.

Q. Did you get a description from Mrs. Ferguson when you talked to her?

A. I did.

page 102 } Q. Did you get any description from Mrs. Henderson?

A. No, I did not see Mrs. Henderson.

Q. I see.

A. Mrs. Ferguson, I'm sorry. I did not see Mrs. Ferguson. I saw Mrs. Henderson.

Q. Mrs. Ferguson's mother?

A. That's right.

Q. The older lady?

A. That's right.

Q. Did you get a description from her?

A. She told me a description—

Mr. Wingfield: I object to what she told him, Your Honor.

Q. I say, you got a description?

A. I got a description.

Q. All right.

A. I got a description and the general vicinity in which the subject ran from the scene.

Q. All right, then what did you do?

A. I went to the Durrette home then. And Bill Whitehead, Deputy Sheriff Whitehead and Trooper Hart were there when I arrived. And the house was locked up. There was a car parked in the yard.

Then they left me stationed at the house in case that he came back. Sgt. Gaunce had called—I think Sgt.

page 103 } Gaunce called for the dogs to try to track the subject down.

Q. You mean bloodhounds?

A. Bloodhounds, yes, sir. One of the Officers from Augusta County brought the dogs. I don't know his name or the unit number. I stayed at the home until around 11:40 or 11:45, as well as I can remember.

Before that Sgt. Gaunce came up to the house with a colored boy in the car with him, which I did not go to the car. He got out and talked to me at the back of the car.

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He got back in the car and left and at approximately 11:40 or 11:45 he called me and said that he had the suspect in custody, and to meet him at Hebron Church.

Q. To meet him there?

A. To meet him there, which I did.

Q. You say Sgt. Gaunce drove up to the Durrette house where you were stationed and he had a colored boy in the car?

A. Yes, sir.

Q. Was that the suspect, the accused?

A. He said that he told—

Q. You can't tell what he said.

A. At that time the discussion was that this boy knew the whereabouts of the suspect.

Q. Then Sgt. Gaunce left with this boy?

page 104 } A. Yes, sir, left with the boy in the car, with the understanding that the boy knew where the suspect was at.

Q. And then a few minutes later you got what information?

A. I'd say twenty-five minutes later or somewhere in that time I received a radio message from him that he had the suspect in custody.

Q. And you proceeded to Hebron Church then?

A. Yes, sir.

Q. What did you find at Hebron Church?

A. When I arrived there Sgt. Gaunce and two men with the dogs and another State Trooper, which I don't remember his name, were there with Durrette in the car.

Q. With this Defendant here?

A. Yes, sir. About the time that I arrived Mrs. Ferguson, and I guess it was her husband—I am not sure of that. There was a man with her. They arrived on the scene also.

Bill Whitehead, Deputy Sheriff, was there. Durrette and the Sergeant got out of the car and Mrs. Ferguson identified him as the suspect, or as the man that had hit her and assaulted her on the porch of her home.

Q. All right, what was the next thing that happened?

A. It was some discussion at that time among the Officers, after he was placed back in the car. He denied

page 105 } the charges; and Sgt. Gaunce informed Deputy Sheriff Whitehead and I to bring the prisoner to Lovingston.

I forgot the exact words that he did say or how he said them, but it was something to that effect.

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Q. Well, did you all do that?

A. When we arrived at Lovingston—

Q. How was Durrette, the accused, brought to Lovingston?

A. He was placed in the back seat of my automobile and Deputy Sheriff Whitehead and myself in the front and brought to Lovingston, brought up the stairs in the Sheriff's office. Court was still in session and the Sheriff's office on that day is usually used by the general public. The Court room is small and part of the people have to sit in there.

I left the prisoner in the Courtroom. Court adjourned for lunch and I talked to the Commonwealth in reference to the matter. He advised me to take him—

Mr. Wingfield: I object to that, sir.

The Court: Objection sustained.

Q. You had him in the Sheriff's office. What were you all doing, questioning him or what were you doing?

A. We were not questioning him at all except Deputy Sheriff Whitehead and myself talked to him from over there all the way to Lovingston, which he denied every question we asked him.

page 106 } Q. Then did you move him to another office from the Sheriff's office?

A. I was instructed to move him to the State Police office and get a statement and place him in jail.

Q. All right, what did you do?

A. Court was over and all of the Officers—there were seven or eight Officers, Hart, and Layman, Vance, Bill Whitehead and myself, went down to the State Police office.

The discussion at that time was who would go to lunch first. We went in to the State Police office. When we entered, more or less, Bill Whitehead and I were left with the principal. The Officers were going to lunch and come back, and assist us with the investigation.

When we entered the office I told Durrette to have a seat. I asked him to tell me why he went to Mrs. Ferguson's home, what time he left home, and what he went there for. I told him of the identification that they had given, that it would be a lot better on him to tell the truth. And he said that we were all a bunch of liars, that he hadn't been there, he didn't know anything about it, he did not know Mrs. Fergu-

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son, that he had only seen her when she was down at a neighbor's home.

I turned around and he was still standing. I caught him by the upper part of his arm and told him to sit down in the chair. I walked over to the opposite desk and page 107 } told him that we were there to help him and that we would help him providing he was willing to be helped, and I wanted him to tell me the truth, that they had identified him through his clothing and one of the ladies by name.

And he, at that time, started to tell me what time he left home and where he went to, and the purpose of going to the house. I did not write any of the statement down whatsoever.

After he finished talking to me and telling me what he had done, Bill Whitehead, the Deputy Sheriff, and I discussed what we must do with the prisoner. We had not sworn out any warrant at that time. We decided not to leave him in the open building here. It was a lot of people here. Or in that office there it would be dangerous. We would place him in jail for safekeeping, until after we had eaten lunch.

At that time Deputy Whitehead and I took him up to jail and I am sure, I am not positive, but I think that I told the Jailer that we were placing him in there until after we ate lunch for further investigation, for safekeeping. I am sure that I did that.

We came out and met Hart—The Troopers had just arrived back from lunch. I informed the Troopers that he had admitted the crime, and that we were going to lunch and would be back in a little while. And at that time Hart said that he would swear out a warrant for him on the page 108 } charges.

The time I don't remember exactly. I would say it was in the neighborhood of 2:00 o'clock.

Q. When the warrant was sworn out?

A. At the time I was talking to Trooper Hart. Bill Whitehead and I went to Wood's Restaurant and ate lunch and came back, and at that time Trooper Hart and Deputy Sheriff Whitehead and myself went to the jail. And I went in the jail first. In the room where I had left Durrette was what I took to be at that time, what I later found out to be his mother, Robert Whitehead and Durrette.

I informed the Jailer at the entrance to the room that we had come to get Durrette to go back to the scene, which he

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told us he would go back and show us where he threw a piece of plank down that he hit Mrs. Ferguson with.

Q. He had told you that before lunch?

A. He had told me that in his statement in the room and that he was willing to go back with us and show us where this plank was.

On making that statement to the Jailer I was informed that he had counsel and that he had been informed that he should not return to the scene to assist the Troopers and myself.

At that time Trooper Hart came in. I don't think that Bill Whitehead came inside. I am not sure. It was two news reporters outside. I think he was out there
page 109 } talking to them.

Hart had a discussion with the other people in the room. I was asked a blank question, if I had mistreated Durrette in any way, and I answered, "No."

At that time the news reporters were coming in the door and I told them that the subject had counsel, which was Mr. Whitehead. And at that time Mr. Whitehead denied that he had been hired and he left the jail.

Q. Mr. Whitehead then said he was not representing Durrette?

A. That he was not representing him after the news reporters came in the door. He said he was not representing him and left the jail.

Then Durrette came on out and got in the car and we went back to the scene.

Q. Was Durrette forced to go back to the scene?

A. No, sir. He came on out. Mr. Whitehead left the jail without any statement or telling why he had previously stated that he was representing him and then denied it later. And, under the circumstances, that he had told me that he was—I had been informed that he was representing him and he had told the boy not to make any statement and not to return to the scene, I did not have any further discussion with Mr. Whitehead, that he had had counsel and he had admitted that he was representing the boy.

page 110 } Q. Then just a short time later you heard that he was not representing him?

A. After the news reporters arrived to talk to Mr. Whitehead I presume, he came out and said he was not representing him and left the building.

Q. You heard Mr. Whitehead say that?

A. Yes, sir.

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Q. Before he left the jail?

A. Yes, sir. Durrette volunteered to go back with us after that. He talked freely all the way over there.

Q. Now, when you left the jail to go back to Avon, at that time was it known to you or to any of the Officers there, as far as you know, what weapon had been used?

A. No more than he said, in making his statement down there, that he had used a piece of plank or board, and he threw it down a creek or gully after he had run across the road into the bushes. And he was going back to show us where it was at.

Q. Was that the purpose of your trip?

A. That was the purpose of going back to the scene, was to find the weapon that he hit her with, which he said was a board at that time.

Q. And he was going to show you where it was?

A. Yes, sir.

Q. Well, did you leave the jail and go back to
page 111 } the scene?

A. We left the jail—

Q. Did you go to the Ferguson house?

A. We left the jail and went back to the scene.

Q. Who went with you?

A. Trooper Hart and Deputy Sheriff Whitehead.

Q. And you?

A. And myself.

Q. And Durrette?

A. And Durrette.

Q. All in the same car?

A. Yes, sir.

Q. All right, what happened next?

A. When we arrived on the scene I think Mrs. Ferguson and her mother, and I don't know who the elderly gentleman was—it was seven or eight or ten people there at the house, men and women.

We arrived on the scene and upon arriving and seeing these people, we discussed that we had better leave him in the car or near the car and not take him with us through the whole investigation. I think—I am not positive—but I think we took him out of the car, beside of the car, and Mrs. Ferguson identified him again and Mrs. Ferguson's mother.

The gentlemen around there I don't know any of them by name.

page 112 } Q. How about looking for the piece of plank?

A. After we arrived on the scene and talking to

him going over there he admitted that he hit her with a rock. And arriving on the scene we asked him where he got the rock. He was kind of vague on that. I don't know whether it was discussed further or not, or whether he ever did say where the rock did come from. But the board was dropped at that time. It wasn't discussed any further. I haven't seen any plank or board of any description. I didn't know anything was involved except he said he hit her with a plank and where he threw it. Why a board came into it in the office I don't know.

Q. Now, where were you all on this trip back to Avon when the Defendant first said that he hit her with a rock? Had you gotten back there? Had you already gotten back or not?

A. I don't remember exactly where we were. It was somewhere after we had gotten on Route 6.

Q. Had you gotten back to the Ferguson's?

A. No. I think it was somewhere on Route 6 that he said that he hit her with a rock. Because we were on the way to the scene where he said he threw the plank.

Q. Had you gotten any other information about a rock from anybody else?

A. I don't remember. I don't remember whether we had or not. I don't remember. I don't know whether

page 113 } some of them said they did receive word that a rock was used, or that a rock was found, or not. I don't know. I'm just vague on that part. I don't remember. But anyway, the information, I am sure, was after we had gotten on Route 6, about the rock.

Q. And that came from Durrette himself?

A. Yes, sir, I think it did. I am not sure. Anyway, we were on our way back to the scene when we found out that the rock was used instead of the board. But I don't know whether he said it. He might have. I don't know. It's kind of vague whether he did or not.

Q. Well, how long did you stay at Avon at that time when you got there?

A. I don't know the exact time. I'd say it was in the neighborhood of 4:00 o'clock when we arrived there, somewhere around there. It might have been earlier or later. We didn't stay there but approximately twenty-five minutes—twenty minutes—We wanted to get there and away as soon as we could.

Q. Then you brought him back to Lovingston?

A. While we were there we were offered bribes to turn him over to people that was on the scene.

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By the Court:

Q. Don't go into anything of that sort.

A. And we brought him back to Lovingston at
pagt 114 } that time.

Q. Now, when you got back to Lovingston who came back in the car with you to Lovingston?

A. Trooper Hart and Deputy Sheriff Whitehead and myself.

Q. Along with Durrette?

A. Yes, sir.

Q. The same four of you that had gone down there together?

A. I thought Whitehead was with us. I don't know whether he came back in the car with us or not but I believe he did. I just don't remember. I didn't write it down.

Q. When you got back from that trip where did you go?

A. We went to the State Police office.

Q. There is a written statement signed by the Defendant Durrette introduced in evidence, marked Commonwealth's Exhibit No. 1, and it is dated August 7, 1958, 5:45 p. m., signed by Sharon E. Durrette, and witnessed by Trooper W. C. Hart and Deputy Sheriff H. M. Dixon. Did you witness this?

A. Yes, sir.

Q. This statement?

A. Yes, sir.

Q. Did Trooper Hart take this statement from Durrette
or did—Just tell how this statement was taken.

page 115 } A. We entered the office and Trooper Hart
asked him if he was ready to give a statement and he said he was. And I told him to go ahead and tell Trooper Hart exactly what he had told me previously. And he did.

Trooper Hart wrote it down and read it to him and typed it and read it to him again.

Q. Read it to him two times?

A. Yes, sir.

Q. Then did you see Sharon Durrette sign that statement?

A. Yes, sir.

Q. Now, all during the day—

By the Court:

Q. He didn't tell the story the second time like he did the first time, did he?

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A. No, sir. No, sir, he changed his story completely—just some of the things that he told me at first were in the statement. He did not make the same statement that he made to me. He changed it, considerably.

By Mr. Goad: (Continuing)

Q. Well, the first statement he made was denying it, wasn't it?

A. Well, the first statement that he made I did not take it down. One thing in it, as well as I can remember, was before that he hit her with a board, which later he said page 116 } he hit her with a rock.

Q. When he first made this oral statement to you, that you have described as being shortly after lunch time, what was the difference between that oral statement and this written statement, other than the rock and the board business?

A. That's about all. There are just a few changes in there. He said he threw the board over in the creek or a gully across the road after he had run from the house, which he did not do. He did not hit her with a board. That was two of the changes. The rest of it is approximately the same thing, as well as I can remember.

Q. Well, I ask you, was there any difference in the oral statement he made to you and the written statement he made later before you and Trooper Hart, other than with reference to the rock and the board?

A. No.

Q. What kind of terms were existing between Durrette and the Officers?

A. Durrette cooperated—

Q. All during the day. Now tell the Court and the Jury.

A. Durrette cooperated a hundred per cent. On the way back and over there, he said he was thirsty and we stopped to get a drink. I think I paid for his drink, a soft drink. And he cooperated a hundred per cent except that page 117 } he denied it at first, that he had been there. Other than that he was just as nice as he could be.

Q. Now, it has been claimed here today, or insinuated, that you struck him or slapped him or something of that sort. Did you do anything like that to this Defendant?

A. I had no need to slap him or beat him in any way. I did not. I told exactly what I did.

Q. Were you on friendly terms with him the whole time?

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A. Sure. Sure. I told him we were there to help him and to protect him. And when we placed in the—

Mr. Wingfield: Did you say "glad to help him"? I didn't hear what you said.

A. I told him we were there to help him. And we placed him in jail for his own safekeeping. That was Deputy Whitehead's and my own decision when we left to go to lunch.

Q. Well, did you see any difficulty or any showing of ill will between any Officer and this Defendant during the whole day?

A. No, sir.

Q. How was he treated?

A. He was treated just as well as any person I've ever helped bring in here. I didn't see where he was treated any ways out of the way whatsoever.

page 118 } Q. This statement that he signed and made before you and Trooper Hart, was that a free and voluntary statement on his part?

A. Yes, sir.

Q. Was he advised that he didn't have to make any statement?

A. Yes, sir, he was.

Q. Was he promised anything, or threatened in any way?

A. No, sir.

Q. To make the statement?

A. No, sir, he was advised by counsel that he did not have to make a statement.

Q. And after that he did make a statement?

A. Yes, sir.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Everything very cordial on the part of the Officers towards him?

A. Yes, sir.

Q. He was cooperative with the Officers, doing what the Officers told him to do?

A. I would say so, yes, sir.

Q. I may have misunderstood you, but honestly I thought

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page 119 } you said you grabbed him by the shoulder and told him to sit down. Did I hear you say that you grabbed him by the shoulder and told him to sit down, or did you tell him that?

A. I said I took him by the shoulder and told him to sit down. I had previously told him to have a seat when I entered the office and he did not sit down.

Q. And he didn't do it?

A. No, sir.

Q. So you thought it necessary to put your hands on him and use force to sit him down?

A. I didn't have to use force.

Q. Well, you did do it, didn't you?

A. I just placed my hand on him, told him to sit down.

Q. And up until that time—that very point he had denied everything about it, is that right?

A. Yes, sir.

Q. But when you grabbed hold of his shoulder and told him to sit down, from that time on he started different, started telling a different story?

A. Not right at that moment, no.

Q. Now, you testified that at 5:00 something that afternoon you told him, and I am going to use your exact words, to tell Trooper Hart what he had told you, is that right? You told him to tell Trooper Hart what he had told you, is that right? I believe you said that, didn't you? That's at the time of this confession.

page 120 } A. I told him to make a statement to Trooper Hart, exactly what he had made to me previously.

Q. Yes, sir. And you were then referring to the statement that he had told you in the morning—or, before you put him in jail?

A. It was all in the afternoon.

Q. But you were referring to that statement?

A. Yes, sir.

Q. And you had told him to sit down, you had put your hands on him, on his shoulder, and used force to sit him down?

A. I didn't use force, no, sir.

Q. Well, you said the reason you did it was because you had previously told him to take a seat and he didn't do it.

A. That's correct.

Q. What was the purpose in grabbing him by the shoulder, and I think you used the word "grab" if I am not mistaken?

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A. I don't think I did. I said I caught him on the upper part of his arm and told him to sit down, which he did.

Q. And then you wanted him to tell Trooper Hart at 5:00 o'clock what he had told you about Noon, or something after Noon? Is that right?

A. I told him to tell Trooper Hart approximately what he had told me.

page 121 } Q. You didn't want him to tell Trooper Hart what he had previously said, nor what may have been the truth of it, but you wanted him to tell him what he had told you?

A. I wanted him to tell the truth. I assumed what he had told me previously was the truth.

Q. You didn't tell him to sit down and tell Trooper Hart the truth of the situation, you told him to tell you what he had told you?

A. He was already sitting down when he was talking to Trooper Hart.

Q. I believe you also said something about, after you had gotten him seated that you told him you were there to help him. Is that right?

A. Yes, sir.

Q. Were you making him some promise?

A. No, sir.

Q. How were you going to help him? What were you going to help him do?

A. We were there to protect him and to help him.

Q. Well, how were you going to help him? That's what I want to know. You were promising him something. What were you promising him to help him do?

A. I didn't promise him anything.

Q. Well, your word was a promise, wasn't it?

A. I told him we were there to help him and to

page 122 } protect him.

Q. If he would tell you that he did it?

A. I didn't tell him anything like that.

Q. Well, you've got a perfectly good jail out here, haven't you?

A. Yes, sir.

Q. And if he is in jail he is protected, isn't he?

A. Jails have been broken into.

Q. And you thought that that jail would be broken into?

A. It could be.

Q. Well, why did you put him in there that night after

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you had stirred up a lot—Why did you leave him there that night?

A. We had protection that night. We were instructed to watch the jail.

Q. Why didn't you watch the jail that afternoon? What were you taking him out for? He was best protected in jail than he was out, wasn't he?

A. I wouldn't say that.

Q. Well, let me ask you this. If he had made this confession to you, at we will say, the middle of the day, before 1:00 o'clock anyway—before you went to lunch—why was it necessary to get him out of jail and take him back down there?

page 123 } A. To assist in finding the weapon that he struck the lady with.

Q. Well, if he admitted it and if the confession was worth anything at all to you and you could believe anything that he had told you, why would you have to take him back to find the weapon?

A. I didn't know whether that was the truth or not.

Q. In other words, you had reason to believe that what he had said—that the confession he had made to you wasn't the truth, didn't you?

A. I didn't know whether he hit her with a board or what he hit her with.

Q. Well, it wouldn't have made any difference what he hit her with so long as he hit her and he intended to rape her, so long as he hit her and said, "I am the one that did it"? What difference did it make whether he hit her with a board or a rock or whatever? What difference did it make?

A. I don't know.

Q. And he could have told you where it was if he had used anything like that and you could have gone and gotten it, couldn't you?

A. Well, I didn't know where the creek was at or the ditch he was referring to or anything else.

Q. You knew where the porch was, didn't you?

A. Yes, sir. I did not go on the porch.

page 124 } Q. You hadn't looked for any weapon and it wasn't necessary to take him down there? You hadn't looked to see if he had used a board or a rock if you hadn't been on the porch to see if anything was there he might have used?

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A. I wasn't assigned to that, sir.

Q. Who did the assigning?

A. Sgt. Gaunce was the top Officer there and he instructed me when I got there.

Q. Well, you are a Deputy Sheriff of Nelson County. You are not under Sgt. Gaunce, are you?

A. No, sir.

Q. You are not under his orders, are you?

A. No, sir.

Q. And this was an offence committed in Nelson County and it was up to Sgt. Gaunce to help you rather than you helping Sgt. Gaunce, wouldn't it?

A. That's exactly what he did.

Q. Well now, let's go back, Mr. Dixon, to that morning. I understood you to say that you were there when Sgt. Gaunce was at the Ferguson home with the boy, is that right?

A. No, sir, I didn't say that.

Q. Well, what did you say about that? How did you all happen to get together there at the Ferguson home?

A. I wasn't at the Ferguson home with Sgt. Gaunce.

page 125 }

Q. At no time that he had the boy there?

A. No, sir.

Q. Well, who brought the boy up to Lovingston?

A. Deputy Sheriff Bill Whitehead and myself brought him to the Sheriff's office.

Q. Who did you get him from?

A. I got him from Sgt. Gaunce.

Q. And where did you get him from Sgt. Gaunce?

A. From Hebron Church.

Q. Isn't the yard of the Hebron Church and the yard of the Ferguson house right together, one running right into the other?

A. I don't know, sir.

Q. Well, you were there, weren't you?

A. I don't know whether that's part of the Ferguson home yard or not, or whether it's part of the yard of the Church. I was not at the Ferguson home with Sgt. Gaunce.

Q. Well, let's get this straight. The Ferguson home is right beside the Hebron Church, isn't it?

A. Yes, sir. I'd say it's approximately as far as from here to the street.

Q. And you were certainly there at some place in that neighborhood with Sgt. Gaunce?

H. M. Dixon.

A. I told you I was at Hebron Church with Sgt. Gaunce and the boy.

page 126 } Q. In sight of the Ferguson place?

A. Yes, sir.

Q. And you brough the boy to Lovingston?

A. Yes, sir.

Q. And you carried him to the Sheriff's office?

A. Yes, sir.

Q. The Sheriff's office is on the same floor as the County Courtroom?

A. That's right.

Q. And Judge Wheeler is the Juvenile and Domestic Relations Judge of this County?

A. Yes, sir.

Q. And also the County Judge?

A. Yes, sir.

Q. And Court was in session?

A. Yes, sir.

Q. And you had him in the Sheriff's office when Court was adjourned?

A. Yes, sir.

Q. Did you take him before Judge Wheeler?

A. I contacted the Commonwealth.

Q. I asked you if you carried him before Judge Wheeler.

A. No, sir, I did not.

page 127 } Q. And Judge Wheeler was on the same floor at the same time that you had the boy there?

A. Yes, sir.

Q. And you carried him from that place to where?

A. I had instructions to carry him—

Q. I am not talking about your instructions. I want to know where you carried him.

A. I didn't carry him anywhere without instructions, sir.

By the Court:

Q. Just tell where you took him.

A. I took him to the State Police office.

By Mr. Wingfield: (Continuing)

Q. And he continued to deny any knowledge of guilt with reference to the situation, didn't he?

A. When I instructed him to tell me what happened and took place over there he did deny it.

Q. And the instructions you gave him were after you had laid your hands upon him?

H. M. Dixon.

A. No, sir.

Q. Well now, talking about in the jail, which I understood was in the afternoon when Mr. Whitehead was there, I want to ask you if Mr. Whitehead didn't tell you that you had no right to take that boy out of that jail when he was in there, and remove him from that jail?

A. Do you want me to repeat what Mr. White-
page 128 } head said?

Q. I asked only one question. Did he tell you that you had no right to do it?

A. He advised me that he was his counsel and that he had instructed him not to go.

Q. He told you that he was not his counsel, that he was not representing him, did he not?

A. No, sir, he did not tell me.

Q. Well, let me ask you if that boy didn't point out to Mr. Whitehead right then and there, and point to you as the man that had struck him with your hands and fist—

A. No, sir.

Q. —right there to Mr. Whitehead?

A. No, sir.

Q. And didn't he point you out as the man, not knowing your name, but pointed you out as the man that hit him?

A. No, sir.

Q. You didn't know this boy before, did you? You had never seen him before, had you?

A. Not to my knowing.

Q. That was a strange part of the County to where you work, wasn't it?

A. No, sir, I work there all the time.

Q. But that is not part of the county to which you are assigned unless something unusual happens, is it?

A. No, sir.

page 129 } Q. And the boy did not know you? He was a stranger to you, wasn't he?

A. I guess so. I don't know.

Q. As a matter of fact, he was a stranger to all of the Officers there, wasn't he?

A. I couldn't say.

Q. A fifteen-year old boy among a group of men and officers at that?

A. Well, I don't know if he was—whether all of them were strangers or not.

Q. When you had him make this statement to you, you said that his feelings towards you were kind and cordial?

Dr. S. G. Saunders.

A. He appeared to be kindly towards all of the Officers.

Q. And not unfriendly and not scared?

A. No, sir.

Q. Did you tell him what happened to a little negro boy found—and referred to a Chicago boy found down in Mississippi?

A. The first time I had heard it was this morning. I didn't even know that they had trials down in Mississippi, ever had any. I didn't know about it.

Q. Did you threaten to hit him with a board?

A. No, sir. The board was the first time mentioned this morning that I know of, except in his statement.

page 130 } Q. The fact that you wanted to attempt to find the board that he had talked about the only reason that you carried him back down there that afternoon?

A. It was the only reason as far as I was concerned.

Q. It certainly wasn't because of any identification, was it?

A. No, sir, not as far as I was concerned.

Q. It looks like it has come up here several times, that Mrs. Ferguson and Mrs. Henderson again identified him. How many times did they have to see him that day to identify him, do you know?

A. Well, Mrs. Henderson had not seen the prisoner until we carried him back that afternoon, to my knowing. Mrs. Ferguson saw him when Sgt. Gaunce arrested him and brought him to Hebron Church.

Q. Well, was one of the reasons you carried him back so Mrs. Henderson could see the culprit, too?

A. Not as far as I was concerned.

Q. It was solely because of the board that you carried him back, the only reason?

A. Yes, sir.

Q. You hadn't believed what he said? You didn't think his confession was worth writing up?

A. I didn't know whether the board would be there or where the place was.

page 131 } Mr. Wingfield: That's all.
Mr. Goad: That's all, Mr. Dixon.

The witness stands aside.

DR. S. G. SAUNDERS,

a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

Dr. S. G. Saunders.

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are Dr. S. G. Saunders of Waynesboro?

A. Yes, sir.

Q. You have your office and practice in Waynesboro?

A. Yes, sir.

Q. How long have you been practicing, Doctor?

A. Twenty-five years.

Q. Are you a general practitioner?

A. General practitioner.

Q. On the morning of Thursday, August 7, 1958, did you have a Mrs. Annie Henderson Ferguson as a patient?

A. May I refer to my notes?

Q. Yes, sir.

A. I had a Mrs. Milford Ferguson, according to
page 132 } my notes.

Q. Do you recall what time she came to your office that morning?

A. It was approximately 11:00 o'clock.

Q. Now tell what injuries she had. Tell what you did for her and what you found by examining her.

A. She had an abrasion on the left temple region of the scalp, which it did not need a suture; abrasion on the right elbow and right knee.

Q. What is an abrasion?

A. An abrasion is the scuffing of the skin.

Q. Will you point out—you say the left temple region?

A. Temple region, yes, sir.

Q. Right along in here.

A. Right along in here (indicating left temple).

Q. Was there any evidence that it had been made by a sharp instrument or by a blunt instrument?

A. From the abrasion I would say it was a blunt instrument.

Q. This rock here has been introduced in evidence. Would the wound you found on the head by consistent with the fact that it was done by an instrument such as this?

A. Yes, it would.

Q. Now, what kind of abrasions were they you said were on her right elbow?

page 133 } A. Right elbow and right knee.

Q. What kind of abrasions or scuffing of the skin were they?

A. It was what you might call a laceration, which you would have to suture. It was enough to bring blood.

Dr. S. G. Saunders.

Q. How about to the head, was that enough to bring blood?
A. Enough to bring blood, yes, sir.
Q. If it were testified that the blow to the head caused her to become dizzy would that be consistent with the wound which you found on her head?
A. Yes.
Q. How did this patient, Mrs. Ferguson, appear to you at that time?
A. At the time of my examination she appeared to be very emotionally upset.
Q. You treated these wounds then and she left your office?
A. Yes, sir.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:
Q. Were stitches taken in the head wound?
A. It was not.
Q. Was it a gash that was laid open?
page 134 } A. No, it was just a scar, an abrasion of the skin.
Q. And was it such a wound that would have caused immediate bleeding?
A. Immediate bleeding?
Q. Of the head, yes, sir.
A. At the time—Yes it would have.
Q. What was the size of the abrasion, approximately how large?
A. Well, I'd say approximately about an inch and a half.
Q. In length?
A. Yes, sir.
Q. And in width?
A. Probably a half an inch in width.
Q. In other words, there was some evidence then that there had been a blow?
A. A blow, yes, sir.
Q. Instead of a solid blow?
A. Yes, sir.
Q. And it was such an injury to the head that it would have bled instantly with the blow?
A. Yes, sir.
Q. Thank you, sir.

W. N. Whitehead.

RE-DIRECT EXAMINATION.

By Mr. Goad:

page 135 } Q. You said it was about how long, Doctor, an inch and a half?

A. Yes, just about an inch and a half.
Q. An inch and a half long?
A. Yes, sir, and about a half an inch wide.
Q. Which way was the long way?
A. It was across the temple.
Q. Like that?
A. Yes, sir.

By the Court:

Q. Diagonally, the way you have got your finger?
A. Diagonally, yes.
Q. Diagonally downwards?
A. Downward, yes, sir.

Mr. Goad: That is all.

The witness stands aside.

page 136 } W. N. WHITEHEAD,

Deputy Sheriff, a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are Depunty Sheriff W. N. Whitehead?
A. That's correct, sir.
Q. Were you called in to assist in the investigation of this case?
A. Yes, sir, I was.
Q. Go ahead, Deputy Sheriff, and tell us about your part in this investigation?
A. Well, when I received a call from Trooper Hart on the telephone that morning at my home asking me to meet him at Martins store, advising me that he had received—

Mr. Wingfield: I object to what he advised him, Your Honor.

W. N. Whitehead.

Q. You can't tell what he said. He asked you to meet him at Martins store?

A. Yes, sir.

Q. Did you do that?

A. Yes, sir, I met him at Martins Store.

Q. About what time?

A. I wouldn't know exactly what time it was.

Q. Would you know whether it was in the early
page 137 } part of the morning, the middle of the morning?

A. Oh, yes, I met him there and I think it was somewhere in the neighborhood of 8:00 o'clock maybe, one way or the other—I don't know. I mean I wasn't conscious of the time.

Q. It was in the early part of the morning?

A. Yes, sir. It was probably before, or it could have been after. I don't remember. I am not conscious of exactly what time it was.

Q. Then where did you and Trooper Hart go?

A. We proceeded to the vicinity of Avon, to the home of Mrs. Ferguson.

Q. All right, tell what went on there. Just tell everything that you know about your part in the investigation.

A. Well, when we first arrived I talked to Mrs. Ferguson's mother and was trying to get in my mind, gather enough information to determine exactly what had happened. At that time, of course, I did not know and was trying to figure out just what had happened.

And from what I gathered there, what information I received,—My prime motive at that time was to try to apprehend this person who had struck Mrs. Ferguson in the head. And I went out to the Church to try to find tracks and one thing and another and to determine which way this person had gone and so forth.

Shortly after that I talked to Sgt. Gaunce. I
page 138 } talked to numerous people around in the neighborhood trying to find somebody who had seen him. I couldn't find about anything beyond the fact about the general direction the man came, or had gone. I couldn't find anybody that had seen him leaving or going anywhere beyond that point.

And then I went down and talked to some neighbors there, inquiring about the direction up to the Durrette home. I had gotten the information from one of the other Officers about the name of this subject.

Q. Did you have a description of him?

W. N. Whitehead.

A. Yes, sir, I had gotten that information from one of the other Officers. I did not get that description directly myself.

Q. You had a description and you had a name?

A. Yes, sir. However, the first name that I first got was not clear. I mean, we didn't have the first name—The name Durrette had been pretty much established, but the first name wasn't clear. And we went up to this home. We had the name and we went up to this home. I stopped on the side of the road and talked to a lady in regard to who lived up there and so forth.

And we went up to this home and there was no one there. And while we were there—of course, we had radio traffic back and forth—and Deputy Sheriff Dixon arrived and then later on I saw Deputy Sheriff Moon and then Trooper

page 139 } Layman, I believe it is, arrived from over in Augusta County with the bloodhounds.

At that time I went up and attempted to follow the dogs. And Trooper Layman and I were outside then keeping up with the dogs that morning, attempting to pick up the track leading away from the scene, or possibly going away some where going toward the suspect's home, or anywhere.

And it was while we were out with these dogs—We had searched around in several different directions for a couple of hours, or maybe an hour or so that we had been there with the dogs that we received a call from Sgt. Gaunce on the radio advising us that he had picked up the suspect and asking up to signal—or meet him at Hebron Church, which we did.

When I arrived there in the car with Trooper Layman and the dogs. Had two men handling the dogs. And we drove up there in the yard beside the Church, back off of the highway on the opposite side of the Church from the Ferguson home. And it was there that we talked to Sharon Durrette, asking him about whether he had—Gaunce was directing the questioning and I was listening to it.

And Mrs. Ferguson drove up in a car, came up in a car, and she at that time identified this young man. And then Sgt. Gaunce asked Deputy Sheriff Dixon and myself if we would transport him back here to Lovingston.

page 140 } We told him we would. He advised that he had something else to do. We put the subject in the car, in Deputy Sheriff Dixon's car. I had left my car at Martins store and had rode from Martin's store over there with Trooper Hart. I rode in the car with Deputy Sheriff

W. N. Whitehead.

Dixon and Sharon Durrette back to Martins store. We stopped and I picked up my car and we came on here to Lovingston.

Q. The two cars were travelling along together?

A. Yes, sir. I was immediately behind Deputy Sheriff Dixon's automobile. And when we came here, stopped and parked outside here, asked the young man to get out; brought him into the Courthouse, up the steps and into the Sheriff's office. And we walked in and there was a crowd up there, Court was going on. And I asked him to sit over in one of the chairs in the Sheriff's office and he sat there.

Numerous people came in and out of the Sheriff's office. The door was closed but people use that to leave their hats and things in there when they go in the Court room. And there were people going in and out there.

Then we got ready to leave, several of the Officers went out of the door—we all went out of the door and went down and we were discussing going to get something to eat. And we were discussing whether or not to put him in jail at that time or whether to talk to him, interrogate him in regard to this thing. We were discussing that on the way down page 141 } towards the State Police office.

We got down to the State Police office and we went in and I walked back outside to the door with some of the Officers, talking back and forth. Eventually I went back because we were trying to decide exactly who was going to stay and so forth. Eventually, when it was finally decided I went into the office and had a seat.

Deputy Sheriff Dixon was in there at the time talking to Sharon. He was questioning him when I walked in and this boy was telling him about it at the time I walked in, about how it was going on. I had been in and out of that office, going back and forth to the door talking to him. And that was the first knowledge that I had at that time that this boy was admitting anything. Up to that point he had not admitted it, he had denied being there.

He was telling Deputy Sheriff Dixon there that he had gone up there on the pretense of buying eggs, or words to that effect. I don't recall exactly—I had just walked in. We sat there and listened to it, to what he had to say. He told us approximately how he did it.

And during this we asked him—I don't recall that I asked him—but he was asked what he had struck her with on the head, because at that time no one knew. They had no idea that morning, none of the Officers that I had talked with—

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page 142 } nobody that I had talked with had ever given me any indication as to what she had been struck with.

At that time he mentioned the fact that he had struck her in the head with a little stick, he said. And we were inquiring as to exactly what—I mean, asking him to be specific about it, trying to find out what kind of stick it was. And in the previous testimony that I have heard here this morning in regard to a stick, I think that there are, or were at that time, some sticks—if I remember—pieces of tongue and groove boards laying on a desk. I don't know what the purpose is but they were laying on the desk in the State Police office.

I picked up one of these boards right there in the State Police office and asked this boy if the stick was about that size. He kept saying a stick or board and couldn't be specific about it. And I picked up this little stick there and asked him if it was a big as that and he said no, it was not as big as that stick, that this little board that he had struck her with was not that heavy. I asked him if was just a stick, was it a finished board, or was it a rough stick like would come from a sawmill, and he couldn't be specific about it.

I asked him what he had done with the stick and he said he threw it down across the road, after he had crossed the road from the house. I asked him where and he said he

page 143 } didn't know exactly where, but he threw it down after he crossed the road and it was over there in this thicket where he had crossed the road.

And it was at that time that I first mentioned something to him about telling us exactly where this thing was, could he tell us exactly, and he said he couldn't. So we asked him if he would go with us over there and try to show us where the board was and he said he would. So then we said, well we will go get something to eat and after we eat we will go with you over there.

Deputy Sheriff Dixon and I discussed what would be the best thing to do with him. It was Court day here and there was a crowd and we didn't know what rumors might be circulating or anything and we figured the safest thing to do with him at that time was to put him in jail. We carried him up to the jail and put him in the room downstairs on the left by himself, away from all the other prisoners.

We started to go get something to eat and I believe at that time we met some of the other Officers coming back and Deputy Sheriff Moon was there and went out to the jail while

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we were standing there talking. He went out to the jail. He said he wanted to talk to this boy and see if he could determine if there was any connection in a case—that if this young man could be connected with a case that he was working on.

So while we were standing there talking these
page 144 } newspaper reporters came up. Then while we were standing there they were inquiring, of course, and wanted to know what we had. We didn't know what to tell them right at the moment. And Deputy Sheriff Moon came back and I asked him—I don't know that I asked him. I take that back. I don't know that I asked him, but anyway, he said that he couldn't talk to the boy, that Mr. Whitehead, Robert Whitehead, was out there talking to him at that time.

So the reporters were asking me a lot of questions there and I think at that time Deputy Sheriff Dixon and Hart—I don't know this of my own knowledge—but they left me and walked on in the direction of the jail. I don't know whether they went in or not because I wasn't there. I mean, of my own knowledge I don't.

Shortly after that Deputy Sheriff Dixon and I left and went down to get something to eat. We came back and we met Trooper Hart here at the jail. These reporters were still standing out at the jail. We went into the jail and asked Mr. Delk to open and asked Sharon to come on and he walked out of the door by me and went on to the car to get in the door, or in the car, and he was not handcuffed. He wasn't forced to go or anything.

In fact, the reporters were still out there and they asked him to pose for a picture, which he did. And he got in the car and I got in the back seat with him. We drove
page 145 } over to Avon to the Ferguson's home, drove up in the yard, and Deputy Sheriff Dixon and Trooper Hart got out of the car. They went out and talked to the people. I sat in the car with this young man.

We didn't want anything to happen to him and I stayed in the car with him. So then the other Officers brought people to the car to identify him and so forth, and they looked at him.

We finished there. I saw Trooper Hart with a little sliver of rock in his hand. I don't know the particulars on it. I didn't see who gave it to him or anything.

We got back in the car and came back to Lovingston. On the way back to Lovingston we stopped on the road—I

don't even recall just exactly where it was, but somewhere, and got a soft drink and got Sharon a soft drink. And came back here and stopped down here at the State Police office and Deputy Sheriff Dixon and Trooper Hart went into the State Police office. I went in with them.

I was in and out of the office, and they sat there. As far as I know they were there with him all the time but I was in and out of the office at that time doing some other things. And they sat there and wrote this statement up, got this young man to sign a statement there in the office at that time. At the time that he signed the statement I wasn't even in the room. I came in shortly thereafter, though.

page 146 } Q. Now, you went to Avon after lunch to try to find this stick which he had told you he had thrown in the bushes or along the creek somewhere?

A. Yes, sir.

Q. Was any search ever made for the stick?

A. No, sir. As I said, the two of us sat the whole time together in the back seat of the automobile. As I just told you, Trooper Hart came to the car with this little piece of rock that he had obtained over there I assumed. I don't know. I wasn't out there when he obtained it. He came there with this little piece of rock.

Q. When did you first hear anything about a rock?

A. Well, it was discussed on the way over there. I don't know of my own knowledge, but Trooper Hart had information about a rock. I don't know of my own knowledge how he received that information.

Q. Did you ever hear the Defendant say anything about a rock?

A. After he was confronted with the fact that it was thought Mrs. Ferguson was hit in the head with a rock then he finally admitted that he did hit her with a rock.

Q. Where was he when he admitted that?

A. Over there.

Q. Over there?

A. On the way over there—I don't recall

page 147 } whether it was en route or there but I know it was during that time that we were over there. It was in the car and I was in the car all the time. There was talk about it on the way over there and then after we got there, too.

Q. But you heard Durrette admit that he had used a rock?

A. Yes, sir. I know definitely because I had asked him in regard to the stick that he was supposed to have hit her with.

W. N. Whitehead.

I had asked him about it and there was a stick in the State Police office down here. It wasn't a stick, it was a board about three or four inches wide—

Q. You have covered that.

A. —and I asked him in regard to that and because of that I was particularly interested in this exhibit business and then, of course, he never was specific about where he threw the stick. And, of course, when the rock came up then that ended the stick.

Q. Now, during the course of this investigation as you have described it, leaving Hebron Church with the accused at first, back to Lovingston, then back down there and back to Lovingston. During all that time what was the relationship between the Officers and this Defendant, as far as you saw?

A. Well, nothing unusual.

Q. Was there any feeling shown by anybody, and anger, or anything of that sort?

page 148 } A. Nothing unusual, not that I could say—I mean, it was overly friendly and it wasn't overly to the opposite. I mean, nobody was belligerent and nobody was real—I mean, nobody was hugging and kissing one another and neither were they fighting. I mean, there wasn't anything unusual about the attitudes of what was going on.

Q. The relationship between the Officers and this accused was the usual one?

A. Yes, sir.

Q. Do you know of anyone ever threatening him or hitting him or anything of that sort?

A. No, sir.

Q. How did this young man appear to be? Did he appear to be nervous and upset, scared, or how did he conduct himself during that day?

A. Well, I had never seen him before and I wouldn't be in a position to judge whether the way he reacted was normal or not.

Q. Well, how did he react?

A. Well, it wasn't anything out of the way. I mean, I did not notice anything unusual at all about his actions. Not knowing him I wouldn't be in a position to notice anything unusual, other than the normal reaction of prisoners that you pick up.

Q. Did he ever complain to you about being

page 149 } struck by any Officer?

A. No, sir.

W. N. Whitehead.

Q. Did you ever hear him complain to anybody else about it?

A. No, sir, not in my presence he didn't.

Q. Did you ever see any mark on his face or any evidence whatsoever that he had been mistreated in any way?

A. None whatsoever.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. You locked him up in jail while you all went to lunch?

A. We locked him up when we started for lunch.

Q. Did you get any lunch?

A. Yes, sir.

Q. Where was he when you had lunch?

A. When I left to go to lunch he was out at the jail talking to Mr. Robert Whitehead.

Q. Well, he was in jail then, wasn't he?

A. I would assume he was.

Q. Well, that's what I asked you, if you left him in jail while you all went to lunch?

A. I told you I left him in jail when I started

page 150 } to lunch.

Q. Was he in jail when you got back?

A. He was in jail when I got out there with the other Officers.

Q. Well, is there anything important about it? Couldn't you say or no, that you did leave him there?

A. I told you I left him out there.

Q. Did you ask him if he had had lunch?

A. No, sir, I don't have anything to do with feeding prisoners.

Q. Well, you all have certainly put so much importance apparently on buying him a soft drink. Did you buy him anything to eat?

A. I didn't.

Q. Did he have anything to eat?

A. I couldn't tell you whether he did or not.

Q. Who was in the Sheriff's office with him when you all left him in the Sheriff's office temporarily? What Officers staved there with him?

A. I don't know, sir, whether there was any specific Officer

that was supposed to stay there with him. We were all out there in the hall or in the adjoining office and so forth.

Q. In the hall?

A. I recall that I didn't stay in the office all the time and he was sitting in the chair. There were several

page 151 } Officers—there was Court going on up here and most of the Officers stay in the Sheriff's office while Court is going on. And there were other people as well as Officers present. I don't recall all of them at this moment.

Q. You felt that he needed protection?

A. Yes, sir. We didn't have any definite plan to—I mean, there was nothing definite about the fact that he needed protection but—

Q. You thought so?

A. —I had seen grown men crying about the situation over at Avon that day.

Q. Was he one of the grown men you are talking about crying—Sharon?

A. No, sir.

Q. You had seen that and you felt uneasy about his protection, or his needing protection, and you *you* took him on the floor of a building that more people were assembled than any other place in Nelson County on that day? Don't you reckon we are right?

A. Well sir, it so happens that the jailer was up there and it was necessary to obtain the jailer before we could put him in jail. It was necessary to obtain one of the State Policeman to get in their office before we could go there, and that's our office and that would be a normal place for us to take him unless we took him to the State Police office

page 152 } or the jail.

Q. And you left him in a room where people on that floor had left their hats and were coming in and going out, without any particular guard over him? Is that true?

A. Sir, there were some four or five Police Officers within a few steps of him. They might not have been standing right in the room by him but the room is very small and he was sitting in there in a chair and there were Police Officers in the hall on the outside and I couldn't tell you definitely that there were Police Officers in that room all the time.

I said that I left the room and while I was gone out of the room I couldn't tell. I left Police Officers in the room with him when I left, but who stayed in there or whether they went out—they could have gone out just like I did.

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Q. Then you and Mr. Dixon carried him down to the State Police room in the Medical building?

A. When we left this Courthouse, sir, we came down the steps and walked down the walk and he was in the presence of Mr. Dixon and me and—I won't say all, but if not all, nearly all of the Police Officers that were upstairs in this Court. We all walked out together. I couldn't tell you exactly—I know Trooper Hart was along. And I know some of the others, but I am not definite on the names and consequently I wouldn't like to say. There are four State Police Officers here and the Sheriff and three Deputies

page 153 } and I wouldn't like to say which of those eight Officers accompanied us, but we all went down to the office together.

When we got down to the office eventually the only two Officers left down there were Deputy Sheriff Dixon and myself.

Q. That's what I understood you to say.

A. Yes, sir, that's right.

Q. Down to that point this boy had never admitted doing anything? He denied it emphatically, didn't he?

A. I don't—

Q. And then everybody left and left you and Officer Dixon there and he had denied it emphatically, hadn't he?

A. I don't know whether it was so emphatic or not. He had denied it.

Q. And you left him alone with Mr. Dixon and went out—

A. I told you, sir, just a while ago in my previous statement here that I was going back and forth, talking to the fellows that were leaving the office. You understand, we don't have access to that office.

Q. Please answer my question. Did you leave him in a room alone with Officer Dixon?

A. Yes, sir, I did leave him in a room alone because he—He was obliged to be in a room alone with Officer Dixon because I came back into the room and he was alone

page 154 } with Officer Dixon.

Q. And when you got back in the room with Officer Dixon he was telling Officer Dixon you say about what he had done?

A. That's correct.

Q. Why did you leave him alone except for the one reason of having Officer Dixon use force?

A. Sir, these State Police Officers down here, that is their office and we have no keys to it. They had to accompany

us down there to let us into that office. And we went down there to get away from the crowd up here. It was not decided definitely who was going to eat and who was going to stay. We didn't want to leave him alone. So when it wound up, when we were talking, I went out—I started to go one time to eat and some of the other officers were going to stay there and then when I got outside I told some of the Troopers, I said, "You all go ahead and I'll stay on here." So then when I walked back into the State Police office all the Troopers had gone and it was at that time that Dixon was talking to him and he was in the process right then of telling him something about what had happened. It was news to me at that moment.

Q. Answer me this one question.

A. Yes, sir.

page 155 } Q. Did not you leave him alone with Officer Dixon so that Officer Dixon could use force on him? And he wouldn't have a witness to it.

A. I absolutely did not, sir. I gave you the reason why I left the room just now. This is the second time I have answered that question.

Q. When you picked up a board that was laying on the desk, or on a table in that office was that for the purpose of putting fear into the heart of this boy?

A. Absolutely not, sir. I asked that young man in regard to the size of the board if it were bigger, smaller, was it a dressed plank, or a rough plank, or strip. I was trying to determine exactly what it was, the weapon that was used that he said he knocked her in the head with.

He had said it was a board. I was trying to determine what kind of board it was so that I could identify it if we could find it.

Q. Well, I misunderstood you. I thought you said he said he used a little stick.

A. I just told you, sir, that he said a stick and I was trying to determine what kind of stick it was and he was the man that was trying to tell me—from the description that he finally —I finally thought that he meant, from the words that he was trying to tell me, that it was a little narrow, thin board,

page 156 } much thinner board and much narrower than this particular board down there in the State Police office, or at least was down there.

Q. Were you down there at any time when the question of fingerprints came up, a statement was made or anything about fingerprints?

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A. If I was I don't recall it.

Q. Did anybody take his fingerprints?

A. Not in my presence. I mean, they could have been taken but I don't know.

Q. Were you there at all times that Trooper Hart was there?

A. No, sir. No, sir, I certainly was not.

Q. Well, you knew that Trooper Hart did take his fingerprints, don't you?

A. No, sir, I didn't until you just now said so. Or, at least I still don't. I don't know whether you mean that he did or not.

Q. Well, were you present at what was called a preliminary hearing?

A. No, sir, I was not.

Q. What is the distance between Union Baptist Church and Hebron Church?

A. I never have measured it, sir.

Q. Is it as far as from here to the main street or the highway down here, as far as from you to the highway?

page 157 } A. All I could give you would be an estimate, sir, and I would say yes, sir, and that it is farther than that.

Q. And how many houses are between Union Baptist Church and Hebron Church?

A. I am not positive of that, sir. I think it is three. I have never had occasion to count them but as I remember I do believe there are three.

Q. And would you say the distance of Mrs. Ferguson's house from Union Baptist Church is as far as from here then to highway 29?

A. In my opinion, sir, it might be that far. It is very likely that it would be a little less than that.

Q. And in going from Union Baptist Church to the Ferguson house do you go up hill or down hill?

A. Well, it's referred to there as up the road, but it is generally down hill. The road slopes down hill from the Church to her house, although I wouldn't say that the ground generally slopes down hill from the Church to her house necessarily. They are both are up on the side of the hill above the road.

Q. Both on the side of the hill?

A. Yes, sir.

Q. Now, when you used the word suspect, you meant the

person under suspicion or a person under suspicion, didn't you?

A. I would assume so.

page 158 } Q. You didn't necessarily mean Sharon Durrette when you were talking about suspect?

A. Well, I didn't know Sharon Durrette at the time so I couldn't—I didn't until after he was picked up and brought over here. I don't reckon I knew his whole name.

Q. I believe you told us where the Durrette family lived. I believe you said you went up to the house?

A. Yes, sir, I did.

Q. And you were fooling with the dogs, the bloodhounds? Were you?

A. Trying to find some tracks. That was after I came from up at the house.

Q. After you came from up at the house?

A. Yes, sir.

Q. What happened to the dogs when you got them there?

A. Well, they were carried over on the hill across the road from the house where they were deployed, trying to pick up the scent. They were going across the field to where we thought possibly whoever had run had gone.

Q. What time did you get the bloodhounds there?

A. I don't know, sir.

Q. Well now, were you there when the man got there with the bloodhounds?

A. Yes, sir.

page 159 } Q. And you started out with him?

A. Yes, sir, I started out following the dogs.

Q. Well, in order to put them on a track it is customary in using bloodhounds to use some object that a person may have had their hands on, or start them where they started from, isn't it?

A. Well now, that may be—I'm not too familiar with dogs but I didn't think that was necessary altogether, sir. There are—

Q. Well, did you go to the house?

A. There are occasions when that is not done, in my opinion.

Q. Did you go to the house to pick up the tracks with the dogs?

A. Did we go to whose house to pick up the tracks with the dogs?

Q. I am talking about Mrs. Ferguson's house. That's where it started from. That's where the man ran from.

W. N. Whitehead.

A. No, sir, we did not.

Q. Well, didn't any dogs lead to Union Baptist Church, did they?

A. I don't understand your question.

Q. Let me make it clear about this. Were any road blocks put up?

A. Not to my knowledge.

page 160 } Q. You don't know whether they took fingerprints?

A. Not to my knowledge.

Q. Whether they undertook to—The purpose of taking fingerprints, do you.

A. Let me get this clear. I was not the Officer that was handling this case. I was merely trying to assist the Officers, so there would be a lot of things that I would not be familiar with. I'd be familiar with only what part I took in it.

Q. Well, who is here today that knows about the bloodhounds? Who is here that would know about the bloodhounds?

A. Well, I reckon Sgt. Gaunce there I think asked that the bloodhounds—directed that the Officer bring the bloodhounds here and I was one of the Officers that attempted to follow the bloodhounds and the other Officer that brought the—

By the Court:

Q. At what point did you start?

A. Sir?

Q. At what point did you start the bloodhounds?

A. We tried to start the dogs, sir, from a point where the ladies claimed they had last seen this boy here going across the road, at a point on the opposite side of the road from the house. We felt it would be useless to try to

page 161 } start the dogs up around the house where we had walked and where all the other people had walked around there. However, no one had gone across the road to our knowledge and no one had crossed the road in the direction this person had run from the house, so we went across the road there and got on the hill opposite—There was a swampy, muddy place down there and we got over there trying to pick up the track there.

When I talked to—

Q. That's all I wanted to know.

By Mr. Wingfield: (Continuing)

A. Did it occur to you as an Officer that if you had found

W. N. Whitehead.

the weapon that had been used and let the dogs have a scent of that weapon that that would lead you to the culprit?

A. No, sir, it did not—

Q. And you made no effort to look for a weapon?

A. I made no effort, as I told you a while ago. I wasn't—

Q. But you didn't make any effort?

A. I made no effort to look for a weapon. I wasn't up there at the house to look for a weapon. I was down there with the dogs. There were other people at the house looking for—

Q. And as a result of the bloodhounds that you had there on the scene, there was nothing from the bloodhounds that led you to this boy, was it?

page 162 } A. No, sir. Sgt. Gaunce caught him somewhere. I don't even know where of my own knowledge. He brought him there to us. We were there searching the woods, the fields beyond—on the opposite side of the road from the Ferguson home, following a track at the time he brought him. We were still in the process of looking and he called us and told us to stop searching, that he had him.

Q. There are just two more questions I want to ask you.

A. Yes, sir.

Q. I understood you to say that you got there, you made inquiry, and that nobody had seen the culprit—I think you used the word "culprit"—coming or going, coming to the premises or going from the premises?

A. No, I'm sorry if I gave you that impression. I didn't mean that if I said it. I was trying to determine where—this talk about the dogs—I was going—

Q. I'm not talking about the dogs.

A. Well, I'm talking about them. Now I was trying to determine from the people that I talked to where to put the dogs to find the track. As you have just tried to bring out, I was not successful in getting the dogs on the track. And that was what I was trying to do. I couldn't find out—I mean, the general area of where he went across the road but I couldn't determine beyond that where to try to get the

page 163 } dogs on the track, the direction leading away from there, from where the boy disappeared and went into the bushes on the opposite side, the other side of the road.

Q. Well, I hadn't asked—You didn't tell me that. You made that statement to Mr. Goad right at the beginning of your testimony.

Q. When you arrived on the scene that no one had seen any person, or the culprit, going or coming or leaving—

John Jackson.

A. No, I didn't say no one had. I said that the people I talked to. I couldn't get anybody—the people that I talked to. I didn't talk—I can't say no one because I didn't talk to everyone.

Q. You didn't find anybody?

A. No, sir.

Q. Now, my other question is this. That Sharon had said nothing in the world about a rock until after you all had found out that the rock had been found?

A. He didn't in my presence.

Q. Well, you said—

A. He didn't say anything about a rock in my presence until someone brought up this business about a rock. As far as I was concerned at that time we were going to look for a stick or a board or a plank or what have you.

page 164 } Q. Well, he was in your presence from the time you left the jail until you got down to the Ferguson house, weren't you?

A. Yes, sir.

Q. Well now, if he was in your presence all the time until you heard about the rock, he hadn't said anything about the rock? Isn't that true?

Q. I don't follow you, sir. State that again, please, sir.

By the Court:

Q. If you heard about the rock from some other source, had this boy said anything about a rock?

A. He was confronted with the fact of whether or not he did strike her with a rock, whether it was a rock rather than a board. That was the first I heard of it. And I didn't confront him with it. One of the other Officers did.

Q. He had never said anything about a rock until that time?

A. No, sir, he had not in my presence.

Mr. Wingfield: That is all.

The witness stands aside.

page 165 } JOHN JACKSON,

a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

John Jackson.

DIRECT EXAMINATION.

By Mr. Goad:

Q. Is your name John Jackson?
A. John Jackson.
Q. What work do you do?
A. Well, I work at odd jobs and cut wood between times.
Q. Where do you live?
A. Avon.
Q. Do you live on the left-hand side of the main highway, Route 151, going towards Afton?
A. How's that?
Q. Do you live on the main road going towards Afton?
A. Yes, sir.
Q. You live on the main highway?
A. That's right.
Q. Not far from Avon Postoffice?
A. Not far from Avon Postoffice.
Q. Do you know this defendant here, Sharon Durrette?
A. Yes, sir.
Q. Do you remember the day that this case arose?
A. Yes, sir, I remember the day.
Q. Thursday, August 7th.
page 166 } A. That's right.
Q. Now, previous to that day had Sharon Durrette been helping you working, cutting pulpwood?
A. Yes, sir.
Q. Pine pulpwood?
A. Yes, sir.
Q. Had you been picking him up in the morning?
A. In the morning, yes, sir.
Q. Every day?
A. Every day.
Q. Had he been working with you regularly day by day?
A. Day by day, yes, sir.
Q. Did you pick him up the morning of August 7th?
A. Yes, sir.
Q. Where did you pick him up?
A. At Avon Church.
Q. Is that the Union Baptist Church?
A. Yes, sir, that's the Union Baptist Church.
Q. About what time was that?
A. Well, probably about 7:30 to quarter to 8:00.
Q. Do you know exactly what time it was?
A. Well, I got an idea that it was that time.

John Jackson.

Q. Were you a little bit late getting there that
page 167 } morning?
A. Well, according to what I had been getting out. I was supposed to get out at 7:00.
Q. You were about thirty to forty-five minutes late that morning?
A. Well, about thirty minutes late.
Q. The best you can tell was that you picked him up some time between 7:30 and quarter to 8:00?
A. And quarter to 8:00.
Q. Was he by himself there?
A. Yes, sir.
Q. At the Church?
A. By hisself.

By the Court:
Q. Was he down by the road?
A. Right at the sign at the road.
Q. How far is the sign from the home of the Henderson's?
A. Well, I reckon it's a good little ways in a way. It's about two or three houses between there.
Q. As I recall the road there coming towards Lovingston you come around a left curve?
A. That's right, right around a curve.
Q. And it's up on the hill to the left?
A. Right up on the hill.
Q. Well, would it be as far as from here down
page 168 } to the highway there or further?
A. Yes, sir, it's just about that far down to that main highway.
Q. Where that light is?
A. Yes, sir.

By Mr. Goad: (Continuing)
Q. That is where you picked him up at the Union Church?
A. That's right.
Q. From where the Fergusons live? You know where they live?
A. That's right.
Q. Was it about as far as from here down to the main road?
A. That's right.
Q. Down where the bank is?
A. That's right.

John Jackson.

Q. Then you carried him with you and where did you go then?
A. Went up to my house.
Q. Then where did you go?
A. Where I go?
Q. Yes.
A. We stayed there. We waited on the truck to come back. The truck had gone with a load of wood and we
page 169 } waited on the truck to come back before we went after another one. And Sharon stayed with me until the Officer picked him up at my house.

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

CROSS EXAMINATION.

By Mr. Wingfield:
Q. Sharon, is a school boy, isn't he?
A. Yes, sir.
Q. He goes to school?
A. Yes, he goes to school.
Q. And you know him?
A. I know him.
Q. And he was working for you during the Summer in the woods?
A. During the summer, yes, sir.
Q. And this particular day you had missed the truck and so you were waiting for the truck?
A. No, I had the truck loaded and they was going with a load.
Q. There were going with a load?
A. That's right, gone with a load.
Q. And had Sharon done anything towards loading the truck that morning?
A. Well, the first load that went on. That went early. We was aiming to get to Arat at 8:00 o'clock. That's
page 170 } why I knew it wasn't much after 7:30. And when the truck came back we was going to load it again and Sharon waited at the house after I picked him up until we got the next load.
Q. And he was at your house when Sgt. Gaunce came there?
A. Yes, sir.
Q. When Sgt. Gaunce came there did he have anybody in the car with him, in his car with him?

John Jackson.

A. Had my son.
Q. How old is your boy?
A. Fourteen.
Q. And then did you hear what he said to Sharon?
A. The only thing that I heard him say was that he wanted to talk with him.
Q. And then did he leave with Sharon?
A. Yes, sir.
Q. Did your boy stay there?
A. My boy got out.
Q. Got out of the car?
A. Yes, sir.
Q. You don't know where Sgt. Gaunce had picked up your boy, do you?
A. At my brother's house.
Q. At your brother's house?
A. So my son said.

page 171 } Q. When you picked up Sharon there at the Church you say he was on the road next to the the sign?
A. Yes, sir, right at the sign at the Church.
Q. Do you remember when you first saw him when you drove up there was he standing up or sitting down?
A. I believe he was kind of stooped down when I first drove up.
Q. Was this a hot day?
A. Well, pretty warm, in the Summer time, the 7th day of August.
Q. Was the weather clear?
A. The weather was clear.
Q. What was Sharon's condition with reference to being out of breath—
A. No, sir, didn't seem like it was anything to me.
Q. Seemed to be normal?
A. Normal.
Q. Not out of breath?
A. No, sir.
Q. Not sweating?
A. No, sir.
Q. Did anything unusual appear about him?
A. None. Not a bit.
Q. Was that the same place that you were accustomed to pick him up?

page 172 } A. I had been picking him up every morning there.

John Jackson.

Q. At exactly the same place?
A. At the same place.
Q. And you say you estimated it was around 7:30?
A. Around 7:30.
Q. But at the latest what was it?
A. It was a quarter to 8:00.
Q. The latest it could have been was a quarter to 8:00?
A. The latest a quarter to 8:00. But it was probably around 7:30 something.
Q. And he would wait there until you did come there regardless of what time you got there?
A. Waited until I came.
Q. And you hadn't notified him that morning that you were going to be late, had you?
A. No, I didn't notify him I was going to be late.
Q. So he had no knowledge of the fact that you were going to be late that morning? There was no way he could have known?
A. No, no way.
Q. How long have you known Sharon?
A. All my life—All of his life, at least.
Q. He is a school boy?
A. Yes, sir, he's a school boy.
page 173 } Q. Do you know his general reputation in that—
A. Yes, sir, I do.
Q. —general reputation in that community as a law abiding citizen and for truthfulness?
A. He is that.
Q. Is that reputation good or bad?
A. It's a good reputation.
Q. Is he a friend of your son's?
A. Yes, sir, he is.
Q. Does he have any brothers or sisters?
A. Yes, sir, he has one brother and one sister.
Q. Do you happen to know where his brother works?
A. Yes, sir.
Q. Work at Howard Johnson's?
A. Yes, sir.
Q. On the mountain at Afton?
A. Yes, sir.
Q. And he has a sister who is married and away, hasn't hasn't he?
A. I don't know.
Q. You don't know about his sister?

A. No, sir.

Mr. Wingfield: That's all.
Mr. Goad: That's all, John.

The witness stands aside.

page 174 } MILFORD B. FERGUSON,
a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:
Q. Your name is Milton B. Ferguson?
A. Yes, sir.
Q. How old are you, Mr. Ferguson?
A. Thirty-one.
Q. Are you the husband of Mrs. Annie Henderson Ferguson?
A. Yes, sir.
Q. I believe you all have one child named Shirley who is now eight years old?
A. Yes, sir.
Q. Do you and your wife and your child live there in the next house going towards Afton from Hebron Church?
A. Yes, sir.
Q. Do you own your own place?
A. Yes, sir.
Q. Where do you work?
A. Crump and Shenandoah Company, Waynesboro.
Q. How long have you worked there?
A. Eleven years.
Q. What time do you have to be at work in the
page 175 } morning?
A. I have to be at work at 8:00 o'clock.
Q. And what time do you leave for work in the morning?
A. I leave between 7:00 and ten after.
Q. Do you leave at that time every morning that you go to work?
A. As near as possible.
Q. Now, on this morning in question, August 7th, 1958, Thursday morning, do you recall what time you went to work that morning, what time you left your home?

Milford B. Ferguson.

A. Between five and ten after 7:00.

Q. Then later on that morning did you get a message that something had happened there at your house?

A. Yes, sir.

Q. Did you come home from work?

A. Yes, sir, after going down and getting a prescription filled.

Q. Do you know what time you got home from work?

A. Well, it was about 11:30. I don't know exactly when it was.

Q. Now, I show you the rock that has been introduced in the evidence as Commonwealth's Exhibit No. 8, and ask you if you have ever seen that rock before?

A. Yes, sir.

Q. Take a look at it and examine it.

page 176 } A. Yes, sir.

Q. Where have you seen that rock before?

A. It came out of my well.

By the Court:

Q. What?

A. It came out of my well. It was on the back porch there the morning that I came back from work after I heard about her getting hit.

By Mr. Goad: (Continuing)

Q. Did you find the rock?

A. Yes, sir.

Q. Had anyone else pointed it out to you or were you the first one to find it, as far as you know?

A. No, sir, hadn't anybody found it.

Q. How did you happen to find it?

A. Well, after they had all taken this boy to jail, or whatever they done with him, I didn't think they'd come back for any more evidence so I just went to move the bucket.

By the Court:

Q. Remove what?

A. Remove the water bucket. You see, the bucket was still sitting there. So I picked up the bucket and the rock was laying under it.

Q. The rock wasn't actually under the bottom

page 177 } of the bucket?

A. No, it was beside it, real close to the bucket.

Milford B. Ferguson.

By Mr. Goad: (Continuing)

Q. Did you move the bucket any further then?

A. I took the bucket on in the kitchen.

Q. Did you move the rock?

A. No, sir.

Q. How long was it before Sgt. Gaunce came and got the rock?

A. Around thirty-five, maybe forty minutes, at the most.

Q. Had you picked up the rock?

A. No, sir.

Q. Were there any splinters that had broken off of this rock?

A. Well, there was one piece broke off there. I think it's glued back on now.

Q. Where was that one piece.

A. Laying beside it there.

Q. Beside the rock on the back porch?

A. Yes, sir.

Q. Will you look at this picture? Here is the screen door coming in the back porch and this is the door going into your house. Will you point out to the Jury and tell them where you found the rock and show them where the water bucket was?

page 178 } A. The water bucket was sitting between this two-by-four and the door.

Q. The rock was behind the bucket?

A. Right between the bucket and the wall.

Q. Before you moved the bucket could you see the rock?

A. No, sir, unless you went to the other end of the porch.

Q. Now that was about what time that you found that rock?

A. I don't know what time it was, about the middle of the day, 12:00.

Q. I want to ask you this, Mr. Ferguson, if you or any member of your family ever had any difficulty in the past with this young man here or any member of his family?

A. No, sir.

Q. Do you all keep chickens or sell eggs?

A. No, sir.

Q. Have you ever kept chickens or sold eggs?

A. No, sir.

Q. Have you ever sold this defendant or any member of his family any produce or anything of that sort?

A. No, sir.

Milford B. Ferguson.

Q. Have you ever had any dealings whatsoever with this man or his family before?

page 179 } A. No, sir.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Before you saw the rock on the porch where had you ever seen it before?

A. Well, I had been digging a well there and rocks like that came out of the well.

Q. I know, but I said before you saw the rock on the porch, that rock on the porch, where had you ever seen that rock before? Where was it before?

A. Well, I couldn't say where it was before.

Q. You don't know?

A. Because I had dug the well and carried some of the rocks and put them in my driveway.

Q. Was that one of the rocks you carried and put in your driveway?

A. Yes, sir.

Q. This is one that you carried and put in your driveway?

A. This could have been in my driveway. It could have been.

Q. It could have been. I misunderstood you. Could you identify that rock as a rock that came out of your well?

A. Yes, sir.

page 180 } Q. Can you identify it as a rock that was in your driveway?

A. Yes, sir.

Q. Have you got a little girl eight years old?

A. Yes, sir.

Q. And does she pick up rocks?

A. No, sir.

Q. She does not?

A. No, sir.

Q. She doesn't like to play with rocks?

A. She's a girl and doesn't play with rocks.

Q. Have you forbidden her to play with rocks?

A. Yes, sir.

Q. And because she's a girl she wouldn't play with rocks, or doesn't play with rocks?

Milford B. Ferguson.

A. No, sir.

Q. Do you mean to tell this Jury that when you saw the rock on the porch and you moved the bucket and you saw the rock laying there, and your wife only a few hours before that had been struck with some object, that you didn't put your hands on that rock?

A. No, sir. When I moved the bucket I saw the rock and I said it was evidence because I know she never has carried nothing on the porch because I asked her.

page 181 } Q. I want to ask you if naturally, if you thought that was the weapon that had hit your wife if you wouldn't naturally reach and pick it up?

A. No, sir.

Q. You didn't touch it?

A. I wouldn't do it.

Mr. Wingfield: That's all.

RE-DIRECT EXAMINATION.

By Mr. Goad:

Q. You say you had been digging a well in your back yard?

A. Yes, sir.

Q. Were the rocks from the well similar in appearance to this rock?

A. Yes, sir.

Q. When you left for work that morning did you go out the back door or the front door?

A. The back door.

Q. Were there any rocks or a rock on your back porch when you went out?

A. No, sir.

Q. Do you know?

A. No, sir.

Q. You had never seen this particular rock before?

A. No, sir.

page 182 } Q. How far is the place where you were digging that well from the back door of your porch? Would you estimate it?

A. About as far as from here to that corner.

Q. About as far as far from where you are sitting over to the corner of the Courthouse?

A. Yes, sir.

Q. Now, at the time this case came up you all had to go on the other side of the Henderson house to get water?

Milford B. Ferguson.

A. Yes, sir.

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

RE-CROSS EXAMINATION.

By Mr. Wingfield:

Q. How do you know the rock wasn't there when you left that morning?

A. I look every morning when I go out to see that there isn't nothing there.

Q. Look behind the bucket to see if it wasn't there?

A. Wasn't no bucket there when I left.

Q. And you look every morning to see whether there is a rock on your porch or not?

A. Yes, sir.

Q. Why do you do that?

A. Well, if you lived down there you would, too.

Q. Let me get this straight. You look every morning before you leave to see if a rock is on your back

page 183 } porch?

A. Yes, sir.

Mr. Wingfield: That's all.

RE-REDIRECT EXAMINATION.

By Mr. Goad:

Q. Mr. Ferguson, when you go out you say you go out the back door?

A. Yes, sir.

Q. You went out this back screen door that particular morning?

A. Yes, sir.

Q. You say the bucket wasn't there at that time?

A. No, sir.

Q. Can you swear that the rock wasn't there at that time or not?

A. Yes, sir.

Q. And you say it was not?

A. It was not.

Mr. Goad: All right.

George Henderson.

RE-RECROSS EXAMINATION.

By Mr. Wingfield:

Q. What was in that bucket?

A. It was mostly filled with water that she had brought back.

Q. Let me ask you this question, Mr. Ferguson. Do you think that there is a possibility that your wife page 184 } may have had a dizzy spell or she said she got dizzy and fell there and struck her head on something and skinned her leg and her arm?

A. No, sir.

Q. You don't think she might have fallen down?

A. No, sir.

Q. Does she have dizzy spells?

A. No, sir.

Q. Does she wear glasses?

A. Yes, sir.

Q. And has headaches?

A. No, sir.

Mr. Wingfield: That's all.

The witness stands aside.

GEORGE HENDERSON,

a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. You are Mr. George Henderson?

A. Yes, sir.

Q. Mr. Henderson, you live next door to the Fergusons?

A. Yes, sir.

page 185 } Q. If you are going towards Afton on 151 you come to Hebron Baptist Church and then to the Ferguson house and then to your house? Is that correct?

A. That's correct.

Q. How old are you, Mr. Henderson?

A. Seventy-six.

Q. You are the step-father of Mrs. Ferguson, is that correct?

George Henderson.

A. Yes, sir.
Q. Do you recall the morning this case took place?
A. Yes, sir.
Q. Thursday morning, August 7th?
A. Yes, sir.
Q. Do you know that defendant over there, Sharon Durrette?
A. Yes, sir.
Q. Did you see him that morning?
A. I saw him go up the road that morning?
Q. You saw him go up the road?
A. Yes, sir, up the road.
Q. Now, your house and the Ferguson house is between the Union Baptist Church and the Hebron Baptist Church?
A. Yes, sir.
Q. How did you see him go up the road? How was he traveling?
page 186 } A. Walking.
Q. He was walking?
A. Yes, sir.
Q. Which way was he going?
A. He was going towards the Hebron Baptist Church when I saw him.
Q. Where was he on the highway with reference to your house?
A. Right in front of the house.
Q. Where were you when you saw him walking up the road?
A. Setting on the porch filling up my dust gun for to dust beans.
Q. Did you get a clear view of him?
A. Yes, sir.

By the Court:
Q. How far is your house from the road?
A. Twenty-five yards.
Q. Point out some object out there and let's see what twenty-five yards is. Do you see any object out in the yard that's about the same distance?
A. Twenty-five yards.
Q. Do you see any object out in the Court yard that's about twenty-five yards from where you are sitting?
A. It's twenty-five yards up there.
page 187 } Q. To that house?
A. About that house, something like that.

George Henderson.

Q. Is there a bank there?
A. No.
Q. Is it level with the road, your yard?
A. No, it's not quite level with the road.
Q. How high is the bank?
A. Not more than that high (indicating).
Q. About two feet?
A. Something like that.
Q. All right, sir.

By Mr. Goad: (Continuing)
Q. Was there anything to obstruct you from where you were sitting—
A. Not a thing.
Q. —from seeing anyone in the road.
A. Not a thing. Clear view of him.
Q. And you recognized him?
A. Yes, sir, I recognized him because I knew him.
Q. Was anybody with him?
A. No, sir, nobody with him.
Q. Well, did you pay any attention to him at that time?
A. No, I just saw him going up. I didn't pay no attention to him.
page 188 } Q. Then what did you do?
A. I went on dusting beans.
Q. Out in your garden?
A. Yes, sir, in my garden.
Q. And what was the next thing that you know about this case?
A. She hollered.
Q. Who hollered?
A. My step-daughter there.
Q. Mrs. Ferguson?
A. Yes, sir.
Q. And where were you when she hollered?
A. I was in the garden.
Q. Where did the sound of her voice come from?
A. From the house.
Q. From her house?
A. Yes, sir.
Q. How did it sound?
A. She hollered, "O-W!" I knew there was something going on.
Q. You knew there was something going on?
A. Yes, sir.

George Henderson.

Q. So what did you do when you heard her?
A. I aimed to run and I fell over the fence.
Q. You started running?
page 189 } A. Yes, sir.
Q. In the garden?
A. In the garden.
Q. And what happened at the garden fence?
A. I fell over it. I hung my foot in the wire and fell over it.
Q. Then what did you do?
A. Well, I got up then and went out there but he was out of my sight.
Q. Now, let me ask you this, Mr. Henderson. Tell us approximately how many minutes went by from the time you saw him walking down the road—
A. Ten minutes, I reckon.
Q. —until you heard her scream?
A. Ten minutes.
Q. Now, after you saw him walking down the road did you see him again? Did you see Durrette again?
A. No, I never saw him until they brought him back down there.
Q. After you got untangled from the garden fence where did you go?
A. I went right on out to the house.
Q. Whose house?
A. To Annie's house, Mrs. Ferguson.
Q. What did you find there? What was going
page 190 } on?
A. I didn't go in. I went right straight on and called the law.
Q. Where did you go to call the Police?
A. Up at the Parsonage right above me, Hebron Baptist Church there.
Q. The Hebron Baptist Church Parsonage?
A. Yes, sir.
Q. Did the Reverend Keeney the Pastor of the Church call the Police?
A. Yes, sir, he called.

By the Court:
Q. Mr. Henderson, where is your garden located, in the back of your house or at the side of it?
A. It's on the side.
Q. Which side?

George Henderson.

A. This side of the house.
Q. The side next—
A. Yes, it runs down to the road and up the hill.
Q. Is it on the side next to your daughter's house?
A. No, it's on the other side.
Q. Where the well is?
A. Yes, where the well's at.
Q. So your house is in between you and the Ferguson house? You were in the garden.

A. Yes, in my garden. The house was be-
page 191 } tween—on this side—the other side of the house.

Q. Your house was between you and the Ferguson's house?
A. Yes, sir.
Q. And how far was it from where you were in the garden to the Ferguson house?
A. Seventy-five yards.
Q. Mr. Henderson, just one other question. When you were in the garden and you heard this scream could you see the Ferguson house from where you were at that time?
A. Yes, sir.
Q. You were kind of behind your house?
A. No, I wasn't behind the house. I was in the garden on the other side of it but it was a plain view of that window and the end of the house, porch.
Q. At the time you heard a scream did you see anybody run out of there?
A. No. I told you I fell over the fence.
Q. I see. All right, sir.

By Mr. Goad: (Continuing)
Q. I want to show you here, Mr. Henderson—This is the back porch of the Ferguson house looking over to your house (showing photograph to witness).
A. Yes, sir.

Q. Here is your house. That's correct, isn't
page 192 } it?

A. Yes, sir.

Q. Come here and show the Jury and the Court—Point out in that picture about where your garden was. Here is your house. When you heard the screams were you behind your house or were you—
A. I was up above the house.
Q. You see that walnut tree there?
A. Yes.

George Henderson.

Q. Where were you with reference to that?
A. I was right behind that walnut tree.
Q. Behind the walnut tree?
A. Yes, I was right behind that walnut tree.
Q. And you could see over to the direction of this house?
A. Yes, sir.
Q. Now, there is the picture that has been introduced in evidence as the Ferguson house. Which window did you say you could see?
A. This one.
Q. Which one?
A. In the middle here.
Q. The window of the house or of the porch?
A. The porch window.
Q. Will you point that out to the Jury?
A. Yes, sir.
page 193 } Q. Could you see the back screen door of the porch from where you were?
A. No, I couldn't see the back screen door.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:
Q. Mr. Henderson, will you turn around and look at the man sitting on the steps behind you? Turn right around and look at the man sitting on the steps.

The Court: Do you mean the Trooper?
Mr. Wingfield: Yes, sir.

Q. Do you see him?
A. Yes, sir.
Q. Who is he?
A. Well—I don't know. I don't know him.
Q. Has he been on the witness stand to testify today?
A. Yes, he's been on the witness stand.
Q. And you don't know which one he is?
A. No.
Q. Did you talk to him on that day?
A. I might have talked to him.
Q. Well, look again and see if you can recognize him as having talked to him that day.

George Henderson.

A. Well, I've never seen him often enough to
page 194 } know him. I'll tell you that.

Q. You don't know who he is?

A. No.

Q. Was there anybody on that porch up at that house when you looked in the window? Will you look up and tell me whether there is anybody on that porch or not?

A. You can't see for them leaves in the trees.

Q. I can see. Can you see whether there is anybody on that porch?

A. Not from where I'm at you can't see, no, sir. And I looked. You're trying to put something over here.

Q. I certainly am, sir. Can you see the porch?

A. I can see the bottom of the porch.

Q. Well, I wasn't expecting you to see the top. Can you see anybody on the porch?

A. You ain't under the porch, is you?

Q. Sir?

A. I asked if you wasn't under the porch.

Q. You say from your house to the road is as far as you are to that house up there?

A. Yes, sir.

Q. About the same distance?

A. Yes, sir.

Q. If you look from your house directly in front if you were on your porch you couldn't see anybody.
page 195 } You would have to look to your right or to your left to see them? Isn't that true?

A. No, sir. My porch faces right along—

Q. Directly in front?

A. Direct to the road.

Q. And on a bank and you are on the porch?

A. Yeah, a little bank. It ain't two foot, about two foot, not over that.

Q. Now, after you saw a person go by what did you do before you heard somebody scream?

A. Went to dust my beans.

Q. How much more dusting did you have to mix?

A. I had just filled the gun up. It's just one of these little short guns, ain't no longer than that (indicating).

Q. And then you walked out to your garden?

A. Yes, sir.

Q. And dusted how many beans?

A. Well, I don't know as I dusted any.

George Henderson.

Q. Well, you said about ten minutes had gone by? Is that true?

A. Well, it was about ten minutes had gone by.

Q. Did you see Officer W. N. Whitehead that day when he was down there making some investigation?

A. (No response.)

Q. Did you see Officer Whitehead?

page 196 } A. Yes, sir.

Q. Do you know Officer Whitehead?

A. No, sir, but I know he was down there.

Q. Would you know him now if you would see him?

A. No, wouldn't know him now if I was to see him.

Q. You wouldn't know him, but you know he was down there?

A. Yes, he was down there.

Q. And you have seen him today, haven't you?

A. I don't know whether I have or not.

Q. Can you pick out Officer Whitehead? Do you know where Officer Whitehead is sitting in the Court now?

A. No, sir.

Q. Did you talk to Officer Dixon that day?

A. I told you I wouldn't know them if I see them. It was the first time I'd seen them and it's might hard to recognize them again.

Q. Is it mighty hard for you to recognize anybody?

A. No, it ain't that way. If I ever seen them two or three times I'll know him.

Q. You heard the Officer say that he couldn't find anyone down there that day who had seen anybody coming or going that might have been the culprit, didn't you? Did you tell them that day about seeing Sharon going down the road?

A. No, sir.

page 197 } Q. You didn't tell them?

A. No, sir.

Q. When did you find out that you had seen Sharon going down the road? When did you first find it out?

A. I ain't never found it out.

Q. You haven't found it out to this day, have you? Have you?

A. No, sir.

Q. When did you tell Mr. Goad that you had seen him going down the road? When is the first time you told him that you had seen Sharon going down the road?

A. He was going up the road. He wasn't going down the road.

George Henderson.

Q. Well, going up the road.
A. I don't remember.
Q. Well, an Officer here testified that it was going down hill, so I don't know, sir. When is the first time you had seen him going up the road?
A. It was that morning.
Q. Who did you tell it to?
A. I told it to the Officers.
Q. Which Officer?
A. There was several of them there and I wouldn't know one from the other.
Q. Do you know Key Jackson?
page 198 } A. Yes.
Q. Do you know him pretty well?
A. Yes, sir.
Q. Could you turn around and pick him out of the Courtroom from where you are sitting? Key Jackson, the one that testified, or John Jackson.
A. Key?
Q. John Jackson, the one I'm talking about.
A. He's on the back.
Q. How old did you say you were?
A. Seventy-six years old.
Q. Have you ever worn glasses?
A. No, sir.
Q. Never had glasses?
A. No, sir.
Q. Do you know what your vision is now, what vision you have? Have you had occasion for a doctor to test your vision?
A. No, sir.
Q. Can you read and write all right?
A. I can read a little. I never did go to school to write.
Q. But you can read?
A. A little.
Q. Will you look at that at that chart on the
page 199 } wall and tell me what the top row of those letters say?
A. No, sir, I can't see them from here.
Q. What?
A. I can't see them the way the light is.
Q. You can't see them?

By the Court:
Q. Are you able to read anything?

A. Mighty little, mighty little. Never did go to school to read.

Q. Do you know numbers, like one, two, three, four, five when you see them?

A. No, sir.

Mr. Wingfield: I understood him to say that he could read but couldn't write, sir.

The Court: He said a very little, the way I understood him.

A. Yes, I can read, but a very little.

Mr. Wingfield: That's all.

Mr. Goad: That's all, Mr. Henderson.

The witness stands aside.

MRS. BESSIE HENDERSON,

a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

page 200 } DIRECT EXAMINATION.

By Mr. Goad:

Q. Is your name Mrs. Bessie Henderson?

A. Yes, sir.

Q. Mrs. Henderson, are you the mother of Mrs. Annie Ferguson?

A. Yes, sir.

Q. Mrs. Henderson, on this morning in question, Thursday, August 7, 1958,—I want to ask you first to recall that morning and do you know this defendant here?

A. Yes, sir.

Q. You know Sharon Durrette?

A. Yes, sir.

Q. How far does he live from your house?

A. He don't live very far but I don't know exactly how far. You can see his house from my house, across the hill.

Q. You can see his house from your house?

A. Uh, huh.

Q. How long have you known him?

A. Ever since he's been a little boy.

Q. Since he has been a little boy has he lived that close to your house?

Bessie Henderson.

A. Lived the same place.

Q. Did you see him that morning?

page 201 } A. I saw him pass our house but I didn't see him when he went in her house.

Q. Where was he and what was he doing and which way was he going?

A. I don't know where he was going, just walking by the door. He went on past, going toward Hebron Church.

By the Court:

Q. What time was this?

A. I reckon some time after seven-thirty, something like that. I don't know. I didn't look at the time. I just noticed him going up the road, past the road going by my house, right on towards the Hebron Church.

By Mr. Goad: (Continuing)

Q. You say he was walking?

A. Just walking. I thought he was going to the store. I didn't pay any attention where he went.

Q. And where were you when you saw him?

A. I was in my kitchen. Just saw him out the door.

Q. Did you have a clear view of him?

A. Oh, yes, I was sitting at the door when he passed, sitting on the chair.

By the Court:

Q. I understood your husband to say that your house faces straight toward the road?

A. It does, it faces the side of the road.

page 202 } Q. Is your kitchen door at the back?

A. The kitchen door is at the front, the way the house is. The house fronts the Hebron Church, the main house. And the kitchen fronts the road.

Q. And the porch fronts the road?

A. The kitchen porch, but the main part faces the Hebron Baptist Church. That was just the way it was built.

By Mr. Goad: (Continuing)

Q. Do you know exactly what time it was when you saw this defendant?

A. No, I didn't look but it was just something after 7:00, but I didn't know exactly how much.

Q. What was the next thing that you did after you saw this man walk up the road?

Bessie Henderson.

A. Well, my daughter come on down to get water and I walked out there and we were talking to her when she came back from the well. It was just about ten or fifteen minutes, ten minutes, maybe. I didn't pay no attention to time.

Q. And your daughter is Mrs. Ferguson?

A. Yes, sir.

Q. When she came to get the water did you see her going to the well or coming back from the well?

A. She passed right in front of my door. There's a door on each side of my kitchen, two doors in it. She went on around the kitchen and got the water and went on

page 203 } back, didn't stay but just long enough to get just one bucket of water. That's all she had.

Q. Did you have any conversation with her there?

A. She just passed a word or two to me. And then she saw somebody she said going towards her house and she'd get back up there on account of her little girl was up there.

Q. Now, where was it you had conversation with your daughter?

A. Just right in front of my door, just a little piece from my door.

Q. Were you out in the yard or still in your house?

A. In the yard. In the yard, about as far—just from that little bank there.

Q. Do you know where the walnut tree is?

A. Yeah, toward the walnut tree. You know, just passed a word or two and she went on back to the house.

Q. What was the next thing that happened, Mrs. Henderson?

A. Well, I heard her hollering when my husband heard her holler and then I run up there, but I didn't see him come out and I didn't see him go in. I seen him over in the woods, bush, after that but I didn't see him come out of the house because the house hid him from me. He was behind her house.

Q. I will show you this picture of the Fergu-

page 204 } son's back porch and your house over here and the walnut tree in your back yard.

A. I just come out and talked with her and she just went on when she saw the person but I didn't see him. You see, she saw him going up back of the house. The house kind of hid him.

Mr. Wingfield: I object to her testifying to what her daughter saw.

The Court: You don't know what she saw.

Bessie Henderson.

Q. You can't tell what she saw. Just tell what you saw.

A. And I didn't see him. I'll tell you that. I didn't see him going in there.

Q. Where were you and your daughter, Mrs. Ferguson standing while you were talking?

A. About right along by my kitchen door.

Q. Where with reference to the walnut tree?

A. She was next to the walnut tree, I reckon, right along here from my house.

Q. How far from the walnut tree, or how far from the wood pile?

A. I don't know how far it would be but it was just right at the house, just a little piece. I can't tell you exactly.

Q. You were out in your back yard?

page 205 } A. Yes, sir.

Q. Then you know that your daughter left you and went toward her house?

A. I know that something was wrong—She went on in her house and when she hollered I knew that something was wrong.

Q. Which door did she go in, the back or the front?

A. She went on in the back where the porch was. That's the way she usually goes.

Q. Did you follow your daughter over there?

A. No, I didn't follow her but I went on as soon as I heard her. I went on up there as quick as I could.

Q. Then what did you hear?

A. She was standing up on the porch and blood was running down off of her head.

Q. What did you hear first before you got over there?

A. I heard her holler before I got to the house, twice.

Q. Now, can you tell us from the time you saw this defendant walking up the road until you heard your daughter hollering how many minutes was it?

A. Well, I don't know—hardly a minute. I reckon it was—it just passed so quick I don't—I just can't tell you how many minutes. I didn't look at the time.

page 206 } Q. Well, from the time your daughter went on back from where you were talking to her in your back yard to the time you heard her holler, do you know how long that was?

A. It wasn't very long but I just won't say how many minutes because I just don't know but it couldn't have been more than five or ten minutes. It couldn't have been, the time she just run up the hill, just a few minutes.

Bessie Henderson.

Q. Were you keeping any track of the time?
A. No, I didn't.
Q. Now, you heard your daughter holler and then what did you do?
A. Well, I just run on up. I hollered to my husband to come on to see what was wrong.
Q. Now, you say you didn't see anybody come in the back door or leave the back door?
A. I didn't see him go in there but I saw over in the brush.
Q. Where did you see him in the brush?
A. Over on that hill where you took them pictures of them trees, going to the orchard.
Q. Would that be on the Afton side or the Union Baptist Church side or on the other side?
A. On the other side, because he didn't cross the road. That's the only time I seen him.

page 207 } Q. I will show you here a picture. Were you out there when a picture was taken of this tree here?

A. I seen him as he went between these and these trees cut me off from him. When he got here this was an orchard this way?

Mr. Wingfield: Wait a minute. That is not anything that has been introduced as an exhibit.
Mr. Goad: That's what I am trying to do. I am laying the foundation.

By the Court:
Q. Does that picture fairly represent the scene across the road?
A. Certainly. And certainly the very trees. These trees here—
Q. Just a minute. Let me ask you this question.
A. —it shows the road, too.
Q. Do you see there the point where you think you saw this man?
A. Certainly I can. I saw him right up in the brush.

Mr. Wingfield: I have no objection to the picture being introduced, sir.

Note: At this time the abovementioned photograph is received in evidence and marked and filed Commonwealth's Exhibit No. 9.

page 208 } Q. Turn around here and point out where you think you saw him.

A. I saw in between these. He was going this way, because this is the orchard. These are the trees on the bank of the Ferguson's home. You see, this is the road and he had done got over on there.

By Mr. Goad: (Continuing)

Q. Which side of the road was he on?

A. On the side from the Hebron Church.

Q. Was he on your side of the road?

A. No, sir, he was on the other side.

Q. Now, will you point out on there where you saw him?

A. Right along here where he started and he was running humped over.

Q. Which way was he going?

A. Going towards these trees. There was an orchard behind there.

Q. Right in there going that way?

A. Uh, huh, going that way. This is the tree on the road down here. It was a poplar tree.

By the Court:

Q. Who was it you saw running?

A. That Herman Durrette—Sherman Durrette.

Q. Sherman Durrette you say?

page 209 } A. That Durrette boy.

Q. Did you say it was Sherman Durrette?

A. Whatever his name is. I can't say it good.

By Mr. Goad: (Continuing)

Q. You say when you saw him he was going over in these bushes?

A. Yes, sir.

Q. Now which way was he going, towards Hebron Church or back towards Union Church?

A. No, he was going back that way but that's—He had to cross the road but he was going towards that Church.

Q. Was he going away from his home or back in the direction of his home?

A. Back towards his home.

By the Court:

Q. Back towards what?

A. To his home.

Bessie Henderson.

Q. In the direction of his home?
A. Yes, in the direction of it.
Q. Well, if you were in your yard somewhere facing the road and he was going in that direction wouldn't he be going toward Ona?
A. Yes, sir.
Q. Well, his home is in the other direction.
A. His home is right over on the hill. You
page 210 } can see his house from our house, right from where I was standing.
Q. Well, his home—
A. That's my daughter's house. That's where I was at.
Q. Isn't his home beyond your house toward Avon?
A. Yes, sir, right up on this little hill. It ain't very far.
Q. Well then he wasn't going toward his home, was he?
A. Yes, sir, he was, going right in the direction of his home, through that orchard, going right to his home, but I don't know which way he went after he went in the orchard.
Q. There is a road that takes off to the right there at the Church, the brick Church. Which side of that road was he on?
A. He was done cross the road. He wasn't on the side of the Fergusons at all.
Q. I am not talking about Highway 151. I am talking about the road that takes off toward the mountain there.
A. I don't know nothing about that road, the mountain, or any other road. He wasn't that way. He was over on—too far for that road. He wasn't going in that direction.
Q. All right.

page 211 } By Mr. Goad: (Continuing)
Q. Now, Mrs. Henderson, before we got on that picture we were asking you—That was the only sight you got of him except when you saw him walking up the road?
A. That's all I know about him. I wouldn't have knew it was really him if I hadn't saw him passing my door.
Q. Do you know that it was really this defendant? Look at him—
A. Yes, sir.
Q. —that young man sitting right there.
A. Yes, sir, I've known him ever since he was a little boy.
Q. Is that the man you saw going through the bushes?
A. Yes, sir, that's the very one, because he was tall and

he was hooked over. That's what's keeping him from being so tall, but you could tell it was him.

Mr. Goad: All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Mrs. Henderson, in front of your house to the side of the Ferguson house how far is it?

A. Oh, I don't know, just a few—I reckon so many yards but I never have measured it.

Q. The two yards run right together? In other words, the two houses are right close together?

page 212 } A. Yes, sir, we can talk from one *dor* to the other.

Q. How far from one door to the other?

A. I don't know how many yards.

Q. And you were to the side of your house but in what you call your back yard?

A. Yes, sir, just right up from my door.

Q. And you and your daughter were talking?

A. Just passed a word or two and then she saw this person.

Q. I am not talking about what she saw. You don't know what she saw. I am asking you what you saw?

A. I didn't see him go in the house.

Q. You didn't see anybody there at all, did you?

A. I didn't see him but she was hurt.

Q. You didn't see anybody there?

A. No, I didn't, but—

Q. For all you know your daughter may have fallen down, isn't that right?

A. No, I know she didn't. He hit her. Somebody hit her because—

Q. Let me ask you, when you and your daughter were talking there together she walked from where you were talking on to her back porch?

A. Yes, sir.

Q. And how many steps would you say that

page 213 } would be, as many as fifteen?

A. I don't know, maybe so. It was just a few steps she was running.

Q. Just a few steps?

A. You could run it in just a few minutes.

Bessie Henderson.

Q. You were there in the yard?

A. I stayed there and listened because she said somebody had gone in and then I heard her.

Q. And then she walked on over a few steps and she went on her back porch—

A. I can't see her back porch from my door.

Q. Well, you were in the yard.

A. I know, but up beside the house.

Q. You were in your yard you have testified talking to your daughter.

A. Yes, but I say I couldn't see her when she went in her house because it's on the other side.

Q. Well, if you couldn't have seen her when she went in her house she couldn't have seen anybody else going in the house either, when you said she said somebody went in her house, could she?

A. She did, too, because she said she seen the door open.

Q. You were there talking together, weren't you?

A. Yeah.

page 214 } Q. She has told you that since, hasn't she?

A. Yes, sir.

Q. She didn't tell you that that morning?

A. Yes, sir, she told me she saw him. I know she saw somebody.

Q. She walked away from where the two of you were talking? It's not more than ten or fifteen steps, is it?

A. I don't know exactly.

Q. It's a very short distance?

A. It's kinda short but I don't know how many steps.

Q. And she got to the door and went on the porch, you heard her scream?

A. In a minute or two she screamed.

Q. And you heard her scream and when you heard her scream you immediately looked in that direction?

A. Yes, sir, I went to see what was wrong.

Q. Now, there wasn't any way for anybody to leave except by that porch, was it?

A. No, wasn't a way to leave.

Q. And when you heard her scream you didn't see anybody leave?

A. No, because the house—When I went on up to the house—you see, there are some little bushes below her house and trees, and you couldn't see.

page 215 } Q. Going those ten or fifteen steps if anybody had run out there you would have been bound to have seen them if you heard her scream?

Bessie Henderson.

A. When you get down back of her house, though. When I got—the house was between me and her. But I saw him after he crossed the road.

Q. There isn't but one door going off of that back porch, is it?

A. Yeah, up beside of the house.

Q. That is the only door that goes off of the porch, isn't it?

A. Yes, sir.

Q. And you didn't see anybody?

A. All the bushes and things hid me from him and I didn't get to see him because the house hid me. When I got up to the house I didn't know where he went.

Q. When was it that you looked over in the orchard?

A. Well, as I say, when I got up to her house and we saw him going across in the woods.

Q. Over in the orchard?

A. Yes, sir. There's some brush—

Q. Across the road?

A. Going towards the orchard as hard as he could run.

Q. Going towards the orchard or in the orchard?

A. No, he wasn't in the orchard. He was in this
page 216 } brush going to the orchard.

Q. In the woods?

A. Ain't no woods. It's just a growed up piece of land.

Q. And you know that was Sharon?

A. It certainly were.

Q. You know it?

A. I know it.

Q. From that distance?

A. It certainly were.

By the Court:

Q. Mrs. Henderson, when you heard this scream and you ran over to your daughter's house, did you go to the front or the back?

A. No, I went on around to the back to see what happened. Didn't know who it was and I didn't have no idea it was anybody that was going to knock her in the head or nothing like that.

Q. Well, how could you see this boy running over—

A. And then he come running to see what had happened but he got out of there before we got around to the other side.

Q. If you were behind the house how could you see this boy across the road?

Bessie Henderson.

A. Well, I went on back behind my daughter's house and we looked to see which way he went when he run
page 217 } out—She said he run out around the house. That's why I seen him. And I come back and washed the blood off of her neck and face.

Mr. Wingfield: I have no further questions, sir.

RE-DIRECT EXAMINATION.

By Mr. Goad:

Q. Mrs. Henderson, from where you were standing in your back yard when you heard the screams, could you see the back screen door?

A. No, sir.

Q. Of the Ferguson house?

A. No, sir, because it was above the house. I couldn't see it because it's above, on the other side.

Q. Could you see the side window of the back porch?

A. I could see the side window but you see you couldn't see nobody through it because it's got this stuff over it to keep the cold out. Couldn't see through it.

Q. Will you look at this picture of the Ferguson house?

A. Yes, sir. And this window here where the porch is you see is closed up, you know. That's the only one I could see but I couldn't see anyone in it but I heard her holler.

Q. That's the view of the Ferguson house from the side where you were standing?
page 218 } A. It certainly was, right there, right from my kitchen door. I couldn't see the other side at all. Anybody come out and run towards the Church you wouldn't ever see him because the house would hide it.

By the Court:

Q. From the time she screamed and you looked over there did you have this back porch under view all the time from then on?

A. No. You see I was below the porch and the porch is up that way from me and you couldn't see that side of the porch at all.

Q. Couldn't see on the back?

A. Couldn't see him open the door. Couldn't even see on the other side.

Q. How long have you lived where you presently live, Mrs. Henderson?

Bessie Henderson.

A. I been living there for—It will be twenty-one years the 6th of next month.

Q. Has your daughter always made her home there?

A. No, she built the home since she got married.

Q. She lived in your house for a while?

A. She lived with me a while.

Q. And when she got married she moved right next door?

A. Yes, and built her home.

page 219 } Q. She has lived in that community all of her life?

A. That's right.

RE-CROSS EXAMINATION.

By Mr. Wingfield:

Q. Did you have on your glasses?

A. Yes, sir.

Q. Did your daughter have on her glasses?

A. Yes, sir.

RE-REDIRECT EXAMINATION.

By Mr. Goad:

Q. Mrs. Henderson, in order to clear up a question from the Judge, I show you here a picture of the back of the Ferguson house—

A. You see that's all above and I couldn't see none of that. You know yourself. You've been down there.

Q. Now, show the Court and Jury where you went when you saw this defendant when you saw this defendant going through the bushes on the other side of the highway.

A. I went on up to the back like that, on around the corner and up to the back but he had gone when I got there.

Q. Were you at this end of the house or this end?

A. Well, you see it would be going around here, I reckon. It would be towards the Church. You see the Church? And see, if he had run that way you wouldn't never see him because he'd go clear on to the Church, you wouldn't

page 220 } see him.

Q. You were around here when you saw him?

A. No, on this side here. I come up here from my house. This is the Church over here.

Q. Where were you when you saw him running through the bushes?

A. Well, I was at my own house when I—No, when I seen

him up here we were around behind my daughter's house to see him over here.

Q. With reference to—

A. When he went down this way I can't see over here much, but he went back behind the house. This is the Church. Of course, it shows closer to it but it's not that close and then he went that way and I couldn't see him.

Q. My question is—I don't want to confuse you. You haven't been in Court before I guess. Where were you standing with reference to this back door?

A. Well, we had to go around the corner of her building to see over there.

Q. Right around this corner?

A. Yeah. The trees hid him.

RE-RECROSS EXAMINATION.

By Mr. Wingfield:

Q. From what you have said I want to ask you if that is the only door that goes on that back porch?

A. Certainly.

page 221 } Mr. Wingfield: That's all I want to ask.
Mr. Goad: That's all, Mrs. Henderson.

The witness stands aside.

The Court: Gentlemen, I expect this is a very good stopping place. It's a little after 4:30, so we will adjourn until 9:30 in the morning.

I will caution the members of the Jury not to discuss this case with anybody or allow anybody to discuss it with you. Tell anyone who approaches you that it is not proper to talk about it, just decline to discuss it at all.

Whereupon, Court is adjourned at 4:45 p. m., to reconvene at 9:30 a. m., October 28, 1958.

page 222 } October 28, 1958
9:30 o'clock A. M.

Note: The morning session of the second day reconvenes.

TROOPER W. C. HART,

upon being recalled was examined and testified further, as follows:

Trooper W. C. Hart.

DIRECT EXAMINATION.

By Mr. Goad:

Mr. Goad: I want to introduce a diagram of the general picture down there, Your Honor, in view of certain questions.

Mr. Wingfield: If the Court please, he has shown me the diagram and I would like to object to it because it shows the measurement between two points, but it was my impression from examination of the premises that it does not reflect a true picture with reference to the location of the various buildings outside of the distances measured.

The Court: Who made this diagram?

Mr. Goad: I drew it, Your Honor. I think Trooper Hart can testify that it shows the general situation down there with regard to which way a house is from another

page 223 } house. Of course, I haven't drawn it exactly to scale.

The Court: If counsel objects to it I think Mr. Hart would have to draw his own sketch.

Mr. Goad: Well, I can ask him to do it right now.

The Court: All right, sir. If he is going to testify to it he should testify to your drawing.

Q. Trooper Hart, please make a brief sketch of the road from Hebron Baptist Church down to the one-lane bridge, showing these points that we have discussed.

The Court: Show it to defense counsel.

Q. Trooper, does this show the whole layout there where we took these pictures and up and down the road?

A. Yes, it does.

Q. Is this Hebron Baptist Church?

A. Yes, sir.

Q. At this point?

A. Yes, sir.

Q. I believe there is a side County road or a State road that goes off and comes back out near Afton?

A. That's correct.

Q. This is 151 going North towards Afton, making this curve?

A. Sharp curve there, yes, sir.

page 224 } Q. At Hebron Church?

A. Yes, sir.

Trooper W. C. Hart.

Q. Now, after you pass Hebron Church the first house you come to is the Ferguson house?

A. Yes, sir.

Q. Then the next house is the Henderson house?

A. Yes, sir.

Q. Which is a little bit closer to the road?

A. Yes, sir.

Q. And there is a driveway going up between those two houses?

A. That's correct, sir.

Q. Then what does this represent up here?

A. This would represent the Durrette home where the driveway—

Q. That is a private driveway going in?

A. Yes, sir, private drive. I measured that on the speedometer on my automobile. It is slightly over two-tenths of a mile from the driveway here going up in to the Ferguson home to the driveway going to the Durrette home.

Q. From this point on the main road to this point on the main road?

A. Yes, sir.

Q. Now, you have drawn the Union Baptist Church—that's the colored Church?

page 225 } A. Yes, sir.

Q. Are you sure that that is on this side of this driveway or on this side of the driveway? Do you recall?

A. It's right in that vicinity. It's as it is on the map there, north of the driveway.

By the Court:

Q. Where is the school then? There is a school right there.

A. Yes, sir, there's a colored school right up in here on that side of the Church.

By Mr. Goad: (Continuing)

Q. Then does the road make a sharp curve here around and go over the one-lane bridge?

A. Yes, sir.

Q. It is called William's Bridge, I believe?

A. Yes, sir. It's a creek, a creek bridge.

Note: The abovementioned sketch is now received in evidence and marked and filed Commonwealth's Exhibit No. 10.

Q. Now I am going to show you this view and ask you—

That is Commonwealth's Exhibit No. 9—You took that picture, did you not?

A. Yes, sir, I did.

Q. Now, will you show on that map about where you were when you took that picture?

page 226 } A. I was standing right here off of this corner of the house, the Ferguson home?

Q. Looking which way?

A. In the back yard, looking down towards Route 151, across Route 151.

Q. Is that Route 151 down there in the picture?

A. Yes, sir.

Q. And you were right back there looking this way?

A. Right through there.

Q. Now, here is a picture, Commonwealth's Exhibit 7. Mill you look at that? Do you recall that picture?

A. Yes, sir.

Q. Is that the spire of the colored Church right there?

A. Yes, sir.

Q. And this is the Durrette home right over here on this hill?

A. Yes, sir.

Q. Now where were you when you took this picture?

A. I was standing right at the edge of the Ferguson's yard, right between the Ferguson home and the Henderson home at the edge of the yard.

Q. Looking generally over in this direction?

A. In this direction here.

Q. Now, here is a picture showing the back

page 227 } of the Ferguson house, Exhibit No. 5, and the Henderson house. Where were you standing when you took that picture?

A. I was standing about in the same position, not the position I was standing when I took the last picture, but the one before that that I took looking across the road, and back up this way a little bit, and directly through here, from the edge of this house to that house down there, to the Henderson house.

Q. Trooper Hart, the statement signed by the defendant is dated August 7, 1958, 5:45 p. m. You had started investigating the case that morning and the investigation proceeded all through the day, I understand?

A. Yes, sir.

Trooper W. C. Hart.

Q. Now, was any further investigation in the case done after the statement was signed at 5:45 p. m. that day?

A. Not by me, no, sir, not that day.

Q. Now, what was done by you the next day in connection with this case?

A. I don't know how much work I did on it the next day. I brought the statement by your office about Noon on Friday.

Q. Did you leave the statement in my office?

A. Yes, sir.

Q. Now, what further in connection with the case did you handle Friday?

page 228 } A. Nothing, other than the fact of my conversation with you Friday night.

Q. You had a conversation with me Friday night?

A. Yes, sir.

Q. What were you requested to do?

A. I was requested to—

Mr. Wingfield: I object to that, if the Court please.

The Court: I think he could state what he did subsequently.

Q. As a result of the conversation with me Friday night what did you do?

A. As a result of the conversation Friday night I went by the Commonwealth's Attorney's office early Saturday morning and picked up some papers that he had prepared for Judge Wheeler to sign. I then went out to Arrington and contacted Judge Wheeler and had him sign the papers.

By the Court:

Q. This was on the 9th?

A. Yes, sir, that morning. I was contacted Friday and asked to come by the office the first thing in the morning, Saturday morning.

By Mr. Goad: (Continuing)

Q. Trooper Hart, what do you know about bail in this case?

page 229 } A. No bail was set, to my knowledge.

Q. Was any bail ever set for this defendant?

A. No, sir, it was not.

Q. And he has remained in jail continuously since he was arrested on August 7th?

A. That's correct.

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

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Do you know that he has been in jail since the 7th of August?

A. Yes, sir, I know it. I haven't seen him every day but I know he has been there.

Q. You have visited the jail and have seen him in the jail?

A. Quite frequently, yes, sir.

Q. And don't you know that he has been in the cell there in the jail with adults?

A. I don't know that he has been in the cell with adults. I know he has been up in the upstairs of the jail.

Q. Has he been in any separate department set aside for juveniles in the jail?

A. I know of no separate department. Of course, I have nothing to do with the jail.

Q. Not what you had to do with it, but the

page 230 } manner in which he has been kept. Isn't it a fact that he has been in the cell with adults charged with crimes and—

A. I don't believe so. I don't believe that he has. I believe he has been in there by himself. I think he has been in a cell by himself.

Q. Do you know?

A. I do not, no, sir. I am not positive.

Q. On the occasion of your going to the jail did you see him in any part of that jail separated from adult prisoners?

A. What do you mean separated? Do you mean on the same floor, or do you mean the same cell? How do you mean that, sir?

Q. Well, I mean both. I mean in the same cell. I mean on the same floor.

A. He has been on the same floor but I feel sure that he has been in a separate cell, to the best of my knowledge.

Q. Well, since you are on the stand and since you were the one that apparently procured the warrant and signed the petition, I like to have you ascertain from such jail records or from such source as may be available as to what place he was placed in jail and report back to the Court. Can you do it, sir? Will you do it?

Trooper W. C. Hart.

A. I didn't incarcerate him, sir. I don't know
page 231 } where he has been since he was put in jail.

The Court: The best evidence would be to call the Jailer.
Mr. Goad: I plan to call the Jailer anyway, sir.
The Court: All right, sir.

Q. Mr. Hart, did I understand you to tell Mr. Goad and the Jury that you went to these premises yesterday and took these measurements?
A. No, sir, you did not.
Q. When did you take the measurements?
A. October 17th.
Q. And did I understand you tell the Jury that that paper does not reflect the true situation with respect to the driveway and the Church, the Union Baptist Church.
A. I believe I hold you that that paper did reflect the true situation.
Q. This isn't drawn to scale?
A. No, sir, I just drew it over there a few minutes ago.
Q. And it is drawn from your memory?
A. That's correct, sir.
Q. And it would appear from this diagram that you are putting his home—I have folded it for the purpose of showing you—from where you took the figure to where
page 232 } the lady has said she saw him over here and he had traveled from there to his home, or back to Union Baptist Church, is that your reason for showing that distance?
Q. I wonder if I could see that, sir. I understood him to ask you where you were standing when you took the picture that was shown here, which reflected the scene across the road.
A. Yes, sir.
Q. And then this is where you cross 151 and you indicated a point over here, which I will indicate by my finger, near the margin on the top line?
A. I was standing—Well, there are several different pictures.
Q. Well, where is the orchard?
A. The orchard would be over in here. The picture was taken across the road there from the back of the Ferguson home.
Q. Now you have undertaken to locate the Durrette home by this diagram, have you not?

Trooper W. C. Hart.

A. Well, yes, I have located the places involved.

Q. Now, I want to ask you if with reference to Union Baptist Church that the driveway that goes up to the Durrette home is not North of the Union Baptist Church instead of South of the Union Baptist Church as you have it here?

page 233 } A. It's possible, yes, sir. It is possible. I am not—they are very close in there. They are not too far apart. The driveway and the Church are pretty close together and whether it's North or whether it's South I will not be positive about it. I do know that it is slightly over two-tenths of a mile from the driveway.

Q. Now, South of the Union Baptist Church is the school house, the school house lot, is it not?

A. Yes, sir.

Q. And South of the school house lot is the home of Marcellus Hutchinson, isn't it?

A. I don't know, sir.

Q. Well, is there another house in there?

A. There may be another house in there, yes, sir.

Q. You don't by this diagram undertake to tell the Jury that this diagram reflects the true distance between the Ferguson home and the Henderson home, do you?

A. No, sir, I can't show—It's not to scale. I can only say that it shows a general picture, a general location of the scene.

Q. But, as a matter of fact, with reference to the whole diagram, there is a considerably shorter distance between the two houses, isn't it?

A. Yes, sir. I would say there is a shorter distance between these two houses and a longer distance in here.

page 234 } Q. With reference to it there is a shorter distance between Hebron Baptist Church and the Ferguson home, isn't it?

A. Yes, sir, but as I said it was not drawn to scale. It was drawn more or less to show directions with relation to the road and so forth.

Q. In other words, this diagram does not at all reflect a true picture of the situation, does it?

A. Well, it would depend on the situation that you are talking about, sir.

Q. Well, it shows that the—Well, I'll put it this way. All it shows is that the Henderson house is South of the Church and that the Ferguson home is South of the Henderson house and that Hebron Church is South of the Ferguson house. That's all it shows, isn't it?

Trooper W. C. Hart.

A. Well, no, sir, it also gives the general picture of the road here, Route 151, in relation to the houses.

Q. But it does not reflect a true picture of the situation of the driveway, of the Durrette home, of the Henderson house with reference to Union Baptist Church, of the Henderson house with reference to the Ferguson house, or the Ferguson house with reference to Hebron Church? Isn't that true that it does not reflect a true picture of that situation?

A. Not a completely true picture, no, sir.

Q. And, as a matter of fact, it is misleading,
page 235 } isn't it?

A. Not to show what is is intended to show, I don't think so, sir.

Q. And you have drawn it from your memory now on the situation that occurred on October 17th?

A. Yes, sir.

Q. How did you measure slightly over two-tenths of a mile as you have shown on here?

A. I measured on the speedometer on my Police car.

Q. Isn't it true that on your speedometer that it could be a third of a mile—not quite a third, but three-tenths of a mile—nearly three-tenths of a mile as two-tenths of a mile?

A. I don't believe so, sir, because of the numbers on my speedometer when I started out. They are right in the center and when I got down to that driveway there it was slightly over. I dont' think it would have been that much.

Q. You know it was somewhere between two-tenths and three-tenths?

A. I would say between two and two and a quarter.

Q. Would your speedometer in turning to two-tenths of a mile turn except when the tenth of a mile is up?

A. I don't understand that.

Q. In other words, we will say that your miles are registered in tenths, that the figure is standing there at two, when will it turn to three?

page 236 } A. If the figure is standing at two when will it turn to three?

Q. Yes, sir.

A. In one-tenth of a mile.

Q. At the end of a tenth of a mile?

A. Yes, sir.

Q. So there is no way to measure distance accurately within a tenth of a mile, is there?

A. No, sir, but if it's right in the center and it registers two-tenths of a mile and then you just go slightly over I

know it's slightly over two-tenths of a mile. I mean—It's a fairly accurate measurement. I mean, I say approximately a little over two-tenths of a mile. I am not stating exactly how far it is.

Q. Trooper, on this day of August 7th—Mr. Goad asked you if you did anything else about making an investigation—did you take fingerprints?

A. Yes, sir, he was fingerprinted.

Q. Where was he fingerprinted?

A. In the State Police office.

Q. Why was he fingerprinted?

A. It was a felony.

Q. What statement did you make that was charged to him when you—before you took his fingerprints, any statement about—

page 237 } A. I don't know whether I made any statement to him or not. It is hard for me to remember everything that I said three months ago, sir.

Q. Had you gotten any fingerprints at the scene of the alleged offense?

A. No, sir.

Q. Had you looked for any?

A. No, sir.

Q. Well, in the investigation and working with other Officers had they made any examination with reference to searching for fingerprints at that date?

A. Not that I know of. The fingerprints were not even an issue there.

Mr. Wingfield: That's all.

The witness stands aside.

Mr. Goad: This is Mr. G. H. Delk, Mr. Wingfield, who is the day Jailer.

G. H. DELK,

a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Mr. Delk, I hand you here the usual form

page 238 } of the jail committment card in the name of Sharon Emanuel Durrette, signed by Mr. J. R.

Campbell, Justice of the Peace, dated August 7, 1958. And on the back it has, time committed 1:45 p. m. I will ask you if that is the card that you kept in your records in the jail?

A. I would think it is. I have that same record in my jail book: Sharon Emanuel Durrette; colored male; age 15; not married; 1:45.

Q. Is this the card that was in the records in the jail?

A. Yes, sir.

Note: At this time the abovementioned paperwriting is received in evidence and marked and filed Commonwealth's Exhibit No. 11.

Mr. Goad: That's all. Now you can ask him anything you want to about this, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. It is by virtue of that card and that card alone that you had him in jail?

A. The card is not required when you put them in.

Q. That is your only authority to keep him in jail is that card?

A. I think one authority. He is given to me page 239 } and—

Q. What other authority do you have to keep him in jail except that card?

A. I guess it's the principal thing: "You are hereby requested to take into custody and confine in jail of Nelson County the body of the above named person, and safely keep as provided by law for further investigation on suspicion of the commission of the following crime or knowledge thereof."

Now, this is for another person, but it's an identical card.

Q. In other words, it is by virtue of the card that you have introduced in evidence that you had him locked up and that's the only reason you had him locked up was because of that card, isn't that true?

A. The Officer brought him and gave him to me and gave me the card.

Q. Mr. Delk, do you know or have you had in jail a man by the name of Sterling Birdsongs?

A. Yes, sir.

Q. How old is Sterling Birdsongs? With reference to his age, is he over twenty-one?

A. He's over twenty-one. I could give you his age in a little while, I guess.

Q. Well, just so he is over twenty-one it doesn't make any difference. Has he been a cell mate of Sharon

page 240 } Durrette?

A. Yes.

Q. Have you had or do you have in jail a man by the name of Charles Tudor—or Turner?

A. Still have him.

Q. Is he a cell mate of Sharon Durrette?

A. He has been, yes, sir.

Q. Is he over twenty-one years of age?

A. Charles Turner is over twenty-one, yes.

Q. Both of those men are in jail accused with, or charged with having committed crimes?

A. Yes, sir.

Mr. Wingfield: I believe that's all.

By the Court:

Q. Do you have provided any separate facilities for juveniles in your jail?

A. This boy was kept downstairs only a short time, then I moved him in a separate cell upstairs. I had a special reason for doing that. It is my recollection that he stayed in the middle cell upstairs for a few days and he was about sixteen or became sixteen and then he was treated more or less like the rest of the prisoners in jail. He was not locked all the time.

Q. You don't have any isolated facilities?

A. No, sir, I have no place for them.

The witness stands aside.

page 241 } R. C. GAUNCE,

upon being recalled by the Commonwealth, was examined and testified further, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Sgt. Gaunce, I believe you testified to this yesterday but

Bernard E. Moon.

I want to ask you just one question to be sure. Did you notify the parents of this defendant that he had been arrested?

A. Yes, sir, I did.

Q. What time, what day?

A. The same day, August 7th, about thirty to forty-five minutes afterwards.

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

Mr. Wingfield: No questions.

The witness stands aside.

BERNARD E. MOON,

Deputy Sheriff, a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. I believe you are a Deputy Sheriff from Schuyler?

A. Yes, sir.

page 242 } Q. Sheriff Moon, I believe you were up here in Court when the Officers brought this defendant in for the first time, is that correct?

A. Yes, sir.

Q. And that was on Thursday, August 7th. About what time of day was that, do you recall?

A. Yes, sir. It was around lunch time or a few minutes after 12:00.

Q. Do you know where they first brought him when he was brought to Lovingston?

A. The first time I saw him he was in the Sheriff's office.

Q. Right up on the second floor in this building?

A. Yes, sir.

Q. Did you question him to some extent?

A. Yes, sir, I did.

Q. Now tell what—Did you see Judge Wheeler that day?

A. Yes, sir, I did.

Q. Tell what conversation you had with Judge Wheeler—

Mr. Wingfield: I object to the conversation with Judge Wheeler.

Bernard E. Moon.

Mr. Goad: He can state what he told Judge
page 243 } Wheeler.

Mr. Wingfield: I still object to it.

The Court: He say whether he made some report to Judge Wheeler. I think that would be proper, but not what Judge Wheeler told him. Go ahead.

Q. Did you see Judge Wheeler that day and at the time you saw Judge Wheeler where was it and where was this defendant and where were you and where was Judge Wheeler?

A. To start with I answered the call to Avon, too, along with the other Officers and I had quite a number of cases in Court. I returned and the Judge asked me about Trooper Hart. I told him that he would be late for Court, so he took my cases.

When I came out of the Courtroom I was advised that Durrette had been picked up and was in the Sheriff's office. I questioned him.

Q. You went in the Sheriff's office?

A. Yes, sir, in reference to another case that I was working on, primarily. I returned and asked Judge Wheeler for permission and advised him that he had been picked up, if he could be put in jail. The Judge came to the door and that permission was granted.

Q. Did the Judge see this defendant?

A. Yes, sir, I am sure he did.

Q. Where was the defendant when the Judge
page 244 } saw him?

A. He was in the Sheriff's office as you go in right near the door.

Q. Where was the Judge when he saw him?

A. Standing at the door.

Q. And you asked Judge Wheeler, who is the Judge of the Juvenile and Domestic Relations Court of this County—you told him that he had been arrested and asked the Judge's permission to put him in jail?

A. Yes, sir.

Q. And that permission was granted?

A. Yes, sir.

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

CROSS EXAMINATION.

By Mr. Wingfield:

Q. He had not been your prisoner, had he, Mr. Moon?

Bernard E. Moon.

A. No, sir, he hadn't.

Q. I understood you asked Judge Wheeler if you could question him about another matter that you were investigating?

A. Yes, sir.

Q. And that was the reason for saying something to Judge Wheeler about it?

A. Yes, sir.

Q. And Judge Wheeler was in his Courtroom when you asked him?

page 245 } A. Yes, sir.

Q. In his Courtroom?

A. Yes, sir.

Q. And his Courtroom is where with reference to the Sheriff's office?

A. Just across the hall.

Q. I'll ask you if Judge Wheeler ever came inside of the room in which this boy was kept, or if this boy was carried in the room in which Judge Wheeler was holding his Court?

A. To my knowledge he never was carried in the Courtroom but Judge Wheeler did come to the door of the Sheriff's office.

Q. He came to the door. Do you mean that he stood in the hall?

A. He stood in the doorway of the Sheriff's office.

Q. Did you get any written orders from Judge Wheeler?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

Q. And your investigation was concerning another matter?

A. That's right.

Mr. Wingfield: That's all.

RE-DIRECT EXAMINATION.

page 246 } By Mr. Goad:

Q. You were helping in the investigation in this case and that case, too?

Mr. Wingfield: I object to that question as leading, sir.

Mr. Goad: Well, he has already said it.

The Court: It still is leading, Mr. Goad.

Bernard E. Moon.

Q. Well, were you involved in the investigation of this case?
A. Yes, sir, I was.

Mr. Wingfield: If the Court please, as he has already said it I object to it as repetitious.
Mr. Goad: Well, you just questioned him.
The Court: Go ahead.

Q. You said that you answered the call to go to Avon?
A. Yes, sir, I did.
Q. What part did you play in the investigation of this particular case?
A. After I had talked to Durrette briefly in the Sheriff's office I went to lunch along with some of the other Police Officers. And on my return I talked to him again in the jail cell.

By the Court:
page 247 } Q. Talked to him where?
A. In jail. I then left and went back to Avon to the home of Mr. and Mrs. Ferguson. I talked to she and her husband, and I believe Mr. and Mrs. Henderson were there. And then I talked to some other people in the community in reference to the other case I was working on.
Q. You were investigating two cases?
A. Yes, sir.

By Mr. Goad: (Continuing)
Q. Approximately what time was it that you told Judge Wheeler that this defendant had been picked up and Judge Wheeler stood in the doorway and saw him and gave you permission and told you to put him in jail?

Mr. Wingfield: I object to that question, if the Court please.
The Court: On what grounds, Mr. Wingfield?
Mr. Wingfield: He asked him what time he talked to Judge Wheeler, but he has gone further and as a result of his question is a statement made by Mr. Goad in the presence of the Jury, from Mr. Goad's question that he had permission to put him in jail.
Mr. Goad: He has already testified to it. I just wanted to establish the time.

Bernard E. Moon.

By the Court:
page 248 } Q. What time did you talk with Judge Wheeler?
A. Between 12:00 and 1:00—12:30 and 1:00.

By Mr. Goad: (Continuing)
Q. You mean between 12:30 and 1:00 on August 7th?
A. On August 7th, the day he was arrested.

Mr. Goad: All right, sir, that is all.

RE-CROSS EXAMINATION.

By Mr. Wingfield:
Q. Do I understand that you had an order to put him in jail from Judge Wheeler?
A. I wouldn't say it was an order. I'd say he gave his permission to put him in jail.
Q. Did you put him in jail?
A. No, sir, I did not.
Q. You didn't have anything to do with writing the warrant, did you?
A. No, sir, I did not.
Q. And haven't had anything to do with carrying him to jail?
A. No, sir.
Q. And you never transmitted that information to anybody else, did you?
A. I am reasonably sure that the rest of the Officers knew it.
Q. You feel that they knew it?
page 249 } A. Yes, sir.

Mr. Wingfield: That is all.

The witness stands aside.

Mr. Wingfield: In spite of the fact that I cross examined the witness, I will say that I was taken by surprise with reference to the witness' testimony in light of the testimony of the other Officers; I would like to move the Court to strike all of this Officer's testimony because orders of the Court become a part of the record and I do submit unless there is some order issued by Judge Wheeler, signed by Judge Wheeler that is part of this record, or something in writing to the Jailer, that all of his evidence be stricken.

The Court: Of course, if the order had been issued by the Judge of a Court of record I think you would be right, Mr. Wingfield, but as all of know the County Courts are very informal in their manner of operating and I don't think they even have an order book. And except for the printed forms which they use for warrants and mittimus,
page 250 } *habeas,* and things like that, I don't—I never heard of writing out an order.

Mr. Wingfield: If the Court please, in view of—I make this motion in view of Mr. Delk's testimony and in view of an exhibit that has been introduced here, signed August 7, 1958, J. R. Campbell, J. P., and dated at 1:45 p. m.

The Court: That is, in effect, a mittimus.

Mr. Wingfield: Yes, sir, and the only question—it is my thought that the only person who could have signed the mittimus—Mr. Campbell had no authority to sign the mittimus. That's the interpretation I put on the law—that the only person who could have signed the mittimus would have been Judge Wheeler, and if at 1:45 Judge Wheeler had been contacted, as you have heard from this Officer who has testified, or some time prior to that, then he would have been the man to sign the mittimus rather than Mr. Campbell.

The Court: Well, I'm not sure—I think Mr. Campbell had the right since he issued the warrant and the Officer took the man into custody to issue a mittimus to put him in jail temporarily, even without the—
page 251 } Mr. Wingfield: Judge, with reference to that—

The Court: I have been reading this thing all morning here, this juvenile law.

I'll overrule your motion for the present, Mr. Wingfield.

Mr. Wingfield: I except to the Court's ruling and save the point, sir.

The Court: All right, sir. Go ahead, Mr. Goad. The juvenile law is very poorly written.

Mr. Wingfield: Yes, sir, but the interpretation that could be placed on it is in the very first section of the law.

Mr. Goad: Judge, I am at a point in the trial right now—various reference have been made about Judge Wheeler and as Your Honor knows—

Mr. Wingfield: I think I know what he going to say and I don't object to it being in the record but I think the Jury should be excluded, sir.

The Court: Well, the law doesn't permit a Trial County Judge to testify.

Mr. Goad: That is what I am concerned about,
page 252 } sir.

Mr. Wingfield: His records are available

though and I'd like for the Jury to know that, sir, that any records are available.

The Court: It is very definite that they can't testify.

Mr. Goad: Well, that's exactly what I was going to say, that Judge Wheeler is not permitted to testify and—

The Court: Well, just don't say anything more about it. You are trying to get something in the back door now.

Mr. Goad: No, sir, I am not, Your Honor. I don't have to get it in the back door in this case.

Mr. Wingfield: If the Court please, I want to except to the remarks made by Mr. Goad. The last remark—

The Court: Now, both of you just sit down.

Mr. Wingfield: Sir, may I stand and make an objection to that and request that the Jury be instructed to disregard Mr. Goad's statement.

The Court: Well, he hasn't made any statement. He simply wanted to offer Mr. Wheeler as a witness
page 253 } and the Court has said that he cannot testify as a witness.

Mr. Wingfield: He said that he didn't have to attempt to get anything in the back door in this case, sir.

The Court: I was unwise when I made the remark myself, so we have all been wrong and let's start all over with a clean bill of health. I meant that he was trying to get something in indirectly that would end directly, which counsel always does.

Mr. Goad: Your Honor, what I wanted to say was this. Judge Wheeler cannot testify. I was present with Judge Wheeler that day as far as his position and duties are concerned and I don't relish the idea but I think in order that there might be no further misunderstanding about it I will have to testify myself and I'd like to be sworn and make the statement as the Judge himself cannot testify.

Mr. Wingfield: If the Court please, I'd like to object to the statement made by Mr. Goad. It is a statement that I think should have been made in the absence of the Jury. I don't think even that the Jury should have been told that Mr. Wheeler could not testify.

page 254 } For those reasons, sir, I will ask you and move the Court to instruct the Jury to strike everything with reference to Judge Wheeler not testifying and Mr. Goad's statement and all statements made in connection therewith from the record, and that the Jury be so instructed.

The Court: It's true that it is not evidence, to disregard any reference to Judge Wheeler not being able to testify. That's not evidence. It is simply a matter of law.

Now the question is, you wish to be sworn to testify?

Robert C. Goad.

Mr. Goad: Yes, sir.

Mr. Wingfield: If the Court please, I object to Mr. Goad testifying in connection with the case and prosecuting and representing the Commonwealth. I think he is in the same position as any other lawyer would be, if he expects to continue the case. If he expects to have somebody else substitute as Attorney for the Commonwealth then it would be a different proposition.

The Court: Suppose the Jury takes a little recess and let us look into this question.

Note: The Jury retires.

page 255 } Jury out.

The Court: I am going to overrule Mr. Wingfield's motion and allow Mr. Goad to testify.

Mr. Wingfield: If the Court please, I except to the Court's ruling and save the point for the reason that the records of the Juvenile and Domestic Relations Court are the best evidence of what occurred.

I make that statement because it has been stated what Mr. Goad expects to testify to and I think with the Jury knowing that it might have some influence on the Jury.

The Court: All right, sir. Ask the Jury to come on back.

Jury in.

ROBERT C. GOAD,

Attorney for the Commonwealth, being first duly sworn, takes the stand and testifies for the Commonwealth, as follows:

Testimony of the witness: On the morning that this case took place, Thursday morning, August 7th of this year, Thursday is the day that we had Court in Judge Wheeler's Court and we were delayed that morning because many of the Officers were not there. They were investigating this case.

We knew that the case had come up. So we were page 256 } delayed in going on with the Court.

At approximately 12:30 some of the Officers came back and notified Judge Wheeler and I that this defendant had been arrested. Shortly thereafter, I would say around 1:00 o'clock, when Judge Wheeler and I had a moment to discuss this case I told Judge Wheeler that he would have to fix up and issue proper papers in the Juvenile Court.

Robert C. Goad.

He is the County Judge and also the Judge of the Juvenile and Domestic Relations Court.

Those papers were not fixed up that day. I fixed them up and I wrote the petition in my own handwriting. I wrote this petition on Friday after Trooper Hart had brought me the confession that was signed on Thursday evening around 5:45. Trooper Hart brought the confession over to me Friday and after I had read the confession and investigated the law I fixed up this petition. And I think everything on that petition was written by me, except it was signed by Trooper Hart and by Judge Wheeler.

I fixed the petition up Friday and at the time I fixed up the petition, I know it was some time in the afternoon, Judge Wheeler was not here, not available.

I called Trooper Hart later on Friday and asked him to come by my office Saturday morning and pick up the papers and taken them to Judge Wheeler and get him to sign them.

* * * * *

Note: Error in numbering. There are no pages between 256 and 267.

* * * * *

page 267 } Judge Wheeler and I both knew when the Officers came back and I believe even before that by messages that we received what, generally, this defendant was charged with.

On my recommendation, from the beginning, he was not admitted to bail—

The Court: Don't go into that. That is more or less argumentative.

All right, Mr. Wingfield.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Mr. Goad, you are the Commonwealth's Attorney of the County?

A. That's correct.

Q. And as such a Commonwealth's Attorney charged with seeing that the law is properly carried out and properly performed?

Robert C. Goad.

A. I do that to the best of my ability.

Q. If what you say is true, why didn't you have Judge Wheeler sign a mittimus directing this boy to be confined?

A. Well, it was my understanding that day when they brought the boy into the Sheriff's office that Judge Wheeler had told them orally to place him in jail.

Q. Isn't it a fact that the law requires that a mittimus or committment papers be signed by the Juvenile

page 268 } Judge?

A. I don't think that is correct. I think the Juvenile Judge—

Q. You don't believe it to be the law?

A. I think the Judge of the Juvenile Court has the right to orally order the Officers to place the juvenile in jail, which was done.

Q. I'll ask you if under the juvenile laws of the State that those laws themselves don't provide that the welfare of the child is of paramount importance?

A. I think that's correct.

Q. I will ask you if at the time this young man, Sharon Durrette, was brought to the Sheriff's office you had knowledge of the fact that he had been brought there?

A. I am sure I did, yes, sir.

Q. At that time had a warrant been issued by any one?

A. I know now that no warrant was issued until about—I know when the warrant was served. I didn't know at that time whether the warrant had been issued or not. I know now that a warrant was issued and served at approximately—I would say 1:30.

Q. And what time was it when you talked to Judge Wheeler?

A. It was approximately between, I would say between 12:30 and 1:00.

page 269 } Q. Now, the Officers sought your advice in connection with it, did they?

A. Well, the investigation was still continuing at that time. I was in touch with them. They were in and out of there. We were engaged in Court there.

Q. I'll ask you if you are familiar with the section of the law which provided that whenever a child under the age of eighteen years is taken into custody the officer taking custody, depending upon the circumstances existing at the time custody is taken, shall use the following procedure or such appropriate parts thereof:

Robert C. Goad.

"(1) If it is during such hours at the court is open, take the child immediately to the judge, clerk or probation officer, who may release the child to the custody of a parent, guardian, custodian or other person used by the court, either on bail or recognizance or otherwise; of the said judge, clerk or probation officer may order the child detained in such manner as it determines subject to further order of the court."

You are familiar with that?
A. Yes, sir.
Q. And Court was in session?
A. Yes, sir.
Q. The Judge was here that day?
A. Yes, sir.
page 270 } Q. And then I'll ask you if you are familiar with that portion of the law which provides that immediately upon a child—and I am referring to a child as being a person under eighteen years of age.
A. Yes, sir.
Q. That, "Immediately upon a child being placed in a detention home or jail under this section, or as soon thereafter as is reasonably practical, the officer taking the child into custody or another officer at his discretion shall notify the judge of the juvenile court, its clerk, or probation officer of such detention, and shall request that the judge or clerk issue a proper process and order of commitment therefor."
The order of commitment is a mittimus that we refer to, isn't it?
A. Well, that might be subject to dispute. My understanding was that the Judge had told the Officer to place the defendant in jail.
Q. Well, in addition to placing him in jail it says, "Immediately upon a child being placed in jail that the judge of the juvenile court, its clerk, or probation officer shall issue an order of commitment therefor."
A. It says immediately or it says as soon thereafter as is reasonably practical.
Q. Well, if the Judge is in the Courtroom and
page 271 } if no warrant had been issued, and if you were there with knowledge of this law, wouldn't it have been Judge Wheeler who would have signed that order of commitment instead of Mr. Campbell?
A. Well, the warrant—I don't know when Mr. Campbell signed the order. They probably brought him—I don't know when they took him by Mr. Campbell's house.

Robert C. Goad.

Q. Well, Mr. Campbell was here and the defendant you said was in his presence?

A. No, you mean Judge Wheeler.

Q. Well, you said the Judge was right here in the Courtroom and the Judge was standing, if I understand from what you say, in sight of this boy—

Q. This card speaks for itself. I don't have any testimony about that.

A. Yes, and it is signed by Mr. Campbell.

Q. The Jury can see that it is signed by Mr. Campbell and dated August 7th, and it shows the time he was committed to jail as 1:45.

The Court: This is getting to be rather argumentative.

Q. Well, if you had knowledge of it, Mr. Goad, I will ask you if you are also familiar with the provision of the law which prevented the transportation of a child under eighteen in a Police car, especially after being placed in

page 272 } detention?

A. Well, I don't know how else we would get him up here.

Q. Well, I am talking about after he was taken out of jail that afternoon, or if he was put in jail at 1:45.

Were you familiar with that section of the law which says, "No person known or alleged to be under the age of eighteen years shall be transported or conveyed in a police patrol wagon, or confined in any police station, prison, jail or lock-up, or be transported or detained in association with criminals or vicious or dissolute persons; except that a child fourteen years of age or older may, with the consent of the judge, clerk or the juvenile probation officer, be placed in a jail or other place of detention for adults in a room or ward entirely separate from adults."

A. Well, we just don't have the facilities here. We don't have the facilities in the jail. The big cities have these detention homes but we don't have the facilities.

Q. Well, if you were familiar with the situation and Judge Wheeler was here was any order given to put the boy in a police car, taken from jail, put him in a police car and take him from jail and take him down to Avon that afternoon?

A. Well, the Officers, I think, would have authority to investigate the case.

Q. Did they do that under your direction?

A. No, they didn't do that under my direction.
page 273 } I think they had the authority to investigate the case. They have testified as to why they went back down there.

Q. Mr. Goad, do you make decisions for Judge Wheeler or does he make his own decisions?

The Court: I think we are getting into a lot of things that are simply argumentative and doesn't enlighten us on this case at all.

All right, Mr. Goad, call your next witness.

The witness stands aside.

MRS. ANNIE H. FERGUSON,
a witness called by and on behalf of the Commonwealth, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Is your name Mrs. Annie Henderson Ferguson?

A. Yes, sir.

Q. How old are you, Mrs. Ferguson?

A. Twenty-nine.

Q. And your husband is Milford B. Ferguson?

A. That's right.

Q. I believe you have one daughter, Shirley, who is now eight years old?

page 273a } A. That's right.

Q. Do the three of you live in this house that has been described here as being next to Hebron Baptist Church?

A. Yes, sir.

Q. I believe you own your own property?

A. That's right.

Q. And your husband works over at *at* Crompton at Waynesboro?

A. That's right.

Q. What time does he leave for work in the morning, Mrs. Ferguson?

A. Between five and ten after.

Q. After 7:00?

A. Yes, sir.

Q. Does he have to be at work at 8:00?

Annie H. Ferguson.

A. That's right.
Q. Does he leave at that same time every morning?
A. Usually.
Q. Your mother is Mrs. George Henderson?
A. That's right.
Q. Who has testified?
A. That's right.
Q. I believe your step-father is Mr. George Henderson?
A. That's right.
page 274 } Q. Do they live next door to you on the side opposite your house from Hebron Church?
A. Yes, sir.
Q. Now, before this case came up did you know this defendant?
A. No, sir.
Q. Did you know him by sight or by name, either one?
A. No, I can't say I did.
Q. Had he or any member of his family ever been to your house before, as far as you know?
A. No, sir, not that I know of.'
Q. Did you ever have any dealings of buying and selling eggs or any produce or anything of that sort with him or any member of his family?
A. No, sir.
Q. I will ask you this. Do you raise chickens?
A. No, sir.
Q. Do you have eggs?
A. No, sir.
Q. Have you ever sold eggs?
A. No, sir.
Q. Have you ever had chickens?
A. No, sir.
Q. Now go back to Thursday morning, August 7th of this year. Do you recall what time your husband left
page 275 } for work that morning?
A. Well, it was between five and ten after 7:00.
Q. And when he left did he drive his car?
A. Yes, sir.
Q. When he left who was left in your house?
A. Just me and my little girl.
Q. Was your little girl up yet?
A. No, she sleeped.
Q. Now when your husband left what did you do?

Annie H. Ferguson.

A. Well, I fooled around a little bit and then I fed the cat and then I decided to go to the well and get some water.
Q. How many buckets did you take?
A. I didn't take but one.
Q. Did you go out your front door or your back door?
A. The back door.
Q. Now, can you tell us approximately how long it was from the time your husband left until you walked out the back door to go to the well to get water?
A. Well, I'd say it was about ten minutes.
Q. Did you go to the well?
A. Yes, sir.
Q. Where is the well?
A. It is down on the other side of my mother's
page 276 } house.
Q. Did you get water?
A. Yes, sir.
Q. Did you stop on the way to the well?
A. No, I stopped when I come back.
Q. All right, you got your water?
A. Yes, sir.
Q. In your bucket. And then where did you stop?
A. I stopped at the back door in the back yard.
Q. Whose back door?
A. My mother's.
Q. Why did you stop there?
A. Well, she was coming down the hill and we just passed a few words.
Q. Had you seen your step-father, Mr. George Henderson when you were going to the well?
A. No, he was in the garden.
Q. You didn't see him?
A. No, I didn't see him.
Q. You say you stopped and your mother was out in her back yard, too?
A. Yes, sir.
Q. And you talked with your mother?
A. That's right.
Q. Do you know how long you and your mother talked there before you came on back to your house?
page 277 } A. Just a few seconds.
Q. Now, start right there and tell us what you saw.
A. Well, I saw this teenager here go on through my yard

on the other side of the house from where I was standing there at my mother's in her yard.

Q. I will show you Commonwealth's Exhibit No. 6 and ask you if that is a view of your house from your mother's back yard?

A. Yes, sir.

Q. Where you were standing talking to your mother?

A. Yes, sir.

Q. Will you stand up here, please? Point out where you first saw this person.

A. He was coming up through here from the highway.

Q. Was he between the Henderson house and the Ferguson house?

A. No, he was coming up on this side of my house. He was between my house and the Church, Hebron Church.

Q. He was between your house and Hebron Church, right down in this vicinity (indicating)?

A. Yes, sir, from the highway.

Q. Could you tell who it was from that distance?

A. No, I just knew—I could tell it was a colored person. I didn't know who it was.

Q. How was he proceeding along?

page 278 } A. He was walking pretty fast.

Q. When you saw that what did you do?

A. Well, I hurried on up there as fast as I could because my little girl was in bed asleep.

Q. Do you know what your mother did?

A. Well, she followed along behind me. I mean she didn't come right on as I did, but she come on later.

Q. Which course did you take to go to your house? Did you go around in the front or did you go in the back?

A. No, I come on up the hill, right straight on up the hill from my mother's back yard to my back door.

Q. Towards your back door?

A. That's right.

Q. Now, when was the next time and where was the next time that you saw this person?

A. Well, I could see him through the end window on by back porch, closed in.

Q. You were approaching to the back side of your house?

A. That's right.

Q. Will you stand up here? Will you tell the Court and Jury where you next saw him after you saw him coming up here?

Annie H. Ferguson.

A. I saw him right through the end window right here on my back porch.

page 279 } Q. About where were you when you saw him there?

A. I was along in here coming on up. The morning sun was shining and you could see through there.

Q. Is that one of these glazed screens?

A. It's a reflection glass.

Q. Reflection glass?

A. Yes, sir.

Q. Did you see him entering your back porch?

A. No, I didn't see him entering.

Q. So he was up on the back porch?

A. Yes, sir, done already gone in.

Q. When you saw him through the window on your back porch then tell what you did.

A. Well, I went on up to the door and pushed open the screen with my hand, with the bucket in my left hand, and then when I did that he was standing on the doormat of the door that goes in my house and he said, "Good morning," and I said—And he asked me if I had any eggs to sell. And I told him no but possibly my mother did.

Q. You say when you pulled up on the screen door he was on the doormat?

A. Yes, sir.

Q. I would like for you to look at Commonwealth's Exhibit No. 2. Is that the doormat that you are referring to?

A. Yes, sir.

page 280 } Q. Will you point that out to the members of the Jury?

A. Right there (indicating on photograph).

Q. The mat right in front of the door leading into the house?

A. Yes, sir.

Q. Was that mat right in that location on August 7th?

A. Yes, sir, been there all the time.

Q. This is the doormat here?

A. Yes, sir.

Q. He was standing there when you went up on the porch?

A. Yes, sir.

Q. Now, tell us where you were standing when you went up?

A. I was standing in the doorway, the screen door that comes in.

Q. Does the screen have a spring on it?

Annie H. Ferguson.

A. Yes, sir.
Q. Was the door open or shut?
A. It was shut when I come up but I pushed it open with my hand.
Q. Did you let it shut or did you close it?
A. No, I stood in the doorway with my hand on the door, with it open.
page 281 } Q. Then what was the first conversation you and the defendant had?
A. Well, I just said he said, "Good morning." And then he asked me if I had any eggs to sell and I told him no, but possibly my mother did.
Q. Then what happened?
A. Then he just looked at me for the next few seconds and then when he walked towards me I thought he was going on out the door. Instead he hit me on the head with a rock.
Q. Where were you standing when he hit you on the head with a rock?
A. Right over here beside the doorway, right over here.

Mr. Wingfield: I want to object to that, "Where were you standing when *he* hit you on the head." I don't object to it if he says, "Where were you standing when you were hit on the head with a rock."

The Court: Well, she has just said, "He hit me." "I thought he was going out and he hit me on the head," and I think under those circumstances she can testify to that. She hasn't identified anybody yet, except that it was a young man, a teenager.

Mr. Wingfield: All right, sir.

page 282 } Q. Now, you were holding the door. Did you ever let go of the door?
A. Yes, sir.
Q. When I was thinking he was going on out, when he come over towards me, I thought possibly he was going to catch the screen and go on out.
Q. And you let the door go?
A. Yes, sir.
Q. Did the door shut?
A. Yes, sir.
Q. Now, what was the next thing that happened after the door shut?
A. Well, he just banged me with a rock on the head.

Annie H. Ferguson.

Q. How were you facing—How were you standing at that time on this back porch?
A. Sideways.
Q. Tell us by this *picure* which way you were facing?
A. I was facing this way with the left side to here.
Q. With the left side to the wall?
A. No, my right side, standing just like this.
Q. Facing this way?
A. Yes, sir.
Q. Where did the rock hit you?
A. On my left side, just along in here.
Q. Did you know it was a rock at the time?
page 283 } A. No, I didn't.
Q. Did you know what he had hit you with?
A. No, I just know he hit pretty hard but he hit me with I didn't know.
Q. Did you know that he had anything in his hands when he was standing there on the back porch?
A. No, I didn't.
Q. Where were you hit? Show the Jury where you were hit.
A. On the left side, along up in there (indicating) left forehead).
Q. When you were struck what happened to you?
A. Well, I went down on my knees and this arm went down in the water bucket. I skinned this arm and I skinned my right knee.
Q. What effect did this being struck have on you?
A. Well, it kind of made me dizzy.
Q. Do you know how long you stayed dizzy?
A. No, just for a few seconds.
Q. When you were struck and hit the floor what was the next thing that happened?
A. Well, I thought maybe he thought I might have had some money and possibly wanted to rob me so I said, "I don't have any money."
Q. Your words were, "I don't have any
page 284 } money"?
A. That's right.
Q. Did he say anything?
A. No, he just looked at me.
Q. All right. What was the next thing that happened?
A. Well, then he grabbed me hold of my left arm and tried to pull me towards the door that went over into the kitchen.
Q. How did he grab you?

Annie H. Ferguson.

A. He grabbed me on my left arm.
Q. Your left arm?
A. That's right.
Q. Did he grab you with one hand or two hands?
A. Both hands.
Q. How far were you moved at the time he had hold of you?
A. Well, I'd say possibly three feet, maybe a couple of feet.
Q. Did you get over to the door leading into the house?
A. No, I didn't.
Q. Now, was that porch door, inside the porch, leading into the house proper? Was that door open or shut at that time?
A. It was open.
Q. What was the effect of him grabbing your arm? Did you stay down as you were on your knees or were
page 285 } pulled up?
A. No, he pulled me clear up to my feet.
Q. When he grabbed you what did you do?
A. I screamed.
Q. Do you know how many times?
A. Well, I'd say twice. I don't know how many.
Q. Now, from the point where he grabbed you when you were down on your knees did you get as far as the mat?
A. No, not quite over to the mat.
Q. When you screamed what happened?
A. Well, he ran out.
Q. Do you know which way he ran?
A. He ran back around the house, the same way he had come.
Q. Is that the side next to Hebron Church?
A. Yes, sir, next to Hebron Church.
Q. What did you do at that point?
A. Well, I hooked the screen, the back screen, where he had just run out the back door, then I run through the house and saw him going down the same way he just had come, through the living room end window; and then I looked to see if my little girl was all right. And then by the time I run back to the door, the back door, my mother had gone gotten up there and we saw him run into those bushes on the hill.
Q. When you saw him when he went in front of your house had he gotten across the main highway or not?
page 286 } A. He hadn't gotten quite down to the highway.
Q. And then you say you saw him again after that?

Annie H. Ferguson.

A. Yes, sir, running on over the hill.

Q. Where were you when you saw him after that?

A. I was outdoors around the corner of the house looking over at him running.

Q. Around the corner next to Hebron Church or next to your mother's house?

A. No, see I was standing at the end next to Hebron Church of my back door and he was over on the hill.

Q. Was your mother with you then?

A. Yes, sir.

Q. Is that a picture of the highway and the general scene in there from the Hebron Church corner of your back porch, Mrs. Ferguson? (Exhibit No. 9.)

A. Yes, sir.

Q. Did you see him within this view?

A. Yes, sir, I saw him over here, running through here, these bushes in here.

Q. Where was he when you first saw him through the living room window?

A. Going down through there.

Q. Through there?

A. Yes, sir, right by that tree.

Q. By this big tree?

page 287 } A. Yes, sir.

Q. And he hadn't gotten to the highway?

A. No, not quite to the highway.

Q. Then after you came back out in the back and saw him where was he?

A. He was on the hill here running in these bushes.

Q. Which way was he running?

A. He was running over this way towards his home.

Q. This way?

A. Yes, sir.

Q. When he grabbed your arm and started pulling you did you resist him, did you try to fight?

A. Naturally.

Q. Were you able to do anything?

A. No. I mean, I couldn't do nothing with a young boy.

Q. What were the extent of your wounds? Were you bleeding any?

A. Yes, sir.

Q. How about the wound to your head, how much was that bleeding?

A. That was bleeding and running down on my blouse.

Q. How about your right elbow and your right knee?

Annie H. Ferguson.

A. Well, they were just skinned. They wasn't
page 288 } bleeding.

Q. Now, I want you to consider this, Mrs. Ferguson. You testified that your husband left for work that morning about 7:10 and about ten minutes later you went out for the water?

A. Yes, sir.

Q. Which would make it 7:20. How long was it after you went out from your house for the water until you came back and this thing happened on your back porch?

A. Well, I'd say it was about 7:30.

Q. You say this happened on your porch about 7:30?

A. Yes, sir.

Q. Do you know who this person was who did this to you?

A. No, I didn't.

Q. You didn't know it at the time?

A. No, sir.

Q. Do you know it now?

A. Yes, sir, I know who he is now, but I mean I didn't know it right then.

Q. That day when did you see that person again?

A. When they brought him up to the Church.

Q. Who?

A. The Officers had him.

Q. Did you go down to where they had him?

A. Yes, sir.

Q. Why did you go down there and what did
page 289 } you do?

A. Well, they wanted me to identify him.

Q. What did you do when you went down?

A. I told them it was him.

Q. Is that the man seated right there that did this to you?

A. Yes, sir.

Q. Did you give the Officers a description of how he was dressed?

A. Yes, sir.

Q. Before he was arrested?

A. Yes, sir.

Q. When he was brought back to you to be identified at the Church did he meet that description?

A. Yes, sir.

Mr. Goad: All right, Mr. Wingfield.

Annie H. Ferguson.

CROSS EXAMINATION.

By Mr. Wingfield:

Q. Mrs. Ferguson, were you born in the vicinity of Avon?

A. Yes, sir.

Q. In the house occupied by your mother now?

A. No, I wasn't born there but I was born in Nelson County.

Q. In the vicinity of Avon?

A. Well, it's called Greenfield now but I don't

page 290 } know whether you call it Avon or not.

Q. Well, let's get this. How long—The house in which you and your husband are now living has never been completed, has it?

A. Well, the upstairs hasn't been completed.

Q. I mean, does it have steps on the front porch?

A. No, it hasn't.

Q. Your front porch is an elevated porch but you can't get to it because you haven't put steps up yet, isn't that true?

A. Yes, sir.

Q. So the only entrance, the only way to go into your house is through the back porch to get inside?

A. Yes, sir.

Q. And the well that you had been to is how far from your house?

A. I'd say about seventy-five yards.

Q. The well is over near the road, between your mother's house and the Marcellus Hutchinson house, is that true?

A. Yes, sir.

Q. And is it closer to the Marcellus Hutchinson house or closer to your mother's house?

A. Closer to my mother's house.

Q. There is considerable distance between your mother's house and Marcellus Hutchinson's house?

page 291 } A. Yes, sir.

Q. And then there is right much distance between the Marcellus Hutchinson house and the school house, the school house lot?

A. Well, it's not too much distance.

Q. Now your mother's house is closer to your house than to any of the other buildings along there, isn't?

A. Yes, sir.

Q. In other words they are practically side by side?

A. Yes, sir.

Annie H. Ferguson.

Q. As a matter of fact, your house is built on the same lot and in front of your mother's house, isn't that right?

A. No, it's not on the same lot. She owns her property and we own ours?

Q. Yes, but it was a part of her lot, wasn't it?

A. No, sir, never has been.

Q. And then the Hebron Church is South of your house but a little bit further away than your mother's house, isn't it?

A. No, the Church is closer to my house than it is to her house.

Q. Well, your house is not too far from either one, the Hebron Church or your mother's house?

A. No, it's not too far away.

Q. Close to either one. So, in order to go to the
page 292 } well you'd go across the back end of your mother's lot but it would be the side of the house?

A. Yes, by the back door.

Q. And then towards the road?

A. Yes, sir.

Q. And then you would get your water from the well?

A. Yes, sir.

Q. Well now, the well being right on the road you could see anybody if they walked up the road, couldn't you?

A. Yes, sir.

Q. How did you get the water from the well, with a bucket or—

A. Drawed it up by a bucket.

Q. Brought it up by a bucket?

A. Yes, sir.

Q. When you were at the well did you see anyone go up the road?

A. No, sir.

Q. Inf anyone had gone along the road going from the direction of the Union Baptist Church you would have seen him, wouldn't you?

A. Well, unless they went along before I went down to the well.

Q. Well, when you left the well where was your
page 293 } mother?

A. She was in the back yard.

Q. And close to her kitchen?

A. No, it was up on that little bank right behind her house.

Q. Was your mother there when you went to the well?

Annie H. Ferguson.

A. Yes, sir, she was in the house though when I went to the well.

Q. And did you see her when she came out?

A. Yes, sir.

Q. Were you on the way back when she came out or were you at the well when she came out?

A. Well, I was at the well when she came out and when I come back she was coming in off of that little hill. She had done fed her cat.

Q. So that then you walked directly on to your mother's?

A. Yes, sir.

Q. And then you all had some conversation?

A. Yes, sir.

Q. I believe there was some testimony that it was perhaps where you had the conversation about fifteen steps from where you and your mother were talking to your back door. Do you estimate it about the same or is it further or closer?

A. Well, I don't have the least idea.

Q. Well, it's just a short distance, isn't it?

page 294 } A. Yes, sir, it's a short distance.

Q. Just a few steps?

A. Yes, sir.

Q. And how long did you talk to your mother?

A. Just for a few minutes, possibly two minutes.

Q. And from that position that you were standing if anybody had gone along the road you would have seen them, wouldn't you?

A. Well, I don't know. I mean, I was behind the house.

Q. I understood that when you were talking to your mother you saw someone at your back door?

A. No, I didn't see him at the back door. I saw him coming up by the front porch.

Q. Coming by the front porch?

A. On the other side.

Q. Did you see him go in the kitchen door?

A. No, you can't see from my mother's.

Q. Well now, was he going up between your house and Hebron Church?

A. Yes, sir.

Q. Did you know whether he was going into the Church yard or going to your house?

A. He was coming to my house because I could see the direction he was coming in. If he had been going

page 295 } to the Church he would have been going the other way.

Annie H. Ferguson.

Q. Well now, which direction was he coming from? Was he coming from the South, or coming from the East, or from the North?

A. Well, he was coming from that tree there at the highway.

Q. That would have meant he was coming from a Southeasterly direction, is that right?

A. I don't know anything about directions. I just know where he was coming from.

Q. You know where South is? You know where the sun rises?

A. Yeah.

Q. He was coming from the right of where the sun rises, coming up to your house, is that true?

A. Yes, sir.

Q. And you saw him come beside your house and you immediately took those steps on to see who it was?

A. Yes, sir.

Q. And when you got to your house you found there, the place that you pointed out on the picture, this colored boy? You said a teenager standing there?

A. Yes, he was standing on the door mat.

Q. And you didn't know him?

A. No, I didn't.

page 296 } Q. You had never seen him before?

A. No.

Q. Never laid eyes on him before?

A. No, sir.

Q. And then he asked you if you had any eggs to sell?

A. Yes, sir.

Q. And you told him you didn't?

A. Well, I didn't.

By the Court:

Q. Mrs. Ferguson, how long have you lived right there?

A. About nine years.

Q. That is in the home that you and your husband occupy?

A. Yes, sir.

Q. And just prior to that did you live in your mother's home?

A. Yes, sir, I lived with my mother about six months after I got married.

Q. How long before you got married did you live with your mother?

Annie H. Ferguson.

A. Well, I've lived with her all my life.
Q. I mean right at that location.
A. About twenty years.

page 297 } By Mr. Wingfield: (Continuing)
Q. And the man that you saw there on that porch you had never before in your life seen?
A. No, I can't say that I did see him because I haven't.
Q. And you said after the remark was made about the eggs and you told him you didn't have any eggs that that person struck you with a rock?
A. Yes, sir.
Q. How did you know it to be a rock?
A. Well, I didn't know at the time.
Q. Well, how did you know that you weren't struck with his fist?
A. Well, I just knew it was something awful hard that hit me but I didn't know what it was.
Q. Did you see the blow coming towards you?
A. No, I didn't.
Q. Did you see his arm in motion?
A. No.
Q. Did you actually see the blow or feel it?
A. I felt it.
Q. You felt it?
A. Of course.
Q. And you don't know from which direction the blow came? You don't know whether it came from a
page 298 } result of his arm moving or as a result of something coming down from above?
A. Well, it had to be his arm.
Q. How do you know it was his arm? You said you didn't see it.
A. It had to be.
Q. Well, you are supposing now. What kind of flooring did you at that time have on your back porch?
A. It was just wide flooring.
Q. Just what?
A. Wide flooring, about that wide.

By the Court:
Q. Wide boards?
A. Yes, sir.

Annie H. Ferguson.

By Mr. Wingfield: (Continuing)

Q. Does this picture reflect the same kind of flooring that you had on your porch at that time?

A. No, it's a rug there now.

Q. This looks like it is running from wall to wall?

A. Well, it is. It is just carpet, rug, linoleum rug.

Q. Linoleum?

A. Yes, sir.

Q. But at that time you had wide flooring on your floor?

A. Well, it's still there but it's a rug over it.

page 299 } Q. You've got it covered up now?

A. Yes, sir.

Q. This picture doesn't show the situation as it was then?

A. No, because we just put the rug on it, as I said.

Q. And those are wide rough boards?

A. Yes, sir.

Q. When you saw this person, whoever it may have been, you said you were worried about your child and it excited you?

A. Yes, sir, she was asleep.

Q. Let me ask you, did you by any chance slip over those boards and fall.

A. I don't think the cracks are that wide in the boards.

By the Court:

Q. What was your answer?

A. I said I don't think the cracks in the boards could have been that wide to hook your foot and fall over it.

By Mr. Wingfield: (Continuing)

Q. But there were cracks in the boards, were there not?

A. Yes, just little small cracks about like that.

Q. Was this washing machine there then?

A. Yes, sir.

page 300 } Q. Is this porch screened?

A. It's screened and it has reflector glass on the outside.

Q. And the framework is there?

A. Yes, sir, it's never been completed.

Q. And those boards are rough, aren't they?

A. Yes, they are rough on one side.

Q. And I think you said you still had your hand on the screen door?

Annie H. Ferguson.

A. Yes, sir.
Q. And the bucket was sitting there?
A. No, I dropped the bucket when he hit me and knocked me in it.
Q. You hadn't set the bucket down?
A. No, I didn't until he knocked me down.
Q. You were still holding the bucket in one hand?
A. Yes, sir.
Q. You had your other hand on the door?
A. Yes, sir.
Q. Which hand did you have on the door?
A. Pushed it open like this with my right hand.
Q. You were holding the bucket in your left hand?
A. Yes, sir.
Q. Do you step up to go on that porch?
A. Yes, sir.
page 301 } Q. How many steps is it?
A. Just one little step from the ground up.
Q. And you were right there when you saw a strange man to you on your porch with one hand on the door and a bucket of water in the other one and in that position you fell and skinned your leg on the bucket?
A. I didn't fall until he knocked me down.
Q. You didn't see him hit you, did you?
A. Sir?
Q. You didn't see him hit you, did you?
A. No, I didn't see him but I know he hit me.
Q. You heard what the Doctor said about the nature of the wound, didn't you?
A. Yes, sir.
Q. Apparently it looked as though something had—the blow, or whatever it was, had been glancing. It had not been a sharp instrument that had hit your head, but it had made an abrasion about a half inch in width. Could it have been made by your striking your head on the frame work of this screen that you are talking about?
A. No, it couldn't have.
Q. How tall are you?
A. Some five feet six or eight.
Q. You weren't knocked unconscious?
A. No.
page 302 } Q. How hard was the blow?
A. Pretty hard.
Q. But not enough to knock you unconscious?

Annie H. Ferguson.

A. It was enough to knock you down.
Q. You didn't fall out flat?
A. I fell down on my knees.
Q. And you didn't see his arm in motion?
A. No.
Q. And you tell this Jury that anybody would hit you with that rock—
A. Yes, sir.
Q. —that it wouldn't knock you out?
A. It didn't knock me out but it knocked me clear down.
Q. I understood you just fell to your knees?
A. I did, knocked me clear down to the floor.
Q. And that you got dizzy?
A. I did.
Q. But not unconscious?
A. No, not unconscious.
Q. There wasn't any gash cut in your head, was it?
A. I reckon it was. The doctor said it was.
Q. We heard what the doctor said about it. There wasn't any gash cut open that you took any stitches in?
A. No, they didn't take any stitches but it was
page 303 } gashed.
Q. If somebody hit you with the sharp edge of that rock, do you think it would lay a gash open in your head?
A. It depends on how hard he hits.
Q. And then you were helped up by the man, whoever it was? He caught you by the hand and helped you up?
A. He grabbed me by the arm and pulled me up.
Q. Pulled you up? What's the difference between helping up and pulling up?
A. Two different things, if somebody pulls you up or yanks you up.
Q. And you never left the porch?
A. Yes, sir, I left the porch after he left.
Q. I am talking about while the person was there.
A. No.
Q. That was talking to you?
A. No.
Q. You never left, you stayed there and you screamed when he caught you by the arm to lift you up?
A. When he dragged me up I screamed.
Q. Now, whoever was going up the road to your back porch would be bound to see you and your mother in the yard if you could see that person coming up, wouldn't he?

Annie H. Ferguson.

A. Well, I don't know whether he would or not because possibly didn't look that way.

page 304 } Q. If you could see them then you and your mother were both in a position to be seen by that person?

A. Well, I reckon if they looked they could but I don't imagine he even looked.

Q. And did he lay hands on you anywhere else except on your arm?

A. No, sir, he hit me on the head.

Q. He hit you on the head and used both hands on your arm?

A. Yes, sir.

Q. And you say pulled you up?

A. Yes, sir.

Q. Wouldn't it be better to say helped you up?

A. I wouldn't say he helped me up, I'd call it dragging me up, jerking me up.

Q. You got up and then you screamed and your mother came running over?

A. Yes, sir.

Q. And whoever it was there ran?

A. That's right.

Q. Said nothing else to you?

A. No, sir.

Q. Put their hands no where else on you?

A. No, sir.

Q. Made no attempt to rape you?

page 305 } A. No, sir.

Mr. Goad: That's calling for her opinion, Your Honor.

The Court: Well, she has charged it.

Q. And he made no effort to be—he made no improper sexual motions to you, did he?

A. No, sir.

Q. And your mother rushed over?

A. Yes, sir.

Q. And that person, whoever it was on your porch, had gone?

A. He was running away.

Q. Do you wear glasses?

A. Yes, sir.

Q. How long have you worn glasses?

A. About eight or nine years.

Annie H. Ferguson.

Q. Those same glasses?
A. No, I've had them changed, of course.
Q. I mean, did you have on those same glasses this particular day?
A. Yes, sir.
Q. Did you have your glasses on when you went to the well?
A. I certainly did.
Q. Have you had your glasses repaired since
page 306 } then?
A. No, not since then, but I had them changed last Spring.
Q. I mean since August 7th, have you had any glasses repaired?
A. No, I don't think they need to be.
Q. Are your glasses bifocals?
A. They are just made for close reading.
Q. But you do wear glasses all the time?
A. All the time.
Q. Did your glasses drop to the floor?
A. No, sir.
Q. Were your glasses broken?
A. No, sir.
Q. May I see your glasses?
A. Yes, sir.
Q. Can you find any blemish on those glasses anywhere?
A. No, sir, because didn't nothing happen to them.
Q. And they didn't fall off when you were struck?
A. No, sir.
Q. Or when you fell?
A. No, sir.
Q. What is your vision? It appears that those glasses are rather thick, aren't they? May the Jury see them? Maybe they want to see them. Do you know what your
page 307 } vision is?
A. Well, it's for close up.
Q. They are for close up reading?
A. Yes, sir.
Q. And for distance vision they wouldn't be much good to you, would they?
A. Well, I guess they would be all right. I mean, I can see good with them off distances as good as I can close up.
Q. But they are for close up reading?
A. Well, I wouldn't say they were just special for that.

Annie H. Ferguson.

By the Court:

Q. You wear them at all times, do you?

A. Yes, sir.

By Mr. Wingfield: (Continuing)

Q. From wearing those glasses do you at times have dizzy spells?

A. No, sir.

Q. Did you appear before the Grand Jury?

A. Yes, sir.

Q. You appeared before the Grand Jury?

A. No, I didn't appear before them but I was up here.

Q. You have never offered any testimony before the Grand Jury, before Judge Wheeler, or anybody in connection with this case, except talking to Officers or the Com-
page 308 } monwealth's Attorney, have you?

A. No, it's just up to the law. They didn't ask me to.

Q. You have never made any complaint charging any attempted rape, have you?

A. Those charges were brought about by the Officers.

Q. But you haven't appeared in connection with it or testified about anything, have you?

A. No, sir, because they didn't ask me to.

Q. As a matter of fact, you were present on the day that Judge Wheeler had a hearing—I forget the date of it—September 5th, were you not?

A. I was up here for both times.

Q. You were here for both times?

A. Yes, sir.

Q. Nobody has ever called you and you haven't told Judge Wheeler or appeared in connection with it at all, have you?

A. Well, they didn't ask me to, didn't nobody ask me to.

Q. Did you ever tell them that you wanted to?

A. I just thought that if they wanted me to they would come and ask me.

Q. Do you know of any reason they might have had for not wanting you to?

page 309 } Mr. Goad: That is calling for an opinion, Your Honor.

Mr. Wingfield: That's all. I'll withdraw it.

Annie H. Ferguson.

RE-DIRECT EXAMINATION.

By Mr. Goad:

Q. Mrs. Ferguson, I think I overlooked asking you one or two questions. When you first saw this person coming up towards your house across your front yard, between your house and the Church, could you tell how he was dressed at that time? I mean, could you get a good description of him at that time or could you see clear enough?

A. Not right at that time but I did afterwards.

Q. Do you know whether it was the same person you saw coming up there?

A. Yes, sir.

Q. —that was on the back porch?

A. Yes, sir.

Q. Do you know that?

A. Yes, sir.

Q. Then, when you saw him twice running away, once before he got to the road and once on the other side of the road, was that the same person that was up on the back porch?

A. Yes, sir.

page 310 } Q. Is there any question in your mind that that defendant is the one that you saw that was there that day?

Mr. Wingfield: Your Honor, I don't think that is a proper rebuttal question.

The Court: I didn't hear the question. What was it?

Mr. Goad: I had forgotten to ask her whether it was the same appearance of the person she saw first as the one that was on the porch, and then I asked her if there was any question that it was the same person at all times.

A. Yes, sir, it was the same person.

The Court: I think that's all right.

Mr. Goad: Your Honor, that's all.

The witness stands aside.

Mr. Goad: Your Honor, the Commonwealth rests.

Note: At this time a luncheon recess is had, to reconvene at 1:15 p. m. of the same day.

The Jury having left for lunch, the following were had.

page 311 } Mr. Wingfield: If the Court please, there are two motions I would like to make at this time.

The Court: All right, sir.

Mr. Wingfield: The first one is that these proceedings be dismissed, for three reasons. The first one is because there was no order entered by this Court or asked by the Commonwealth's Attorney to be entered by this Court fixing a determination as to whether or not this Court would assume jurisdiction of this juvenile or whether the matter would be referred back to the Juvenile and Domestic Relations Court.

The Statute, as amended by the '58 Act, Section 16.1-176, subsection (b), requires the investigation and report. That investigation and report was apparently made and filed with the papers in the Clerk's office along with the records by Judge Wheeler.

Now, the Tilton case indicates to me, sir, that the purpose of filing that report is for this Court to, by its order, determine whether this Court ought to take jurisdiction or whether it ought to be handled by the Juvenile Court. And until an order is entered by this Court I do not think that

page 312 } it is proper to proceed with a Jury trial unless, sir, and order is entered by you prior to the beginning of the trial so directing and assuming jurisdiction of the case.

I cite the Tilton case as my authority for that, sir. I do not find it nor was it under the old Statute so expressly stated that I can recall, but the Tilton case certainly indicates that that is the reason for that and that it should be done.

As additional grounds for dismissing the case I submit to you that this evidence shows that this man was illegally arrested and illegally detained; and further, that there was an illegal procedure in removing him from the jail, or from the place of detention, on August 7, 1958, during which time he was questioned and after which time and while he was so removed the alleged confession came in.

My other motion is that the evidence be stricken, on the ground that there is not sufficient evidence before this Court that would permit a Jury to make a finding of guilty on Count No. 1, as well as on Count No. 2.

There is no evidence which would permit a

page 313 } conviction under Count No. 1. As to those persons who were present, there were two persons present.

Now, referring to the statements of the various Officers

with reference to, first the denial, then the admission, then another denial, and then I think the report that is before you, the report of the Probation Officer, the Officer making the investigation, best shows the continued denial of his having been present, sir.

The Prosecutrix herself, I think, absolutely eliminates any question or any evidence of anything that could amount to attempted rape.

If I remember—and I haven't looked up this point recently—but it is my recollection that in order for there to be an attempted rape that there are two essential requirements. And I didn't know that this would come up, but that is my recollection of it, that there must be the intent to commit rape and that there must be some overt act in consummation of that intent. Regardless of what the inference of intent may be, there was certainly no overt act which would bring it within the requirement of law. And the only person page 314 } who would know about that overt act would be the Prosecutrix and she has said that there was positively none. With reference to Count No. 2, there is some evidence on the part of the Prosecutrix that she was struck by some object, but if you will consider her testimony in the light of the Doctor's testimony and in the light of the instrument that was used and described as used in hitting her with it, I would submit to you that this would certainly create reasonable doubt in the mind of the Court and in the minds of the Jury.

The Doctor described that wound as a wound one and a half inches long and half an inch wide and an abrasion of the skin or flesh, and not as a cut that would require a suture. The Doctor said that there was instant bleeding, instant bleeding. And the Court knows—I think we can assume this to be a fact, that if an instrument had hit her suddenly, or hit her on the head to cause the damage she said was done, that that probably may or may not have caused instant bleeding, but a scraping on the skin—you know how quickly that does bleed—you know that from probably using a razor sometimes, just a little blood vessel this close to page 315 } the skin, rather than coming from any bruise, or lack of any bruise.

I submit to you from her statement, the Prosecutrix's statement as to that that you cannot draw the conclusion that she was struck by any object. She said she was standing facing the man; that she had a bucket in one hand and her other hand on the door; that she did not see his arm move; that she did not see an object strike her; but that she knew that she

went down and that she had injury to her head, an injury to her arm, and an injury to her leg.

It isn't explained, and I don't think she could explain it, anyone could explain how she received any injury to her leg unless it was outside and there is one stoop. It's just as logical to believe from her evidence that in stepping up on that one stoop that she fell and that it is conceivable that her head was scraped. She was not knocked out. She said she was made dizzy. She had on glasses that were made for close vision, not for distant vision she said, but for close vision. She had on those glasses, her glasses were not broken.

page 316 } A blow to her head I submit would not have left her glasses on and it would not have left her glasses in that condition. It would indicate that that was a scrape rather than a fall. And I think that the Jury would certainly be justified in drawing that conclusion as much as they would that she was struck by a blow.

I think with reference to those questions it is a question of law.

Now, as to the second ground of my motion to strike the evidence is that evidence has been admitted which ought not to have been admitted by the Court.

Among others, I especially refer to the paperwriting signed by this Defendant. You have heard the circumstances under which it was signed. I submit to you that it was signed when he was illegally in the hands of the Officers. He had been jailed under a man who had no authority to jail him. He had been removed from that jail and transported by means that the law did not permit him to be transported. It could not have been for the purpose of identification because he had previously, according to the Officers, been identified.

page 317 } It was not for the purpose, as he says, of getting a written statement because he was removed early and according to the Officers he had made a similar statement early in the day before he had been put in jail. It was not for that purpose that he was removed.

A juvenile was placed in a condition of fear and bound to have been, under those circumstances, in spite of what the Officers said, scared.

I do not think that that writing ought to be admitted and submit to you that his original statement when Officer Dixon had him alone in a room had been admitted.

Now, I want to comment, too, with reference to—Of course, that was illegal that he was held there. If he had been carried before Judge Wheeler, as Mr. Goad would tell you, he still hadn't complied with the law because then they had no right

to remove him from the Sheriff's office to an office in the Health building. They violated the law. And they had no business holding him there, sir.

He made that statement, according to Officer Dixon and according to Officer Whitehead and according to Officer Hart and Officer Moon, after there had been a com-
page 318 } plete denial. Now, I want the Court to bear this in mind. He had been left in a room alone with Officer Dixon.

Officer Dixon said, if you recall his testimony, "I told him to sit on a chair and he didn't do it and I got him by his arm and sat him down." And then he said on that occasion—I don't remember his exact words—about telling him that they wanted to help him.

Now, I submit that under those circumstances, when they took him down there and Officer Dixon talked to this fifteen-year old boy, when they had him in that room illegally, that when he caught him by the arm when he hadn't sat down when he told him to sit down, that the manner in which he forced him to sit down was using coercion and it was done for no other purpose than to force him; and that the offer to help him was done for no other reason than to mislead him.

There was, in the absence of the Jury, evidence taken with respect to that. And there is the evidence which the Court will take into consideration, although it isn't before the Jury, of the fact that Sharon himself who testified that
page 319 } he was alone with Officer Dixon, that the other Officers went out and left him alone, and that Officer Dixon struck him, and he did place him—he was placed in jail and that he was hit.

So, for these two reasons mentioned I move that the evidence be stricken, sir; and for the third reason mentioned I move that the proceedings be dismissed.

The Court: All right, Mr. Goad.

Mr. Goad: There are so many grounds here. I think I've got them all listed, Your Honor.

The first ground given is that this Court has not determined whether or not it should refer the case back to the Juvenile Court, under Section 176. There is nothing in 176 about that at all. Paragraph (a) of 176 specifies how the case will get to this Court and the case has gotten to this Court exactly as prescribed in Section 176.

The Court: I thought he quoted that on the first ground that no order had been entered with respect to this investigation.

Mr. Goad: I thought the ground was that you—

The Court: That is in Paragraph (b) on the page 320 } next page.

Mr. Goad: I thought what he said was that this Court had not fixed—as to whether or not, decided whether or not it would refer the case back to the Juvenile Court. Is that what your ground was?

Mr. Wingfield: That's right, sir.

Mr. Goad: That's not in 176. That's in 177. You didn't mention that section.

The Court: Yes. 176 refers to the report. I mean, it was the subject of the reversal in the Tilton case.

Mr. Goad: The case has gotten to this Court under Paragraph (a) of 176, beyond any question. The Juvenile and Domestic Court had certified it to this Court further proceedings, the Grand Jury met and indicted this Defendant.

Now, you come to Section (b) of 176, you see the last sentence. It says, "Provided, however, if the mandatory provisions of this section have been complied with by the Juvenile Court and the results thereof certified to a court of record, the latter need not order such investiga- page 321 } tion." That's this Court, which this Court has not done because it was already done in the Juvenile Court. So the provisions under 176 have undoubtedly been complied with.

Now, I gather from sort of a two-thronged proposition there,—Mr. Wingfield didn't mention 177 but he did mention something in his motion about this Court referring it back to the Juvenile Court.

Now, Section 177 says this: "Power of court of record over juvenile offender." That's this Court. "In the hearing and disposition of cases properly before a court of record having criminal jurisdiction of such offenses if committed by an adult the court may sentence or commit the juvenile offender in accordance with the criminal laws of this State or may in its discretion deal with the juvenile in the manner prescribed in this law for the hearing and disposition of cases in the juvenile court."

So until such time as this Court gets to the point of sentencing this defendant—in other words, until the final sentence, the final order of conviction, is entered this Court still has the power over this juvenile defendant. And nothing has been done, up to right now, to violate the page 322 } provisions of Section 177.

So, I think the first motion you made is clearly not supported by the law.

Now we come to the second motion. He says that this

defendant was illegally arrested and detained. Now if we study the juvenile laws under which this defendant was arrested you find the statement in the case of Tilton against Commonwealth, saying this, quoting the General Assembly—I think it's in this Act but I'll just read from the decision in the Tilton case.

With respect to the purpose and intent of this Statute the General Assembly says, "This law shall be construed liberally and as remedial in character; and the powers hereby conferred are intended to be general to effect the beneficial purposs herein set forth. It is the intention of this law that in all proceedings concerning the disposition, custody or control of children coming with the provisions hereof, the court shall proceed upon the theory that the welfare of the child is the paramount concern of the State and to the end this humane purpose may be attained, the
page 323 } judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature."

Now, everything that was done in this case carried out these general purposes and intent. There is evidence in the record here that we all felt, the Judge and everybody else, felt that it would be harmful, the Officers felt that it would be harmful to this defendant for him to go back down in this community and therefore he was kept here and has been kept here ever since that time.

Therefore, certainly we were thinking about the welfare of this defendant.

Now those are the broad purposes. Now let's come to the more narrow provisions of the—

The Court: One thing that disturbs me greatly in this case is the fact that Mr. Whitehead told the Officers they had no right to take the boy out, and although he was not retained as counsel, they knew about that when they took him out of jail and took him back down to this place. I'd like for you to elaborate on that point.

Mr. Goad: All right. May I come to that?
page 324 } The Court: Yes, you mav.

Mr. Goad: In Section 164 of the Juvenile law setting up the information to the Judge, investigation, petition, and so on. That section says this:

"When the court"—that is, the juvenile court—"receives reliable information that any child or minor is within the purview of this law or subject to the jurisdiction of the court hereunder, except for a traffic violation or violation of the game and fish law, the court shall require an investiga-

tion * * *" I won't read about the investigation. Next sentence: "The Court may then proceed informally to make such adjustment as is practicable without a petition or may authorized a petition to be filed by any person * * *"

Now, as Your Honor has already mentioned, the Juvenile and Domestic Relations Court proceeds informally, have no order books; the evidence is in the record here as to what happened and as to what was done by the Officers under Section 194. Bear in mind the Court does have
page 325 } the power and does proceed informally because there is no other record or means of keeping orders set up.

Now, Section 194 through 197, dealing with 194 first:

"No child may be taken into immediate custody except:" Now, under No. (4) this defendant was taken into immediate custody:

"When there is good cause to believe that a child has committed an offense which if committed by an adult would be a felony."

So we had a right to take him into custody and there is no question about that. Then, going on down to 197:

"Whenever a child under the age of eighteen years is taken into custody the officer shall taking custody, depending upon the circumstances existing at the time custody is taken, shall use the following procedure or such appropriate parts thereof:"

No. (1) says, "If it is during such hours as the court is open, take the child immediately to the judge and the judge may order the child detained in such manner as it determines subject to further order of the court."

In effect, I feel that that was done in this case.
page 326 } Judge Wheeler saw this defendant. He was notified by the Officers that the defendant had been arrested in this case, and the Judge authorized the Officer to place the defendant in jail. It would certainly be reasonable there to assume that further action was going to be taken because further action did have to be taken under the law and was taken. So therefore, we feel that in this case the Judge did order the child detained in such manner as it determined, that is, by placing him in jail subject to further orders of the Court.

Then you came on down to the last part of that section, and it says, "In any case where the child fourteen years of age or over when taken into custody resists, or is in a drunken condition * * *" Well, those conditions were not present. "* * * or if the officer taking custody deems it to be to the best interest of the child, or in the best interest of the public, or it is otherwise impractical or inadvisable * * *" That means just about anything. In other words, if the officer feels for any reason, any reasonable reason—in this page 327 } case they were still investigating the case. "The officer may first get a warrant." That was done. "* * * then may take the said child to the special place of detention for juveniles or to a separate cell of the jail."

Of course, we don't have any facilities here. Then it says this, "Immediately upon a child being placed in a detention home or jail under this section, or as soon thereafter as is reasonably practical, the officer shall notify the judge * * *" Well, that was done, even in compliance with the first paragraph and in compliance with this paragraph. "* * * and shall request the judge to issue proper process and order of commitment therefor."

Deputy Sheriff Moon has testified that he told the Judge that they had arrested this defendant, and has testified that the Judge told him to commit him to jail, or to put him in jail. It is in evidence here that the Judge was advised that day that he would have to issue proper papers. Papers were issued.

There never was any question of bailing him out. No bail was set from the beginning. I didn't recom- page 328 } mend any bail in the beginning when the preliminary Court hearing was held.

The Court: There was a question of bail because I had the question.

Mr. Goad: There was no question of any bail—

The Court: You mean in the County Court?

Mr. Goad: In the County Court. And then Your Honor stuck to the same position on my recommendation in this Court, and there was no bail ever set, no amount was ever set at any time. There was no question in anybody's mind that he would be bailed out, because even an amount was never set. So he was held here all that time.

And the last provision there is that the officer shall notify the parents. Well, it is in the record that that was done.

How can anything be illegal there when those provisions have been complied with?

Now, Your Honor, has mentioned particularly removing him from the jail. Well, the Officers were in the process of

investigating the case. You mentioned Mr. Whitehead going to the jail and it is in the record that he advised the Officers not to take him from the jail. That's the point
page 329 } you raised.

The Court: That he advised the boy not to go, that he was a juvenile.

Mr. Goad: That's right. The record is clear on that. Mr. Whitehead, I believe the record shows, that at first he was back consulting with the mother and told the Officers that he was representing the boy. Then at the time he left the jail he told the Officers that he was not representing the boy. Now, certainly the Officers of this County investigating a case are not bound by any orders of Mr. Whitehead, especially after he has withdrawn from the case. Had he not withdrawn from the case no doubt he and I would have consulted.

The Court: That's the thing that bothers me. I doubt whether it makes any difference, Mr. Goad, whether he had withdrawn or not. He had already, obviously while he was counsel for these people, had told the Officers that they had no right, which the law provides, to take him. And he told the boy not to go. That bothers me right much as just what the effect of that might have on this whole thing.

Mr. Goad: You mean the Officers had no right
page 330 } to go forward with the investigation of the case, a case such as this?

The Court: Under the Section of the Code which provides that they shall not transport him in Police cars and things of that sort. Mr. Whitehead informed them that that was the law.

Mr. Goad: I don't think that is the law, Your Honor, if he voluntarily agreed to go with them. That's all the evidence we have—

The Court: Well, an adult, yes, but where you have a fifteen-year old—

Mr. Goad: He had a right to agree to go with them, didn't he? The evidence here is that the Officers had asked him before lunch, after he had mentioned this board.

The Court: We appoint guardians *ad litem* for infants because they don't have the knowledge or the experience to answer for themselves. That's the thing that troubles me in this case.

Mr. Goad: Your Honor, I think I can clear it up for you.

The Court: All right, sir, go ahead.

Mr. Goad: Under the evidence the Officers
page 331 } have testified that even before Mr. Whitehead went out there that this defendant had agreed to go with them to try to find where he had thrown this piece

of plank, piece of wood, down in the creek or the bushes somewhere. They asked him where he had thrown it and they asked him to describe the plank and he couldn't do it, couldn't tell them. Then they asked him if he would go and show them where it was. How, in the investigation of the case, how could you say there was anything wrong about that, if he agreed to go and show them where the plank was? Certainly the Officers, if a juvenile commits a felony as we claim in this case—the Officers are not hamstrung completely in their original investigation, the day that the thing happens.

I don't see any law, certainly under the power to investigate a case, they would have a right if the defendant agreed to take him and see if he could find a piece of wood that he claimed was the weapon.

The Court: There are entirely different sets of rules. Applying to juveniles there is a difference.

Mr. Goad: I don't think there would be any-
page 332 } thing wrong there. Assume that they violated the law when they took him out of the jail, assume that. I don't assume it, but we will do it. And you come to the proposition of law in this McHone case, *McHone* v. *Commonwealth,* also in *Winston* v. *Commonwealth.* In the summary of *McHone* v. *Commonwealth* was where a person had been arrested for driving under the influence and the Court held that he had been illegally detained. In other words, the officers did not do their job. The Court held, as a matter of law—

The Court: The Winston case?

Mr. Goad: This is the McHone case. I will point out the distinction between the two. In the McHone case the Supreme Court held that the defendant was illegally held in jail. There wasn't any question about it. He was held there too long. He was claiming that he was sober and there was evidence to the effect that he was sober, and the officers wouldn't permit him to be bailed, and it was found as a matter of law and fact that he was held illegally.

Just like in this case, suppose Your Honor
page 333 } believes that it was illegal to take him back down to the scene, which I do not concede for a minute, but suppose you did. Then the Supreme Court says this, "A conviction of a defendant does not lack due process of law merely because the Commonwealth's officer has failed to perform his legal duty in dealing with him after his arrest." The law supplies him with a civil remedy for that.

"In so acting, the officer goes beyond the authority given him by the Commonwealth and ceases to be its agent. His

wrongful act should not deprive the Commonwealth of its right to enforce its penal laws unless it is made reasonably clear that such wrongful act has in fact invaded defendant's constitutional rights and deprived him of evidence material to his defense which he would otherwise have obtained."

Now, it was a foregone conclusion right from the beginning that this defendant was not going to be bailed out. He was in jail to stay and he has been in jail since then, up until today. How have his constitutional rights been violated in any way? How has he been deprived of any evidence material to his defense?

page 334 } The Court: Well, of course, they say he has been required to testify against himself illegally.

Mr. Goad: You are asking me about going out. I am talking about that particular thing now. I haven't come to that other point yet.

The Court: The same thing would apply to this.

Mr. Wingfield: It is stronger than this because this was evidence illegally obtained.

Mr. Goad: Well, I hadn't gotten to the confession yet. You are asking me about the trip. The trip could not have deprived him of evidence material to his defense, could not have invaded his constitutional rights. How could the trip have deprived him of any evidence which he would otherwise obtain if he hadn't made the trip? There is no question there.

Now, in the McHone case it says, "In this case it has not been shown that the officer's act deprived the defendant of material evidence."

In the McHone case the defendant was plainly drunk, and the evidence was clear that he was drunk. And they held that even though he was held in jail illegally that still

page 335 } it didn't violate his right to obtain evidence in his favor.

In the Winston case there was evidence tending to show that the defendant was not drunk and that he was detained illegally for over three hours, and that after he was finally let out then he didn't have the right, which could have been in his favor, to have a blood test. Therefore, he was deprived of that evidence which could have been in his favor.

The Court: Did the Court hold that even though they arrested him that the detention was illegal, and that that made no difference as the man was in fact guilty?

Mr. Goad: Yes, sir.

The Court: Let me see that. I didn't recall that the Court decided that (reading). All right, let's move along.

Mr. Goad: Now, when you come to the confession, Your

Honor, the question there, the way I take it—Mr. Wingfield has sort of gotten me mixed up as to all these motions. But he doesn't want the confession, I understand that. He doesn't want that to be in the evidence. Now, was there
page 336 } anything illegal about the confession? First, we have proved that it was a voluntary statement beyond any question. It was a free and voluntary statement, that he was cooperating with them and told them the truth. There is no evidence here that this defendant had heard Mrs. Ferguson tell her side of it when he made his statement. When he made his statement you will see that it goes right along with what she has testified to today, just about exactly, as close as two people could tell it. And they were apart that day. No one knew what the other one had said. This was his statement and you have heard her statement. The Court has already admitted the confession as being a voluntary confession. Now, the question—I take it from Mr. Wingfield's motion, is whether the Court had ordered the defendant detained. Judge Wheeler had ordered him detained. He had been notified that he had been arrested, and he had been advised that he would have to issue proper papers. If this Court is going to say where there is no, certainly no, it doesn't look like to me—any real mandatory thing in the law—Is the Court going to say that the Officers in questioning the defendant had to go into a jail full of other
page 337 } people to question a person, that they can't take him to an office around the Courthouse or close to the jail where they can talk to him without any interference from people who don't have anything to do with the case.

The Court: I am not much impressed with that point in the evidence.

Mr. Goad: All right, we will go on to the next one. The next motion he made is that the evidence be stricken on at tempted rape. Do you wish me to argue on that point?

The Court: If you wish to be heard.

Mr. Goad: Now, I have an instruction here which is based on the instruction given and approved in the case of *Lufty* v. *the Commonwealth.* That was a case decided in 1919 and a case very similar to this one. This is an instruction that was objected to and the Supreme Court approved it.

"The Court instructs the Jury that if you believe from the evidence beyond a reasonable doubt that Ethel Garrison is under fifteen years of age, and if you further believe from the evidence beyond a reasonable doubt that the
page 338 } accused, Mosty Lufty, attempted by force to have intercourse with her and that he did any overt

act towards carrying out that purpose, such as taking hold of her or throwing her down," which is exactly about what happened in this case, "then he would be guilty of attempted rape as charged in the indictment in this case."

Now we come to the more recent case of *Ingram* v. *the Commonwealth,* and that is very similar to this case. In the case of *Ingram* v. *the Commonwealth* the defendant instead of asking for eggs he went up to the house and asked for a jack, for an automobile jack, which was later proved just to be a pretense to get there. Has Your Honor read this case?

The Court: Yes, I read it.

Mr. Goad: Do you wish me to tell you what is in there?

The Court: No.

Mr. Goad: We feel that the Ingram case is very similar to this case. If you have read it recently I won't go into it, sir. It is an excellent authority for our position in this case on the question of attempted rape. I don't
page 339 } think there could be any question that the attempted rape in this case is similar to the Lufty case and the Ingram case and should the Jury question it it should be submitted to the Jury. If you have any doubt on that question I can go into the Ingram case more.

Now, on Count No. 2, he alleges that the evidence is insufficient to submit that. It looks like it is just mainly a Jury question on the facts. Here is this rock which is a right good rock. She was assaulted with that rock. She was struck in the head with it. She was knocked down. Whether the Court would rule as a matter of law that that rock was a deadly weapon or not I don't know, but it's a dangerous weapon. She was partially disabled by it.

You will recall the different alternatives in the law: Intent to main, disfigure, disable or kill. And certainly assault with a weapon such as that is sufficient to go to the Jury under Count No. 2. And the way I have the instructions drawn of course this defendant couldn't be convicted of more than one crime. If he were found guilty of attempted rape all the others—the Court would tell the Jury
page 340 } that all the others would be dismissed, or he would be acquitted on, not guilty.

If he was found not guilty of attempted rape then he could be found guilty of lesser offenses all the way from attempted rape down to common assault. That's the view we take of the case.

I think I have covered all of the points, maybe not exactly in order. But I think I have covered all of these points and sufficiently answered all of them. I think now that we can

proceed with the case and that the motion should be overruled.

The Court: Do you wish to be heard further, Mr. Wingfield?

Mr. Wingfield: Just briefly, Your Honor. If I can read you from the last paragraph of the Tilton case. It says, "Section 8 of the Virginia Constitution guarantees to an accused, whether guilty or innocent, that 'He shall not be deprived of life or liberty, except by the law of the land." Skipping to the next sentence. "In the trial of the defendant, Tilton, the constitutional provision has not been satisfied, in that he was denied the benefit of the investiga-
page 341 } tion required by section 16-172.42."

Now, this infant has been deprived of his liberty by virtue of a violation of the laws with reference to his detention and otherwise. In reference to that, sir, if you will read it, these questions that I have indicated on pages 58 and 59, I would submit—

The Court: What sections are they?

Mr. Wingfield: The 4th section of 16.1-194, through Section 197. And I say to you from all of this evidence that there has been a flagrant violation of this defendant's rights with reference to his liberty.

The Court: All right, gentlemen, we will adjourn until 1:00 o'clock.

AFTERNOON SESSION.

1:00 o'clock p. m.

The Court: There are multiple questions that have been raised in this case and I am presently of the opinion that possibly some of them should have been raised maybe on an application for a writ of *habeas corpus* before or after the indictment. In order to be fair to both sides I think under the McHone case I should at this time overrule the
page 342 } motion and allow the defense to present its evidence.

You can state your exceptions now or later if you wish, Mr. Wingfield.

Mr. Wingfield: I will state them later but let me get the objection in, sir.

Counsel for the defendant excepts to the ruling of the Court for reasons which have been stated when the motion was made and with the permission of the Court the grounds of exception will be put in the record later.

The Court: All right, call your witnesses, Mr. Wingfield.

MARCELLUS HUTCHINSON,
a witness called by and on behalf of the defense, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. You are Marcellus Hutchinson?
A. Yes, sir.
Q. Where do you live, Marcellus?
A. In Avon.
Q. Where do you live with respect to the home of Mrs. Henderson, who has testified here?
A. I live right below Mrs. Henderson.
page 343 } Q. Do you live on the Afton side or the Lovingston side?
A. The Afton side.
Q. And how far is your house from the Henderson house, approximately? Do you know?
A. I don't know—I would say it is about two hundred yards or maybe more.
Q. From where you live can you see the front portion of the Union Baptist Church yard?
A. Yes, sir.
Q. Where do you work, Marcellus?
A. I was working at Trimble's Dry Cleaning in Crozet, at that time.
Q. At that time?
A. Yes, sir.
Q. How old are you?
A. Thirty-seven.
Q. Are you married?
A. Yes, sir.
Q. Your family lives in the house that you have just referred to?
A. Yes, sir.
Q. Do you remember the day on which Sharon Durrette was arrested?
A. Yes, sir.
page 344 } Q. That day has been stated to be August 7th of 1958. Is that the date you are referring to?
A. That's right.
Q. On that day, in the morning of that day, did you see Sharon Durrette?
A. I sure did.
Q. Where was he when you saw him?

Marcellus Hutchinson.

A. When I saw him he was at the Church. It's a big oak tree sits right on the edge of the bank on the side of the Church there, the driveway where you go up. And when I saw him he was under that tree. This was no later than quarter after 7:00 when I first saw him and he was there continuously until I left home going to work at twenty-five minutes to 8:00.

Q. You saw him there at quarter past 7:00?

A. Yes, sir.

Q. And you know he was there continuously until twenty-five minutes to 8:00?

A. Yes, sir.

Q. On that day?

A. Yes, sir.

Q. And was it twenty-five minutes to 8:00 when you left home to go to work?

A. It was twenty-five minutes to 8:00 when I left home.

Q. You heard later about him being arrested

page 345 } later that day?

A. Yes, sir, when I got home that evening my wife told me that he had been arrested.

Q. Had you heard anybody scream before you left or know anything about it?

A. No, sir.

Q. You don't know about after twenty-five minutes to 8:00, but you know he was there until twenty-five minutes to 8:00?

A. Yes, sir.

Mr. Wingfield: Witness with you.

CROSS EXAMINATION.

By Mr. Goad:

Q. How did you happen to see him at 7:15?

A. Well, I always watch the time in the morning so I won't be late going to work.

Q. Where were you when you saw him at 7:15?

A. I was in the kitchen looking out the back door. The back door faces the Union Baptist Church and it has a big glass in it.

Q. Where was Sharon when you saw him?

A. He was under this tree.

Q. On the side of the road?

A. Yes, sir.

Marcellus Hutchinson.

Q. Not up in the Church yard?
page 346 } A. Well it's on the Church property.
Q. It's right down off of the main road?
A. That's right.
Q. And you just happened to look out your back window?
A. Back door.
Q. Out of your back door and you saw him down the road?
A. Yes, sir.
Q. Right beside the Church?
A. That's right.
Q. And you just happened to look at your watch and it was 7:15?
A. That's right, because I watches my time pretty closely in the morning before I go to work.
Q. Look at that picture. Is this your house right here?
A. Yes, sir.
Q. Is this Durrette's house up on the hill there, right there?
A. I believe it is. It looks like the top of it there.
Q. And is this the top of the Church.
A. That's the top of the Church, the Union Baptist.
Q. And you saw down on the road from your
page 347 } back door here?
A. Yes, sir. The back door is on the far side from where this picture was taken.
Q. You could see from your back door down to where the road is?
A. Yes, sir.
Q. Looks like there are right many bushes and trees in there, Hutchinson.
A. It's not any trees in there, little bushes about that high, I guess. But it's clear vision from my back door out to the Church.
Q. The Church is up on the bank, isn't it? Sort of elevated and a right good distance from the road?
A. Yes, sir. Well, we live up on a bank, too. The house is up on a higher bank than the Church is on.
Q. What did you do, just stay there at your back door and just watch him?
A. No, I didn't—
Q. Didn't you—
A. No, but I could see him off and on between that time.
Q. Why were you paying any attention to him?
A. Well, I just wasn't paying any attention at all.

Q. You weren't paying any attention at all and you didn't even know who it was, did you?

page 348 } A. Yes, sir, I knew who it was because I've seen him there before waiting on Jackson to pick him up.

Q. Well, that's a right good distance from your house down to the Church, isn't it?

A. No, sir.

Q. And you say there were no bushes or trees there to obstruct your vision of the highway where he was?

A. No, sir, there wasn't a thing to keep me from seeing him from where I was.

Q. What time did you leave for work that day?

A. I left at twenty-five minutes to 8:00.

Q. All right, stand aside.

The witness stands aside.

HENRY REED,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:

Q. Henry, where do you live?

A. I live up above O. F. Farrar's store.

Q. How old are you?

A. Forty-seven.

Q. Are you married?

page 349 } A. No, sir.

Q. On the morning of August 7th—or rather, the day that Sharon Durrette was arrested, do you recall that day?

A. Yes, sir, I saw him that morning when I went to work.

Q. You saw him that morning?

A. Yes, sir.

Q. Do you know what time you saw him?

A. Yes, sir.

Q. What time was it?

A. Twenty after 8:00.

Q. Twenty minutes after 8:00?

A. I mean twenty minutes after 7:00.

Q. How do you know the time?

A. I looked at my watch.

Henry Reed.

Q. When you saw him?
A. Yes, sir.
Q. How were you traveling?
A. In the truck, pickup truck.
Q. Anybody in the pickup truck with you?
A. Yes, sir, a whole gang of men.
Q. How many were with you?
A. There were five.
Q. And when you passed you say you looked at
page 350 } your watch?
A. That's right.
Q. And it was 7:20 when you drove by?
A. That's right.
Q. Whereabouts at the Church was he and which Church was it?
A. At the Avon Baptist, colored Church.
Q. And where was he, in the yard?
A. No, sitting up at the sign, right at the sign.
Q. Sitting down?
A. Yes, sir.
Q. And you know it was twenty minutes after 7:00?
A. Yes, sir.

Mr. Wingfield: Witness with you.

By the Court:
Q. How did you happen to look at your watch riding along there?
A. I didn't want to get to work too fast.
Q. Too fast?
A. That's right.
Q. Where were you working?
A. Working at Greenfield Hollow for Carl Barnes' sawmill.

The Court: All right, Mr. Goad.

CROSS EXAMINATION.

By Mr. Goad:
page 351 } Q. What kind of watch did you have?
A. It's right here (showing watch to counsel).
Q. How did you drive your truck along with both hands, getting out the watch?
A. I wasn't driving.

Q. You weren't driving?
A. No, sir.
Q. Where were you sitting?
A. Sitting in the back.
Q. And you rode along and just when you happened to see Durrette you reached in your pocket and got out your watch?
A. No, the boy sitting with me, Frank, he asked me what time it was.
Q. Just at the time you happened to pass where you say you saw him?
A. That's right.
Q. Was that 8:20 or 7:20?
A. It was 7:20.
Q. Are you sure about that?
A. Sure I'm sure.
Q. Why did you first say 8:20?
A. Sir?
Q. Why did you first say 8:20?
A. I just got mixed up.
page 352 } Q. Just got mixed up?
A. That's right.
Q. All right, that's all.

The Witness stands aside.

ARDELIA JOHNSON,
a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Ardelia, do you remember the day that Sharon Durrette was arrested?
A. Yes, sir.
Q. Was that on August 7th?
A. Yes, sir.
Q. On that day were you in an automobile that went along Route 151 by what they call the Union Baptist Church, the Avon Baptist Church?
A. I was.
Q. Do you know whether there was a car anywhere in front of you or not, or whether anybody may have been in a car in front of you?

Ardelia Johnson.

A. No, I don't think so. I think we were—Henry, who just got off the stand was the only one ahead of us.

Q. He was ahead of you?

page 353 } A. That's right.

Q. Who was in the car with you?

A. Mr. Frank Alexander and Miss Dorothy Reed. Mr. Alexander was driving.

Q. And you know that Henry Reed was ahead of you?

A. Yes, just in front of me, just in front of us. Well, we were practically together.

Q. In other words, the two cars were traveling along?

A. That's right, and that was all.

Q. Did you see Sharon Durrette that morning?

A. Yes, sir.

Q. Do you know exactly what time it was?

A. Yes, sir.

Q. Where was he when you saw him?

A. He was seated on a rock right beneath the sign in front of Union Baptist Church. There is a big tree there and the sign is beside the tree. The rock is there below the sign and he was seated there.

Q. And what time was that?

A. That was 7:20.

Q. Were you headed for work?

A. Yes, sir.

Q. Where do you work?

A. In Waynesboro.

page 354 } Q. What time are you supposed to be at work?

A. About 8:00.

Q. And you know it was 7:20 and that Henry Reed was in front of you, the car that you were in?

A. That's right.

Mr. Wingfield: Witness with you.

CROSS EXAMINATION.

By Mr. Goad:

Q. Did you look at your watch?

A. Yes, sir, I happened to look at my watch because Dorothy asked me what time was it.

Q. Right when you happened to go by the place where Durrette was sitting?

A. That's right.

Q. Somebody happened to ask you what time it was?

A. Yes, I looked at my watch and it was 7:20, and he was there up on the bank and he waved to us and we waved back.

Q. He was sitting down, wasn't he?

A. That's right.

Q. Where do you live?

A. I live in Avon, right up there above O. F. Farrar's store, right in the back there.

By the Court:

Q. When you say above it, do you mean this page 355 } way on Route 151?

A. That's right.

Q. Up on the bank before you get to that orchard?

A. It's right up on a bank there. It's the first house that you get to after you come this way. It's on the right-hand side coming.

By Mr. Goad: (Continuing)

Q. Where does Henry Reed live?

A. In the same house.

Q. You live in the same house with Henry Reed?

A. That's right, Henry, Dorothy.

Q. How about Marcellus? Where does he live, Marcellus Hutchinson?

A. Oh, he lives down the road from us. He's the house next to the Union Baptist Church down there.

Mr. Goad: That's all.

The witness stands aside.

FRANK ALEXANDER,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:

Q. Frank, on the day that Sharon Durrette was arrested, did you see him in the morning of that day?

page 356 } A. Yes, sir.

Q. Were you in the automobile with Ardelia, who has just testified?

A. I was driving.

Frank Alexander.

Q. Where was he when you saw him?
A. He was right under that sign, that sign at the Church, Union Baptist Church.
Q. And can you estimate the time?
A. Well, the way we come—about the time, one of the girls sitting in the back says, "Where is Sharon working at?" I said, "He is working with John Jackson." And one of them said, "Maybe we're a little late." I looked at the watch and noticed it was just 7:20. I said, "You don't go to work no way until 8:00 o'clock." And I paid no more attention to it, no more attention that day.
Q. And you heard later that he had been arrested?
A. That's right.
Q. You know Sharon pretty well, don't you?
A. Yes, sir, I know him.
Q. Do you know his general reputation in that community as a law abiding citizen?
A. I know he is a law abiding citizen. He's a good Sunday School boy. He works in the Sunday School. He works on the usher board at the Church. And I felt that was about as good as I could expect from teenagers.

page 357 } Mr. Wingfield: You may ask him.

CROSS EXAMINATION.

By Mr. Goad:
Q. Where do you live, Frank?
A. I live in Dirt Town.
Q. Tell the Court and Jury where that is with reference to the Avon Postoffice?
A. Well, it's Southeast from Avon.
Q. You know where the Union Baptist Church is, don't you?
A. Yes, sir.
Q. Well, is it on the Afton side of that or is it on the Greenfield side?
A. You mean where I live at?
Q. Yes, where you live.
A. Well, you see, Afton side is on the left-hand side of 151. Dirt Town is on the right-hand side. You see, you come on down 151 and turn at Williams Creek to your right to come into Dirt Town.
Q. Is it off on that side road there going—just the other side, the Afton side, of the one-lane bridge?

A. That's right.
Q. You turn in that way?
A. That's right.
Q. So then you were riding in this car up the
page 358 } road towards Greenfields, South?
A. No, sir. I went up there and picked up those riders because I was driving somebody else's—the other boy was in the hospital and that was the reason I happened to be driving that day.
Q. Were you driving?
A. Yes, sir.
Q. Were you driving your car?
A. No, sir, I was driving for another fellow.
Q. You didn't see any watch yourself, did you? You didn't pull out your watch?
A. No, sir, I didn't pull out my watch.

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

The witness stood aside.

DOROTHY REED,
a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Dorothy, on the morning of August 7th of 1958, were you in an automobile with Ardelia Johnson and Frank Alexander?
A. Yes, sir.
Q. Did you see anything of Sharon Durrette
page 359 } that morning?
A. Yes, sir, he was sitting out there at the Church under the sign on a rock.
Q. Do you know what time it was?
A. I'm the lady that asked the time. I thought we was late and I asked Ardelia what time it was and she said twenty minutes past 7:00, and I looked up on the bank and saw Sharon and he threw up his hand at us.
Q. And you later during the day heard about Sharon being arrested?

Ann Spears.

A. I read about it in the paper before I came from Waynesboro.

Q. And you remembered the time that you had seen him and you remembered what had taken place and you let it be known?

A. That's right, because I really saw him.

Mr. Wingfield: Witness with you.

CROSS EXAMINATION.

By Mr. Goad:

Q. You all just happened to look at your watch when you rode—

A. No, I mean I was the one that asked the time about the time we got to the Union Baptist Church. I said to them in the car, I said, "We are late this morning." And Ardelia spoke up and said, "No, it's twenty minutes past page 360 } 7:00," and we looked up on the bank and Sharon was sitting up there under the tree, right there on the rock, right by the sign. But I didn't thought, you know, that this here was going to come up so that we would have to say anything about the time, but I was looking at him at twenty minutes past 7:00.

Q. It just happened that you all looked at your watch just as you saw Sharon?

A. That's right.

Q. You actually looked at your watch just as you passed where you claim he was sitting?

A. I said we was late and she said it was twenty minutes past 7:00.

Q. All right, that's all. Where do you live, by the way?

A. I live up in a place called Coon's Hill.

Q. You live with Henry Reed?

A. Yes, sir.

Q. And Ardelia Johnson?

A. Ardelia Johnson lives there, too.

The witness stands aside.

page 361 } ANN SPEARS,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

Ann Spears.

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Where do you live?
A. Greenfields.
Q. Where do you live with reference to the Henderson home?
A. I'd say approximately four and a half miles.

By the Court:
Q. That would be this side of the Henderson home, wouldn't it?
A. That's right.

By Mr. Wingfield: (Continuing)
Q. On the morning of August 7th, the day that Sharon Durrette was arrested, did you see Mr. Henderson that morning?
A. Yes, sir, I did.
Q. Where did you see him?
A. On the back of a trailer pulled by a tractor, driven by Mr. O. F. Farrar.
Q. And what time was it when you saw Mr. Henderson? I am talking about the step-father of Mrs. Ferguson.
A. I would say that it was between ten and
page 362 } fifteen minutes after 7:00 o'clock.
Q. Where was he when you saw him?
A. He was standing on the trailer holding to the seat of the tractor.
Q. I mean whereabouts, at what location?
A. Coon Hill.
Q. And how far is that from his home?
A. Oh, I couldn't say definitely, but it's as much as a mile.
Q. And that was between ten minutes after 7:00 and 7:00 o'clock?
A. And 7:00 o'clock, that's right.
Q. And that's the same Mr. Henderson that testified here?
A. That's Mr. Henderson right here, yes, sir.
Q. And that was the same day that Sharon was arrested?
A. That was, Thursday.
Q. And the 7:00 o'clock you are referring to was in the morning or in the evening?
A. Morning.

Ann Spears.

By the Court:

Q. Where is this location where you saw this man?

A. O. F. Farr's store is on the—

Q. Right beside the creek there?

page 363 } A. That's right. Well, it's between his house and the top of the hill. We particularly noticed it that morning because evidently he was having trouble with the tractor because it was bouncing. And Mr. Henderson was holding to the seat of the tractor. We were going to Waynesboro to work.

Mr. Wingfield: You may ask her.

CROSS EXAMINATION.

By Mr. Goad:

Q. How do you know what time it was?

A. We leave home, my home, around five after 7:00 every morning.

Q. Did you look at your watch?

A. We always do. It's four or five of us that ride in the same car and we always compare watches to see who is right and whether we all have the same time or not.

Q. You compare watches every morning when you get together?

A. Uh, huh, every morning. We sure do.

Q. That's the first thing you do, you compare watches?

A. Well, not the first thing, no. The first thing we do is get our stuff together that we have got to take to work.

Q. I mean when you get in the car.

A. No, because we get in the car, when we leave

page 364 } the house.

Q. Did you compare watches when you passed by where you claim you saw Mr. Henderson?

A. No, we had done that before.

Q. You didn't compare watches at that time?

A. No, sir.

Q. Who was driving the tractor?

A. O. F. Farrar.

Q. And are you sure you saw Mr. Henderson on the tractor?

A. Most certainly did.

Q. Which way was the tractor going?

A. Towards the orchard. It's up the road towards Greenfields.

Marie Durrette.

By the Court:
Q. Is that towards what they call Rockfish orchard?
A. I believe they turn off near the same road as Rochfish orchard.

By Mr. Goad: (Continuing)
Q. Which side of the car were you sitting on, the car that you were riding in?
A. I was with the driver.
Q. On the front or back seat?
A. Front.
Q. How many were in the car?
page 365 } A. Four.
Q. Which side of the road was the tractor on?
A. The other side.
Q. Why were you paying so much attention to this tractor?
A. Well, we were just laughing at him having such a difficult time steadying himself. Evidently Mr. Farrer was having trouble steadying the tractor. I don't know what had happened but it was just bouncing and he was holding to the seat evidently to steady himself.
Q. All right, that's all.

The witness stands aside.

MARIE DURRETT,
a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. You are the mother of Sharon Durrette?
A. Yes, I am.
Q. On the morning of his arrest do you know what time he left your house to meet anybody?
A. Well, Sharon left home between five and ten minutes after 7:00 o'clock to meet John Jackson. Some calls him Key Jackson.
page 366 } Q. Was he dressed to go to work?
A. Yes, he was.
Q. Dressed in work clothes?
A. Yes, he was.
Q. You know it was between 7:05 and 7:10?
A. Correct.

Marie Durrette.

Q. And do you know where he was supposed to meet Jackson?

A. He was supposed to meet Key, John Jackson, at Union Baptist Church, right down at the foot of the hill. He goes down the hill and across the highway and up on the Church property and that's where he usually meets him.

Q. How old is Sharon?

A. Sharon was fifteen years old. He is sixteen. He had his sixteenth birthday on the 24th of August.

Q. Is he still going to school, or was he going to school up until vacation for the Summer?

A. Yes, he was.

Q. And what grade was he in?

A. Well, he was promoted to high school.

Q. Had he been working for John Jackson after school had let out?

A. Yes, he had.

Q. Did he expect to go back to school this Fall?

A. Yes, he did.

page 367 } Q. But he has been in jail ever since August 7th?

A. He most certainly has.

Q. Did you learn on August 7th that he was in jail?

A. Yes, at 12:00 o'clock I was at John Jackson's, the man which Sharon worked for. I was in the house there and some of the children came in after the Trooper had picked Sharon up and they picked him up at 12:00 o'clock Noon. Some of the children come in and said, "Miss Marie, the Police got Sharon and gone down the road." And so Key stepped out and went across the road, because they had asked him that they just wanted to speak to Sharon. So I asked Davie Durrette would he carry me down to the house. He didn't tell anybody where they was carrying him, just told him to come on and get in the car, that they wanted to talk to him. And then Sharon got in the car and shut the door and down the road they went.

So I got Davie to carry me back to my home and I didn't find anyone at home, so I asked him would he bring me to Lovingston and so he did.

Q. And you came to Lovingston?

A. I certainly did.

Q. And do you know what time it was you got to Lovingston?

A. Well, we left home I reckon around ten minutes after or fifteen minutes after 12:00. So we came, you know, just

Marie Durrette.

about the time it takes to drive from my home
page 368 } up here to Lovingston.

Q. When you got here where was Sharon?

A. They had Sharon upstairs in the Sheriff's office, across the hall.

Q. Did you stay in sight of him within the building, with reference to him, from that time?

A. Yes, I sit upstairs. I consulted Mr. Goad here as one of the Troopers had told me to go to him. And I asked him would it be any chance for me to stay with Sharon. He told me he didn't know, that he was in the Sheriff's office. So he told me to go ahead and have a seat, which I did. I sat there at the door. And I sat there and they didn't bring Sharon down. So I came downstairs and stayed out there and waited.

Q. Did you see Judge Wheeler?

A. No, I did not. No one informed me to go to him.

Q. I've got to stick within the rules of evidence, but let me ask you this. Subsequently did you find out that Sharon was in jail, was in the jail, locked up over here?

A. Yes.

Q. Did you go to that jail?

A. I certainly did.

Q. Was Mr. Robert Whitehead in that jail?

A. Yes, he was.

Q. Did Sharon make any complaint in your
page 369 } presence and in the presence of Mr. Robert Whitehead about the manner in which he had been treated?

A. Yes, he did.

Q. What statement did Sharon make?

A. They wouldn't let me to see Sharon.

Q. Did you hear the accusation yourself?

A. You mean when I was in the jail?

A. Yes, I did.

Q. And what did Sharon say there in the presence of any Officer that might be there?

A. Well, Mr. Whitehead, Sharon Key, and I was in the jail and Mr. Dixon came in and Hart, and I'm not too sure, I think Mr. Whitehead.

Q. The Deputy Sheriff?

A. That's right. And so Sharon had told Mr. Whitehead before they came in asking had a warrant had been issued to him, and Sharon told him no. He said it was a white piece of paper or either a yellow paper.

Marie Durrette.

Q. I don't know that you can tell what he told Sharon, but I want to know what Sharon said about the Officers when the Officers came in.

A. Well, when Mr. Dixon walked in Sharon said, pointed out, and said in our presence, "That's the big man that hit me in my stomach, slapped me in my face, and told me that if I didn't own up that I was at this lady's house page 370 } that he would give me the same thing that they give Emmett Till." So he asked me who was he speaking of and I told him who he was referring to.

Q. That was the statement that Sharon made to Mr. Dixon in the presence of you and Mr. Whitehead?

A. That's right, and in the presence of Mr. Dixon. He pointed him out when he walked in. He most certainly did.

Q. Do you know whether Mr. Whitehead had any conversation with the Officers concerning the future handling of Sharon?

A. Yes. I went over and asked Mr. Whitehead would he—

Q. I would like for you to tell it but it isn't proper. Were you present when Mr. Whitehead made any statement to any of the Officers?

A. He told them—

Mr. Goad: Your Honor, I object to that. It is hearsay. I've let some of it go on.

The Court: This boy was present, the Officers were present.

Mr. Goad: He hasn't established that.

By the Court:

Q. Who was present when you heard this statement by Mr. Whitehead?

A. Mr. Dixon, Mr. Whitehead, and myself, and Key.

page 371 } By Mr. Wingfield: (Continuing)

Q. Was Sharon there?

A. Yes, he was.

The Court: All right, go ahead.

Q. What did Mr. Whitehead tell the Officers?

A. He told them not to take Sharon out from the jail because he was only a boy fifteen years old.

Mr. Wingfield: You may ask her.

Marie Durrette.

CROSS EXAMINATION.

By Mr. Goad:

Q. Are you this boy's mother?

A. Yes, I am.

Q. And you tell us that he left home that morning between 7:00 and 7:10?

A. That's correct.

Q. Dressed in his work clothes?

A. That's right.

Q. And you didn't see him again until he was in jail? Is that right?

A. I didn't say I didn't see him again until he was in jail.

Q. Where was the next time you saw him after he left your home that morning?

A. I saw him at John Jackson's house where he was picked up at.

page 372 } Q. Did you see him before he was picked up?

A. Yes, I did.

Q. What time was that, you say 11:30 or 12:00?

A. No, they arrested him—I don't know whether they arrested him but they asked him to get in the car around 12:00 o'clock.

Q. You were down at John Jackson's house?

A. Correct.

Q. So then you didn't see him from between 7:00 or 7:10 in the morning until approximately 12:00 o'clock that day?

A. I just stated that I saw him before 12:00 o'clock.

Q. Well, what time was it that you saw him next after he left home that morning?

A. Well, it was around the middle of the morning when I saw him.

Q. Can you estimate what time it was that you saw him?

A. No, because I didn't look at my watch.

Q. Did you see him just a short time before Sgt. Gaunce came in and asked him to go down to Hebron Church?

A. Well, certainly I did because he was out there in the yard playing with John Jackson's children.

Q. Well, how long before that had you seen him the next time? When did you go to John Jackson's?

page 373 } A. I went there early in the morning.

Q. And when did Sharon come in there?

A. Sharon was there when I got there.

Marie Durrette.

Q. Did he stay there the whole morning?
A. Of course.
Q. Do you know what time you got there?
A. Not exactly.
Q. You can't tell us what time you got there that morning?
A. I just stated I couldn't tell you exactly because I didn't look at my watch.
Q. You didn't look at your watch?
A. No.
Q. Well, one thing for sure, you don't know what happened or anything about Sharon from the time he left your house that morning until you got down to John Jackson's house? During that time in the middle, you don't know what happened, do you?
A. What you mean?
Q. I say you don't know where he went or what he did, of your own knowledge, do you?
A. Yes, I know where he was at, because he was at John's house when I got there.
Q. I say, before that you don't know where he was.
A. Well, I told you he went to the Church.
page 374 } Q. Did you see him?
A. Why certainly—What you mean, did I see him?
Q. What you have testified to is that he—I just want to establish this. He left home between 7:00 and ten minutes after 7:00?
A. I said between five and ten after 7:00.
Q. Well, between five and ten after 7:00.
A. That's what I said.
Q. And then you didn't see Sharon again until you went to John Jackson's house later on in the morning?
A. Correct.
Q. All right. And you don't know what happened in the meantime? You don't know anything about what happened between 7:00 and the time you went to John Jackson's house?
A. Of course I don't know what happened. I just know that John was supposed to pick him up.
Q. But you don't know anything about that of your own knowledge, do you?
A. No.
Q. All right, stand aside.

The witness stands aside.

page 375 } J. J. REED,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:

Q. You are J. J. Reed?

A. Yes, sir.

Q. Do you live near Avon?

A. Yes, sir.

Q. Do you hold any office in any Church?

A. Yes, I do.

Q. What Church?

A. The Union Baptist Church.

Q. What office do you hold in that Church?

A. Deacon.

Q. How long have you been living in that vicinity?

A. Well, practically raised there. Been away for several years but it's really my home there.

Q. Do you know Sharon Durrette?

A. I know him.

Q. Do you know him pretty well?

A. Pretty well, I reckon.

Q. Do you know others that know him that live around there?

A. Oh, yes.

page 376 } Q. Through social and Church relationships?

A. Who?

Q. People who know him?

A. Yes, yes, that's right.

Q. Do you know his general reputation for truthfulness and as a law abiding citizen?

A. Yes, I do.

Q. Is that reputation good or bad?

A. It's good, yes, sir. Good.

Mr. Wingfield: You may ask.

Mr. Goad: Stand aside.

The witness stands aside.

S. P. SMITH,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

John Jackson.

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Where do you live?
A. I live one mile North of Avon on Route 638.
Q. You are a farmer, aren't you?
A. Well, practically.
Q. Are you a deacon in the Church that Sharon goes to?
A. Yes, I'm Chairman of my Board and also a
page 377 } Deacon.
Q. Chairman of the Board?
A. Yes, sir, and Secretary of my Church.
Q. How long have you known Sharon?
A. I've been knowning him all his life.
Q. Do you know others that know him?
A. I know many of them that knows him.
Q. Do you know his general reputation in that community, the community in which he lives, for being truthful and a law abiding citizen?
A. Well, I don't know nobody—I'm speaking for myself—I don't know of anything that would go against his recommendation to be a law abiding citizen of our neighborhood.
Q. He goes to your Church?
A. Yes, sir.
Q. Goes to your Sunday School?
A. Yes, sir. And he's an usher of our Church.
Q. He wouldn't get that position, from the position that you hold, unless you heard somebody else talk about him?

Mr. Goad: Your Honor, he is leading the witness. That's immaterial anyway.

Q. Well, is that reputation good or bad?
A. It is good.

Mr. Wingfield: You may ask him.
Mr. Goad: Stand aside.

The witness stands aside.

page 378 } JOHN JACKSON,
a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

John Jackson.

DIRECT EXAMINATION.

By Mr. Wingfield:

Q. John, I don't want to repeat anything that you have told previously, but I do want to ask you this. Were you at the Nelson County jail on the day of August 7th in the early afternoon of that day at a time Mr. Robert Whitehead was present and at the same time Sharon Durrette was present, and Officer Dixon and Officer Hart was there and perhaps another Officer?

A. Yes, sir.

Q. Were you there?

A. I was there.

Q. Did you hear Sharon make any statement with reference to any treatment that he had received at the hands of any Officer?

A. He said that one had hit him and—Had hit him up in his face and hit him in his stomach.

Q. To whom did he direct that statement?

A. I don't know the fellow, but he pointed to the man.

Q. Who did he point to as having hit him?

page 379 } A. I don't know one of them from another but he said a fellow did it—I believe he said Officer Dixon.

Q. You heard Sharon make that accusation?

A. I think he did.

Q. Did you hear Mr. Whitehead, Mr. Robert Whitehead, make any statement to the Officers?

A. He did that.

Q. What did he tell them?

A. He told them that—at the time we was in there the Officers came in—they says to Sharon that they decided to take him back down to the scene. Mr. Whitehead said they advised by law to put him in jail and said they still are advised by leaving him in there.

Q. He told the Officers that?

A. He told the Officers that.

Q. Did you hear Sharon say anything about having made any confession?

John Jackson.

A. What you mean?

Q. Well, let's put it this way. Did you hear Sharon say anything about what any Officer had threatened to do to him?

A. Well, he did.

Q. What did he say?

A. He said they were going to do him like—if he didn't tell it, that they were going to do him like they did some other case of some kind. I don't know what it was.

page 380 } Q. You didn't know who they were talking about?

A. No, I didn't know.

Q. How far is your house, approximately, from the Union Baptist Church?

A. Well, I just don't remember. I imagine about three-quarters of a mile, I imagine.

Q. You've never measured it?

A. I don't think it's quite a mile. I think it's around three-quarters.

Q. You have previously told about what time you picked Sharon up and I won't repeat that. You may answer Mr. Goad.

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Goad:

Q. Who was present there in the jail when you say you were there?

A. His mother.

Q. Who else?

A. And Mr. Whitehead and myself.

Q. Just you three?

A. Us three was there. We was there and the Officers came in.

Q. Who came in?

A. I don't know the Officers but three of them

page 381 } came in.

Q. Three Officers came in?

A. Yes, sir.

Q. How about Sharon, was he there?

A. Yes, sir, he was there.

Q. Were the three Officers Deputy Sheriffs or State Police?

A. I don't know what they—I don't know who they was but I know he pointed to this one man.

Q. Did he have on a brown suit or a blue suit?
A. He had a brown suit on.
Q. All three of them?
A. No, all three of them didn't have brown suits on. I don't reckon they did. I never paid particular attention to what they had on.
Q. Well then, you didn't know who he was referring to, did you?
A. I know what was said.
Q. Did Sharon tell you that he had already agreed to go back with the Officers—
A. No, he didn't.
Q. Let me finish my question. Did he tell you that he had already agreed to go back with the Officers to the Ferguson home and look for this plank or stick that he had told them he had thrown away in the creek?
page 382 } A. No.
Q. He didn't tell you that?
A. I didn't hear him.
Q. Did Sharon tell you at that time that he had already admitted that he had been there on the back porch?
A. He told us that he hadn't been there.
Q. He didn't tell you that he had already told the Officers that he had been there?
A. No, he didn't tell me that.
Q. And you didn't hear anything said about a plank?
A. Didn't hear anything said about it.

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

The witness stands aside.

LAURA BANKS,

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Were you at John Jackson's, or Key Jackson's as they call him, house the day that the Officer came there and got Sharon?
A. Yes, sir.
Q. Had you been there all the morning?

Laura Banks.

A. Yes, sir, I got there—I spent the night with
page 383 } Mrs. Teese, a widow lady—

Q. That's all right. You were at Jackson's house that morning?

A. Yes, sir.

Q. Did you have any occasion ot know what time it was at any time between 7:00 and 8:00 o'clock that morning?

A. Yes, sir. Mrs. Teese asked me, she said, "Laura, when you get to the house ask the little girl to go to the store for me," and when I got to the house Sharon was already there.

Q. What time was that?

A. When I went on in I said, "I want you to go to the store for Mrs. Teese," and I looked up at the clock and she said, "Now?," and I said, "No, wait until after we eat our breakfast." And it was ten minutes to 8:00, and Sharon was already there.

Q. What was he doing at Jackson's house?

A. Had two girls in a wagon and he was pulling it around the house, sitting in a wagon.

By the Court:

Q. They were little girls?

A. Yes, sir, they were small girls. One is eleven and the other one is ten, ten and eleven.

By Mr. Wingfield: (Continuing)

Q. And this was at Key Jackson's house?
page 384 } A. Yes, sir.

Q. At ten minutes to 8:00?

A. Yes, sir.

Q. And Sharon was already there?

A. He was already there.

Mr. Wingfield: Witness with you.

CROSS EXAMINATION.

By Mr. Goad:

Q. Did you look at the watch? Did you happen to look at the watch then?

A. No, when I went in and by talking to the little girl I looked at my clock. It's an electric clock over on the icebox.

Q. Just as you got to this house and you say you saw

Sharon there you happened to look up at the clock?
A. Yes, when I went in.
Q. As soon as you went in?
A. Yes, sir, because I wanted the little girl to go to the store.
Q. All right, that's all.

The witness stands aside.

page 385 } SHARON DURRETTE,
the Defendant, being first duly sworn, was examined and testified in his own behalf, as follows:

DIRECT EXAMINATION.

By Mr. Wingfield:
Q. Sharon, on the day of your arrest, August 7, 1958, you left your home headed for what place?
A. Union Baptist Church.
Q. Why were you going to Union Baptist Church?
A. Because Key Jackson always picks me up there.
Q. And what time was he supposed to pick you up?
A. He usually picked me up about 7:00.
Q. About 7:00?
A. Yeah, about 7:00.
Q. When you got to Union Baptist Church what did you do?
A. I took and sat down there.
Q. You sat down where?
A. Sat down at the sign at the Church on a rock.
Q. Did you go anywhere before John Jackson, or Key Jackson, got there?
A. No, I ain't went nowhere.
Q. You stayed right at the Union Baptist Church.
A. Yes, I sat right down there.
Q. You mean at the sign?
page 386 } A. Yes, at the sign.
Q. Did you go to the home of Mrs. Milford Ferguson?
A. No, I didn't.
Q. Did you go by the home of the Henderson's on the way down there?
A. No, I didn't.
Q. Were you there continuously until Jackson picked you up?

Sharon Durrette.

A. Yeah, I was there when he picked me up.
Q. And when you left there where did you go?
A. We went on down to Farrar's store and John stopped there and he picked up something for his truck. Then we took and went back to his house.
Q. Did you see Laura Banks after you got there?
A. Yes, she were on the porch.
Q. You saw her on the porch?
A. Yea, I seen her on the porch.
Q. Subsequently, were you in the Nelson County jail?
A. Sir?
Q. Were you in this jail late in the afternoon?
A. Yes, I were in the jail.
Q. Did your mother and John Jackson come to the jail?
A. Yes, they did.
Q. Was Mr. Robert Whitehead there?
page 387 } A. Yes, he was there.
Q. Did you make any statement to Mr. Robert Whitehead about anybody having struck you?
A. Yes, I told Mr. Robert Whitehead, Dixon was beating me in the face and hit me in the stomach.
Q. Why did you tell him that?
A. Because he kept on slapping me and told me if I didn't sign them papers he was going to do me like Emmett Till down in Mississippi.
Q. And you did tell Mr. Robert Whitehead he had said that?
A. Yes, I told him that.
Q. Were you telling him the truth?
A. Yes, I was telling him the truth.
Q. And did you hear Mr. Robert Whitehead tell the Officers anything?
A. Yes, he told them to let me stay right there at the jail and don't carry me back.
Q. Did you go to her house?
A. No, I didn't go to her house.
Q. Why did you sign that paper?
A. Because he started beating me in my face and told me if I didn't sign that paper he was going to kill me.
Q. Were you scared?
A. Yeah, I was scared a little bit.

page 388 } Mr. Wingfield: Witness with you.

Sharon Durrette.

CROSS EXAMINATION.

By Mr. Goad:

Q. Just scared a little bit when somebody was threatening to kill you? Is that all you were scared?

A. Yeah, I was scared right much.

Q. We will change that then from a little bit to right much. Now, when this was going on, Sharon, this was around the middle of the day, wasn't it?

A. What going on?

Q. What you have just been telling us about, when Mr. Whitehead was out there and you were telling him about Dixon threatening you and so on, hitting you as you claim?

A. Yeah, about 12:00.

Q. Well, the date that this—the time that this paper was signed was 5:45 p. m., almost six hours later. Is that right?

A. What?

Q. When you signed this statement? You signed it, didn't you?

A. Yes, I signed it.

Q. And did you sign it at approximately quarter to 6:00 that evening?

A. No, I signed that paper that morning.

Q. You signed this paper that morning?

page 389 } A. Yes, I did.

Q. What time?

A. As soon as they got through fussing with me and all that.

Q. Did you sign the paper before Mr. Whitehead came out there?

A. Yeah, I signed it before he came out there.

Q. Before your mother came out there?

A. Yeah, it was before my mother came out there.

Q. Well, the Officers have dated this and timed it at 5:45 p. m. You claim that you had already signed it when your mother and Mr. Whitehead and the rest of them were out there?

A. I had already signed it.

Q. You had already signed it?

A. Yes.

Q. Well, if you had already signed it at that time why did they take you back to Avon after that?

A. They said they wanted to see if the woman could identify me.

Sharon Durrette.

Q. Well now, Sharon, you were taken by the Ferguson home right after you were arrested, weren't you?

A. Then they took me back that evening.

Q. Didn't they take you back that evening to try to find this piece of wood?

page 390 } A. Yeah, they tried to find that, too, but they say if she can identify me.

Q. So you admit, do you, and you know it's the truth, that when they took you back to Avon that evening it was because you had told them you would try to find a piece of plank that you had used? Is that right?

A. No, I didn't tell them about no plank.

Q. Didn't you tell them that that was the reason you were going back down there, to find the plank for them?

A. No, I didn't tell them nothing. Mr. Robert Whitehead told that Officer don't carry me back down there or nothing.

Q. Why did they carry you back down there then if it wasn't for the plank? To find the plank or board.

A. When they carried me out of jail they said they were going to have me fingerprinted and then when they carried me down there they said I was going on down there anyway.

Q. Do you recall anything about a plank that day? Did you tell them anything about a plank?

A. Yeah, when he was beating me in the face he told me I'd better tell them that kind of plank, that I'd used something like that.

Q. Well then, did you tell them that you had thrown the plank away in the creek?

A. Yeah, I told them I had thrown it away in

page 391 } the creek.

Q. So that's correct?

A. I didn't throw it in the creek, though.

Q. I know, but you told them that, though?

A. Yes, I told them that.

Q. We know you didn't throw it in the creek but you told them that and then after you told them that, wasn't that the reason they went back down to Avon and took you to try to find where this plank was?

A. I don't know. They said they had to take me down there to have my fingerprints.

Q. They took you to Avon to take your fingerprints?

A. Took me down to the Police office.

Q. Now, if you signed this statement when you claim you did in the middle of the day, the Officers didn't even know that you had used a rock at that time, did they?

Sharon Durrette.

A. I didn't tell them I used no rock.

Q. No, you had told them you used a plank, used a piece of wood, didn't you?

A. I didn't tell them that, for a minute.

Q. Well, I say you did tell them that, though, didn't you?

A. Tell them what?

Q. That you used a plank or a piece of wood?

A. Yes, that's because they just kept on beating
page 392 } me, though.

Q. So when this statement was signed, if it was signed in the middle of the day, it wasn't any need to go back to Avon, was it? In this statement you admit the rock.

A. They took me back there.

Q. When you were picked up by Officer Gaunce down at John Jackson's house, you were brought by Hebron Baptist Church, were you not?

A. Yeah, I was brought by there.

Q. And did Mrs. Ferguson come out to the car and see you?

A. Yes, she did.

Q. Did you see her?

A. Yeah, I saw her.

Q. And did she say you were the one?

A. She said it.

Q. That's what she said. So there wasn't any need to take you back to Avon to have her look at you again, was there?

A. They took me back down there and pulled in that yard and told me to get on outside of the car and I stood on the outside of the car and she say, yeah, I was the one.

Q. Then they brought you on to Lovingston, didn't they?

A. Yeah, then they brought me on back here.

page 393 } Q. Now, I notice you have a little phrase that you use a lot. You say "I took and came on back," or "I took and did this or I took and did that."

Mr. Wingfield: When did he say that?

Mr. Goad: He said it about four or five tmies when you were questioning him.

Mr. Wingfield: I don't recall that he said that and I have been listening carefully.

Q. Isn't this statement in your own words, Sharon? Didn't Trooper Hart write this statement down late that evening?

A. He wrote it that morning.

Q. Trooper Hart wrote it that morning.

A. Yes, he wrote it that morning.

Q. Did he take down your own words, try to take down what you said?

A. He took some of my words down.

Q. Did you tell him this, "I took and ran out of the door"? Were they your own words, "I took and ran out of the door"?

A. No, Dixon say that himself. You see, he was the one that taken it all down.

Q. And then did you tell him in your own words, "I took and jumped across the bank"? Did you tell him that?

A. Yes, that was when he was beating me that morning and they say that.

page 394 } Q. And then did you say in your own words, "I took and came back through the field to the Union Baptist Church"? Were they your own words?

A. I didn't tell them that.

Q. Where did this beating take place, now? Where did it take place?

A. What beating?

Q. The one you are talking about.

A. Well, when they was beating me in my face and all they was down behind the Health Center.

Q. Behind the Health Center?

A. Bottom of the Health Center.

Q. The basement of the Health Center?

A. Yeah, in the basement.

Q. What did they hit you in the face with?

A. He had his hand like this.

Q. He hit you with his fist?

A. Yeah, with his fist.

Q. Did it leave any mark on you?

A. No, it didn't leave no mark on me.

Q. Did it bloody your nose or black your eye or cut your lip or anything like that?

A. No, it didn't.

Q. Didn't leave a mark on you?

A. I ain't seen none.

page 395 } Q. Did you tell Mr. Whitehead out at the jail, or anyone else, when John Jackson and your mother and all of them were out there, did you tell them that you had already signed this statement?

A. Yes, I told them I signed it.

Q. You told them that you had already signed the statement?

Sharon Durrette.

A. I certainly did told them.

Q. Now, did you tell Officer Hart that you went out to work that morning down by the Union Baptist Church, and then did you tell him that you decided to go up to Mrs. Ferguson's?

A. I didn't tell him no such thing.

Q. You didn't tell him that?

A. No, I didn't.

Q. Did he read this statement over to you?

A. He read the longhand to me.

Q. Then did he read the typewritten?

A. No, he didn't.

Q. And you signed it? Why did you sign it if it wasn't true?

A. Why I signed it if it wasn't true, because he made me sign it.

Q. Trooper Hart made you sign it?

A. Yes, he did. I mean, Dixon made me sign it.

page 396 } Q. Did you hear Mrs. Ferguson testify here today?

A. Yes, I heard her testify.

Q. Had you ever heard her testify before during the time this case was pending? Have you ever heard her make a statement about this case before?

A. No, I didn't hear her make none.

Q. Well, how did you get all the information to go in your statement about walking up to her house, picking up a rock, asking if she had any eggs, and so on? How did you get all that information if you didn't tell it to the Officers?

A. Because Dixon told me, he say, "You know you went up there to that woman's house and asked for a dozen eggs."

Q. Dixon is the only one that you have got it in for, is that right? The rest of them treated you all right?

A. He is the only one that done something to me.

Q. He is the only one that did anything to you? The other Officers treated you all right?

A. Yeah, they did.

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

The witness stands aside.

Mr. Wingfield: We rest, Your Honor.

The Court: All right, sir. Is there anything further, Mr. Goad?

page 397 } W. C. HART,

Trooper, upon being recalled on rebuttal by the Commonwealth, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Marie Durrette, the mother of this Defendant, has testified that you were present when the conversation took place in the jail in the presence of John Jackson and Robert Whitehead and she and the defendant, is that correct?

A. No, sir, it is not correct.

Mr. Wingfield: If the Court please, it is my recollection that she said she wasn't positive that he was there.

Mr. Goad: No, I think she was positive. John Jackson was the one that didn't know but she was positive that he was there.

The Court: They were all a little uncertain of the identity of the Officers. That was my impression.

Q. Were you present at that time?

A. No, sir. I was only at the jail on two occasions. I was not there at that time.

Q. All right, sir, stand aside.

The witness stands aside.

page 398 } GEORGE HENDERSON,

a witness called on rebuttal, having been previously sworn, was examined and testified, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. Mr. Henderson, one of these witnesses, Ann Spears, has testified that that morning you were on the back of Mr. Farrar's tractor going up Coon Hill. Is that correct or not?

A. No, sir, that wasn't correct. I can prove by these Officers that I was at home.

Q. Well, she said you were down on Mr. Farrar's tractor between 7:00 and ten minutes after 7:00 that morning. Is that correct?

A. I can prove by the Preacher I wasn't down there and I

can prove by several people that I wasn't down there. The Officers and all knowed I was at home all day.

Mr. Wingfield: May the Court please, he testified previously that he had been at home all morning in his direct testimony.

Mr. Goad: I've got a right to rebuttal.

The Court: I don't think there is any testimony that he wasn't down at Farrar's. I think he would have a right to rebut that.

Mr. Goad: That's all I wanted to ask him.

page 399 } The Court: And you have asked him.

Mr. Wingfield: I have no questions.

The witness stands aside.

W. C. HART,

Trooper, upon being recalled by the Commonwealth, testifies further, as follows:

DIRECT EXAMINATION.

By Mr. Goad:

Q. This defendant has testified that this written statement was taken around the middle of the day on Thursday, August 7th. Did you take any written statement or make up any written statement, or make up any written statement, or write up, or type up for him to sign, and did he sign any written statement of any kind before 5:45 p. m., on August 7th?

A. No, sir, absolutely not.

Q. Was he presented with any statement before 5:45 p. m.?

A. No, sir, I never even questioned him before that time, except the time we got in the automobile and went to Avon. That was the first conversation I had had with him.

Q. Did you ever hear him claim before today that he had signed the written statement in the middle of the day?

A. No, sir.

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

page 400 } CROSS EXAMINATION.

By Mr. Wingfield:

Q. Trooper Hart, it is true that you went with Mr. Dixon, Mr. Whitehead before you went to lunch down to the Health

building in the basement with them and discussed their going to lunch, didn't you?

A. No, sir, it's not true at all.

Q. Well, I understood one of the Officers to say that—two of the Officers say that.

A. The discussion about going to lunch was right outside of the Courthouse here, right there next to the entrance to the jail. As a matter of fact, a couple of Police cars were parked around there.

Q. Where was the boy at that time? Where was Sharon at that time?

A. I don't know where he was. He was either in jail—I assume that he was in jail at that time.

Q. Well, if I misunderstood some of these Officers to say that when they left the Sheriff's office that you, included, went to the Motor Vehicle office—the Officers headquarters, whatever it is—down in the County Health building, and there discussed whether you would question him further or go to lunch?

A. That is absolutely incorrect, sir.

Mr. Wingfield: That's all.

The witness stands aside.

page 401 } Mr. Goad: That is all, sir.

The Court: The Jurors have indicated that they would like to have a view of the scene.

Note: At this time the Court, Jury, counsel, Prosecutrix and Defendant take a viewing of the scene.

Whereupon, upon returning to the Courtroom the following proceedings were had.

Mr. Wingfield: Your Honor, pertaining to the view there is one question that I'd like to ask of one witness. I don't know whether there are any witnesses here who could answer that question with reference to something we saw at the scene. Could I be permitted to ask either Mr. or Mrs. Ferguson the one question that I indicated to you, sir?

The Court: Yes, sir. Mrs. Ferguson, come back to the witness stand just a moment.

ANNIE FERGUSON,
having been previously sworn, upon being recalled, testified further, as follows:

Questions by Mr. Wingfield:
Q. Mrs. Ferguson, do you have a dog?
A. I did not have a dog at the time but I do
page 402 } now.
Q. You did not have a dog at that time?
A. No, sir.
Q. No dog at that time?
A. No, sir.

Mr. Wingfield: That's all I wanted to ask, sir.
Mr. Goad: That's what I wanted to ask her.

The witness stands aside.

The Court: It's so late and it will take an hour or more to finish instructions and I think I had better excuse the Jury until 9:30 in the morning, and I will ask the counsel to remain.

Whereupon, Court was adjourned, to reconvene at 9:30 a. m. October 29, 1959.

Mr. Wingfield: If the Court please, I'd like to renew my motion that I made at the conclusion of the evidence offered by the Commonwealth, both to strike and to dismiss. And my grounds for it will be the same as those set forth in the grounds that I enumerated in my argument at the time.
In addition to that we now have additional
page 403 } evidence which has come from the defendant
which has substantiated the position that I am taking in that argument. So, for that purpose I now renew both motions.
The Court: I overrule your motions.
Mr. Wingfield: I'd like to except to the Court's ruling and save the point.
The Court: All right, sir.

Note: At this time the Court and Counsel consider the instructions to the Jury; whereupon, the following objections and exceptions were made by counsel:

page 404 } The Court, having indicated that he would give
Instructions #1, 2, 3, 4, 5, 6, 7, 8 and 9 offered by the Commonwealth, Mr. Wingfield said that he objected to

the giving of Instructions 1, 2 and 3 and excepted to the ruling of the Court in allowing said instructions to be given on the grounds that there was not sufficient evidence before the jury to warrant the giving of an instruction on attempted rape. The Court over-ruled the objection, whereupon counsel for the defendant excepted for the reasons stated in his objection.

The Court, having considered the instructions offered in behalf of the defendant, refused to give Instructions marked J, K, H, F and E to which refusal counsel for the defendant noted his objections and excepted to the ruling of the Court on the grounds that, with reference to Instructions J, K and H, the same would instruct the jury with reference to a question of fact and that the jury should have the right to know the law applicable to such facts and, with reference to Instructions F and E, the refusal of the Court to give said Instructions was excepted to on the grounds that the jury was entitled to be instructed as to the law with respect to juveniles and to determine by the application of such law whether or not the constitutional rights of the juvenile defendant had been violated.

page 405 } The Court reconvened on October 29, 1959, and the Court instructed the jury as follows:

In each and every case when the evidence is all in, it is the Court's responsibility to give you some instructions as to the law applicable to the charges made against the accused person. Now, of course it is first your exclusive duty and perogative to decide what has been proved. It is up to you to say what witnesses you believe and give them such credit as you think is warranted, taking into consideration their opportunity to see and to know what went on and their intelligence or lack of it and their interest in the case, if any, and to give such credit as you feel is due. When you have determined what you think the facts are, then you should take the instructions and apply the law to those facts.

You are instructed that your verdict in this case may be one of the following: You may find the accused guilty of attempted rape, or guilty of malicious wounding, or guilty of unlawful wounding, or guilty of common assault, or not guilty.

You are instructed that if you believe from the evidence beyond a reasonable doubt that the accused, Sharon E. Durrette, did feloniously assault one Annie H. Ferguson, a female over 16 years of age, with intent to have carnel knowledge of her against her will and by force, and then did

page 406 } there attempt to rape her, then the Jury shall find the accused guilty of attempted rape and fix his

punishment at death; or in the discretion of the Jury, confinement in the penitentiary for life or for any term not less than three years.

You are further instructed that if you do not believe from the evidence that the accused is guilty of attempted rape, but do believe from the evidence, beyond a reasonable doubt, that the accused did maliciously wound one Annie H. Ferguson with intent to maim, disfigure, disabled, or kill her, then you shall find the accused guilty of malicious wounding and fix his punishment at confinement in the penitentiary for not less nor more than twenty years.

You are further instructed that if you do not believe from the evidence that the accused is guilty of attempted rape or malicious wounding, but you do believe from the evidence beyond a reasonable doubt that the accused is guilty of unlawfully wounding said Annie H. Ferguson with intent to maim, disfigure, disable or kill, then you shall find the accused guilty of unlawful wounding and fix his punishment at confinement in the penitentiary for not less than one nor more than five years, or by confinement in jail for not exceeding twelve months and a fine of not exceeding $500.00, in your discretion.

page 407 } You are instructed that if you do not believe from the evidence that the accused is guilty of attempted rape, nor of malicious wounding or unlawful wounding, but you do believe from the evidence beyond a reasonable doubt that the accused is guilty of common assault upon the said Annie H. Ferguson, then you shall so find and fix his punishment at confinement in jail for not exceeding twelve months or by a fine not exceeding $500.00, or by both such cofinement and fine in the discretion of the jury.

Of course, if you find him not guilty of any of those things you shall say so.

Now, you are instructed that attempted rape in criminal law is the apparent unfinished crime and is composed of two elements; one, the intent to commit the crime of rape; two, a direct overt act done toward the commission of the crime of rape, but falling short of the execution of the ultimate design. Such act need not be the last proximate act to the completion of the crime in contemplation, but is sufficient if it be an act apparently adapted to produce the result intended.

You are further instructed that if you believe from the evidence beyond a reasonable doubt the accused with purpose and intent of committing rape upon Annie H. Ferguson committed an overt act toward the accomplishment of such purpose which was of a character apparently adapted to

page 408 } produce the result intended, then you shall find the accused guilty of attempted rape, even though the Jury may further believe that he subsequently voluntarily abandoned his purpose and did no further act toward its accomplishment.

You are further instructed that the distinction between a malicious wounding and an unlawful wounding is this: If the person wounded had died as a result of the wound and the accused would have been guilty of murder either in the first or second degree, that is, a killing with malice, then the crime is a malicious wounding. Whereas, if the accused would have been guilty of only voluntary manslaughter, that is, a killing in the heat of passion upon reasonable provocation, the crime is an unlawful wounding.

You are further instructed that, as I said in the beginning, you are the sole judges of the evidence and that you may believe or refuse to believe any witness and that when passing upon the credibility of any witness, you may take into consideration his interest in the matter in controversy, the reasonableness or unreasonableness of their statements, his bias or prejudice in the matter, if any, his manner of testifying and his opportunity for knowing the truth, and all other surrounding circumstances appearing during the trial.

You are further instructed that a person is presumed to intend that which he does and that which is the immediate or necessary consequence of his act.

page 409 } You are further instructed that in the offense of malicious wounding and unlawful wounding the Commonwealth must prove that such wounding was with intent to maim, disfigure, disable or kill. To constitute such intent, it is not necessary that there be in fact an actual permanent maiming, disfigurement, disabling or a killing, but the wounding must have been done with the intention to permanently maim, disfigure, disable or kill; and not with the intent to inflict such temporary or inconsequential injury.

The term "malice" as used in these instructions, and it is used in these instructions in its technical sense, and may be either expressed or implied. It includes not only anger, hatred, and revenge, but every unlawful and unjustifiable motive. Malice may be inferred or implied from the deliberate use of a deadly weapon, in the absence of proof to the contrary; or from any deliberate and cruel act done without reasonable provocation. It is not necessary that malice shall have existed for any length of time and it may first come into existence at the time of the wounding.

You are further instructed that while the Commonwealth must prove the guilt of the accused beyond a reasonable doubt,

this does not mean proof to a point of mathematical certainty. If you have an abiding conviction of the truth of the charge, then you are satisfied beyond a reasonable doubt and must convict the accused. A reasonable doubt
page 410 } must be based upon the evidence. It must not be an arbitrary doubt without evidence to sustain it. It must be a serious and substantial doubt in order to warrant an acquittal. It must be a doubt of a material fact necessary for the Jury to believe to find a verdict of conviction and not a doubt of immaterial and non-essential circumstances. A doubt engendered by sympathy or dislike to accept the responsibility of convicting the accused is not a reasonable doubt.

Further, you are instructed that the law presumes the accused to be innocent of this charge alleged against him until he is proved guilty. The burden rests upon the Commonwealth to prove the guilt of the accused beyond all reasonable doubt. Nothing is to be presumed or taken by implication against him. No mere preponderance of the evidence will suffice as in the trial of a civil case; nor is it enough that by conjecture or speculation he may be supposed to be guilty, but the Jury must be satisfied by the evidence that he is guilty beyond a reasonable doubt.

Now, a reasonable doubt in every criminal case is not a mere form to be disregarded by you, but is a substantial part of the law of this land and, before you can convict the accused in this case, you must have an abiding conviction in your mind, based upon the evidence in the case, that he is guilty beyond a reasonable doubt. If you shall have
page 411 } any reasonable doubt as to any material fact necessary to convict the accused of any offense whatever under this indictment, you are bound to give him the benefit of such doubt. If, upon the whole evidence of the case, there is any reasonable hypothesis consistent with the innocence of the accused, he cannot be convicted.

You are instructed that the character of the accused, good or bad, when proved may always be received with all the other evidence and weighed by you in favor of or against him, as the case may be.

Last, you are instructed that you should disregard and reject the confession made by the accused in this case if you believe from the evidence that such confession was obtained by threats, force or undue influence on the part of the officers, or that the confession was not freely made by the accused without influence of hope or fear held out by the officers. That means that before a confession is valid evidence it must be freely given and without any intimidation on the part of

the officers, without any violence or without any threats or without any promises. Unless you believe it was freely given, you should disregard that evidence.

Note: Whereupon, the Court and Jury heard the argument of each counsel.

page 412 } After argument of counsel, the Jurors retired to the Jury Room and later returned with the following verdict:

We, the jurors, find the accused, Sharon E. Durrette, guilty of attempted rape and we hereby fix his punishment at 27 years in prison.

Signed: ..... M. TUCKER,
Foreman of the Jury.

Mr. Wingfield: I move to set aside the verdict as contrary to the law and evidence; that the instructions objected to by the defendant and given by the Court should not have been given; that the Court erred in not striking the evidence, certainly in so far as the crime of attempted rape is involved, at the conclusion of the Commonwealth's evidence; that the Court erred in not striking all of the evidence at the conclusion of all of the testimony in the case; that the Court erred in permitting the Attorney for the Commonwealth to introduce in evidence the alleged confession of the defendant; that the defendant's constitutional rights were violated in that the law with respect to the arrest, trial, custody, transportation, and other requirements of the law with respect to juveniles, was not complied with; and on the further ground that the Commonwealth's Attorney, Mr.
page 413 } Goad, should not have been permitted to testify as a witness in the case and thereafter remain as counsel for the Commonwealth in subsequent proceedings before the Jury.

The Court: All of these various points I will, of course, take under advisement and will fix a later time to be heard at greater length. There are a great many points which you raise that will require considerable legal research and several of them, as I have indicated before, are rather disturbing to me, but I can't set a date right now. I will set a date later on when both of you can be heard at length with authorities.

Subsequently, the Court heard argument of counsel and on May 4, 1959, over-ruled the defendant's motion and exceptions to the ruling of the Court were duly noted by the at-

torney for the defendant on the grounds set forth in the said motion.

Whereupon, the Court sentenced the defendant in accordance with the verdict of the jury.

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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