

FILE COPY

Records Nos. 5162, 5163

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM V. PHILLIPS

v.

COMMONWEALTH OF VIRGINIA

CHARLES R. CAMPBELL

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF WASHINGTON 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. 5163

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1960.

CHARLES R. CAMPBELL, Plaintiff in Error,
against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Washington County

Upon the petition of Charles R. Campbell a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Washington County on the 9th day of October, 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 NO. 5162

WILLIAM V. PHILLIPS

v.

COMMONWEALTH OF VIRGINIA

RECORD

page 9 }

• • • • •

INSTRUCTION NO. 1.

The Court instructs the jury that the defendant is presumed to be innocent until his guilt is established by the evidence beyond all reasonable doubt. It is not sufficient that his guilt is probable only, or even more probable than his innocence, nor can the defendant be convicted on mere suspicion. No amount of suspicion, however strong, will warrant his conviction. But in order to convict, the evidence of guilt must be so strong that there can be no theory from the evidence consistent with his innocence.

Granted.

T. L. H.

page 10 }

• • • • •

INSTRUCTION NO. 3.

The Court instructs the jury that in order to convict the accused of the crime alleged in the indictment every material fact necessary to constitute such crime must be proved beyond a reasonable doubt, and if the jury have a reasonable doubt upon a material fact or element necessary to constitute the crime it is their duty to give the defendant the benefit of such doubt and acquit him.

Granted.

T. L. H.

page 11 }

• • • • •

INSTRUCTION NO. 5.

The Court instructs the Jury, that the oral and written

statements of the defendant, Campbell, made to the police officers, do not constitute admissable evidence against the defendant, Phillips, and cannot be considered by the jury in determining Phillips' guilt or innocence in this case.

Granted.

T. L. H.

page 12 } INSTRUCTION NO. 2.

The Court instructs the jury that in a criminal case admissions and confessions of the accused are admitted with caution, and the Court tells the jury that it is their province to consider all the circumstances under which the alleged confessions were made, and determine their exact nature, import and meaning.

.

Refused.

T. L. H.

page 13 } INSTRUCTION NO. 4.

The Court instructs the jury that the establishment by evidence of the fact that the defendant is of good character, taken in connection with all other evidence in the case, may generate a reasonable doubt in the minds of the jury as to the guilt of the defendant, and if the jury believe from the evidence that such good character of the defendant has been established, and if such reasonable doubt is thereby raised, then such doubt must be given in favor of the defendant and they must acquit him.

Refused.

T. L. H.

.

page 15 }

.

the seventh day of October, in the year of our Lord, nineteen hundred and fifty-nine.

Present: The Honorable Thomas L. Hutton, Judge.

Commonwealth of Virginia,

v.

William V. Phillips.

Commonwealth of Virginia,

v.

Charles R. Campbell.

This day came the Attorney for the Commonwealth, George M. Warren, Attorney for the defendant Charles R. Campbell, E. S. Sheffey, Attorney for the defendant, William V. Phillips, the court reporter who was sworn according to law, and came also the defendant Charles R. Campbell in custody of the sheriff of Washington County, and the defendant, William V. Phillips appeared in obedience to his recognizance, and the Attorney for the Commonwealth and the defendants by their attorneys announced that they were ready for trial at this time, and by agreement it is ordered that these two cases be tried together;

Thereupon, the defendants were arraigned, and upon their arraignments each entered in person a plea of not guilty to the indictment against them for sodomy and the court ordered the venire summoned by the Clerk of this court according to law for the trial of criminal cases at this term to be used for the trial of the defendants in these two cases, and twenty persons from said venire appeared in court and were sworn and examined according to law and were found to be free from all exceptions and qualified in all respects to serve as jurors in these two cases; the Attorney for the Commonwealth and the defendants by their attorneys each struck off four persons from said panel alternately, the Attorney for the Commonwealth beginning, the remaining twelve, to-wit: Raymond E. Harris, William A. Atkins, H. C. Kiser, Jr., Harlow W. Johnson, Preston Miller, George V. Thomas, page 16 } J. Bruce Hyatt, Roy Duncan, V. L. Helton, H. C. McFaddin, C. M. Ringley, and J. Mack Ryburn constituted the jury for the trial of the defendants in these two cases, who were further sworn as required by law to try

the issue in these cases, and the attorneys made their opening statements and the Commonwealth introduced its evidence and rested its case, at which time both the defendants, Charles R. Campbell and William V. Phillips moved the court to strike the evidence of the Commonwealth on the grounds which were dictated to the Court reporter and made a part of the stenographic record herein, which motion the court denied, and the defendants, by counsel, excepted; and the defendants introduced their evidence and rested their case, at which time the defendants, Charles R. Campbell and William V. Phillips renewed their motions to strike the evidence of the Commonwealth on the grounds which were previously assigned, which motion the court denied, and the defendants, by counsel, excepted, and after hearing the instructions of the court and arguments of counsel the jurors retired to their room to consider their verdict, and after some time returned into court having found the following verdict:

“We the Jury find the defendant, Wm. V. Phillips Guilty as charged in the indictment and fix his punishment at 2 years in the State Penat.

J. MACK RYBURN, Foreman.”

“We the Jury, find the defendant, Chas. R. Campbell Guilty as charged in the indictment and fix his punishment at 2 years in the State Penat.

J. MACK RYBURN, Foreman.”

Thereupon, the defendants, by counsel moved the court to set aside the verdicts of the jury in both cases as being contrary to the law and the evidence and without evidence to support them, and on the further grounds which were dictated to the court reporter and made a part of the stenographic record herein, which motion the court takes under advisement until a later date; and the defendants are remanded to jail.

.

page 17 }

.

Circuit Court of the County of Washington, on Friday, the ninth day of October, in the year of our Lord, nineteen hundred and fifty-nine.

Present: The Honorable Thomas L. Hutton, Judge.

Commonwealth of Virginia,

v.

William V. Phillips.

Commonwealth of Virginia,

v.

Charles R. Campbell.

This day came again the Attorney for the Commonwealth, George M. Warren, Jr., Attorney for the defendant Charles R. Campbell, E. S. Sheffey, Attorney for the defendant, William V. Phillips, the court reporter, and came also the defendant, Charles R. Campbell, in custody of the Sheriff of Washington County, and the defendant, William V. Phillips, appeared in obedience to his recognizance. And it appearing to the court that the defendants were regularly tried by a jury upon their plea of not guilty to the indictment against each of them for sodomy on the 7th day of October, 1959, and the jury having found the defendants guilty as charged and fixed the punishment of each of the defendants at two years in the State Penitentiary, and the defendants, by counsel, having moved the court to set aside the verdict of the jury and grant each of the defendants a new trial, which motion the court took under advisement until this time.

Thereupon, the Court heard arguments of counsel on said motion, and having maturely considered the same is of the opinion to, and doth hereby deny the same, and the defendants, by counsel, excepted. Thereupon, it was demanded of the defendant, Charles R. Campbell, if anything he knew or had to say why the court should not sentence him according to law, and nothing being said or offered in delay of judgment, it is ordered by the court that the defendant, Charles R.

Campbell, be, and he is hereby sentenced to serve
page 18 } a term of two years in the State Penitentiary and
pay the costs of this prosecution; and it was likewise demanded of the defendant, William V. Phillips, if anything he knew or had to say why the court should not sentence him according to law, and nothing being said or offered in delay of judgment, it is ordered that the defendant, William V. Phillips, be, and he is hereby sentenced to serve a term

of two years in the State Penitentiary, and pay the costs of this prosecution.

Each of the defendants having indicated to the court their intention of applying to the Supreme Court of Appeals of Virginia for a writ of error herein, it is ordered that execution of each of the two year sentences herein imposed be suspended for a period of sixty days from this date, and the defendants having moved the court to allow each of them to remain at large on bond, which motion was denied, and the defendants were remanded to jail.

* * * * *

page 19 }

* * * * *

Commonwealth of Virginia,

v.

William V. Phillips.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Notice is hereby given of the intentions of defendant, William V. Phillips, to apply to the Supreme Court of Appeals of Virginia for an appeal from the order of the Circuit Court of Washington County, Virginia, on the 9th day of October, 1959, overruling defendant's motion to set aside the verdict and entering final judgment against this defendant in accordance with the jury verdict of October 7, 1959.

ASSIGNMENTS OF ERROR.

1. The Court erred in not granting defendant's motion to strike the evidence made at the conclusion of the Commonwealth's evidence and renewed at the conclusion of all of the evidence.
2. The Court erred in overruling defendant's motion to set aside the jury verdict against him and discharging him from custody.
3. The verdict is contrary to the law and the evidence and without admissible evidence to support it, and the Commonwealth wholly failed to bear the burden of proof of the charge against this defendant.
4. The Court erred in refusing to grant defendant's re-

requested Instruction No. 2 on the effect of the admissability of the alleged confession and in refusing to grant defendant's requested instruction No. 4 concerning the effect of the evidence of good character of the defendant.

5. The Court erred in overruling defendant's objection to the Commonwealth's exceeding the scope of direct examination of Mrs. William V. Phillips in his cross examination of her.

page 20 } 6. The Court erred in overruling defendant's objection to the Commonwealth's statements and questions concerning proceedings at a preliminary hearing where the defendant was a witness, and in denying defendant's motion that the jury be instructed to disregard said statements and questions.

WILLIAM V. PHILLIPS
By Counsel.

E. SUMMERS SHEFFEY
Counsel for Defendant
188 East Main Street
Abingdon, Virginia.

Filed Nov. 20, 1959.

C. N. BOOTH, Clerk.

• • • • •

RECORD NO. 5163

CHARLES V. CAMPBELL

v.

COMMONWEALTH OF VIRGINIA

RECORD

page 4 } Com.,

v.

Campbell.

INSTRUCTION NO. 1-B.

The Court instructs the Jury, that the oral and written statements of the defendant, Phillips, made to the police officers, do not constitute admissible evidence against the defendant, Campbell, and cannot be considered by the jury in determining Campbell's guilt or innocence in this case.

Granted.

T. L. H.

page 6 }

Virginia:

Circuit Court of the County of Washington, on Wednesday, the seventh day of October, in the year of our Lord, nineteen hundred and fifty-nine.

Present: The Honorable Thomas L. Hutton, Judge.

Commonwealth of Virginia,

v.

William V. Phillips.

Commonwealth of Virginia,

v.

Charles R. Campbell.

This day came the Attorney for the Commonwealth, George M. Warren, Attorney for the defendant Charles R. Campbell, E. S. Sheffey, Attorney for the defendant, William V. Phillips, the court reporter who was sworn according to law, and came also the defendant Charles R. Campbell in custody of the sheriff of Washington County, and the defendant, William V. Phillips appeared in obedience to his recognizance, and the Attorney for the Commonwealth and the defendants by their attorneys announced that they were ready for trial at this time, and by agreement it is ordered that these two cases be tried together;

Thereupon, the defendants were arraigned, and upon their arraignments each entered in person a plea of not guilty to the indictment against them for sodomy and the court ordered the venire summoned by the Clerk of this court according to law for the trial of criminal cases at this term to be used for the trial of the defendants in these two cases, and twenty persons from said venire appeared in court and were sworn and examined according to law and were found to be free from all exceptions and qualified in all respects to serve as jurors in these two cases; the Attorney for the Commonwealth and the defendants by their attorneys each struck off four persons from said panel alternately, the Attorney for the Commonwealth beginning, the remaining twelve, to-wit: Raymond E. Harris, William A. Atkins, H. C. Kiser, Jr., Harlow W.

Johnson, Preston Miller, George V. Thomas, J.
page 7 } Bruce Hyatt, Roy Duncan, V. L. Helton, H. C. Mc-

Faddin, C. M. Ringley, and J. Mack Ryburn constituted the jury for the trial of the defendants in these two cases, who were further sworn as required by law to try the issue in these cases, and the attorneys made their opening statements and the Commonwealth introduced its evidence and rested its case, at which time both the defendants, Charles R. Campbell and William V. Phillips moved the court to strike the evidence of the Commonwealth on the grounds which were dictated to the Court reporter and made a part of the stenographic record herein, which motion the court denied, and the defendants, by counsel, excepted; and the defendants introduced their evidence and rested their case, at which time the defendants, Charles R. Campbell and William V. Phillips renewed their motions to strike the evidence of the Commonwealth on the grounds which were previously assigned, which motion the court denied, and the defendants, by counsel, excepted, and after hearing the instructions of the court and arguments of counsel the jurors retired to their room to consider their verdict, and after some time returned into court having found the following verdict:

“We the Jury find the defendant, Wm. V. Phillips guilty as charged in the indictment and fix his punishment at 2 years in the State Penat.

J. MACK RYBURN, Foreman.”

“We the Jury, find the defendant, Chas R. Campbell guilty as charged in the indictment and fix his punishment at 2 years in the State Penat.

J. MACK RYBURN, Foreman.”

Thereupon, the defendants, by counsel moved the court to set aside the verdicts of the jury in both cases as being contrary to the law and the evidence and without evidence to support them, and on the further grounds which were dictated to the court reporter and made a part of the stenographic record herein, which motion the court takes under advisement until a later date; and the defendants are remanded to jail.

• • • • •

page 8 }

• • • • •

Virginia:

Circuit Court of the County of Washington, on Friday, the ninth day of October, in the year of our Lord, nineteen hundred and fifty-nine.

Present: The Honorable Thomas L. Hutton, Judge.

Commonwealth of Virginia,

v.

William V. Phillips.

Commonwealth of Virginia,

v.

Charles R. Campbell.

This day came again the Attorney for the Commonwealth, George M. Warren, Jr., Attorney for the defendant Charles R. Campbell, E. S. Sheffey, Attorney for the defendant, William V. Phillips, the court reporter, and came also the defendant, Charles R. Campbell, in custody of the Sheriff of Washington County, and the defendant, William V. Phillips, appeared in obedience to his recognizance. And it appearing to the court that the defendants were regularly tried by a jury upon their plea of not guilty to the indictment against each of them for sodomy on the 7th day of October, 1959, and the jury having found the defendants guilty as charged and fixed the punishment of each of the defendants at two years in the State Penitentiary, and the defendants, by counsel, having moved the court to set aside the verdict of the jury and grant each of the defendants a new trial, which motion the court took under advisement until this time.

Thereupon, the Court heard arguments of counsel on said motion, and having maturely considered the same is of the opinion to, and doth hereby deny the same, and the defendants, by counsel, excepted. Thereupon, it was demanded of the defendant, Charles R. Campbell, if anything he knew or had to say why the court should not sentence him according to law, and nothing being said or offered in delay of judgment, it is ordered by the court that the defendant, Charles R.

Campbell, be, and he is hereby sentenced to serve page 9 } a term of two years in the State Penitentiary and pay the costs of this prosecution; and it was likewise demanded of the defendant, William V. Phillips, if anything he knew or had to say why the court should not sentence him according to law, and nothing being said or offered in delay of judgment, it is ordered that the defendant, William V. Phillips, be, and he is hereby sentenced to serve a term of two years in the State Penitentiary, and pay the costs of this prosecution.

Each of the defendants having indicated to the court their intention of applying to the Supreme Court of Appeals of Virginia for a writ of error herein, it is ordered that execution of each of the two year sentences herein imposed be suspended for a period of sixty days from this date, and the defendants having moved the court to allow each of them to remain at large on bond, which motion was denied, and the defendants were remanded to jail.

• • • • •

• • • • •

Commonwealth of Virginia,

v.

Charles R. Campbell.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Notice is hereby given of the intention of the defendant, Charles R. Campbell, to apply to the Supreme Court of Appeals of Virginia for an appeal from the order of the Circuit Court of Washington County, Virginia, of the 9th day of October, 1959, overruling defendant's motion to set aside the verdict and entering final judgment against this defendant in accordance with the jury verdict of October 7, 1959. Said appeal will be based upon the following:

ASSIGNMENTS OF ERROR.

1. The Court erred in not granting defendant's motions to strike the evidence made at the conclusion of the Commonwealth's evidence and renewed at the conclusion of all of the evidence.

2. The Court erred in overruling defendant's motion to set aside the jury verdict against him and discharge him from custody.

page 11 } 3. The verdict was contrary to the law and the evidence and without admissable evidence to support it, and the Commonwealth wholly failed to bear the burden of proof of the charge against this defendant.

CHARLES R. CAMPBELL
By Counsel.

GEO. M. WARREN, JR.
714 Reynolds Arcade Building
Bristol, Virginia.
Attorney for Charles R. Campbell.

Filed November 11, 1959.

C. N. BOOTH, Clerk.

• • • • •

Records Nos. 5162 and 5163

Virginia:

Circuit Court of Washington County.

Commonwealth of Virginia,

v.

William V. Phillips.

Commonwealth of Virginia,

v.

Charles R. Campbell.

Appearances: Volney Campbell, Esq., Abingdon, Virginia
Commonwealth Attorney.

Elmo S. Sheffey, Esq., Abingdon, Virginia, Counsel for
Phillips.

George M. Warren, Jr., Esq., Bristol, Virginia, Counsel for
Campbell.

• • • • •

page 3 } The following cases came on to be heard on this
the 7th day of October, 1959 before the Honorable
T. L. Hutton, Judge of the Circuit Court of Washington
County, and a jury of twelve.

The court reporter was duly sworn.

The indictments were read and a plea of not guilty was
entered by both defendants.

Mr. Sheffey: If it please the Court, I would like to register
an objection to the remarks of the Court insofar as his state-
ment as to the nature of the case.

The Court: It is a sodomy case, Mr. Sheffey. You know
what it is as well as I do. I am not indicating anything about
the guilt or innocence of the prisoners, just the language
that will be used in this case or a rape case. There are a
number of ladies present in the courtroom. If they want to
stay, they are welcome. Certainly I haven't indicated to the
gentlemen of the jury about the guilt or innocence of the
parties and don't intend to do so. I don't see how anybody
could be prejudiced by the remarks.

page 4 } (Thereupon, the jury panel was qualified by the Court.)

Mr. Sheffey: Has anyone of you gentlemen ever worked for a law enforcement agency, military service, United States Government, state or local?

The Court: The Court rules that is not pertinent. Proceed with the next question.

Mr. Sheffey: That is all the questions I have.

The Court: Mr. Warren?

Mr. Warren: I don't have any questions.

Before Mr. Campbell begins on that list, may we see you about a matter in chambers? In fact, it has just come to our attention.

The Court: Is there any motion to be made?

Mr. Warren: Yes, sir.

The Court: All right, let's retire to chambers.

(Thereupon, the Court, counsel and defendants retired to chambers where the following proceedings were had.)

Mr. Warren: It has just come to our attention here—I am not sure whether Mr. Booth called his name or not, but I am told that he did. Mr. Scott Mitchell, Jr. is on that jury panel and I understand that he is a state employee, page 5 } that he is a deputy game warden. I don't even know the gentleman, have no personal objection to him because I have no knowledge of him. He is apparently a law enforcement officer of the state.

The Court: Suppose he is.

Mr. Warren: I think that is disqualifying. The Commonwealth is a party to this proceeding.

The Court: I work for the Commonwealth and Mr. Campbell works for the Commonwealth.

Mr. Warren: You may be paid by it, but I think you work for us all.

I don't want to embarrass the gentleman. I have no personal prejudice against him whatever. Have never met him to my knowledge. I don't think Mr. Sheffey has either.

Mr. Sheffey: No, I haven't.

The Court: I don't think it disqualifies him.

Mr. Warren: All right, sir.

The Court: We have some more out there. I want you to have a wholly fair trial.

Mr. Campbell: I don't know whether he is deputy or part time.

The Court: They all answered the questions on their *voir dire*. I think he is qualified, Mr. Warren.

Do you have any others?
page 6 } The Clerk: Yes, I have six others.
Mr. Sheffey: I would like to have another one.

The Court: You have your strikes. You can cut him off, if you don't want him.

Mr. Sheffey: We would like to use the other strikes, your Honor.

The Court: I am going to overrule your motion. He is qualified.

Mr. Warren: Exception.

(Thereupon, the Court, counsel and defendants returned to the open courtroom where the following proceedings were had.)

The Court: Mr. Scott Mitchell, will you stand aside. I believe you are employed by the state part time.

(Thereupon, the juror was excused and another juror called and qualified. Strikes were made by counsel for Commonwealth and Defendants, and a jury of 12 was duly sworn.)

(After a short recess, witnesses were called and excluded under the rule.)

(Thereupon, opening statements were made and the following objections interposed.)

page 7 } Mr. Campbell: * * * Phillips came back to the Police Department voluntarily either the following day after he had been there the first time or the second day thereafter, very nervous and upset, came back voluntarily—he was not sent for—and I believe possibly his wife was with him. I don't know, but she is not a party to this case. Came back there and said that he had not given the entire story when he made his report of his stolen automobile, or the automobile that hadn't been returned. Then in all vivid frankness, gentlemen, he told Officer Norman Smith of the Bristol Police Department and Captain Newton Roark of the Bristol Police Department all of the sordid details of what had transpired that night when these two men were out together in Washington County.

Mr. Warren: If your Honor please, I move to strike that portion of the Commonwealth Attorney's opening statement as to the defendant Campbell and ask the Court to instruct

the jury to disregard it as to the guilt or innocence of the defendant Campbell.

The Court: In other words, it will be hearsay as to him?

Mr. Warren: Yes.

The Court: I think we can take care of that, Mr. page 8 } Warren, on final instructions to the jury at the proper stage. I will deny your motion at this stage.

Mr. Warren: Save exception.

The Court: You are trying two cases, as I told you, gentlemen of the jury. Please bear in mind the two verdicts to be rendered. Some evidence may be introduced as to one that doesn't fit the other, or *vice versa*. Bear in mind that you are trying two distinct cases, please.

Now proceed.

Mr. Campbell: The defendant Phillips made a full statement there as to what had transpired on that night. He made first an oral statement, the officers previously having warned him, when they saw that possibly he was incriminating himself, of his rights, that he did not have to make a statement. They will testify that he was fully warned about any statement that he might make; that he did make a free and voluntary statement which was reduced to writing and will be introduced in this case, gentlemen, signed by him and initialed by him on each page. That statement tells everything that happened. It will have to be presented to you gentlemen, regardless of the disgusting facts that it presents.

Mr. Warren: If your Honor please, I am going to have to object to that comment by the Commonwealth Attorney page 9 } as to his own opinion or evaluation of the facts.

The Court: All right, proceed. Objection is overruled.

Mr. Warren: Save exception.

Mr. Sheffey: I would like to register an objection on the ground that the Commonwealth has commented on evidence the legality of which has not been determined by this Court.

The Court: We will attend to that. Go ahead. State the facts and leave out any argument at this stage.

Mr. Campbell: Yes, your Honor. I apologize if I seem to be arguing.

(Thereupon the opening statements were completed by counsel.)

The Court: Call your first witness.

Mr. Campbell: It was indicated possibly there will be other witnesses for the defendants.

Officer Norman Smith.

The Court: Any other witnesses in the courtroom will follow the sheriff.

The people in the audience—I want you to be quiet and I don't want any commotion or laughter or anything like that.

Conduct yourselves, please, in a quiet and respectful manner. 10 }

Mr. Sheriff, I am going to ask you to be careful that that order is carried out, please, sir.

You may proceed.

OFFICER NORMAN SMITH,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Q. State your name and official position, please, sir.

A. Norman Smith, police officer, Bristol, Virginia.

Q. Mr. Smith, how long have you been a member of the Police Department of Bristol?

A. Nine years this month.

Q. Were you working as an officer in the Bristol Police Department on the 4th through the 7th of August of this year?

A. I was.

Q. Did a gentleman by the name of William J. Phillips, one of the defendants in this case, come to the Police Department?

A. He did.

Q. Do you recall the day and hour when he first came there, sir?

A. It was on August 7, approximately nine page 11 } o'clock. It was on a Friday.

Q. What was his purpose in coming to the Police Department at that time, according to the statement?

A. He had made a statement about his car being missing and he came back to give another statement about his automobile.

Q. When did he first report his car as missing?

A. I think that was August 6 he reported.

Q. Was that complaint made to you or another officer, the first one?

A. Made to another officer.

Q. On the 7th of August when he came back to the Police Department, what was his purpose in coming that time?

Officer Norman Smith.

A. Well, he came in with his wife—

The Court: Gentlemen, let's follow this through. I understand, but call names instead of saying "he" every time. You have two men. Make it certain which one you are talking about.

By Mr. Campbell:

Q. We are at this time talking of the defendant William Phillips, is that correct?

A. Yes, sir.

The Court: Carry that in mind throughout.

By Mr. Campbell:

Q. What statement or report did Phillips make to you on that occasion, the 7th of August?

page 12 } A. Well, I talked to Mr. Phillips and the officers and he gave me a statement stating that the first statement he made about his automobile was incorrect.

Mr. Sheffey: I object, your Honor.

The Court: We are not trying him for the automobile. Go ahead.

Mr. Sheffey: Exception.

A. He wanted to give a correct statement of what happened.

By Mr. Campbell:

Q. Did he give such a statement?

A. Yes, he did.

Q. To whom did he give that statement?

A. Captain Roark and myself.

Q. Prior to his making a statement, was he fully warned of his rights?

A. He was.

Q. Who warned him of his rights?

A. I did, sir.

Q. Advise the Court and jury, if you will, just exactly what you told him.

A. I advised Mr. Phillips that he didn't have to make a statement, and any statement he did make may be used in a court of law against him and he was entitled to an attorney,

Officer Norman Smith.

if he wished one. I asked him if he still wanted to
page 13 } make the statement and he stated that he did.

Q. Did he first make an oral statement to you or
a written statement?

A. He made an oral statement.

Q. In your and Captain Roark's presence?

A. Yes.

Q. Was his statement then reduced to writing?

A. It was.

Q. By whom?

A. By myself.

Q. Was that statement read to him or did he read that
written statement then?

A. I wrote the statement in his presence and then it was
read to him and he read it.

Q. Did he sign that statement?

A. He did, sir.

Mr. Campbell: If the Court please, we would like at this
time to introduce the statement.

Mr. Sheffey: I would like to cross examine the witness
as to the admissibility of this statement, your Honor.

The Court: On what theory?

Mr. Sheffey: On the way it was obtained, your
page 14 } Honor.

The Court: Well, he says it was a free and
voluntary statement.

Mr. Sheffey: I am sure more transpired than what the
witness—

The Court: I don't know whether it did or not.

Mr. Sheffey: That is what I would like to find out, your
Honor.

The Court: I think unless you can aver that you can show
you have reasonable ground to show that the statement was
obtained through duress or threats and not a voluntary state-
ment—

Mr. Sheffey: I have no way of knowing without examining
the witness.

The Court: Overruled.

Mr. Sheffey: Exception.

Mr. Warren: On behalf of the defendant Phillips we ob-
ject to the introduction of the statement at all.

The Court: You mean the defendant Campbell.

Mr. Warren: Campbell, yes, sir. On his behalf, if the

Officer Norman Smith.

Court overrules our objection and allows the statement to be introduced, then we ask the Court to instruct the jury that the statement has absolutely no weight, bearing or probative value of any kind on the case of Campbell.

page 15 } The Court: Let's go along and I will see what to tell the jury.

I will say this, gentlemen of the jury, the statement of this man here, Phillips, is not Campbell speaking, and can't bind Campbell, unless under certain conditions and circumstances, but an ordinary statement by Phillips is no evidence against Campbell. I will cover that more completely after while.

In other words, you are correct in your assumption, Mr. Warren, that the evidence of what Phillips said under the usual conditions is not evidence against Campbell.

Mr. Warren: Yes, sir.

The Court: I will so instruct the jury at the proper time.

Let's get along.

Mr. Warren: All right, sir.

Mr. Campbell: The Court will permit the introduction of the statement?

The Court: Yes.

Have you seen the statement?

Mr. Sheffey: I would like to see it again.

The Court: Have you seen it?

page 16 } Mr. Sheffey: I saw it a couple of months ago.
I would like to see it again.

(Counsel examined statement.)

The Court: Let's expedite things as reasonably fast as possible, gentlemen. Let's don't take too much time. If you are familiar with the statement, okay. If you are not, that is a different story.

Were there any threats, intimidation, or duress used against this man to obtain this statement?

The Witness: No, sir.

The Court: Was it a free and voluntary statement?

The Witness: Yes.

The Court: Of his own own free will and accord?

The Witness: Yes.

The Court: After you told him what you just stated you did tell him?

The Witness: Yes, sir.

The Court: I am going to permit the introduction of the statement then.

Officer Norman Smith.

Mr. Sheffey: Your Honor, I would like to register further objection to admission of this statement on the ground that although the witness testified that the defendant Phillips was fully advised as to his rights and advised that the statement could be used against him, I have no way of know-
page 17 } ing, being refused to have the privilege of cross
 } examining him, whether the witness told the de-
 } fendant Phillips that this statement could be used against him
 } insofar as the reporting, of making a false report as to a
 } stolen vehicle, or in just what respect it could be used against
 } him.

The Court: You heard what the witness *aid*. I asked him if he made any threats, used duress, or violence or intimidation and he said no.

Gentlemen of the jury, step out there just a minute.

(Thereupon, the jury retired from the open courtroom.)

The Court: Gentlemen, out of the presence of the jury—I want to get along. I want to give you the opportunity to protect your interests, but let's not offer these objections unless they are meritorious. Let's don't take up too much time in this argument.

I will permit you to examine this officer out of the presence of the jury. Proceed expeditiously. We are taking too much time.

CROSS EXAMINATION.

By Mr. Sheffey:

Q. In advising the accused, Phillips, of his rights and the fact that this statement might be used against him,
page 18 } what did you have in mind? What did you give
 } Phillips to understand?

The Court: Nobody can answer that, Mr. Sheffey. Just ask him what he said.

By Mr. Sheffey:

Q. What did you say, sir?

A. I just advised him that anything he may make in the statement could be used against him, if he wanted to go ahead and make his statement.

Q. Did you indicate to him that he had better make some

Officer Norman Smith.

kind of statement to you before you could get his car back?

A. No, sir.

Q. You never made that statement?

A. No, sir.

Q. Did you tell him that if he didn't make some kind of statement he was going to be in trouble for making a false report of a stolen vehicle?

A. No, sir, I did not.

Q. Did you tell him that the making of such a false report was a violation of the laws of the Commonwealth of Virginia?

A. I did not, no, sir.

Q. Did anybody else in your presence?

A. Not in my presence, no, sir.

page 19 } Q. Did they of your own knowledge?

A. Sir?

Q. Do you know whether anyone told him that or not at the Police Department?

A. No, sir.

The Court: "Anyone" might have been his half-brother. Be more definite.

By Mr. Sheffey:

Q. Do you know whether any police officer made that statement to him?

A. No, sir.

Q. You do not know?

A. No, sir.

The Court: Anything further, please, sir?

Mr. Sheffey: No, sir.

The Court: All right, bring the jury back.

(Thereupon, the jury returned to the open courtroom.)

The Court: Now proceed.

FURTHER DIRECT EXAMINATION.

By Mr. Campbell:

Q. May I ask one further question before we get into this?

On the occasion that Mr. Phillips came back on the 7th

Officer Norman Smith.

day of August, did he come to the Police Department
page 20 } ment voluntarily or was he sent for? How did
he happen to come?

A. He came voluntarily.

Q. All right. I hand you here what purports to be a statement on four pages of yellow sheets and ask if you will identify that to the Court and jury, please, sir.

A. (Witness examined papers.) Yes, sir.

Q. Is that statement written in your own handwriting?

A. Yes, sir.

Q. By whom is it signed?

A. Signed by Mr. Phillips and Captain Roark and myself.

Q. Did the defendant Phillips sign each and every page of it?

A. Yes, sir.

Q. After it had been read back to him?

A. Yes, sir.

Q. I believe it will show you and Captain Roark initialed the individual pages?

A. Yes, sir.

Q. Start at the beginning, if you will, please, and read that statement to the jury so they can hear it.

A. "August 7, 1959. I, William Vale Phillips, age 37, address Route 1, Box 28, Narrows, Virginia, make the following statement to Captain Roark and Officer Smith, who are members of the Bristol, Virginia Police Department.

page 21 } I make this statement free and voluntary without
promises or threats made toward me. I have also
been advised that I do not have to make a statement and any
statement that I do make may be used in a court of law
against me. I also have been advised I may have an attorney
if I wish.

"On Aug. 6, 1959 at approx. 9:40 A. M. I reported to Captain Roark that I had let a boy who stated his name was Chuck Davis have my car to go home in but this was not how it happened. The *true* is that on Tuesday night Aug. 4, around 10:45 P. M. I was sitting in my car at the F-M Cafe when this boy walked up to my car and we began to talk about one thing another, when this boy stated he had to go up to the Va. Drive Inn to see his brother, and I told him I would drive him up to the Drive Inn and we would have a cup of coffee. I drove this boy to the Va. Drive Inn and we *dranked* a cup of coffee and the boy then stated I forgot my brother didn't go

Officer Norman Smith.

to work until 3 o'clock and don't get off until 12 o'clock. So I began driving toward Bristol on the way the boy said that the coffee just went thru him and he would like to take a leak. So I turn off the hwy. toward the Bristol Pool on Wallace Rd. Just before I got to the pool I turned off onto a side road to the left and stopped. The boy got out and stepped behind the car and taken a leak. I got out also and taken one. We got back into the car and another

page 22 } car came up behind us so I pulled out and drove toward Bristol. I turned off again into Briarwood Addition and parked. So this boy began to play with himself. He pulled his pants down and began to play with his private and asked me if I had ever seen anything like that before. I told him I have one of those myself. He then asked me if I would blow him. I told him I couldn't do anything like that, but I tried to any way. I taken his private in my mouth but I couldn't go on so told him I would *tried* it otherwise, so I taken my pants down and this boy had a unnatural intercourse with me from behind. After leaving Briarwood the boy began to drive my car. He stated he had never driven a Olds and wanted to drive, which I agreed. On the way to town this boy asked me to let him keep the car until tomorrow, and he told me it belongs to me and I could let him have it. I told him I can't let you have this car, it's not paid for, and he said yes you can *to*, look what I did for *for* and said yes look what you did do to me. He then said if you don't let me have the car I will run it and you into a house or over some cliff. When he began to talk like this I got scared and began to tell him the car had a bad tire and etc. This boy said he would take me home and bring the car back the following day. I told

page 23 } him I can't let him have the car again. He said that he was broke and he needed some money to pay off a bill or two and he wanted me to give him some money. I was still scared and didn't know what to do so I had \$7.00 (seven dollars) and I gave him \$1.00 (one dollar) to start with and he said I was holding out on him and I then gave him the other \$6.00 dollars. I had more but I hid approx. \$60.00 of my money when he wanted to see my billfold. He still said he was going to keep the car and was going to take me home. I thought maybe if I kept him driving long enough the car would run out of gas. So we drove out the old Abingdon Hwy. and thru one of the additions and back to Valley Drive near the Monroe Plant and stopped and a police car came by and the boy told he would do the talking. When the police car stopped the boy told

Officer Norman Smith.

him that I was his boss and that we were talking over what we were going to do tomorrow. The officer asked if I was sick. I stated no I am not sick, this was at approx. 1 o'clock in the morning. I taken my wife's papers to the car and my check book out of the car and got out and I told the boy to be *use* to meet me at 9:00 o'clock in the morning and he said he would and drove off and I walked to 225 Old Abingdon Hwy. where my wife and I are staying at the present time. The following day I looked for my car and this boy but have not seened either.

"I have read and had read to me the following page 24 } statement and it is true to the best of my knowledge.

"Signed: Wm. V. Phillips.

"Witnessed: Norman Smith. Newton J. Roark."

Mr. Warren: If your Honor please, on behalf of the defendant Campbell I move the Court to exclude this statement as to the defendant Campbell and to instruct the jury to disregard it as to the guilt or innocence of the defendant Campbell.

The Court: Well, I will make a proper ruling on that at a little later stage, Mr. Warren. I will take care of that. I won't overrule it, but I will let it ride at the present time.

Mr. Warren: All right, sir. We think we are entitled to have them told that. They just heard the statement.

The Court: Gentlemen of the jury, of course this is Phillips talking. It will be considered as evidence against Phillips. That is the reason it was introduced, I take it. Ordinarily I can't bind you or you can't bind me with a statement. That is the general rule. There are some qualifications to the rule under certain exceptions. It will be fully covered at the proper time.

Mr. Warren: I respectfully save exception, your page 25 } Honor.

Mr. Campbell: May we introduce this?

The Court: Let it be introduced and marked Commonwealth's Exhibit No. 1.

(Commonwealth's Exhibit No. 1 was marked for identification and filed.)

Mr. Sheffey: I would like to renew my objection to admission of this statement on the ground that the warning as to

Officer Norman Smith.

rights were improper and that the accused Phillips was not properly warned and advised as to how the statement could be used against him and on what charge.

The Court: We have gone into that fully, Mr. Sheffey, and I have already ruled. That objection is overruled.

Mr. Sheffey: Exception, your Honor.

The Court: Let's proceed.

By Mr. Campbell:

Q. Mr. Smith, are you familiar with the Briarwood Addition?

A. Yes.

Q. Where is it located?

A. Located just outside of the city. It is on the left traveling toward Abingdon.

Q. Is that in Washington County?

page 26 } A. Yes.

Q. Outside of the corporate limits?

A. Yes.

Q. Mr. Smith, when was—if you know, when was the defendant Campbell arrested?

A. He was arrested Friday afternoon, August 7.

Q. Did you talk to defendant Campbell?

A. No, sir.

Q. You did not talk to him?

A. No, sir.

Mr. Campbell: I believe that is all.

The Court: You may cross examine, gentlemen.

CROSS EXAMINATION.

By Mr. Sheffey:

Q. You stated when Mr. Phillips came back the second time he appeared very upset and nervous?

A. Yes, sir.

Mr. Sheffey: That is all. That is the only question I have.

CROSS EXAMINATION.

By Mr. Warren:

Q. Mr. Smith, you say you did not talk to Campbell?

A. No, sir.

Officer Norman Smith.

Q. You are the man, however, that Phillips re-
page 27 } ported to, is that right, in jail?

A. The second time.

Q. And at that time was any warrent outstanding for Mr. Phillips?

A. No, sir.

Q. At the time this statement was given was any charge of any kind to your knowledge then in existence against Mr. Phillips?

A. No, sir.

Q. I believe there was a subsequent hearing in the Municipal Court, Police Court in Bristol, on a charge that was then outstanding against Campbell, is that right?

A. Yes.

Q. It was a charge of unauthorized use or larceny, whichever it might have been, of an automobile, growing out of Phillips' statement, was it not?

A. Not out of this statement. It was out of the statement unauthorized use of his car.

Q. I am talking about the original statement he made, the oral statement he made when he came to the police station and reported the car stolen or whatever it was.

A. Yes, sir.

Q. Campbell was found not guilty on that charge?

A. Yes.

page 28 } Q. Do you know how old Mr. Phillips is?

A. I think he gave his age as 37.

Q. Thirty-seven. Do you know how old Campbell is?

A. No, sir, I don't.

Q. Campbell has been in jail since he was arrested on that Friday afternoon, hasn't he?

A. I don't know. To my knowledge I couldn't say.

Mr. Warren: All right, that is all.

Mr. Campbell: Since the defense brought that out, I would like to open up a new—

The Court: Gentlemen, we are not trying the unauthorized use of the car.

Mr. Campbell: No, sir.

The Court: The only issue is whether he is guilty as charged in these two indictments—one indictment against each. We are not trying about the automobile. It couldn't be admissible on any theory, unless to show bias or prejudice.

Officer Norman Smith.

Mr. Campbell: That is not what I had in mind.
The Court: All right, proceed.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Mr. Smith, at the hearing Mr. Warren mentioned in Bristol did the defendant Phillips take the oath page 29 } and testify?

A. Yes, sir.

Mr. Sheffey: I object, your Honor.

The Court: We are not going to show what happened down there unless for the purpose of contradiction.

Mr. Campbell: For the purpose of verification, your Honor.

Mr. Sheffey: Your Honor, that is still objectionable.

The Court: What is the theory?

Have a seat, Mr. Sheffey.

Mr. Campbell: We will show, your Honor, that the defendant Phillips, on sworn testimony in the court in Bristol in the other hearing, testified under oath that that statement which was handed to him was correct.

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

The Court: I don't know. We will get to that at a later stage.

Mr. Campbell: Which I would take to be verification.

The Court: I don't know whether he will take the stand or not. The objection is sustained on the part of page 30 } this—

Mr. Sheffey: I request the jury be instructed to disregard that.

The Court: That motion is denied.

Mr. Warren: On behalf of—

The Court: It is denied.

Mr. Sheffey: Exception.

Mr. Campbell: Stand aside.

Mr. Sheffey: If it please the Court, I would like possibly to call this witness.

The Court: Don't point your finger. Conduct yourself in the proper manner, please, sir.

What is your motion?

Mr. Sheffey: My motion is to request the witness to stay around because we might need him again.

The Court: He hasn't been excused.

Captain Newton J. Roark.

Mr. Warren: In the event we should like to use him, we would like for the rule to continue to apply to Mr. Smith.
The Court: All right, let him go out.

(Witness excused.)

CAPTAIN NEWTON J. ROARK,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 31 } By Mr. Campbell:

Q. State your name and official position.

A. Newton J. Roark, captain of police, Bristol, Virginia.

Q. How long have you worked as police officer?

A. Seventeen years.

Q. How long have you been a captain?

A. About 14.

Q. Fourteen years. Captain Roark, in the 4th of August were you on duty at the police station in Bristol?

A. Yes, sir.

Q. Did William V. Phillips, one of the defendants in this case, come to the Bristol Police Department to make a report or complaint?

A. Yes, sir.

Q. Did you take that report?

A. Yes, sir, I had the desk clerk to take the report. I was standing there while he was giving it.

Q. What complaint or report did he make on that occasion?

A. He reported—

Q. Phillips.

A. He reported a boy, Davis boy, having his automobile.

page 32 } He stated Chuck Davis had his automobile and he didn't think he wanted to give it back.

Q. Was that the full complaint on the 4th of August?

A. Yes, sir, the first day.

Q. Was Phillips told to come back to the Police Department at any particular time?

A. No, sir, he wasn't told to ever come back. We told him we would look for the car. He said he didn't want to prosecute the boy that had the car.

Captain Newton J. Roark.

Q. Subsequent to that time did the defendant Phillips come back to the Bristol Police Department?

A. Yes, sir, he and his wife came in.

The Court: Leave the wife out of it, gentlemen, at this stage. Quote him, don't undertake to quote anybody else.

By Mr. Campbell:

Q. Do you recall when that was, how long after the first visit?

A. That was on the 6th, I believe, that he was in there and made a full report, on the 6th of August.

Q. Did he come back then of his own free will and accord?

A. Yes.

Q. He had not been sent for by any officer or anything?

A. No, sir.

Q. Did you talk to him on this other occasion, the page 33 } second occasion, talk to Phillips on the second occasion when he came back?

A. Yes, sir, I did.

Q. What statement did he make then?

A. He made this statement here to Officer Smith and I.

Q. Did he advise you that he wanted to make a different statement from the one he had originally made?

A. Yes, sir, he did.

Q. Did he say why he wanted to change his story?

A. He said he wanted to tell the truth about it, that this boy had his automobile and he wanted to make a statement stating the facts about it.

Mr. Warren: I hate to interrupt, but on behalf of my client, Mr. Campbell, I feel compelled to move again that the Court instruct the jury to disregard any statement that came from the mouth of Phillips as to the guilt or innocence of Campbell.

The Court: I stated a while ago—I have already told the jury, and I tell you again—this statement has been introduced. That was made by the defendant Phillips, purported to have been made, according to the testimony. Now then any quotation of Phillips, of course, can't bind Campbell.
page 34 } You will consider that statement against Phillips, but not against Campbell.

Is that clear, Mr. Warren? Does that suit you?

Mr. Warren: I think that does it.

The Court: That is the third time I told them.

Captain Newton J. Roark.

Mr. Warren: I don't mean to be too persistent.
The Court: Proceed:

By Mr. Campbell:

Q. Was statement made to you freely and voluntarily,
Captain Roark?

A. Yes, it was.

Q. Had Phillips, was he warned of his rights?

A. He was, yes, sir.

Q. Before he made any statement?

A. Before he made any statement at all he was warned of
his rights.

Q. Who warned him?

A. I did. Smith wrote that in the statement before he
started the original statement.

Q. When he came in there did you have any idea what the
nature of this subsequent statement would be?

A. No, sir, I didn't know what he was going to tell us.

Q. Was he threatened in any way or intimidated in any
manner whatsoever?

A. No, sir, he was not.

page 35 } Q. Did he make an oral statement to you first?

A. He made the statement while Smith was
writing.

Q. And Officer Smith was the one in whose handwriting the
statement is?

A. Yes.

Q. Was that made in your presence?

A. Yes, it was.

Q. I don't want you to read it, it has already been read.
I will ask you if you will identify that.

A. That is the statement that Phillips gave.

Q. Was that statement made, reduced to writing and signed
by the defendant Phillips in your presence?

A. Yes, sir.

Q. I believe you have initialed it for identification on each
page, is that correct?

A. Yes, sir.

Q. Captain Roark, at the time the statement was made was
the name of the co-defendant known to the Police Department
in Bristol?

Mr. Warren: If your Honor please, I object to that. He
doesn't know what is known to the Police Department.

Captain Newton J. Roark.

The Court: Ask if he knew, if Captain Roark did.

By Mr. Campbell:

Q. Did you know who the co-defendant was?
page 36 } Did you know, Captain Roark?

A. No, sir, I didn't.

Q. Was the description given you by the defendant Phillips?

A. Yes, sir.

Q. When did you learn that the person who was called in this statement Chuck Davis was the defendant Charles R. Campbell?

A. After Sheriff Clendenen and Taylor had arrested this fellow in an automobile.

Q. Did you see Campbell after he was arrested?

A. Yes, sir, I did.

Q. Was that in or out of the presence of the defendant Phillips?

A. It was out of Phillips' presence.

Q. Did you talk to the defendant Campbell?

A. Yes, sir, I did.

Q. Prior to talking to him was he warned of his rights?

A. Yes, sir, he was.

Q. Tell the Court and jury, please, what warning was made and what information he was given as to his rights to make or not to make a statement.

A. He was told that he didn't have to make any statement at all and any statement that he made might be
page 37 } used against him in a court of law, and that if he so desired, he could have an attorney present.

Q. Did he then make a free and voluntary statement?

A. He first said that he didn't want to make a statement, and from there he started to talk.

Q. Was the statement he then made free and voluntary?

A. Yes, it was.

Q. Any threats or intimidation used against him?

A. No, sir, none whatsoever.

Q. Did he know at the time he made a statement what he was accused of?

Mr. Warren: I object to that, if your Honor please. I think this witness can testify what he told him, but I don't think he can qualify to testify what this young man knew or didn't know.

The Court: Objection sustained.

Had he been advised of the charge?

Captain Newton J. Roark.

The Witness: Yes, sir, he was advised.

The Court: You may ask the witness if he had been advised of the charge.

By Mr. Campbell:

Q. Had he been advised of the charge against him at the time he made the statement?

A. Yes, sir, he had.

Q. Will you relate to the Court and jury what page 38 } statement the defendant Campbell made to you?

Mr. Warren: Just a minute. If your Honor please, I object to that. I don't think they have properly laid the foundation or qualified this witness for that statement.

The Court: I think they have, Mr. Warren. He said it was free and voluntary, did not use force.

Mr. Warren: They didn't say what they had advised him of, what he was charged with or anything of the kind.

The Court: He said he advised him of the charge. You can ask what the charge was.

Mr. Warren: We except.

The Court: What did you advise him he was charged with?

The Witness: Sodomy.

The Court: All right, proceed.

What statement, if any, did he make to you? Let's get along.

The Witness: He made a statement—

The Court: You are talking about Campbell?

The Witness: Campbell, yes, sir.

The Court: What did Campbell say to you?

The Witness: It was identical to this statement page 39 } here.

Mr. Warren: I object to that, if your Honor please.

The Court: Wait a minute. Just state, not identical with some other statement—just state as best you can remember the exact language used by this defendant to you.

The Witness: He stated he got with Phillips on Piedmont Avenue and Phillips took him up to Virginia Drive-In and they returned, had a cup of coffee at the Virginia Drive-In. On their way back they stopped to relieve themselves on the Wallace Road—up near Crystal Pool. They got back in the car and proceeded down the highway to Briarwood, that ad-

Captain Newton J. Roark.

dition on the outskirts of Bristol in Washington County. And they pulled over on the street there and stopped, and while they were stopped there Phillips put his hand over on Campbell's leg and Campbell said he told him he was going to take his damn hand'off "my leg." He said that was the first time he knew he was queer.

Mr. Sheffey: Your Honor, I have to object to that and request the Court to give a similar instruction to the jury.

The Court: All right, let's proceed. I will give page 40 } the instruction. Don't interrupt.

Mr. Sheffey: Exception.

The Court: Go ahead.

By Mr. Campbell:

Q. Proceed, please, sir.

A. And Campbell was riding with Phillips up until they got into the Briarwood Addition. That is where he stated that Campbell took over driving and took Phillips home down on the Old Abingdon Highway inside the city.

Mr. Warren: Who stated that? You stated Campbell did—

The Court: Wait a minute, Mr. Warren. Don't interrupt, please, sir.

Mr. Warren: Excuse me, your Honor.

The Court: Go ahead. Tell us all the details.

The Witness: Campbell stated that he took the driving there and took Phillips home so he could have a way to come back to town to get Phillips the next day.

The Court: You have been interrupted so much, Captain Roark. Just go ahead, before they got to Briarwood—take a fresh start right there, please, and relate exactly what this witness said, what happened there and the details.

The Witness: After he said Phillips put his hand over on his leg, that is Campbell, he said he cussed him page 41 } and said that was the first time he knew Phillips was queer. From there he took him over on the Old Abingdon Highway and let him out. That is as far as he went with his statement.

He said Phillips let him have the car, told him to go ahead and use it and come back and get him the next day.

The Court: That was Campbell's statement to you?

The Witness: Yes, sir.

The Court: Proceed.

Captain Newton J. Roark.

By Mr. Campbell:

Q. Did Campbell state how Phillips happened to let him take his automobile?

A. He said he let him have it voluntarily to come back to get him the next day, that they were going to do some fishing and some work that Phillips had that he wanted to be done.

Q. Did Campbell state whether or not he had ever seen or known Phillips before they saw each other before at the F and M Cafe?

A. He said he had never seen him before to his knowledge.

Q. Did he state how long he kept the car, what he did with it?

Mr. Warren: I object to that as being imma-
page 42 } terial.

The Court: Objection overruled.

Mr. Warren: Exception.

By Mr. Campbell:

Q. You may answer the question.

A. He stated that he hadn't took the car to keep it, that he would have given it back to Phillips, that he talked to Phillips on the day following this and he had left the car up on a parking lot; that is the reason he didn't have it with him when he talked to Phillips.

Q. Did Campbell make any statement about any money changing hands on that night?

Mr. Warren: Object to the leading.

The Court: I think it is. Ask the officer to go forward and tell the whole conversation.

Proceed.

Mr. Warren: Exception.

A. He denied, as I remember, denied any money being passed between the two.

Mr. Campbell: I believe that is all.

The Court: Now then, gentlemen, that statement made by this witness, alleged to have been made by the defendant Campbell, as testified by this officer, of course, is not binding upon the other defendant Phillips. The Court gives you the

Captain Newton J. Roark.

same instruction as it did a while ago with refer-
 page 43 } ence to Phillips' statement not being binding on the
 other defendant Campbell.

Now proceed.

Mr. Campbell: May I ask one further question?

By Mr. Campbell:

Q. Have you ever talked to the defendant Campbell and the defendant Phillips together?

A. No, sir, I haven't.

Q. Have you ever been present when they were together discussing what happened that night?

I was in Police Court when this—

Mr. Warren: I object to that now. He is starting to state what occurred in Police Court.

The Court: I don't know what it is. Go ahead. Let's see what his answer is.

A. Where Judge Davis—

The Court: Let's see what the question is. Reframe the question. We are not trying these proceedings over. Reframe your question.

By Mr. Campbell:

Q. I asked you, Captain Roark, if in the Police Court of the City of Bristol, if the defendant Phillips stated under oath that this written statement was true?

A. Yes, sir.

Mr. Sheffey: Objection. I request the Court to instruct the jury to disregard that.

page 44 } The Court: Objection overruled.

Mr. Warren: The same objection here, your Honor. The question was leading and immaterial as to—

The Court: He is not quoting your man Campbell, he is quoting Phillips.

Mr. Warren: Yes, but it is inadmissible as to Campbell.

The Court: We are not trying him on the Police Court case.

Mr. Warren: That was on another charge.

The Court: I don't know. Let's just try this one here and not try the one in Bristol over. Proceed.

Captain Newton J. Roark.

By Mr. Campbell:

Q. Was Campbell present when that statement was made by Phillips?

A. Yes.

The Court: Is that the Police Court?

Mr. Campbell: Yes.

The Court: He is not responsible for what Phillips testified, gentlemen.

Mr. Campbell: I think an accusation was made in his presence, and whether or not he denied it or affirmed it would be admissible.

The Court: I am against you on that. Let's get along to something else.

page 45 } By Mr. Campbell:

Q. I would like to ask this, if the Court please, and don't answer. Did the defendant Campbell, after Phillips made that statement, deny the fact?

The Court: Objection is sustained.

Mr. Campbell: I believe that is all.

The Court: You may examine first, Mr. Warren, as to Campbell.

CROSS EXAMINATION.

By Mr. Warren:

Q. Only one question. Newt, can you tell the jury what date it was when you had this conversation with Mr. Campbell that you have related parts of to the jury or all of to the jury? What date did that occur on?

A. On Friday, August 6, at around 3:30.

Q. Friday, August 6.

A. The time is not exact, but in the neighborhood of 3:30.

Mr. Warren: Thank you. That is all.

The Court: Mr. Sheffey, any questions of this witness?

CROSS EXAMINATION.

By Mr. Sheffey:

page 46 } Q. Mr. Roark, upon Mr. Phillips' second visit
to the police station, was he nervous and upset, or did he appear to be?

Captain Newton J. Roark.

A. He appeared to be, yes, sir.

Mr. Sheffey: No further questions.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Did he tell you why he was nervous and upset?

A. He stated that he was afraid of this fellow who had his car.

Q. And that is when he made this statement?

A. Yes.

RE-CROSS EXAMINATION.

By Mr. Sheffey:

Q. You say he said he was afraid of him?

A. Yes.

The Court: Wait a minute. Gentlemen, I am going to have to request that we proceed in an orderly fashion. Wait for one to get through before you break in. Let's conduct the case as it should be.

Are you through?

Mr. Campbell: Yes, sir.

Mr. Sheffey: Your Honor, I understood him to say he was through before I asked my question.

The Court: Proceed. You had him once and page 47 } finished with him. Do you want to ask him an omitted question?

Mr. Sheffey: Mr. Campbell had him again and opened up a new field.

The Court: I am not going backward and forward.

Mr. Sheffey: I have no further questions.

The Court: If you have any additional questions, you may ask.

Mr. Sheffey: Nothing further, your Honor.

The Court: Stand aside.

(Witness excused.)

The Court: I want to give each of you a full and fair opportunity to present your case. Let's do it in an orderly fashion. Let's don't seesaw back and forth.

DEPUTY SHERIFF R. A. CLENDENEN,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Q. You are R. A. Clendenen, Deputy Sheriff of Washington County?

A. Yes, sir.

Q. Mr. Clendenen, in the early part of August of page 48 } this year did you, together with another officer, stop Charles R. Campbell and bring him in?

A. Yes, sir, I did.

Q. Do you recall when that was?

A. It was on Friday, as I remember, I believe the 7th.

Q. Where was he located, sir?

A. I observed the car pull into the lot of the Star Drive-In here west of Abingdon.

Q. Whose car was it?

A. We checked the tags. I believe they were issued to Mr. Phillips over at Narrows, Virginia.

Q. At the time Campbell stopped at the Star Drive-In, what was he stopped for? What was he charged with at that time?

A. There was an unauthorized charge against him in Bristol on this car and I had been watching for the car for some little time when I spotted it.

Q. Do you know when the sodomy warrant against Campbell was issued?

The Court: The warrant is the best evidence there, gentlemen.

Mr. Campbell: Yes, sir.

A. I believe it was issued that afternoon later.

page 49 } Mr. Campbell: I don't think it is material. I withdraw that, your Honor.

By Mr. Campbell:

Q. Did you talk to the defendant Charles R. Campbell?

A. Yes.

Q. I don't want you to talk about the unauthorized use of the automobile charge. Did you discuss with him the sodomy charge?

Deputy Sheriff R. A. Clendenen.

A. Yes, sir, I did.

Mr. Warren: If your Honor please, he testified there wasn't any sodomy charge outstanding against him at that time.

The Court: He said the warrant was issued that afternoon.

Let's proceed. Go ahead.

By Mr. Campbell:

Q. After he had been charged with sodomy, did he make any statement to you or in your presence?

A. Yes, sir. I questioned him about this at the Police Department in Bristol.

Q. Did he make a free and voluntary statement?

A. Yes, sir, he did.

Q. Was he fully and completely warned of his rights before making any statement?

page 50 } A. Yes, sir, he was.

Q. What statement did the defendant Campbell make to you in your presence?

A. He stated that he got with Mr. Phillips over about the F and M Cafe, and they had gone out to the Virginia Drive-In or Kerns Bakery to see his brother and that they came on back, drank some coffee and came on back down No. 11 there and stopped in the Briarwood Addition or thereabouts in there. Phillips had made an advance toward him, laid his hand over on his leg, and that he had told him to get his hand off of him or he would break his neck.

Q. Go on and tell what he said after that.

A. We questioned him then some more about it, about what went on, about the car, why he had the car and if he knew who Phillips was and so forth and if he knew Mr. Phillips was a queer, and he said that he did know it after he had laid his hand over on his leg.

Q. What did he say they did then?

A. He had gone on, I believe, and taken Mr. Phillips home, as I remember—there wasn't any written statement on that—and had kept the car.

Q. Did he state how long he had kept the car?

page 51 } A. Well, he had the car on Friday when he was picked up.

Q. Did he state whether he had ever known Phillips before they met there in Bristol that night of the 4th?

Deputy Sheriff R. A. Clendenen.

A. I don't recall, sir, whether he stated that or not.

Q. Mr. Clendenen, where is the Briarwood Addition?

A. It is just a short distance out of the City of Bristol in Washington County west of No. 11 highway.

Q. Have you gone back to the scene where they supposedly stopped?

A. I have been by there several times.

Q. Have either one of the defendants pointed out to you where they stopped?

A. Not to me, no, sir.

Q. Was any statement made by defendant Campbell about money changing hands?

A. No, sir, not to me.

Q. Have you talked to Phillips?

A. No, sir, I have not.

Q. You have not talked to him. That is all.

The Court: You may cross examine.

Mr. Warren: No questions.

Mr. Sheffey: No questions.

The Court: Stand aside.

(Witness excused.)

page 52 } The Court: Gentlemen, I guess it is about time
for the noon recess.

Please observe this admonition on the part of the Court. Do not permit anyone to mention this case in your presence or hearing; or discuss it with you in any manner whatsoever.

Let us return to our seats here about 1:05. According to my watch, I am now 12:05.

(Thereupon, court adjourned at 12:05 p. m. for the noon recess.)

page 53 } AFTERNOON SESSION.

(Thereupon, court reconvened at 1:05 p. m.)

The Court: Now then, Mr. Campbell, if you are ready, may we proceed.

Mr. Campbell: If I may have one minute to see Mr. Kite, we may announce through.

The Court: All right.

Deputy Sheriff R. A. Clendenen.

(Counsel confers with witness.)

Mr. Campbell: The Commonwealth announces through.

Mr. Warren: If your Honor please, I have a motion I would like to make in the absence of the jury.

The Court: Gentlemen, step out in the hall.

(Thereupon, the jury retired from the open courtroom.)

The Court: Now, Mr. Warren, state your motion.

Mr. Warren: If your Honor please, the defendant Campbell respectfully moves the Court to strike the Commonwealth's evidence as to the charge against him for the reason, sir, that I followed this evidence very carefully and I see absolutely no evidence here that, first of all, as to Campbell proves even the *corpus delicti*, and certainly there is no evidence at all that proves that he took part in any
page 54 } offense of the nature charged. I think that essentially is the whole statement of our motion.

The Court: All right, let's hear your motion.

Mr. Sheffey: Your Honor, my motion is essentially the same. It is based on the ground that the Commonwealth has failed to establish the *corpus delicti*, either as to the crime itself and have evaded it as far as that goes—

The Court: Evaded what?

Mr. Sheffey: The place where the act was alleged to have occurred, as to the county or city.

The Court: He said it was out in the county. There is no doubt about that.

Mr. Sheffey: But those statements were contained in the evidence admitted before the Court—

The Court: Deputy Sheriff Clendenen said it was out in Briarwood, it was out in the county.

Mr. Sheffey: He said they told him it was out in the county.

The Court: Briarwood is in the county. Go ahead, please, sir.

Mr. Sheffey: I have nothing further, except I would request the Court to examine the applicable case law in regard to the *corpus delicti* and establishment thereof.

page 55 } The Court: Your motions are respectfully denied. Bring back the jury.

Mr. Sheffey: Exception.

Mr. Warren: Defendant by counsel excepts.

Mrs. W. V. Phillips.

(Thereupon, the jury returned to the open courtroom.)

The Court: You gentlemen may proceed as you may be advised.

Mr. Sheffey: On behalf of the defendant Phillips the defense calls as its first witness Mrs. Phillips.

MRS. W. V. PHILLIPS,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Sheffey:

Q. Your name is Mrs. Phillips?

A. Yes, sir.

Q. You are the wife of the defendant in this case, William Phillips, is that correct?

A. Yes, sir.

Q. How long have you and Mr. Phillips been
page 56 } married?

A. Approximately 12 years.

Q. Where were you married?

A. Fries, Virginia.

The Court: That is not material. Let's get along.

By Mr. Sheffey:

Q. Where do you live, Mrs. Phillips?

A. We have a farm in Giles County and also have a home in Bristol, Virginia in the McChesney Heights area.

Q. In the McChesney Heights section?

A. Yes, sir.

Q. Do you have any children?

A. Yes, sir, we have two, a daughter seven and a son nine.

Q. Are these children in school?

A. Yes, sir, they are.

Q. Do you have an occupation other than a housewife?

A. Yes, sir, I have taught school for 12 years.

The Court: I will have to require you to get down to the issue. We are not trying this lady's family.

Mr. Sheffey: Your Honor, a defendant's character—

Mrs. W. V. Phillips.

The Court: I don't want any argument. The Court ruled. Adhere to that ruling.

Mr. Sheffey: I except to your ruling.
page 57 } The Court: Proceed. Prove his general character, if you are going to prove it.

Mr. Sheffey: That is what I was attempting to do.

The Court: There is a way to do it. Let's proceed.

By Mr. Sheffey:

Q. Are you and your husband living together now?

A. Yes, sir.

Q. Would you describe, please, to the Court and jury the relation between you and your husband for the last 12 years.

The Court: I will not permit that. We are not trying that.

Mr. Sheffey: Your Honor, I would like—

The Court: No argument. Proceed.

Mr. Sheffey: Exception, your Honor.

The Court: All right, proceed. We would be here for ten years maybe, five weeks or two days or something. That is not the issue, gentlemen.

Mr. Sheffey: Do I understand that the Court is precluding all argument by counsel?

The Court: I haven't precluded any argument by counsel, just extraneous matters. Let's proceed, Mr. page 58 } Sheffey. Propound your question and let's get along.

By Mr. Sheffey:

Q. Mrs. Phillips, when did you first become aware of the charge placed against your husband?

A. When I was told.

Q. Approximately what date?

A. Not until he was jailed and I went down to see.

Q. What date? Do you remember what month?

A. In August. It was around the 8th, I believe, sir.

Q. You bonded him out, is that right?

A. That is correct.

Q. And you and he have been living together as man and wife since then?

A. Oh, yes, definitely, because he has done nothing wrong.

Mr. Campbell: If the Court please, I object to that.

Mrs. W. V. Phillips.

The Court: That is a conclusion. Let's get along. That is not the issue.

Mr. Sheffey: All right, your Honor. I am through.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mrs. Phillips, where was your husband on the night of August 4?

Mr. Sheffey: I object to that. That exceeds page 59 } the scope of direct examination.

The Court: Objection overruled.

Mr. Sheffey: Exception.

By Mr. Campbell:

Q. If you know.

A. Sir?

Q. Do you know where your husband was on the night of August 4?

A. Yes, sir, he was working.

Q. Do you know that of your own knowledge?

A. Yes, sir.

Q. Where does he work?

A. N & W.

Q. Do you know where physically he was, on the railroad or at the station or where?

A. Yes, I think it could be proven that he was on a freight train.

Q. Do you know? Did you see him at work?

A. Well, no, sir.

Q. So you don't know where he was, do you?

A. No, sir.

Q. Do you know William Phillips?

A. Yes, sir.

Q. I mean do you know Charles Campbell?

A. No, sir.

page 60 } Q. Mrs. Phillips, you went with your husband to the police station on August 6 and 7, did you not?

A. Yes.

Mr. Sheffey: I offer the same objection on the same ground.

Mrs. W. V. Phillips.

The Court: Overruled.
Mr. Sheffey: Exception.

By Mr. Campbell:

Q. Why did he go to the police station on the second occasion?

A. Because at my request I asked him to, but it has nothing to do with his character.

Q. Why did you ask him to?

A. Because I have worked for two years and poured \$2,000 of my own money into that automobile and I hated to see Mr. Campbell keep it.

Q. He had already reported the loss of the automobile, hadn't he?

A. Yes, sir.

Q. Why did you go with him to change his story?

A. I didn't have anything to do with changing the story.

Q. If he had already reported the loss of the automobile and they were hunting it—

The Court: I don't know that that is within page 61 } her knowledge.

The Witness: In fact, I had no knowledge of what had gone on, Mr. Campbell.

The Court: You can ask her what she did. She is not responsible for what somebody may or may not have done.

By Mr. Campbell:

Q. Mrs. Phillips, isn't it true that you learned what had happened that night and you wanted your husband to go and tell the true fact about it?

A. No, sir, I knew nothing. In fact, I still feel that he is not guilty.

Q. We are not interested in what you feel. We are interested in what you know, Mrs. Phillips. When you went to the police station that morning did you hear him talk to the officers?

A. No, sir. He was taken downstairs and pressured.

Q. Do you know that of your own knowledge?

A. Yes.

Q. You were downstairs watching?

A. No, sir, I was sitting upstairs.

Q. You heard the blood-curdling screams?

A. No, sir.

Q. You just don't know what happened?

George Fielder.

A. No, sir.

page 62 } Mr. Sheffey: I object to that.
The Court: I think that is a valid objection.

By Mr. Campbell:

Q. You just don't know what happened?

Mr. Sheffey: Same objection.

A. All I know he isn't guilty because I can prove that by medical doctors.

Mr. Campbell: These gentlemen here will decide that.

The Court: Anything further you want to ask her?

Mr. Campbell: That is all. Stand aside.

(Witness excused.)

The Court: Next witness.

Mr. Sheffey: Call Mr. Fielder. Your Honor, this next witness is a little hard of hearing.

GEORGE FIELDER,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Sheffey:

Q. Mr. Fielder, would you state to the Court, please, your residence and occupation.

A. It is Fries over in Grayson County. I am retired.

page 63 } Mr. Campbell: Could I have the witness's name?

The Witness: George Fielder.

Mr. Sheffey: George Fielder, F-i-e-l-d-e-r.

By Mr. Sheffey:

Q. Are you acquainted with the defendant in this case, William Phillips?

A. Yes, sir.

Q. Would you speak a little louder and direct your attention to the Court and jury.

George Fielder.

How long have you been acquainted with William Phillips?

A. Well, I have known him all his life.

Q. Are you acquainted with his reputation in the community at Fries?

A. Yes.

Q. As to honestly and moral integrity?

A. It is good.

Q. Have you ever known of him being in any kind of trouble before?

A. No, sir.

The Court: We will not go into that. Just prove his general character.

By Mr. Sheffey:

Q. Do you know whether or not he has lived with his wife since their marriage?

A. As far as I know—

page 64 } Mr. Campbell: I don't think that is material.
I object to that.

The Court: We are not interested in that. He may or may not have. That doesn't make him guilty or innocent.

Mr. Sheffey: That is all, your Honor.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Fielder, where does the defendant Phillips now live?

A. As far as I know it is right there in Pearisburg, that section.

Q. Down that way?

A. Yes.

Q. How long has it been since he lived in Grayson County?

A. Several years, six or eight years. I don't know just how long.

Q. So you haven't been in contact with him at all for the past six or eight years?

A. Yes, I see him when he comes in to visit his father and mother.

Q. He has not lived in your community?

A. No.

page 65 } Q. Do you believe a statement he would make
and sign would be true?

Harold Douglas Turner.

A. Yes, sir, I do.

Mr. Campbell: Thank you very much. Stand aside.

(Witness excused.)

Mr. Sheffey: Call Mr. Turner.

HAROLD DOUGLAS TURNER,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Sheffey:

Q. Will you state to the Court, please, your full name and occupation?

A. Harold Douglas Turner, attorney at law.

Q. Where do you practice law?

A. Independence, Virginia.

Q. Is that in Grayson County?

A. Yes, sir.

Q. Are you acquainted with the defendant William Phillips?

A. Yes, I am.

Q. How long have you known Mr. Phillips?

A. Well, I have known him probably most all my
page 66 } life, but regular for probably about 20 years, I
guess, that I recall.

Q. Were you born and reared in the same neighborhood as he?

A. That is right.

Q. Do you know his people over there?

A. Very well.

Q. What sort of folks are they?

The Court: We are not interested in his folks. Let's proceed as the law directs, Mr. Sheffey.

By Mr. Sheffey:

Q. Are you acquainted with Mr. Phillips' reputation in his community over there as to honesty?

The Court: Reframe that.

Do you know his general reputation?

The Witness: Yes, I do.

Harold Douglas Turner.

The Court: And general character in that community—is that what you want?

Mr. Sheffey: That is what I was getting ready to say.

The Court: All right, say it.

The Witness: Yes, I do.

The Court: Is that reputation good or bad?

The Witness: It is very good. I have never
page 67 } heard anything derogatory said about him.

The Court: Anything further?

Mr. Sheffey: That will be all, your Honor.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Turner, he has lived away from that community about six or eight years?

A. I haven't lived away, I have been going to school away.

Q. I say Mr. Phillips has lived away from there?

A. That is correct.

Q. You have not been in close association with him or know much about his life for the past six or eight years?

A. Well, I have known him fairly well because of his father's illness. I was close to him through his father.

Q. You know nothing of his reputation in his present home community?

A. No.

Q. Do you believe a statement that he would make and sign would be the truth?

Mr. Sheffey: I object to that, your Honor. I think that is an improper question. He might ask him if he would believe him under oath.

The Court: You can ask him his general reputa-
page 68 } tion. Of course, he hasn't taken the witness stand
and doesn't have to take the witness stand, if he
doesn't want to.

You may ask him if he knows, if you want to inject that, his general reputation for truth.

Mr. Campbell: I think that—

The Court: No, that was general character, he didn't say anything about truth.

Mr. Campbell: If that hasn't been—I thought that had.

The Court: No, sir.

Mr. Campbell: No further questions.

(Witness excused.)

JAMES H. DAVIS,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Sheffey:

Q. Would you state to the Court your name and occupation.

A. My name is James H. Davis, brakeman on the Norfolk & Western.

Q. Brakeman on the Norfolk & Western?
page 69 } A. Yes, sir.

Q. Are you presently employed?
A. Yes, sir.

Q. Where do you work?

A. I work on 17 and 18 Birmingham Special, runs between Bristol and—

The Court: Turn around and speak up here.

A. I work on the Birmingham Special, 17, between Bristol and Lynchburg.

By Mr. Sheffey:

Q. Are you acquainted with the defendant in this case, William Phillips?

A. Yes, sir, I am.

Q. How long have you known him?

A. About 12 years, sir.

Q. How did that association come about?

The Court: We are not interested in that.

By Mr. Sheffey:

Q. Did you work with Mr. Phillips?

A. Yes, sir.

Q. Did you and Mr. Phillips, in pursuance of your same occupation, have occasion to stay in the same car overnight together?

A. Yes, sir, we did.

Mr. Campbell: I object to that.

The Court: Repeat the question, please.

page 70 } By Mr. Sheffey:

Q. In connection with your and Mr. Phillips'

James H. Davis.

similar employment, did you both have occasion to live together for any number of days or months?

A. Yes, sir, we did.

Mr. Campbell: I object to that.

The Court: I will let him show how intimately he knew him.

By Mr. Sheffey:

Q. Would you describe to the jury and to the Court the circumstances under which you both lived together?

The Court: No, sir, we are not going into that. I will let him show whether he knew him or not. You are talking about his general reputation. We are not trying his relationships with somebody else.

By Mr. Sheffey:

Q. How well did you know Mr. Phillips?

A. I know him very well. We have worked together off and on for the last 12 years, and I wouldn't want to be around a finer fellow in no way, shape or form.

Mr. Campbell: I move all that be stricken as not responsive.

The Court: Objection is sustained.

Mr. Sheffey: That will be all, your Honor.

The Court: That is not general reputation, page 71 } gentlemen. You may prove general reputation, but, gentlemen of the jury, you may ignore that last statement about a fine fellow.

Mr. Campbell: I have no questions.

By Mr. Sheffey:

Q. I have one further question I forgot to ask you. Are you aware of Mr. Phillips' general reputation as a moral and law abiding citizen?

A. Working with him, I would say—

The Court: First, do you know that reputation?

The Witness: Yes, sir, I know his reputation as an up-standing citizen.

The Court: All right, now the next question.

By Mr. Sheffey:

James H. Davis.

Q. What is that reputation?

The Court: Good or bad?

A. It is a clean reputation.

The Court: Good or bad?

The Witness: Good reputation.

The Court: Now the next question.

Mr. Sheffey: That will be all.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Do you know where he lives?

A. At the present I believe he lives in Narrows, Virginia.
I believe—I can't say.

page 72 } Q. Are you sure he doesn't live in Grayson
County?

A. It could be Grayson County.

Q. Are you sure he doesn't live in Washington County,
Virginia?

A. Right at present, I could not say, sir.

Q. In other words, you just don't know where he lives and
yet you are trying to attest to his reputation in the community
where he lives and you don't even know where he lives, is
that right, sir?

A. Well, I have worked with the man.

Q. I mean where he lives, you don't know his reputation
where he lives?

A. I know his reputation where I lived with him before.

Q. You know your personal opinion, but you don't know
his reputation in his home community?

The Court: That is what people say at large about him.

The Witness: I know where he used to live at Glade Spring
Virginia and lived right close to him.

The Court: I am asking you about his general reputation
in the community in which he now lives as I now understand.
Do you know that now?

page 73 } The Witness: Where he lives now? No, sir, I
have not been in his community.

The Court: You do know his reputation where
he formerly lived?

James H. Davis.

The Witness: Yes.

The Court: How many years ago was that?

The Witness: About four or five years ago.

The Court: What community was that?

The Witness: Glade Spring, Virginia.

The Court: All right.

Mr. Campbell: That is all.

(Witness excused.)

Mr. Sheffey: The defense rests, your Honor.

The Court: Mr. Warren.

Mr. Warren: The defense rests for Campbell, your Honor, and I have a motion to make, please, sir.

The Court: All right, gentlemen, you may go to your rooms.

(Thereupon, the jury retired from the open courtroom.)

The Court: State your motion right here.

Do you desire to call anyone further?

Mr. Campbell: No, I have no rebuttal testimony.

The Court: Both sides announce through?

Mr. Warren: Yes, as far as the defendant
page 74 } Campbell.

Mr. Sheffey: The same as to defendant Phillips.

Mr. Warren: The defendant Campbell now at the conclusion of all the evidence renews his motion to strike all of the evidence as to the charge of which he stands indicted, for the reason that we again insist that the *corpus delicti* of an alleged crime has not been proven and there is no evidence that implicates him in such a crime. The Commonwealth has wholly failed to bear the necessary burden of proof and, indeed, has offered no proof that this boy was involved in the offense of which he now stands indicted.

The Court: What do you say to that, Mr. Campbell, as to Campbell?

Mr. Campbell: I think, especially in a crime of this nature, the two parties are necessarily involved. The defendant Campbell has, according to the statement of the officers, in his statement to the officers, placed himself with the defendant Phillips throughout the entire evening, and corroborates in every detail, except the actual commission of the act, the statement as read to the Court and contradicted.

The Court: All right, that is sufficient.

James H. Davis.

Now, Mr. Sheffey.

Mr. Sheffey: My motion, your Honor, on behalf page 75 } of the defendant Phillips is essentially the same as that made by counsel for Campbell, based on the ground that the Commonwealth has failed to establish the *corpus delicti* as the law prescribes that he must. It makes little difference what the nature of the crime is, the rule is the same insofar as the establishment of the *corpus delicti* is concerned, and I again request the Court, before ruling, to examine the applicable case law.

The Court: Well, that motion is denied.

Mr. Sheffey: Exception.

The Court: I have had that for about 30 some years, and I am not going to stop now and go to the library and read some books on what the law is.

Your motion also is denied, Mr. Warren.

Mr. Warren: The defendant Campbell respectfully excepts to the action of the Court.

The Court: Do you gentlemen have any instructions?

Mr. Campbell: I have no written instruction, your Honor.

The Court: Let's see them.

May the witnesses, by common consent, be excused?

Mr. Sheffey: Yes, your Honor.

Mr. Warren: Yes, your Honor.

page 76 } The Court: All right, witnesses may be excused.

(Thereupon the following instructions were offered on behalf of the defendant Phillips.)

INSTRUCTION NO. 1.

(Given).

“The Court instructs the jury that the defendant is presumed to be innocent until his guilt is established by the evidence beyond all reasonable doubt. It is not sufficient that his guilt is probable only, or even more probable than his innocence, nor can the defendant be convicted on mere suspicion. No amount of suspicion, however strong, will warrant his conviction. But in order to convict, the evidence of guilt must be so strong that there can be no theory from the evidence consistent with his innocence.”

The Court: I will cut the citation off. That is not proper to put on there. I will grant No. 1.

INSTRUCTION NO. 2.

(Refused).

“The Court instructs the jury that in a criminal case admissions and confessions of the accused are admitted with caution, and the Court tells the jury that it is their province to consider all the circumstances under which the page 77 } alleged confessions were made, and determine their exact nature, import and meaning.”

The Court: What do you say about No. 2?

Mr. Campbell: Mine are not numbered.

The Court: It is necessary that they be numbered. No. 2 starts out “that in a criminal case admissions and confessions of the accused.”

Mr. Campbell: I object to Instruction No. 2.

The Court: I will refuse No. 2 in that language.

INSTRUCTION NO. 3.

(Given).

“The Court instructs the jury that in order to convict the accused of the crime alleged in the indictment every material fact necessary to constitute such crime must be proved beyond a reasonable doubt, and if the jury have a reasonable doubt upon a material fact or element necessary to constitute the crime it is their duty to give the defendant the benefit of such doubt and acquit him.”

The Court: Instruction No. 3, that is a re-hash of No. 1, but I am going to grant it. He is entitled to one on presumption of innocence and one on reasonable doubt. I will grant No. 3.

page 78 } INSTRUCTION NO. 4.

(Refused).

“The Court instructs the jury that the establishment by evidence of the fact that the defendant is of good character, taken in connection with all other evidence in the case, may generate a reasonable doubt in the minds of the jury as to the guilt of the defendant, and if the jury believe from the evidence that such good character of the defendant has been established, and if such reasonable doubt is thereby raised,

then such doubt must be given in favor of the defendant and they must acquit him.”

The Court: That is not proper, Mr. Sheffey. I will refuse No. 4.

Now do you have anything further?

Mr. Sheffey: Do I understand the Court will not offer an instruction on the evidence of good character?

The Court: I am not offering it at this stage. I will give you an opportunity to present a proper one. That is not proper.

Mr. Sheffey: I took it out of the law book, your Honor. I don't know how else to write it.

Mr. Campbell: It is a West Virginia law book, page 79 } your Honor.

The Court: The Supreme Court told us recently how to write an instruction on good character, and the effect of good character. That instruction is refused.

Mr. Sheffey: Exception.

The Court: Now, Mr. Warren, do you have any?

Mr. Warren: I haven't seen the Commonwealth's.

Mr. Campbell: The Commonwealth offers no written instructions. Just requests a charge.

Mr. Warren: I have one instruction about one sentence long that she is writing.

The Court: What are you basing it on?

Mr. Campbell: Section 18-98 of the Code.

Mr. Sheffey: Did you refuse defendant's Instruction No. 2?

The Court: Yes.

Mr. Sheffey: I would like to note an exception.

Note an exception to the Court refusing Instructions No. 2 and 4.

(Thereupon the following instruction was offered on behalf of defendant Campbell.)

page 80 } INSTRUCTION NO. 1-B.

(Given).

“The Court instructs the jury, that the oral and written statements of the defendant, Phillips, made to the police officers, do not constitute admissible evidence against the defendant, Campbell, and cannot be considered by the jury in determining Campbell's guilt or innocence in this case.”

The Court: What do you say, Mr. Campbell?

Mr. Campbell: If the Court please, I believe that is Warren law, with nothing to support it. I think the instruction goes entirely too far. I don't think he should be convicted solely on that statement. I think it can be considered by the jury as corroborated by the statement that he, Campbell, made as to his activities on the night and places they went and places they stopped and so forth. I certainly think it could be considered by the jury.

I think the instruction goes too far—it cannot be even considered admissible evidence—it corroborates the statement Campbell himself made.

The Court: He didn't take the witness stand and he doesn't have to take the witness stand.

Mr. Campbell: Certain statement testified by page 81 } the officer.

The Court: The defendant Campbell can't be bound by the statement of the defendant Phillips. He had no chance or opportunity, or if he had an opportunity it wasn't incumbent upon him to affirm or deny. I think you can't base a conviction of the defendant Campbell upon the extra-judicial confession or admissions of the defendant Phillips.

Mr. Campbell: Not alone and of itself, your Honor, I don't.

The Court: Mr. Warren, he challenges the law. Do you have any authority there somewhere?

Mr. Warren: Yes, sir, Nash on Evidence, Section 179.

The Court: Read it.

Mr. Warren: "Confessions of one defendant are not evidence against a co-defendant, but they may be admitted against the one making them, with instructions to the jury not to consider them against the other. Whether the confessions of a conspirator is admissible against his co-conspirator depends whether it was made during the pendency of his conspiracy and furtherance of the purpose."

The Court: I think I will grant the instruction. page 82 } Mr. Warren: I would ask the Court on behalf

of defendant Campbell to charge the jury as to the fact that the defendant did not see fit to take the witness stand creates no presumption against him and is not a matter which the jury can consider in arriving at his guilt or innocence.

The Court: I think they ought to be told what constitutes the crime of sodomy, and here it is in *Miles v. Commonwealth*, 135 Va. 757. In order to expedite matters, I believe I will tell them what sodomy is and read them the statute here and give them the charge and go from there.

Bring the jury back.

Mr. Sheffey: Your Honor, I would like to offer another instruction.

The Court: Do you have it? I have sent for the jury and they are coming in.

(The jury returned to the open courtroom.)

(Thereupon, the following instruction was offered on behalf of defendant Phillips.)

INSTRUCTION NO. 5.

(Given).

page 83 } "The Court instructs the jury, that the oral and written statements of the defendant, Campbell, made to the police officers, do not constitute admissible evidence against the defendant, Phillips, and cannot be considered by the jury in determining Phillips' guilt or innocence in this case."

The Court: That will be refused.

Mr. Sheffey: I take exception.

The Court: Wait just a minute. By the defendant, oh, I will grant you that one. I thought you said defendant Phillips but it is defendant Campbell.

Mr. Warren, I have designated yours as Commonwealth v. Campbell and Mr. Sheffey's as Commonwealth v. Phillips.

Mr. Warren: All right, your Honor.

May the record show that the defendant Campbell objects to the Court giving any charge or instruction on behalf of the Commonwealth based upon the same grounds stated in our motion.

The Court: Let the record so show.

Now, gentlemen of the jury, give attention. I am going to give you certain written instructions.

We are trying two cases here today together, one against defendant Phillips and the other against defendant
page 84 } Campbell.

(Thereupon, the Court read Instructions 1, 3, 5 and 1-B.)

The Court: Now in addition to that, gentlemen, the statute provides this. If any person shall carnally know any male person by the anus or by or with the mouth, or voluntarily

submits to such carnal knowledge, he or she shall be guilty of a felony; and if you find him guilty, he shall be punished and confined in the penitentiary not less than one nor more than three years.

The indictment charges what is termed in law sodomy. One indictment is against Charles R. Campbell and the other indictment is against William V. Phillips. Now before the prisoners or either of them can be convicted of the crime charged against them in the indictment, the Commonwealth must prove by competent evidence the guilt of the accused beyond a reasonable doubt.

Now sodomy has been defined by our Supreme Court as follows. Sodomy, in the strict original sense, is the infamous crime against nature when committed between two human beings.

So the Court tells the gentlemen of the jury page 85 } that if you believe from the evidence beyond a reasonable doubt that the two defendants engaged in this, carnally knew each other, or one carnally submitted to the carnal knowledge by the other, well then he is guilty as charged, otherwise he is not.

Further, the Court tells the jury that neither defendant, if they see fit not to do so, need not take the witness stand. They don't have to go on the witness stand and testify. They have a perfect right to remain silent, and the fact that they do not go upon the witness stand in this case cannot be considered by the gentlemen of the jury as evidence of their guilt.

I think that pretty well covers it.

Any objection to that?

Mr. Warren: Not a bit in the world.

The Court: Mr. Sheffey?

Mr. Sheffey: No objection, your Honor.

Mr. Warren: Other than the general objection that I previously stated.

The Court: I am talking about just what the Court said.

Mr. Warren: No, sir, I believe that is the law, page 86 } your Honor.

The Court: Now there are the instructions.

Now then counsel will be given 15 minutes—well, let's see, how much time do you gentlemen want?

Mr. Warren: Two minutes is all I want, and you can hold me to it.

The Court: I will give you 15 minutes—I will give this side 15 minutes together and give you 15.

Mr. Campbell: All right, your Honor.

The Court: Gentlemen, I want to make this crystal clear to you, this further pronouncement.

You are the triers of the fact. The Court undertakes to rule on the admissibility of evidence and give you the law. The Court is called upon to rule many times, as it was here today. The fact that I ruled for or against somebody doesn't mean the Court is leaning one way or the other. That is the method of procedure. Don't let that influence you one way or the other. If I rule in favor of Mr. A and against Mr. B, that is the Court's ruling, but that doesn't mean that I favor one over the other. That is just an expression of the law.

So far as I am concerned and as far as you gentlemen are concerned, you are wholly unbiased. Take this page 87 } case and try it upon the law given you by this Court and the evidence which you heard from this witness stand.

Now you may proceed.

(Thereupon, Mr. Campbell and Mr. Warren presented their argument to the jury.)

The Court: All right, you may have 15 minutes. I gave Mr. Warren 15 and I will give you 15 and Mr. Campbell 15.

(Thereupon, Mr. Sheffey and Mr. Campbell presented their argument to the jury.)

The Court: Gentlemen, remember to write two verdicts in this case. If you find the accused guilty as charged, you shall fix his punishment by confinement in the penitentiary not less than one year nor more than three years. If you find him guilty, say so and no more.

Follow the sheriff.

Give them the exhibits and indictments and two sheets of paper.

(Thereupon, the jury retired from the open courtroom at 2:05 p. m. and returned to the open courtroom at 2:30 p. m.)

The Court: The sheriff said that you wanted page 88 } some additional instructions.

Don't ask me any questions of fact. You gentlemen are the sole judges of the fact. Any question of law bothering you, I will undertake to straighten you out.

Juror Ryburn: There is no question of that. Just one or

two men disagree to whether we set the penalty or whether you put it.

The Court: No, you fix the penalty.

Juror Ryburn: We do it ourselves. Thank you, sir. That is all that is necessary.

(Thereupon, the jury retired from the open courtroom at 2:30 p. m. and returned at 2:45 p. m.)

The Clerk: Gentlemen of the jury, have you agreed upon a verdict?

The Jury: Yes.

The Clerk: Or verdicts, I should say.

“We the jury find the defendant Charles R. Campbell guilty as charged and fix his punishment at two years in the state penitentiary. J. Mack Ryburn, Foreman.”

“We the jury find the defendant William V. Phillips guilty as charged and fix his punishment at two years in the state penitentiary. J. Mack Ryburn, Foreman.”

page 89 } Gentlemen of the jury, are these your verdicts?
The Jury: Yes.

The Clerk: So say you all?

The Jury: Yes.

The Court: Just interline “as charged in the indictment.”

Is that your verdict? So say you all?

The Jury: Yes.

The Court: All right, let the verdicts be received.

Gentlemen of the jury, you are discharged.

Mr. Sheffey: Your Honor, I should like to move that sentence be set aside as contrary to the law and evidence.

Mr. Warren: If your Honor please, on behalf of the defendant Charles Campbell, I respectfully move the Court to set aside the verdict of the jury in this case as being contrary to the law and evidence and without evidence to support it, because the Commonwealth wholly failed to bear the burden of proof in this case. It is incumbent upon them by law.

The Court: It is a good jury, gentlemen, a good, honorable group of gentlemen there. They passed on the page 90 } facts.

I will hear you another time on this. I will take those motions under advisement for the present. I will hear you sometime tomorrow, if you have an opportunity, or maybe later this afternoon.

I will defer the imposition of sentence.

Take charge of them, Mr. Sheriff.

page 91 }

October 9, 1959.

(Thereupon, the Court and counsel reconvened at 12:10 p. m. on October 9, 1959.)

The Court: Now then, I will hear Mr. Sheffey and Mr. Warren on the motion to set aside the verdict in the case of Commonwealth v. Phillips and Commonwealth v. Campbell. Both of them are present in court.

I will hear you gentlemen now. You may proceed.

Mr. Sheffey: Your Honor, on behalf of the defendant Phillips, I respectfully move this Court to set aside the verdict rendered by the jury, on the grounds that the verdict is contrary to the law and the evidence.

The Court: In what respect, please, sir?

Mr. Sheffey: I was coming to that, your Honor.

The grounds for this motion is that the only evidence produced by the Commonwealth tending to show the guilt of the accused Phillips, and so far as that is concerned the accused Campbell, was statements, oral and written, of both accused. The basis of the defense motion is that since that was the only evidence introduced by the Commonwealth, that that is in-

page 92 } sufficient in law to establish the *corpus delicti*, the fact that a crime had in fact been committed. The

Commonwealth produced evidence to show that in fact the defendant Campbell was at one time in possession of the automobile owned by the defendant Phillips. That was the only evidence introduced by the Commonwealth to show, in addition to the alleged confession, to show that there was any remote connection, any connection at all, whether proximate or remote, insofar as showing the commission of a crime.

The Commonwealth relied on both of the statements made by Phillips and Campbell, in spite of the fact that both statements which he contended indicated guilt were inconsistent.

One of the statements, the statement by Mr. Phillips, contained an allegation that at one time or another during the night of the alleged offense that a police officer stopped by and observed both defendants in the car and actually asked defendant Phillips if they were sick. The Commonwealth could have at least placed these two defendants together on the night in question by calling that police officer, which he did not do.

The Commonwealth has not even placed these page 93 } two defendants in Washington County on the same night, other than the admissions of both defendants, which, as the Court must realize, are in themselves inconsistent, insofar as the issue of ultimate guilt or innocence is concerned.

It is the belief of counsel for the defendant Phillips that the law requires much more evidence to sustain a verdict of guilty.

That is all I have, your Honor.

The Court: All right, Mr. Warren.

Mr. Warren: Your Honor, just very briefly—and I appear, for the record, on behalf of the defendant Charles Campbell. Your Honor, the Court gave Instruction No. 1-B to the jury:

“The Court instructs the jury, that the oral and written statements of the defendant, Phillips, made to the police officers, do not constitute admissible evidence against the defendant, Campbell, and cannot be considered by the jury in determining Campbell’s guilt or innocence in this case.”

That instruction, of course, was quite properly in accord with the rulings of the Court which excluded the evidence of the purported statements of Phillips, both oral and written, as being evidence that could be considered against page 94 } Campbell, and the jury was instructed that they were not to consider that evidence and they could disregard it as against Campbell.

That being true, if your Honor please, there just remains no evidence against the defendant Campbell, and for that reason we respectfully ask the Court to set aside the verdict and enter judgment for him and to discharge him from custody.

Thank you, sir.

The Court: All right, Mr. Campbell.

Mr. Campbell: If the Court please, I don’t feel that it is necessary for the Commonwealth to answer in detail the argument of both counsel.

Suffice it to say, in my opinion there was ample evidence against each defendant in this case, individually and separately, to support the verdict. A fair, competent jury has passed upon the facts of this case, and the Court, I think, gave every instruction that was requested by both defendants and the jury was adequately instructed as to the law.

I don’t think it would serve any useful purpose to rehash at this time all of the evidence. I am sure that it is fresh in the Court’s mind now.

I feel that a competent jury has found against the defendants. There was more than ample testimony on page 95 } which to base a verdict, and the verdict should not now be disturbed.

The Court: Gentlemen, I am going to deny your motion. I think there was ample evidence on which to base a conviction.

The alleged voluntary statements there which were admitted in evidence convicted both of them.

The *corpus delicti* has been alluded to. You are familiar with that rule. I think that the evidence has shown the guilt of the accused and each of them beyond a reasonable doubt.

There is no use for me to review in detail the evidence. You gentlemen are familiar with it. The Court is familiar with it.

The question of confessions and so forth, I think I am pretty familiar with the law on that subject.

So I shall deny your motions as not being well taken, and in accordance with the verdict of the jury, Mr. Phillips and Mr. Campbell, come around, please.

Mr. Warren: If your Honor please, the defendant Campbell respectfully excepts to your action and we would move the Court to suspend—I take it the Court wants to sentence them before you suspend.

page 96 } Mr. Sheffey: I should also like to enter exception to the Court's ruling on the motion.

The Court: Come around. Do you or either of you have anything to say or offer as to why the Court should not now sentence you in accordance with the finding of the jury?

Mr. Phillips: No, sir.

Mr. Campbell: No, sir.

The Court: In accordance with the finding of the jury, I do sentence you, Charles R. Campbell, to serve the term of two years in the state penitentiary, and you, the defendant William Phillips, in accordance with the verdict of the jury, I sentence you to serve two years in the state penitentiary, and each to pay the costs.

Now then, Mr. Warren.

Mr. Warren: We move that the Court suspend the execution of this sentence for a period of what we would request to be 60 days to permit us to apply to the Supreme Court of Appeals for writ of error in the case of Campbell.

Mr. Sheffey: On behalf of the defendant Phillips I make the same motion, your Honor.

The Court: Execution is suspended and re-
page 97 } spective sentences will be suspended.

Mr. Sheriff, take charge of the prisoners.

Mr. Sheffey: I have an additional motion to make. I move that the defendant Phillips be allowed to remain on bond pending outcome of this appeal.

Mr. Warren: I would like this boy's bond set. He has been in jail a good while.

The Court: You are not able to execute a bond?

Mr. Warren: I am not, but I think his uncle will, Walter Minnick.

The Court: I am going to deny your motion and let him remain in custody.

Mr. Warren: You are going to refuse to set bond in any amount?

The Court: During the 60 day period. Well, I won't say that, if you come up with a bond and show me some valid reason, but at this stage I am going to deny your motion. Let them remain in custody. If somebody gets sick or something like that, I may change my mind.

Mr. Warren: I didn't know a man had to have a valid reason to want his freedom, if your Honor please.

The Court: Some other additional reason.

Mr. Warren: All right, sir. We except to the
page 98 } denying of our motion for bond.

Mr. Sheffey: Note an exception.

The Court: We will recess until 1:30.

These were all the proceedings had and evidence introduced in the trial of these cases.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and <i>Supersedeas</i> Awarded, Record No. 5162	1
Writ of Error and <i>Supersedeas</i> Awarded, Record No. 5163	2
Record No. 5162	3
Record	4
Instructions	4, 59, 63
Order—October 7, 1959	5
Judgment—October 9, 1959	7
Notice of Appeal and Assignments of Error	9
Record No. 5163	11
Record	12
Instructions	12, 61
Order—October 7, 1959	12
Judgment—October 9, 1959	14
Notice of Appeal and Assignments of Error	16
Proceedings	17, 23, 42, 45, 58, 65
Witnesses:	
Officer Norman Smith	21
Captain Newton J. Roark	33
Deputy Sheriff R. A. Clendenen	43
Mrs. W. V. Phillips	47
George Fielder	51
Harold Douglas Turner	53
James H. Davis	55