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Record No. 5243

In the Supreme Court of Appeals of Virginia at Richmond

JOHN F. SNYDER, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5243

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 4th day of October, 1960.

JOHN F. SNYDER, JR., Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Hustings Court of the City of Roanoke

Upon the petition of John F. Snyder, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 5th day of May, 1960, in a prosecution by the Commonwealth against the said John F. Snyder, Jr., for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

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* * * * *

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its APRIL TERM, in the Year 1960, upon their oaths do present:

That E. W. BRIZENDINE, JOHN F. SNYDER, JR., and EWELL GRANT TASKER, heretofore, to-wit: on the.. day of February, 1960, within the jurisdiction of this Court, in the said City of Roanoke, Virginia

1 diamond ring, of the value of .....$525.00.

and being the property of Edward E. Foster, then and there unlawfully and feloniously did steal, take and carry away,
Against the peace and dignity of the Commonwealth of Virginia.

* * * * *

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* * * * *

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 21st day of April, 1960.

This day came the Attorney for the Commonwealth of Virginia and the defendant, John F. Snyder, Jr., came into Court in obedience to his recognizance and was set to the bar. Also came the defendant's Attorney.

Thereupon the said John F. Snyder, Jr., was arraigned and pleaded not guilty to the charge of grand larceny alleged against him in the indictment and for his trial puts himself upon the country.

Thereupon came twenty (20) persons, citizens of the City of Roanoke, Virginia, summoned by the Sergeant of the City of Roanoke, Virginia, pursuant to writs of *venire facias* issued as the law directs, and the Court having examined said persons and finding them free from all legal exceptions

and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having each struck from said list four (4) of the names thereon, the remaining twelve (12) to-wit: Mrs. Virginia H. Thomas, Claude A. Hodges, Ilar Simmons, James F. DeHart, Robert G. Cassell, Thomas W. Fore, Bowman D. Ferguson, Mrs. Virginia C. Martin, William L. Saul, Frederick Dean, Mrs. Gillie C. Caldwell and Virgil Pring were sworn to well and truly try the prisoner at the bar, and having heard the evidence, the defendant by counsel, moved the Court to strike the Commonwealth's evidence on the grounds the evidence did not show Jack F. Snider, Jr., guilty of taking the ring, which motion the Court overruled and the defendant, by
page 6 } counsel, excepted and the jury having received the instructions of the Court and heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

"We, the jury, find the defendant John F. Snyder, Jr. guilty as charged and fix his punishment by confinement in the Penitentiary for a period of three (3) years.

CLAUDE A. HODGES,
Foreman of the jury."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that the same was contrary to the law and the evidence, which motion the Court takes time to consider until May 2, 1960 and the defendant's bond in the amount of $1,000.00 shall be continued to May 2, 1960 and the defendant shall be released from custody until May 2, 1960 upon the execution of an additional appearance bond in the sum of $1,500.00, for his appearance before this Court on May 2, 1960 at ten o'clock a. m.

* * * * *

page 14 } INSTRUCTION F.

The Court instructs the jury that there can be no such thing as an aider and abettor unless there is a principal in the commission of a crime. And the jury is instructed that mere presence is not sufficient to constitute one an aider and abettor, and that, whenever a reasonable doubt exists as to the intention of one charged as an aider and abettor, he cannot be found guilty as such; and the jury is further instructed that

mere consent is not sufficient to constitute one an aider and abettor, but before a defendant charged as an aider and abettor in the commission of a criminal offense can be convicted, it is incumbent upon the Commonwealth to prove beyond a reasonable doubt that the defendant so charged as an aider and abettor was present and shared in the criminal intent of the principal.

Given.

D. A. K.

page 15 } INSTRUCTION G.

The Court instructs the jury that before you can convict the defendant, Snyder, in this case, you must believe from the evidence in this case, beyond a reasonable doubt, that the diamond ring exhibited to the witness, Krisch, by the defendant, was the same identical ring missing from the Foster Jewelry Company store.

Refused—Exception 4/21/60.

D. A. K.

page 16 } INSTRUCTION H.

The Court instructs the jury that there can be no such thing as an aider and abettor unless there is a principal in the commission of a crime; And the jury is instructed that mere presence is not sufficient to constitute one an aider and abettor, and that, whenever a reasonable doubt exists as to the intention of one charged as an aider and abettor, he cannot be found guilty as such; and the jury is further instructed that mere consent is not sufficient to constitute one an aider and abettor, but before a defendant charged as an aider and abettor in the commission of a criminal offense can be convicted, it is incumbent upon the Commonwealth to prove beyond a reasonable doubt that the defendant so charged as an aider and abettor was present and shared in the criminal intent of the principal.

Refused as offered—Exception 4/21/60.

of it therefore necessary

D. A. K.

* * * * *

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* * * * *

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof on the 5th day of May, 1960.

* * * * *

This day came the Attorney for the Commonwealth, and the accused, John F. Snyder, Jr., in person and by counsel, and whereupon counsel for the defendant moved the Court to set aside the verdict of the jury in this case, returned on the 21st day of April, 1960, on the following grounds:

1. That the verdict of the jury was contrary to the law and the evidence and wholly without evidence to support it; that the evidence in this case does not show, beyond a reasonable doubt that the crime of larceny had been committed; that the evidence fails to show that Snyder knew, or had any reason to believe, that a ring had been stolen by Brizendine, the mere presence at a place where a crime is committed is not enough to make one an aider and abettor. The defendants also contents the evidence further shows that the last person known to have the ring in question was the complaining witness, Foster, whose testimony was that Brizendine handed the ring to him and he replaced the same in the case, and the same complaining witness, Foster, was not able to state that Brizendine took the ring or that he was near enough to the ring to have taken the same when he turned his head to answer a question of either Snyder or the defendant, Tasker.

2. That the *corpus delicti* had not been established in this case, and the evidence does not show beyond a reasonable doubt that Brizendine took the ring in question, and does not show that Brizendine had in his possession the identical ring alleged to have been taken from the Foster Jewelry Company.

3. That the Court erred in permitting the Commonwealth's Attorney in his opening statement to relate to the jury the appearance of Brizendine at the place of business of the witness, Krisch, when it was then known by the Court and the Commonwealth's Attorney; that Snyder was not present and so far as the evidence related in the Brizendine case, Snyder did not assist him in going to said place of business, or assist in taking him therefrom.

page 19 } 4. That the Court erred in admitting the evidence of the witness, Krisch, over the objection of the defendant, for the same reasons stated in exception (3) above.

5. That the Court erred in amending Instruction H as offered by the defendant, as said Instruction correctly stated the law applicable to this case, as it is essential in order to convict one as being an aider and abettor, that there must have been a principal, and he must have in fact perpetrated the crime; that the Instruction F as given by the Court after the amendment, permitted the jury to convict the defendant, Snyder, without the Commonwealth proving beyond a reasonable doubt that the crime of larceny had been committed by the defendant, Brizendine.

6. That the Court erred in refusing Instruction G as offered by the defendant, as said Instruction correctly stated the law applicable to this case, as the only evidence connecting Brizendine with the stealing of the ring from Foster was that he appeared in the business place of Krisch shortly after Foster missed the ring, with a ring similar to the one alleged to have been stolen.

7. That the Court erred in refusing to strike the Commonwealth's evidence at the completion of same, and for the reasons as stated at the time of making said motion; that the evidence was not sufficient to establish the *corpus delicti,* nor was any evidence offered to show that Snyder had anything whatever to do with the ring alleged to have been stolen by the complaining witness, Foster.

The said defendant, by counsel, for the reasons hereinabove stated, moved the Court to set aside the verdict as returned by the jury in this case, and to dismiss the defendant.

And the Court having considered said motions, doth ORDER that the defendant's motion to set aside the verdict of the jury be and the same is hereby overruled.

page 20 } Whereupon the defendant, by counsel, moved the Court to set aside the said verdict of said jury, and to grant him a new trial, upon said grounds hereinabove recited and the reasons therefor and the Court having considered the said motion doth order that the same be and hereby is likewise overruled.

To the action of the Court in overruling both motions the defendant, by counsel, excepted.

It is therefore considered by the Court that the said John F. Snyder, Jr. be and he is hereby sentenced to confinement in the State Penitentiary at Richmond, Virginia for a term of three (3) years, and it is ordered that the said John F. Snyder, Jr. be removed from the jail of the City of Roanoke, Virginia and safely conveyed to said State Penitentiary at

Richmond, Virginia therein to be kept imprisoned and treated in the manner prescribed by law.

Thereupon the defendant by counsel signifying his intention to apply to the Supreme Court of Appeals of the State of Virginia for a writ of error from the judgment of this Court, execution on the above judgment is stayed for a period of sixty (60) days from this date to enable the defendant to prepare and file his bills of exception, upon the defendant entering into a recognizance with approved security in the penalty of $2,500.00 conditioned as the law directs.

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Received and filed June 29, 1960.

M. R. CARTER, JR., Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To W. H. Carr, Clerk of the Hustings Court of the City of Roanoke, Virginia:

Counsel for John F. Snyder, Jr., the defendant in the above styled case in the Hustings Court of the City of Roanoke, Virginia, hereby gives notice of appeal from the order entered in this case on May 2, 1960, and sets forth the following assignments of error:

1. That the trial of the defendant, John F. Snyder, Jr., upon the indictment returned against him by the Grand Jury on April 4, 1960, was illegal and void, in that the defendant was denied a Preliminary Hearing to which he was entitled under Section 19-137.1 of the Code of Virginia. The right to said such hearing not having been waived by the defendant in writing, and the Court in this case had no jurisdiction to try the defendant.

2. That the Court erred in failing and refusing to strike the evidence of the Commonwealth when it completed the presentation of it's evidence.

3. That the Court erred in failing and refusing to grant the defendant's Instruction "H" and erred in amending said Instruction "H" and giving Instruction "F" instead.

4. That the Court erred in failing and refusing to give Instruction "G" as offered by the defendant.

page 24 } 5. That the Court erred in permitting the attorney for the Commonwealth relating to the jury in his opening statement, the actions and conduct of E. W. Brizendine when he appeared at the place of business of Joel Krisch, when he and the Court knew that the Commonwealth's evidence would not show an agreement or conspiracy between the defendant, E. W. Brizendine and Ewell Grant Tasker, to steal the ring of Edward E. Foster.

6. That the Court erred over the objection of the defendant, in admitting the evidence of Joel Krisch, a witness for the Commonwealth.

7. That the Court erred in failing and refusing to set aside the verdict of the jury returned in this case on the 21st day of April, 1960, and dismissing the defendant on the ground that the verdict was contrary to the law and evidence, that the Commonwealth failed to establish the *corpus delecti,* and upon the further ground that there was no evidence upon which to support the verdict.

8. That the Court erred in failing and refusing to set aside the verdict of the jury returned in this case on the 21st day of April, 1960, and to grant the defendant a new trial, on the ground that the verdict was contrary to the law and evidence; that the Commonwealth failed to establish the *corpus delecti,* and upon the further ground that there was no evidence upon which to support the verdict.

WILLIAM G. CREASY,
Counsel for John F. Snyder, Jr.

WILLIAM G. CREASY, Attorney
for John F. Snyder, Jr.
Peoples Federal Building
Roanoke, Virginia.

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Mr. Creasy: I would like to make a motion in Chambers.

In Chambers.

Mr. Creasy: I see that Mr. Kirsh is out here in the court-

room presumably as a witness in the case, and as is understood from the testimony yesterday when Mr. Brizendine was in the pawn shop with this ring Snyder was not present. I don't know what the Commonwealth anticipates trying to prove, but since the Commonwealth has him here as a witness, presumably, I don't think he ought to be permitted to make any mention of what Brizendine did except in the presence of Snyder. That could be very damaging to Snyder who was not present when the Court heard the case yesterday.

The Court: Mr. Cuddy, you want to reply?

Mr. Cuddy: This is one of the circumstances that was used to connect this man up with the case. If the Court, at the conclusion, decides that it is not properly connected up it can be stricken, but we're certainly charging this man with aiding and abetting in the theft of the diamond ring, and we can certainly show that one of the parties showed up shortly thereafter with the ring, or almost identical with the description of the ring; and I think it's absolutely essential and proper to show that he did. Any statement that Brizendine might have made wouldn't be binding. I'm not relying on any statement, but the fact that he did show up with the ring.

Mr. Creasy: I don't think it is proper and after
page 29 } it's put into the minds of the Jury you cannot wipe it out.

The Court: In this case Mr. Cuddy is charging these three people with a concerted plan or scheme to steal this ring, and the evidence yesterday indicated that the three of them were involved, and the Jury must have believed that the three of them acted together in the theft of the ring; and I think what was done by Brizendine with this ring, if the Jury believes it was the ring in question he offered to the pawn broker, I think that's another circumstance going to show this man's part in the crime.

Mr. Creasy: I except to the ruling of the Court on the ground that it would not be proper evidence in this case.

Return to Courtroom.

OPENING STATEMENT.

Mr. Cuddy:

At this time you are considering a case against John F. Snyder, Jr., charged along with two other persons with the theft of a diamond ring from Mr. Foster's jewelry store, which is located out on the Williamson Road in the 2800 block.

This happened at approximately two o'clock or shortly thereafter on the 26th day of February, this year. Mr. Foster operates a little jewelry store out there and at the time there

was only one employed in the place. I don't know the exact dimensions but it is not a large store.

Shortly after two o'clock on the 26th, Mr. Snyder here, and a man by the name of Tasker went into *to* Mr. page 30 } Foster's store and engaged him in some talk about a watch. Mr. Snyder told Mr. Foster that he wanted to look at a watch to buy for his wife. He was showing them the watches when Mr. Brizendine then came into the store. They had been in there approximately five minutes or so when Brizendine came into the store. Brizendine went over to the ring counter. There are several show cases. One he had watches in and another rings in. Brizendine went to the ring counter, and either Tasker or Snyder, one or the other told Mr. Foster—Mr. Foster told Mr. Brizendine he would be with him in a minute—and they told him they were in no hurry—one of them, Snyder or Tasker told him they were in no hurry and to go on over and wait on the other man.

It will develop that Tasker, Snyder and Brizendine are rather close friends. They have known each other for a long, long time and associate together quite a bit. When Brizendine came into the store there was absolutely no sign of recognition between the three of them at all.

So Mr. Foster then goes over to the ring counter where Mr. Brizendine is and asks him what he wants. He is interested in buying a ring set, a solitaire diamond ring and a wedding ring. He was going to buy it for his wife. So Mr. Foster took out several trays for him to look at. All of these trays had little slots in them where they put the rings and he keeps those completely filled, and so when he took them out all these slots were filled. And in one of these trays was a ring, and the only ring he had with approximately a one carat ring. I think the weight of the diamond or set was .97 carats, and that was the only carat ring that he had in the show case, or in page 31 } this tray. He was showing him the rings and he would pick them out and Mr. Brizendine would look at them, and finally while he was doing that one of the two, either Snyder of Tasker, called Mr. Foster's attention and turned to see what they wanted. He turned away but he didn't leave—naturally looking after his merchandise—and he did turn away. He turned back just a few seconds or just shortly after that, and Tasker and Snyder left the place and made some comment about they would be back later on. He was interested in looking at this watch at the price I believe was $59.00, and Mr. Foster told them he could probably do a little better for them if it was on a cash basis. So they went on out and said, "We'll be back later." So then, Oh, just a very short time after that Brizendine goes out. Mr. Foster has the two rings he said he would be back to get the ring set, a wedding

band and a solitaire diamond he had handed over to Mr. Foster and told him he wanted his wife to come by and look at those, and he would be back in an hour or so with his wife, and he started out. When he did Mr. Foster had the two rings in his hand and looked down and realized that there was another ring missing. There were three vacant places in this tray. So he looked, and, of course, he said he moved within two or three feet was all the space that he had moved there, and so he looked around to check and he didn't see the ring at all, so then he walked out to the door to get any information he could such as automobile description or license tag if Brizendine was leaving in an automobile. He saw Brizendine walking on down the street so he went in immediately after

page 32 } this, a minute or so, and called the police and told the police what had happened and gave a description of the diamond ring and gave them a description of Brizendine. Now, that diamond ring is what is known as a Columbia setting. As far as Mr. Foster and all could determine his place out there is the only one that handled that setting. It had some sort of safety device in the setting so that when the ring is placed on it will not turn on the finger, a spring device in it. So by that he could describe—I mean, he knew definitely about the ring and the setting which was in it. So he called the police department and notified them what had happened.

The police department went right on then into operation to try to find out what they could and locate this ring. They called the pawn shops and they called the United Pawn Shop, which is run by Mr. Krish and told him what was up, and he said, "Come on down. I think maybe I've got something for you." Well, now what had happened was Mr. Brizendine came into the pawn shop there and displayed this diamond ring to Mr. Krish and asked him what it was worth. The diamond ring—bear this in mind—had a price tag on it of $1500.00. That was the retail price tag on it. Actually the ring had cost Mr. Foster $525.00. So Brizendine takes it in there and sees Mr. Krish and asks him what he will give him on the ring. He described the ring and it was a ring with a Columbia setting; he saw the setting; he did not examine it very closely but he looked at it and he's been in the business of handling precious jewels, buying and selling all along for about fifteen years, and there's no question about his knowledge of it.

page 33 } So then he told him offhand and without any further examination he would give him $300.00 for it.

Mr. Creasy: Now, if your Honor please, that's the same thing.

The Court: I understand your objection, but I'm ruling its proper.

Mr. Cuddy: So he offers him $300.00 for the ring, and he says it's worth $1500.00 and he takes the ring and goes on out the store. The officers get there just a minute or so before the police called—the police got down here, and they started to search. They knew Brizendine but they couldn't find him, and he was picked up the next day after the ring was missing and the ring was still missing.

In the investigation working on this case the Snyder and Tasker name came up, and so they were brought in and questioned about it. Captain Allman questioned Snyder about it and these are his statements.

On that morning he and Tasker were at his place of business, which is a little lunch counter place on east Campbell Avenue—I believe it's the 8 or 900 block right across from the entrance to the shops—that they were down at his place; they came up town and went to Billy's place, which is over on Salem Avenue right there at the Market Square, and while in there in comes Brizendine. They have a conversation with Brizendine. We don't get the details of that, but they had quite a conversation. Then he and Tasker go back to his place down in southeast, and shortly thereafter they go to Mr. Foster's jewelery shop out on Williamson Road.

page 34 } He says for the purpose of making a purchase of a watch for a girl friend of his; that while there Brizendine came in, although they didn't speak to him, or made no recognition whatsoever that passed between the three of them; that they left and told him they would be back later to see about the watch; that he and Tasker left; that shortly after they left; that shortly after they left—and this was right after Brizendine had left and Brizendine had been to the United Pawn Shop, they again met Brizendine at Billy's place and talked with him there and Snyder, Tasker and Brizendine all three went together and went out to pick up Brizendine's girl friend, June Fuller Perrow, and they were all together when they went out and picked her up.

It is so obvious now, and it will be to you from the evidence in this case that these three men were friends, cohorts, went out there in a concerted effort to steal this ring; that Tasker and Snyder went in and they were actually aiding and abetting by attracting the attention of the owner while the other man took it, and left there and by the way, he admits that they discussed down there at the restaurant after they had come back from out on Williamson Road, after the ring had been taken, discussed making a trip to Richmond. That is, with Brizendine, Tasker and Snyder. Whether or not the trip ever

materialized—I don't think it did—but it was discussed there among those three.

We submitt hat we will have proven to you a case of three people conspiring to steal a diamond ring. The ring—actual wholesale price to the dealer was $525.00 in value
page 35 } far in excess of $50.00; and that this man participated in it and went in and diverted the attention of the owner at the time the ring was taken, and we submit that in these meetings that they planned what they were going to do and carried it out. We will ask you to convict him and give him such punishment as you think he deserves.

EDWARD E. FOSTER,

called on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Edward E. Foster?

A. Yes, sir.

Q. Mr. Foster, you operate a jewelery store out on the Williamson Road?

A. Yes, sir.

Q. 2821 the address?

A. Yes, sir.

Q. That is in the City of Roanoke, is it not?

A. Yes, sir.

Q. Now, will you locate this place with reference say to the Lee Theater?

A. Approximately a couple of blocks.

Q. In which direction?

A. Toward town.

Q. Between the business section of town and the
page 36 } Lee

A. Yes, sir.

Q. Mr. Foster, were you at your store on the afternoon of the 26th of February of this year?

A. Yes, sir.

Q. Did you lose a diamond ring at that time?

A. Yes, sir.

Q. I wish you would go ahead and relate to the Court and Jury what transpired there in your store that afternoon. Was there anyone else there helping you to operate that store?

A. No, sir.

Q. You were operating it by yourself?

Edward E. Foster.

A. Yes, sir.
Q. Did Mr. Snyder come into your store?
A. Yes. sir.
Q. I take it you did not know the names of any of these three people at that time? You have learned the names since?
A. Yes, sir.
Q. About what time did Mr. Snyder come into your store?
A. It was around two or shortly afterward.
Q. Was anyone with him?
A. Yes, sir.
Q. Who was with him?
A. I have since learned that his name is Mr. Tasker.

Q. Describe your store so far as size and the
page 37 } layout on the inside.

A. The inside floor plan is about 12 x 18 to 20 feet. Two wall cases and three closed show cases.
Q. Now, where are these show cases located?
A. They've located parallel with the long side of the building.
Q. You divide your jewelery and merchandise in different show cases. Do you have one you keep watches in?
A. Yes, sir; I have watches in all three of them.
Q. Watches in all three of them. Where do you keep the precious jewels, the diamond rings?
A. In one section of one of the cases.
Q. Where is that.
A. When you come in the door the first one is shoved against the wall and the one the diamonds are in is the second one.
Q. When Mr. Snyder and Mr. Tasker came in where did they go?
A. They walked back to the third one.
Q. That's toward the rear of the building?
A. Yes, sir.
Q. And what was in that show case?
A. Mr. Snyder said that he was interested in looking at a lady's watch.
Q. Did he say who he wanted to buy it for?
A. As I recall now, you know who a person buys a watch for is more or less immaterial, but I was under the
page 38 } impression it was for his wife.

Q. Did you display watches to him then?

A. He wanted the one watch in the show case and wanted to take a look at that. And I set it on the case and he examined it and said, "Let's see this one?", which was a similar watch

only in white gold. And they looked at those two watches and they were the only two taken out of the show case.

Q. And while they were there and looking at the watches, did someone else come into your store?

A. Mr. Brizendine.

Q. Just what happened when he came in?

A. Mr. Snyder and Mr. Tasker were standing there and they were looking at the watches, which is normal. And Mr. Brizendine came in and I turned to him and said, "I'll be with you in a minute." And I'm reasonably sure that it was Mr. Snyder who said, "Go ahead and wait on him; we're in no hurry." And then I turned to Mr. Brizendine and asked him what I could do for him, and he said he was interested in buying a set of rings for his wife, and I proceeded to wait on him. I asked him a few questions about what he wanted; what he was interested in, and he made the remark, "Let's look at some of them." And I just reached and got a tray and I checked it as I took it out.

Q. What was he apparently interested in buying?

A. Set which would include a solitaire, one stone in one ring and a plain matching band with it.

page 39 } Q. A wedding band?

A. Wedding band; yes, sir.

Q. And did you display those for him?

A. We had the tray and he picked those after looking through the tray; he decided on those two. And in the meantime he had examined a number of them.

Q. Did you have a larger stone in that case?

A. I did; and it was a one carat stone and I had the only one in stock that I had at all.

Q. What was the exact weight of that stone?

A. It was billed to be as ninety-seven points.

Q. 0.97 of one carat?

A. That's right.

Q. What is the value of that ring, Mr. Foster?

A. I paid the company $525.00 for it.

Q. Was there a tag on this ring as to the sale price of it,

A. Yes, sir; it was put on there by the manufacturer at the price of $1500.00 which would include long range credit and federal taxes.

Q. You say you just had the one 1 carat ring is all you had?

A. That was the only one carat in stock.

Q. What sort of setting was it?

A. It was in a Columbia true fit mounting.

Edward E. Foster.

Q. Describe just what is a Columbia true fit mounting?

page 40 } A. It was in white gold. A true fit mounting is a patented with an internal lock, with two little plungers that sets near the top of it and sets down against the finger to keep it from rolling over like that (indicates by turning ring on finger), other than that you would never know the difference until you took it off and examined it. It's patented by this one company.

Q. Who handles those rings?

A. For the last several years I'm the only one. At one time four or five years ago there was one other store handled them that's out of business, but at the present time to my knowledge I'm the only one in Roanoke that handles them.

Q. Of that particular setting?

A. Yes, sir.

Q. All right; just go ahead and describe what happened there at your store?

A. Well, Mr. Brizendine was looking at the rings. As I said, we examined—we, he and I—any number of them, checking prices, and this one carat in particular he looked at that, looked at the tag, and as I recall he handed it back to me and I put it back where it belonged.

Q. About how many rings did you have in each of those trays, approximately?

A. I think there's twelve.

Q. What about the merchandise in the tray?

A. Each space was full, each slot.

page 41 } Q. You permit any vacant slots?

A. No, sir.

Q. All right; go ahead from there; what happened then?

A. We were looking at the rings and he decided on one particular set, and in the meantime while doing this Mr. Snyder asked me a question concerning the watch, and he was standing on my left, and I turned to answer him, answer his questions, and he and Mr. Tasker, I think Mr. Snyder said, "Well, we're looking around and we'll be back later," and they left.

Q. They left?

A. Yes, they left.

Q. Did they ever come back?

A. No, sir.

Q. All right, then just finish up what else happened?

A. Mr. Brizendine said, "Here's this set here, hold these rings," The two he had in his hands he handed back to

me as I recall. Anyway I had them in my hand when he left. He says, "Hold these, I'll bring my wife back in a couple of hours; I want her to look at them and I'm going to buy them." And when he said that he was ready to go.

Q. Approximately, just the best you can, how long was it between the time Snyder and Tasker walked out until Brizendine walked out?

A. Well it would have been between thirty seconds and sixty seconds. It wasn't too long, very shortly.

Q. When he walked out what happened? When page 42 } did you miss the ring?

A. I had the one tray on the counter and I had the two rings in my hand and I glanced and there was one empty slot. There were three in fact, plus the two I had in my hand, and one missing, and I immediately noticed it was the carat diamond because it being the only one. And I thought to myself that he had it, and I spent about thirty or forty-five seconds to be sure it hadn't been laid some place else around, and I assured myself it was missing, and I walked ouside to see if the man had an automobile to get his license number; that's what I intended to do, and I saw him walking Oh, about 50 or 75 yards down the street and I came back in the store and immediately called the police department.

Q. You immediately called the police department to give them a description—

A. Of Mr. Brizendine.

Q. —of Mr. Brizendine and of the diamond ring?

A. Yes, of the ring.

Q. Now, when Snyder and Tasker came in they were the first to come in?

A. Yes, sir.

Q. When Brizendine came in was there any signs of recognition whatsoever between Brizendine, Snyder and Tasker, or any of the three of them?

A. No, sir. I didn't see any recognizing each other or saying anything or having spoke to each other in any way.

Q. Did they at any time while they were in the store speak to each other?

page 43 } A. No, sir.

Q. Did any of them speak to Brizendine?

A. No, sir.

Q. Did you see anything that would indicate recognition?

A. No, sir; they seemed total strangers.

Edward E. Foster.

Q. Mr. Foster, when Mr. Brizendine left did he make any statement with reference to returning or not?

A. Yes, he said he would bring his wife back in a couple of hours and pick up the set of rings.

Q. Did he ever come back?

A. No, sir.

Q. Mr. Foster, had any of these three men so far as you know been in this store prior to this afternoon of February 26th?

A. Yes, sir.

Q. Which one?

A. Mr. Snyder.

Q. When was he in your store?

A. I'd say approximately a week or ten days, I don't know exactly, along about that.

Q. What did he say to you about why he was in there at that time?

A. Well, he came in and started a conversation. I don't know what the conversation started about, but he mentioned he had lost a ring himself, and as I recall he told me about losing it, and in the conversation indicated that the page 44 } ring might turn up some place, which it could do, and asked if I had seen such a ring as he described, and I hadn't, and we talked for, Oh, I'd say maybe ten minutes just a general conversation.

Q. And he is the only one of the three that you can recognize as having been there prior to the 26th day of February, is that correct?

A. Yes, sir.

Mr. Cuddy: All right, take the witness.

CROSS EXAMINATION.

By Mr. Creasy:

Q. Mr. Foster, when Mr. Snyder was in your place the first time you have just testified about, he talked about watches to you, did he not?

A. I can't definitely recall that. It's possible; he might have. I wouldn't say one way or the other. We talked about ten minutes in a general conversation and talked about a number of things.

Q. Didn't you tell him that you operated a small shop there and at a low overhead and that if he needed any jewelery that you could make him a good price on it?

Edward E. Foster.

A. I wouldn't say I did or I didn't.

Q. But it is possible that you did tell him that?

A. Some things is possible I could. I could have told him I could sell cheaper than the other places on account of that.

Q. Assuming that the ring was taken by Mr. Brizendine, did he take it when Mr. Snyder called your attention to the watches would you say, or was it when you put the rings on the counter behind you, when you turned to do that?

page 45

A. I'd say he took it when by head was turned and spoke to Mr. Snyder.

Q. That's when you think it was?

A. Yes; that's when I think it was.

Q. When did you decide that?

A. The whole period of time, you know, was very short.

Q. Didn't you say when you testified downstairs these words:

"There is a doubt in my mind by the fact that I had two of the rings in my hand, and I had had the other one in my hand; I laid the two rings that Mr. What-you-may-call-it's name was looking at on the bench immediately behind me as I might have turned around."

A. I do recall laying those rings on the bench.

Q. Mr. Brizendine could have taken the ring when you turned around; that's what you testified to downstairs?

A. It's pretty hard to remember just when I laid those rings down, but I do recall that I did lay them on the bench, and I had to lay them there after he said he would take them, otherwise I had no reason to lay them there other than that. After he decided that was the set he wanted—

Q. You don't know whether you laid them down right then or whether you talked to him some more and then laid them down?

A. That's all in a period of about a few seconds and I couldn't say. I can't remember every move I might have made with my hand or head in that particular time.

page 46

Q. Then you don't know when the rings was taken; whether it was by Mr. Snyder calling your attention away from Mr. Brizendine, as you have stated, or when you turned around to put the rings on the counter behind you?

A. As I recall looking back over that thing—well, I can't say just exactly. In a short period seconds I assume the ring

Edward E. Foster.

was taken when I turned around, because a short time after they was all gone, very short.

Q. You still wasn't sure after Mr. Brizendine left the ring was missing until you went back and made another check, were you?

A. The ring was missing; there's no question about its being missing out of the show case and out of the slot.

Q. There was a question in your mind whether somebody had taken it or not? You went back to check the bench to see if you had laid it on the bench, didn't you?

A. I didn't go back, I just turned around; they were all right there together.

Q. You turned around to see if you had laid it there?

A. I testified that I spent 30 to 45 seconds doing that. It always pays to be sure. When you're talking to people like that that's interested in buying you can't keep track of every move and later on remember every move you made.

Q. You said something about this ring being a Columbia true fit, is that what you said?

A. Yes, sir.

page 47 } Q. Those rings are patented, I believe, are they not?

A. Yes, sir.

Q. The mechanism inside of them is a patented thing?

A. Yes, sir; it's patented by the Columbia Diamond Company.

Q. And it's sold all over the United States?

A. Yes, sir; I'd say so.

Q. Probably a store in each city that sells those rings?

A. I would imagine in a large majority of the cities do, yes. I think so.

Q. And there would be any number of those rings in circulation?

A. Well, there should be some in circulation, yes.

Q. You have any number of customers who come in your store and look around and indicate that they're going to buy a ring or watches or jewelry, don't they?

A. Yes; I have customers.

Q. And they tell you that they're going to come back later?

A. Yes, sir; they do that too.

Q. And you never see them again?

A. That's right; I've had that happen; people shopping.

Q. And all of this took place within—let me ask you this: The counter that you exhibited the watches to Mr. Snyder on was the counter where those watches were in stock?

A. Yes.

page 48 } Q. You picked them up and laid them up there?

A. Directly on the case he was standing in front of, yes.

Q. The two watches were there when they left, weren't they?

A. Oh, yes.

Q. And there was nothing in Mr. Snyder's actions or conduct that indicated to you that he was having anything to do with any ring, was there?

A. At that particular time?

Q. Yes.

A. I have to be honest and say no, because at the time I didn't put them together myself.

Mr. Creasy: All right; that's all.

Mr. Cuddy: Stand aside.

Witness stands aside.

The Court: Let's take a five minute recess. The Jury may go to their room.

page 49 } PROCEEDINGS RESUMED.

JOEL KRISH,

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

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Mr. Joel Krish?

A. Yes.

Q. You operate the United Pawn Show, do you not?

A. Yes, sir.

Q. How long have you been dealing with rings, precious stones, diamonds and things like that?

A. Fifteen years.

Q. Mr. Krish, on the afternoon of the 26th day of February, this year, was a diamond ring brought into your place?

A. Yes, sir.

Joel Krish.

Mr. Creasy: Your Honor please, let me ask him a question in order to make an objection.
The Court: All right.
Mr. Creasy: Was Jack Snyder there at the time?

A. No, sir.

Mr. Creasy: Then if your Honor, please, I object to the evidence.
The Court: I overrule the objection for the same reason that I stated in chambers awhile ago that I thought this was proper.
page 50 } Mr. Creasy: I save the exception on the same reasons.

By Mr. Cuddy:
Q. You say a diamond ring was brought into your store and exhibited to you?
A. Yes, sir.
Q. By whom?
A. Mickey Brizendine.
Q. You've known Mickey for years and years?
A. Yes, sir.
Q. Just the best you can, describe that diamond ring to the Court and Jury?
A. It was a solitaire diamond approximately 80 or 90 points, white gold, Columbia true fit mounting.
Q. Would you describe what a true fit mounting is?
A. A true fit mounting is a mounting that has a little locking device, a little spring up in the inside of it to hold the ring in place on your finger.
Q. Were you asked how much you would give on the ring?
A. Yes, sir.
Q. How much would you have given on the ring at that time?
A. $300.00.
Q. What did he do with the ring?
A. Put it in his pocket. He got kinda mad and put it in his pocket and walked out.
page 51 } Q. He just walked out?
A. Yes, sir.
Q. Shortly thereafter did you get a telephone call from the police department?
A. Yes, sir.
Q. And what was described to you?

Capt. Kermit E. Allman.

A. A white gold lady's diamond ring, approximately one carat in a Columbia true fit mounting.

Q. Did they give you a description of the person too?

A. I don't believe he had. No, I don't believe he had even got that far.

Q. How long had Mickey been gone from your store when you received that call?

A. Certainly not over a couple of minutes.

Q. You notified the police to come on down to your store?

A. Yes, sir.

Q. That you had some information for them?

A. Yes, sir.

Mr. Cuddy: All right; take the witness.

CROSS EXAMINATION.

By Mr. Creasy:

Q. I believe, Mr. Krish, you've been in this business for a long time, and without bragging, I consider you and you consider yourself an expert; you make your living buying and selling diamonds?

A. Yes, sir; I handle them.

page 52 } Q. And this stone that you saw could have been as small as 70 points?

A. I think it could, yes.

Mr. Creasy: That's all I want to ask him.

Mr. Cuddy: Stand aside.

Witness stands aside.

CAPT. KERMIT E. ALLMAN,

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

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Captain Kermit E. Allman?

A. Yes, sir.

Q. Captain of detectives of the City of Roanoke, Virginia?

A. Yes, sir.

Q. Captain Allman, did you assist in the investigation of this diamond ring?

Capt. Kermit E. Allman.

A. Yes, sir.
Q. Did you have John F. Snyder brought in and was he questioned by you?
A. Yes, sir.
Q. In regard to what had transpired?
A. Yes, sir.
Q. What did he say with reference to how long
page 53 } he had known Mickey Brizendine?

Mr. Creasy: Wait just a minute.
Your Honor, please, he hasn't laid the proper ground work for a confession.

By Mr. Cuddy:
Q. You had him in and talked with him?
A. Yes, sir.
Q. Did he make a statement to you?
A. Yes, sir.
Q. Was that statement made in your office?
A. Yes, sir.
Q. Did you hold out any promises, or threats or intimidation or anything like that to cause him to make such a statement?
A. No, sir.
Q. Was that statement made freely, voluntarily without promise of any reward?
A. Yes, sir.

Mr. Creasy: Wait just a minute.
I would like to cross examine him on that.
The Court: Not cross examine him. You may ask him a few questions or two if you wish, but don't go into cross examination.

By Mr. Creasy:
Q. What day of the week was Mr. Snyder picked up or was he locked up?
A. It was on March 3rd. Wednesday, March 3rd.
page 54 } Q. And I believe on Thursday or Friday Mr. Moran got in touch with you about releasing him on bond, didn't he?
A. I don't recall what day he got in touch with me about releasing him on bond.
Q. And you told him you would not release him on bond until he cooperated with the department?

Capt. Kermit E. Allman.

A. I did not tell him any such thing.

Q. Well, then when I talked with you prior to the time he was released what, if anything, did you tell me as to letting him out on bond?

A. I told you that we were holding him for investigation in connection with the theft of a diamond ring from the Foster Jewelery Store.

Q. And you didn't let him out until on Sunday morning?

A. That's correct.

Q. And during that time you questioned him numerous times?

A. I questioned him—I interrogated him three or four times.

Q. If his statement had been voluntary it would not have been necessary to do that, would it?

Mr. Cuddy: Your Honor, I submit that unless he can go from that examination and show something that he had done to intimidate him, it's improper.

Mr. Creasy: He had been held in jail three or four days and I called the Court about it, to give bond.

page 55 } Mr. Cuddy: You mean to turn him loose without any questions?

The Court: We are trying this man now on this offense that he's alleged to have committed, and not in taking up questions as to whether he was illegally detained. If you can connect this with the alleged offense you may go ahead.

Mr. Creasy: What I'm trying to show, if your Honor, please, is that the statement he made was not made voluntarily. It was made under pressure of refusing to permit the man to have bond, and held for four days. That's what I'm objecting to.

The Court: All right; I'm going to let you go ahead.

Mr. Cuddy: If he so feels he has every right to take any such action as he deems proper before a proper court for release on bond. Now, it's perfectly proper to keep people during periods of investigation. He did nothing to try to have him released in a legal manner. So, I submit his examination is improper.

Mr. Creasy: I think the Court will concede that the Court is not open on Saturday, and I called the Court.

The Court: The contention is that Captain Allman may have intimidated this witness, and for that purpose I'm going to let him go ahead.

Capt. Kermit E. Allman.

By Mr. Creasy:

Q. And you kept him confined until on Sunday morning when I talked with you and told you we would appear before Judge Kuyk on Monday morning, and you let him out on Sunday?

page 56 } A. He was not released because of that reason.

Q. I don't mean he was released for that reason; but he was not released until then, isn't that correct?

A. He was not released because we were making an investigation.

Q. And during that entire time you questioned him about this ring?

A. I questioned him three or four times.

Mr. Creasy: I move that the confession not be admitted, your Honor. The United States Supreme Court has ruled on those same circumstances.

Mr. Cuddy: They haven't done any such thing of the kind. I submit that if he's going to argue these things that —

The Court: There's no evidence to this point that there's been any intimidation of the witness, so I will let Mr. Cuddy go back to his direct examination, but I do think we should clear this one question:

Q. Captain Allman, as I understood it, you say that you talked with him on Wednesday, March 3rd. By reference to my calendar here, it seems that March 3rd is on Thursday. That might have some bearing, and for that reason I want to bring it out.

A. I looked at my calendar wrong, and it is Thursday. I know that it was on March 3rd, because that was the day I sent for him and had him brought into my office, and I talked with him on that day and that was the day he was

page 57 } arrested. I looked at the calendar wrong.

The Court: All right; Mr. Cuddy.

By Mr. Cuddy:

Q. Captain Allman, in talking with Snyder how long did he say that he had known Mickey Brizendine?

A. He stated that he had known Mickey Brizendine all his life.

Q. How long had he known Ewell Grant Tasker?

A. He stated that he had known Tasker for several years.

Capt. Kermit E. Allman.

Q. On the 26th of February just prior to going out on the Williamson Road where did he say he had been?

A. He stated that he and Tasker had been to Billy's beer joint on Salem Avenue—on east Salem Avenue.

Q. Where is that located?

A. It is located diagonal across the street from the rear of the City market building on East Salem Avenue.

Q. Where had they come from?

A. His restaurant, Snyder's restaurant.

Q. Where is Snyder's restaurant located?

A. 8½ Street, S. E., Campbell Avenue and 8½ Street.

Q. Who did he see when he came to Billy's? Who did he say he saw and talked to when he came to Billy's?

A. Mickey Brizendine.

Q. Did he tell you who went with him to Mr. Foster's jewelery store?

A. Yes, sir.

page 58 } Q. Who went with him?

A. Tasker.

Q. Did he tell you approximately what time he went?

A. They were at Billy's beer joint around noon and then returned to his restaurant, and then they left in his, Snyder's, automobile it was pretty close to between 1:30 and 2:00 P.M.

Q. Did he give you approximately what time he went into Mr. Fosters jewelery store?

A. He said it was approximately between two, or between two and two-thirty; he didn't know the exact time.

Q. Did he say who came in while he was there?

A. Yes, sir.

Q. Who came in while he was there?

A. Mickey Brizendine.

Q. What did he say about recognition, or speaking to Mickey Brizendine?

A. He said they didn't exchange any words or greetings.

Q. Did he say how long he was there?

A. He said he was there just a few minutes.

Q. Did he tell you what he went there for?

A. Yes, sir.

page 59 } Q. What?

A. He said he went there to look at a watch; that he was considering buying a lady's watch for a girl friend.

Q. After leaving the Williamson Road did he make any statement with having met Brizendine again?

Capt. Kermit E. Allman.

A. Yes, sir.

Q. Where did he meet Brizendine?

A. He stated that he and Tasker returned to his restaurant and then awhile later, after a short time, they left his restaurant again and went back up to Billy's beer joint and picked up Mickey Brizendine.

Q. And then he and Mickey and Tasker, what did they do?

A. They left there and Mickey Brizendine wanted to pick up his girl friend, June Fuller, who lives on Sanford Avenue, S. W., and they went in his, Snyder's automobile, the three of them, out to her house and picked her up.

Q. Did he say whether or not there had been a discussion with reference to a trip outside of the city of Roanoke?

A. He said that Tasker and Brizendine had some discussion about going to Richmond because Tasker had some friends in Richmond.

Q. Where did that conversation take place?

A. In the automobile while they were going for June Fuller.

page 60 } Q. This is the man here (indicating Snyder) who made those statements to you?

A. Yes, sir.

Mr. Cuddy: All right, sir; take the witness.

Mr. Creasy: No questions.

Witness stands aside.

State rests.

RECESS FOR LUNCH.

Mr. Creasy: I would like to make a motion.

IN CHAMBERS.

Mr. Creasy: If your Honor, please, I move to strike the Commonwealth's evidence as to John F. Snyder, Jr., on the ground that the evidence does not show in any way that Jack Snyder is guilty of actually stealing the ring, or taking the ring. The evidence is wholly without notice to Mr. Snyder that a ring had even been stolen. There's nothing in the record to show that he knew that Mr. Brizendine had taken the ring, if the ring was actually taken, because the man himself who lost the ring doesn't know Mr. Brizendine took

it. He thinks he took it but he doesn't know. The ring presented to Mr. Krish could have been a 70 points or a 97 point diamond; a ring having general circulation all over the country. And the only evidence in the world is Mr. Foster's suspicion that Mr. Snydor attracted his
page 61 } attention in order for the ring to be missed. He admits that it could have been missed when he turned around to the counter behind him, and it is just a *supicion,* and a suspicion added on to another suspicion.

The evidence shows that he went into the jewelery store to buy a watch for his girl friend. He might have talked to Mr. Brizendine that morning, but there's no evidence that there was any collusion between them, or no evidence that he has been involved in any activities whatsoever, or any other criminal action whatsoever, and for that reason I move to strike the Commonwealth's evidence, and for the reason that the Commonwealth has not made out a primi facie case; and Mr. Foster said there was nothing noticeable between the men to indicate Mr. Snyder had anything to do with the theft of the ring.

The Court: The fact that these three men were together earlier in the morning by Snyder's own statement; and the fact that they appeared in the store at the same time, and that the diamond ring was missing right after Brizendine left the place makes it, I think, a clear case for the Jury on circumstantial evidence, Mr. Creasy.

The Jury may believe that he participated in this offense by prior arrangement with these other two men, and if they do believe that I believe they are perfectly justified in saying that this man is guilty.

Mr. Creasy: Simply because three men happened to be in a jewelry store at the same time makes him guilty beyond a reasonable doubt?

page 62 } The Court: That is for the Jury to say; not for me.

Mr. Creasy: We rest, your Honor.

INSTRUCTION NO. 1 offered by the Commonwealth.

Mr. Creasy: I object because it would have to be under the theory that he had conspired with Brizendine and had formed this plan to steal this ring. There is no evidence whatever that there was ever any plan formed to steal the ring.

Which instruction was given by the Court and excepted to by counsel for Defendant.

INSTRUCTION NO. 2 offered by the Commonwealth.

Mr. Creasy: I object because the instruction says other evidence connected with circumstantial evidence, and they don't have any other evidence that I know of; no direct evidence of any kind.

The Court: There is evidence that this man and Tasker were in the place of business of the complaining witness there at the time the ring disappeared.

Mr. Cuddy: On the statement that they met a short time before that and met again a short time afterwards.

Mr. Creasy: There's no evidence that they conspired in any of these meetings or made any effort to go out and take this ring.

The Court: I think that instruction is proper under the evidence in this case.

Mr. Creasy: I except to the Court's ruling.

INSTRUCTION A offered by the defendant, and given without objection.

page 63 } INSTRUCTION B offered by the defendant, objected to by the Commonwealth on the ground that it is not the law and does not apply. The instruction was amended and given, to which action in amending said instruction the defendant, by counsel, excepts.

INSTRUCTION C offered by the defendant and given without objection.

INSTRUCTION D offered by the defendant and given without objection.

INSTRUCTION E offered by the defendant, objected to by the Commonwealth, amended and given.

INSTRUCTION F offered by the defendant, amended by the Court deleting "and it is therefore, necessary for the Commonwealth to prove beyond a reasonable doubt that the principal is guilty", and given as amended.

Exception to the Court's ruling on the ground that the instruction should have been granted as offered.

INSTRUCTION G offered by the defendant and objected to by the Commonwealth on the ground that you don't have to prove it was the same ring, which instruction was refused by the Court.

Mr. Creasy: Exception to the ruling of the Court for the reason that the evidence was admitted to prove the ring had been stolen from Foster's Jewelery Store, and since there's no evidence that it was the same ring the evidence should be stricken or this instruction should be granted, because the Jury would have to assume that the ring was the same ring, which are not permitted. The burden is
page 64 } on the Commonwealth in order for those statements to be admissible at all, and it has not been proved.

INSTRUCTION H offered by the defendant, objected to by the Commonwealth and refused, to which action of the Court the defendant, by counsel, excepted.

The Commonwealth's Attorney announced that he did not care to make an opening argument of the case.

Mr. Creasy: I do think Mr. Cuddy should make an opening argument of the case.

The Court: I know of no requirement that compels the Commonwealth's Attorney to make an opening argument if he desires to waive it. He's entitled to that privilege.

Mr. Creasy: I except to the Courts' ruling.

RETURN TO COURTROOM AND PROCEEDINGS RESUMED AT 2:00 P.M.

The Court instructed the Jury and counsel proceeded with their argument of the case; after which the Jury retired to their room to consider of their verdict; and after a time returned to the courtroom and rendered the following verdict:

"We, the Jury, find the defendant, John F. Snyder, Jr., guilty as charged and fix his punishment by confinement in the penitentiary for a period of three years.

Claude A. Hodges, Foreman"

Whereupon, the Jury was discharged from further consideration of this case.

Mr. Creasy: If the Court please, I move to make a motion to give me a day or two to go over this record and give my exceptions.
page 65 } The Court: The Court will permit it, and we will make that at 10:30 A.M. on May 2nd.

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Petition presented 6/21/60 D.A.K.

Filed by leave of Court July 7, 1960.

PATSY TESTERMAN, Deputy Clerk.

To the Honorable Dirk A. Kuyk, Judge of said Court:

Your petitioner, John F. Snyder, Jr., would respectfully show unto your Honor the following:

1. That on the 3rd day of March, 1960, your petitioner was arrested and charged with grand larceny of a diamond ring alleged to be the property of one Edward E. Foster, and thereafter he was regularly released on an appearance bond on the 6th day of March, 1960, for his appearance before the Municipal Court for the City of Roanoke, Virginia; and

2. That on the 18th day of March, 1960, in obedience to said charge of grand larceny, and in compliance with his appearance bond, your petitioner appeared before the Honorable Beverly T. Fitzpatrick, Judge of the Municipal Court for the City of Roanoke, Virginia, and at which time and place, the Commonwealth of Virginia presented evidence to said Court in connection with the charge, and at the conclusion thereof, your petitioner, by counsel, moved the said Municipal Court to strike the Commonwealth's evidence, and to dismiss your petitioner from further proceeding as to the said charge of grand larceny, there being no other criminal charge known to your petitioner pending against him in said Court. The said Court announced that the motion would be taken under advisement. And, insofar as the said charge pending in the Municipal Court is con-
page 80 } cerned, the said charge is still under advisement by said Court, and is the same charge herein complained of. But, notwithstanding, the said charge being under advisement by said Court, your petitioner was indicted by the Grand Jury attending your Honor's Court on the 4th day of April, 1960, and upon which said indictment your petitioner was arraigned, pled not guilty, and was on the 21st day of April, 1960, and the Jury returned a verdict finding your petitioner guilty of grand larceny of the said diamond ring,

the property of the said Edward E. Foster, and fixed his punishment by confinement in the penitentiary for a period of three years; and

3. That your petitioner offered no objection to being tried under said indictment, and did not in any way, demand that the charge pending in the Municipal Court for the City of Roanoke, Virginia, be disposed of before being tried on said indictment; and

4. That by reason of Section 19-137.1 of the 1950 Code of Virginia, approved by the General Assembly of Virginia, and which took effect on March 30, 1960, and reads as follows, to-wit:

"Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 19-137.1 as follows: 19-137.1. No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing.

2. An emergency exists and this act is in force from its passage",

and the said indictment returned against your petitioner by the said Grand Jury on the 4th day of April, 1960, and upon which he was tried, and found guilty, is a mere nullity, void and of no effect, for the reason that your petitioner page 81 } did not waive his right to a preliminary hearing in writing as required by said Section.

Your Petitioner therefore prays that the conviction and sentence imposed upon him in this case by the said Jury on April 21, 1960, be set aside, and that the indictment be quashed, and that your petitioner be discharged from the punishment imposed upon him in this case.

Respectfully,
JOHN F. SNYDER, JR.

W. G. CREASY
Counsel for Defendant
Peoples Federal Building
Roanoke, Virginia

STATE OF VIRGINIA
CITY OF ROANOKE, TO-WIT:

John F. Snyder, Jr., the petitioner named in the foregoing petition, being duly sworn, says that the facts therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

JOHN F. SNYDER, JR.

Subscribed and sworn to before me, Dorothy R. Young, a Notary Public of and for the City aforesaid, in the State of Virginia, in my said City, this 20th day of June 1960. My commission expires December 14, 1960.

DOROTHY R. YOUNG
Notary Public

page 82 } This is to certify that on the 21st day of June, 1960, I delivered a true and correct copy of the foregoing Petition to C. E. Cuddy, Commonwealth's Attorney for the City of Roanoke, Virginia.

W. G. CREASY

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* * * * *

ORDER.

This day came the attorney for the Commonwealth, and the defendant, John F. Snyder, Jr., by counsel, upon the Petition of the defendant tendered to the Court on June 21, 1960, in this cause, praying that he be discharged from the punishment imposed by the Jury in this cause, and that the indictment herein be quashed.

And the Court having read the Memorandums filed by the attorney for the Commonwealth, and the attorney for the defendant, and heard argument of both parties, and having considered all of which, the Court doth deny the prayer of said Petition, for the reasons that the defendant, John F. Snyder, Jr., made no objection to being tried upon the indictment in this case prior to the trial on said indictment, and for the further reason that said Petition was filed more that twenty-one days after final judgment, and the Court is

without jurisdiction to grant the prayer thereof, to which action of the Court the defendant, by counsel, excepted, upon the grounds that the matters raised by the said petition may be raised at any time, in any manner, before any Court, or by the Court itself.

Enter July 8 1960, D.A.K. Judge,

A Copy—Teste:

H. G. TURNER, Clerk.

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