Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

202 VA 1019

Record No. 5270

In the
Supreme Court of Appeals of Virginia
at Richmond

EWELL GRANT TASKER

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. 5270

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 25th day of November, 1960.

EWELL GRANT TASKER, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Hustings Court of the City of Roanoke

Upon the petition of Ewell Grant Tasker a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 14th day of July, 1960, in a prosecution by the Commonwealth against the said Ewell Grant Tasker for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

page 4 }

* * * * *

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

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

That 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.

* * * * *

page 7 }

* * * * *

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof on the 14th day of July, 1960.

This day came the Attorney for the Commonwealth of Virginia and the defendant, Ewell Grant Tasker, came into Court in obedience to his recognizance and was set to the bar. Also came the defendant's Attorney.
Thereupon the said Ewell Grant Tasker 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: Howard W. Elliott, Garland F. Foster, H. Glenn Angle, Theodore Fulton, Charles C. Leonard, Aubrey D. Miller, Frank T. Forbes, Lewis A. Mays, Marvin C. Comer, J. Harold Putt, Mrs. Marjorie Armistead and A. E. Gormican were sworn to well and truly try the prisoner at the bar, and the defendant, by counsel, moved the Court for the Attorney for the Commonwealth to specify the indictment as to taking the ring or accessory before the fact, which motion the Court overruled, and having page 8 } heard the evidence, the defendant, by counsel, moved the Court to strike the Commonwealth's evidence on the grounds that the same was contrary to the law and the evidence, which motion the Court overruled and the defendant, by counsel, excepted, and the jury received the instructions of the Court, the defendant, by counsel, renewed his motion to strike the Commonwealth's evidence, which motion the Court overruled, and the defendant, by counsel, excepted, and having heard the argument of counsel, the defendant, by counsel, moved the Court for a mistrial on the grounds of inflammatory argument by the Commonwealth to the jury and other reasons indicated in the record, which motion the Court overruled, and the defendant, by counsel, excepted. Thereupon the jury retired to consider their verdict and after some time returned into Court the following verdict, viz:

"We, the jury find the defendant guilty as charged in the indictment and fix his punishment at two years in the penitentiary.

A. E. GORMICAN, Foreman."

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 overruled and the defendant, by counsel, excepted.

It is therefore considered by the Court that the said Ewell Grant Tasker be and he is hereby sentenced to confinement in

the State Penitentiary at Richmond, Virginia for a term of two (2) years, and it is ordered that as soon as practicable the said Ewell Grant Tasker 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, moved the Court to permit him to be released on bond until July 18, 1960, which motion the Court overruled and the defendant, by counsel *excpeted.*

And the prisoner is remanded to jail.

* * * * *

page 9 } INSTRUCTION I.

The Court instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that Ewell Grant Tasker was present aiding and abetting another in the unlawfully taking of one diamond ring belonging to Edward E. Foster, and that the value of said diamond ring was more than Fifty Dollars, then you should find the defendant, Ewell Grant Tasker, guilty as charged in the indictment and fix his punishment by confinement in the penitentiary for a period of not less than one nor more than ten years, or, in the discretion of the jury, by confinement in jail not exceeding twelve months, and a fine not exceeding Five Hundred Dollars.

Changed as indicated and given as No. 1.

L. J

* * * * *

page 20 } INSTRUCTION C.

The Court instructs the jury that in determining the credibility of any witness, and in determining the weight to be given the testimony of any witness, they may consider the good character or bad character of such witness and his general reputation in the community in which he resides, for truthfulness or untruthfulness.

Refused.

L. J.

page 21 } INSTRUCTION D.

The Court instructs the jury that proof of the mere presence of Ewell G. Tasker in the Foster Jewelry Store on February 26, 1960, in the company of Jack Snider while Everett Brizendine was there is wholly insufficient to warrant his conviction.

Refused.

L. J.

page 22 } INSTRUCTION E.

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

Therefore, althought the jury may believe from the evidence in this case that there is a strong probability that Ewell G. Tasker is guilty of the offense charged in the indictment, still, if upon the whole evidence, there is any other reasonable hypothesis consistent with his innocence, they cannot fine Ewell G. Tasker guilty, and this is true, although it may appear from the evidence that the probabilities of his guilt are greater than the probabilities of his innocence.

Refused.

L. J.

page 23 } INSTRUCTION F.

The Court instructs the jury that circumstances of suspicion alone, however, grave and serious, can never warrant a jury in returning a verdict of guilty, and you are, therefore instructed that if the evidence in this case arouses

in your mind a question of suspicion alone, it would be your duty to acquit Ewell G. Tasker.

Refused.

L. J.

page 24 } INSTRUCTION G.

The Court instructs the jury that the presumption of innocence is not a mere form to be disregarded by the jury at pleasure but it is an essential part of the law of the land, and binding on the jury in this case; and it is the duty of the jury to give Ewell G. Tasker in this case the full benefit of the presumption unless and until the Prosecution has overcome this presumption by proving the guilt of Ewell G. Tasker beyond all reasonable doubt.

Refused.

L. J.

• • • • •

page 35 }

• • • • •

Received 9/12/60 and filed.

R. F. FERRELL, Deputy Clerk

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

TO: The Honorable C. E. Cuddy
Commonwealth's Attorney
City of Roanoke
Roanoke, Virginia

Ewell Grant Tasker hereby gives notice that he appeals from the judgment of the Hustings Court of the City of Roanoke, Virginia, entered on the 14th day of July, 1960, and will apply to the Supreme Court of Appeals of Virginia for a writ of error and supersedeas to said judgment.

In support of his appeal and petition for a writ of error and supersedeas, the following assignments of error will be relied on:

(1) The Court erred in failing and refusing to sustain the motion of the defendant that the Commonwealth be required to state by a bill of particulars the theory of the prosecution for the reasons assigned on pages 2 to 6, inclusive, of the stenographer's transcript of the testimony.

(2) The Court erred in failing and refusing to strike the Commonwealth's evidence and in failing and refusing to enter summary judgment for the defendant as to the charge of felony embraced in the indictment for the reasons assigned on pages 49 to 54, inclusive, of the stenographer's transcript of the testimony.

page 36 } (3) The Court erred in failing and refusing to set aside the verdict of the jury on the ground that said verdict was contrary to the law and the evidence.

(4) The Court erred in failing and refusing to sustain the defendant's motion for a mistrial for the reasons assigned on pages 65 to 66, inclusive, of the stenographer's transcript of the testimony.

(5) The Court erred in failing and refusing to permit the defendant to show that the Commonwealth's witness, June Fuller Perrow, was not credible nor worthy of belief and thereby impeach her testimony.

(6) The Court erred in giving, at the instance of the Commonwealth, Instruction 1 for the reasons assigned on page 63 of the stenographer's transcript of the testimony in that said instruction did not embody the theory of independent acts of the two men, or either of them, alleged to have been aided and abetted by the defendant in the charge of the felony embraced in the indictment.

(7) The Court erred in failing and refusing to give, at the instance of the defendant, Instruction C, for the reasons assigned on page 63 of the stenographer's transcript of the testimony.

(8) The Court erred in failing and refusing to give, at the instance of the defendant, Instruction D, for the reasons assigned on page 63 to 64, inclusive, of the stenographer's transcript of the testimony.

(9) The Court erred in failing and refusing to give, at the instance of the defendant, Instruction F, for the reasons assigned on page 64 of the stenographer's transcript of the testimony.

(10) The Court erred in failing and refusing to give, at the instance of the defendant, Instruction F, for the reasons assigned on page 64 of the stenographer's transcript of the testimony.

page 37 } (11) The Court erred in failing and refusing to give, at the instance of the defendant, Instruc-

tion G, for the reasons assigned on page 64 of the stenographer's transcript of the testimony.

EWELL GRANT TASKER

By HARVEY S. LUTINS
Of Counsel

* * * * *

page 40 } (IN CHAMBERS.)

(The Reporter is sworn).

Witnesses are sworn and separated.

Mr. Lutins: May we see you in Chambers.

IN CHAMBERS:

Mr. Lutins: Your Honor, the defendant here and now asks that the Commonwealth inform us by a bill of particulars of of what part Ewell Tasker was to have taken in the alleged larceny of the diamond ring, whether by principal in the first degree or second degree or as an accessory.

The Court: Any objection to that, Mr. Cuddy?

Mr. Cuddy: I have no objection. I think one or both of them were present during the trial of the others. They heard quite a bit of the evidence and know exactly what the theory of the Commonwealth is.

These three persons went into the store and stole this ring in which this man participated in the stealing of the ring. It will be a question of proving he was present and either took the ring or aided and abetted in the taking of the ring.

Mr. Lutins: We are entitled to know whether his position is going to be that the man either took the ring or aided and abetted in the taking of the ring.

Also, had we heard the trial, which we didn't, that wouldn't have anything to do with what this man is being tried for.

The Court: You had an opportunity to do that before the Jury was sworn. I know nothing about this evidence nor what he's going to produce, but certainly at the termination of the evidence the Court will be in a position to instruct the Jury on the law from the evidence. I have no idea what it will produce. This indictment charges grand larceny.
page 41 } If it is proved that he aided and abetted they have a right to convict him.

Mr. Lutins: We feel we're entitled to know the true nature of the prosecution. I went to the Commonwealth yesterday and asked him to inform us and told him the matter could be disposed of by agreement, and we now make our motion.

Mr. Honeyman: It is apparent from the proceedings and from what the Court has been informed from the proceedings that three individuals were involved in the taking of a diamond ring. The Commonwealth has proceeded by identical indictments against all three of the parties, and to date there have been two convictions. What has happened in previous trials is immaterial to this trial. The Commonwealth starts again to prove its case. It would therefore appear from all the circumstances that the Commonwealth would state to the Court whether it is proceeding against this defendant as an aider or an abetter, or as a principal; it's just that simple as we see it. It makes a very material difference, particularly in the opening statements of both the defendant and the Commonwealth and in the presentation of the evidence, and therefore, it would appear to me most material at the outset, and as the Court said, you will view it at the conclusion of the evidence, and also whether the Commonwealth asserts its position that it is principal in the first degree or aider and abetter, and that position we feel is proper to be determined prior to the opening statement.

Mr. Cuddy: I don't think the Commonwealth is required to go any further than to allege the theft. I don't think you have to give a bill of particulars if a conspiracy took place; I think that's a matter of proof whether he aided and abetted or actually took the ring. I submit that the indictment has charged this man with the larceny of it, which if page 42 } he took it himself he can be convicted of that, and if he was there present aiding and abetting he can be convicted of that; it's all the same sort of action and it's ridiculous to make the Commonwealth state either by a bill of particulars or oral statement just exactly what his action was there at the time.

Mr. Honeyman: I don't think any crime involving a penalty of a maximum of ten years that it is not material to know how you're proceeding. If a man is before the Court charged with murder and the Commonwealth is going to proceed on manslaughter, he should know it at the outset whether it is going to proceed on manslaughter or first degree murder charge

Where you have had two previous convictions on a charge of grand larceny everybody couldn't be guilty of taking this ring. All we're is asking is whether it is principal in the first degree or aider and abetter.

The Court: Personally, I would like to narrow the issue down, and probably will during the course of the trial. I know nothing about these former cases. I was advised this morning that two other persons were involved in this alleged larceny and have been tried. I don't know what they were tried on or what they were convicted of or anything. This indictment alleges larceny and the indictment includes in it the clause of aiding and abetting, principal, first degree and second degree. Wouldn't that depend on the evidence as it came out?

Frequently I have seen, and prosecuted cases myself, where it started out that the case was grand larceny and the man was the principal that took the goods and articles, and it developed during the course of the trial that
page 43 } he was aiding and abetting and received them, and the Commonwealth was just as surprised as the defendant was.

Mr. Lutins: Under *Grace Smith* v. *Commonwealth,* 185 Virginia, 800, we're entitled to know the true nature of the prosecution. Certainly there's no reason why they don't want to disclose that. It gives us the ability and means to defend, and with knowing what the entire prosecution is going to be. The indictment is good, but under the Smith case we're entitled to know whether it is principal in the first degree or second degree.

The Court: I think we're quibbling over something that doesn't amount to anything.

Mr. Cuddy: Suppose we cannot prove who actually picked the ring up, and make a statement that we're going to prove that he was aiding and abetting and in the course of the trial he actually picked the ring up. It's not unusual for people acting in consort for the state to say which of the three actually picked the ring up. We may not be in a position to prove it, and we're not required to so long as we connect that person with the theft of the ring.

Mr. Lutins: We're entitled to know. In the Smith case the Court so ruled that they were entitled to it. The theory was set out in this case in the record. The record indicated that procedure and they were bound by that.

Mr. Cuddy: To allege a crime and allege that a person did it is one thing and it's a question of evidence as to the instruction at the conclusion as to whether it is principal in the first degree, conspiracy or aiding and abetting.

The Court: It looks like to me that you're ask-
page 44 } ing a little bit too much of the Commonwealth. Apparently you know right much about the background in the case, which I don't know. The Commonwealth's Attorney has alleged larceny of a ring, and the indictment appears to be very particular in its statement. The balance

of it remains as a matter of proof and I think it is tying the hands of the Commonwealth in requiring him to say under this, I'm going to admit that he's not guilty of actually picking the ring up. I overrule your motion.

Mr. Lutins: We except on the grounds stated.

Return to Courtroom.

(The Court proceeded to hear the opening statements of both the Commonwealth and Counsel for the Defendant.)

EDWARD E. FOSTER,

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

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Mr. Edward E. Foster?

A. Yes, sir.

Q. I believe you operate a small jewelery store under the name of Foster's Jewelers?

A. I do.

Q. Where is your store located?

A. 2821 Williamson Road.

Q. With reference to that address where it it located in connection with the Lee Theater?

A. Approximately two blocks towards town on page 45 } the opposite side of the street.

Q. Who works with you, or who is there at the store with you; anyone?

A. No one.

Q. You operate the store by yourself?

A. Yes, sir.

Q. On the 26th day of February, this year, were you operating the store by yourself?

A. Yes, sir.

Q. Were you in your store shortly after lunch between one and two o'clock on that day?

A. Yes, sir.

Q. Just describe to the Court and Jury who came into your store during that period or shortly thereafter?

A. At about this time we're speaking of I was in the store by myself and two people walked in and wanted to buy a watch.

Q. Who were those two people?

Edward E. Foster.

A. Mr. Snyder and Mr. Tasker, I found out later.
Q. Do you see either one of them here?
A. Yes, sir.
Q. Which one?
A. Mr. Tasker.
Q. Is he one of them that came in?
A. Yes, sir.
Q. As best you can fix the time, just approximately about what time it was, to the best of your recollection?

page 46 } A. It was in the vicinity of around 2:30, give or take either way.

Q. Two men came in first?
A. Yes, sir.
Q. What, if anything, was said to you by either of those two men?
A. These two people came in and were interested in a watch, and walked back to the back show case and Mr. Snyder at this time picked out two watches he was interested in. I removed that from the show case and set it on the counter and he and Mr. Tasker looked at them. It seems that there were only two they were interested in and during the discussion of watches they seemed in no particular hurry.
In the meantime Mr. Brizendine walked in.
Q. At the time Mr. Brizendine came in was there any sign of recognition between the three of them?

Mr. Honeyman: We object to the question; It's most leading.
The Court: Let him reframe it.

By Mr. Cuddy:
Q. Tell what, if anything, was done by Brizendine as he walked in?

Mr. Honeyman: Let him tell what happened.
The Court: That question was perfectly all right. Let him go on with it.

A. Mr. Brizendine walked in and I spoke and said, "I'll be with you in a minute", or something similar.
I am reasonably sure Mr. Snyder spoke and said, "Go ahead and wait on him, we're in no hurry."

page 47 } I turned to Mr. Brizendine and asked him could I wait on him.

Q. What did he do?
A. He stopped at the diamond ring case and said he was

interested in a set of rings. These other two people were three or four feet away.

Q. The best you can, describe the physical layout of your store? How your counters are located, and where each one of these customers were?

A. The inside dimensions of the store are 14 x 22, something like that. Coming in the front I have three show cases on the left. There is two setting close together and then a walkway and then the third one.

Q. How do they set with reference to the wall of the building?

A. They are parallel with the wall or lengthwise of the store.

Q. At which show case was Mr. Snyder and Mr. Tasker?

A. The back one, the third one.

Q. To which show case did Mr. Brizendine go?

A. The second one.

Q. And you went over at that time and talked to him?

A. Yes, sir.

Q. Tell the Court what transpired there with you and Mr. Brizendine?

A. Mr. Brizendine, when I went to wait on him I asked him what he wanted and he said he was interested in a set of rings for his wife. I asked him what he was interested in, what type, size and so on, and he gave me a few answers and said, "let's look at some", and I reached in the case and got one tray out and checked it and it was full.

Q. I believe there are little slots where the rings are?

A. Yes, sir.

page 48 } Q. How many slots are there to each tray?

A. I think 12 in the ones I have; twelve or fourteen.

Q. Go right ahead?

A. We started looking at some rings and I had this one tray out and we looked at some in that; and he wanted to see some in another, and I removed that tray and during the time we were looking and examining the rings and looking at the price tags, this and that and the other, and he finally decided on a set, a diamond solitaire with a matched wedding band. I had these in my hand. Mr. Snyder asked me a question about the price of a watch.

Q. What other rings, other than the set had you displayed or looked at?

A. In this particular tray a number he examined and the

Edward E. Foster.

one in particular was the largest one I had, and I had a price tag on it of $1500.00.

Q. What was the size and description of that ring?

A. That was a solitaire diamond and the invoice called for .97 points, and it was considered a carat, and it was a white gold lady's mounting, a Columbia mounting.

Q. Describe that mounting?

A. It was a Columbia brand name. It's an unusual type mounting for the fact it has locks built up inside of it to keep it from turning on your finger and it's patented by this one company and it's very easily identified as a Columbia.

Q. Who in Roanoke had the sale of that particular mounting during February, 1960?

page 49 } A. I had the only dealership on that to my knowledge in Roanoke.

Q. What price tag was on that ring?

A. It had a price tag—the company put it on—of $1500.00 which included a long range credit plan and taxes; everything involved was included.

Q. What was the actual price of the ring to you?

A. I paid the company $525.00; that was the invoice price.

Q. You had gotten to where he had selected a set of rings. Tell the Court and Jury what happened after that?

A. He had selected this set of rings and he handed them to me and made the remark to hold this set of rings; that he wanted his wife to see them and that he would be back in a couple of hours and pay cash for it. Somewhere in the conversation he said—

Mr. Honeyman: We object if it was made out of the presence of the defendant; it would be hearsay.

A. The conversation was with Mr. Brizendine, the man who actually got the ring.

Mr. Honeyman: It wouldn't be admissible in this case.

The Court: Tell what happened; don't repeat his conversation.

A. During the process of the sale of this ring Mr. Snyder asked me a question about the price of a watch that they were looking at.

Q. Who do you mean by "they"?

A. Mr. Snyder and Mr. Tasker were together. As I recall, he asked me a second time before I answered him.

Edward E. Foster.

I turned my head to answer him, and that is the
page 50 } only time the ring could have been removed from
the tray that I can possibly see.

Q. Go ahead and tell what happened then?

A. I answered his question turning around, and he said he would be back later, and they left.

Q. Who do you mean would be back later?

A. Mr. Tasker and Mr. Snyder.

Q. Go ahead, what else happened?

A. Mr. Brizendine had made a selection of his rings.

The Court: You say Snyder and Tasker left the store?

A. Yes, sir; and Mr. Brizendine.

Mr. Honeyman: As to what transpired after Mr. Snyder and Mr. Brizendine left the store is not admissible in this case. We would like to see the Court in chambers, please.

IN CHAMBERS.

Mr. Honeyman: Your Honor, it would appear to me that at this point in the case, Mr. Foster has described the physical happenings that occurred in the store, which he says is 14 x 20 feet. He has described two customers, Tasker, the Defendant and, Snyder who came to look at a watch. They conducted themselves as any two normal customers would in a store in inspecting and looking at a watch. Mr. Brizendine comes in and Mr. Snyder remarks, "Go ahead and wait on him, I'm in no hurry." He very vividly describes how he waited on Brizendine and then he gets to the very guts of the case.

Snyder asks him a question twice and then he states purely an opinion, that in his opinion that is the only time the ring
could have been removed from the tray.

page 51 } The Court: No objection was made to that.

Mr. Honeyman: Now Snyder and Tasker leave the place of business in a normal manner, and I submit to the Court that from that evidence before the Court there is no basis for any further evidence with reference to a conversation between Brizendine and Foster, because the Commonwealth certainly hasn't connected the two in any manner on the charge of larceny before this Court.

The Court: I will have to assume that. I don't know. I assume immediately thereafter he missed the ring.

Edward E. Foster.

Mr. Honeyman: He missed the ring, but Mr. Cuddy's opening statement said he missed the ring after Brizendine walked away.

The Court: Why couldn't you just show that he missed the ring.

Mr. Cuddy: That's what I am trying to show.

The Court: Without any conversation. It's immaterial.

Mr. Cuddy: He stated that Mr. Tasker or Mr. Snyder called and spoke to him twice. He has not repeated any conversation.

The Court: He had gotten to where, as I recall, after these two men left out of the store, Mr. Brizendine said something about he was leaving. You're going into that conversation; you're not saying Mr. Brizendine was in the act of leaving when he missed the ring.

Mr. Cuddy: That's exactly what we're trying to do.

Mr. Honeyman: Brizendine left and then he missed the ring.

The Court: You're swallowing a camel and straining at a gnat. What the Commonwealth is trying to prove is that the ring was missing at that particular instance when he left.

page 52 } RETURN TO COURTROOM.

The Court: Gentlemen, you waive the call of the Jury.

(Counsel answered in the affirmative)

By Mr. Cuddy:

Q. Mr. Foster, how long after Mr. Tasker and Mr. Snyder left did Mr. Brizendine remain? Give us your best estimate?

A. One to two minutes, maybe three.

Q. Describe what happened there with your merchandise?

A. Mr. Brizendine finished the discussion we had, the two of us, and made the statement that he would be back in a couple of hours.

Q. Don't get into the conversation.

A. He left and went out the door; and after he left I had two rings in my hand and I glanced at the trays and there were three spaces open. I spent a few seconds checking. I knew which one was missing because there wasn't but one of that size in the whole collection. Those few seconds were spent in checking to be sure. Immediately I walked out of the store with the intention of getting his license number of the automobile, if he was in one, and I saw Mr. Brizendine

Edward E. Foster.

walking down the street 50 or 75 yards away. I come back in the store and called the Detective Bureau and made the report to them.

Q. Did you give them a description of the ring and the person?

A. Yes.

Q. Had any of those three, as far as you could remember, prior to that time been in your store?

A. Yes; Mr. Snyder.

Q. Approximately how long before was it that
page 53 } he was in the store?

A. It could have been three to five weeks.

Mr. Honeyman: Objection; I don't think that is admissible in this case.

The Court: I think he can show that Snyder was in his store.

By Mr. Cuddy:

Q. Your store is located on the Williamson Road in the City of Roanoke, Virginia?

A. Yes, sir.

Q. Now, Mr. Foster, did either one or any of the three return to your store after that day, or any time since?

A. No, sir.

Mr. Cuddy: All right; take the witness.

CROSS EXAMINATION.

By Mr. Honeyman:

Q. You been in the jewelery business for a number of years?

A. Yes, sir.

Q. And your place of business is located on the Williamson Road in the City of Roanoke?

A. Yes, sir.

Q. And you have described your place of business as being 14 x 20 feet?

A. 14 x 20 or 22, I haven't measured it.

Q. Your place is on the righthand side going out away from Roanoke City?

A. That's correct.

page 54 } Q. I am not a drawer, but I want to draw what is a simple sketch of your place of business so

Edward E. Foster.

that the Jury will get your version and not my version. (Counsel draws sketch)

I am calling that 14 feet the width. Here is 22 feet and that is the depth. The door is on the righthand side as you go in the place, is that correct?

A. Correct.

Q. The counters which you refer to are counters which set approximately like this. There is the first one and there is the second one (indicating) and then there's a little aisleway and there is the third one. Is that approximately correct?

A. Yes, sir.

Q. And that is approximately where your watch repair counter is?

A. Yes, sir.

Q. And also there's a little swivel chair in front of it?

A. It is usually there; it's not stationary.

Q. You have your aisleway back in here to wait on your customers?

A. Correct.

Q. Is it not further correct that in the rear of the store on this side there is a display wall case flush against the wall?

A. There's two of them.

Q. Set side by side?

A. Yes, sir; real close together.

page 55 } Q. I'm going to ask you to explain to the Jury the position of the respective parties that you testified about; Mr. Snyder and Mr. Tasker came into your place of business and Mr. Snyder asked you to look at a watch?

A. That's correct.

Q. And the watches were displayed in this second or third counter in the rear?

A. Yes, sir; call that the third one if you will.

Q. And isn't it also correct that there's some display of watches in this wall case?

A. Yes, some are there.

Q. We'll call that the second wall case. You testified you went back to this second counter and at Mr. Snyder's request showed him a watch, is that correct?

A. Correct.

Q. And you looked at that one watch?

A. There was two involved.

Q. He first looked at the first watch and then he asked to see the second watch?

A. Correct.

Edward E. Foster.

Q. Did he have one or two watches out?
A. Both watches were on top of the counter.
Q. On top of the third counter?
A. Right.
Q. And let us for the moment say that Snyder was standing looking at the watches, one and two watches which you showed him; do you recall whether Tasker was on the left or right of him facing you?
page 56 } A. I think he was on my right; I'm pretty sure he was, but I couldn't say positively.
Q. You just don't know on which side he was standing. And while Mr. Snyder was looking at the watch and Mr. Tasker was on either the right or left side of him, how far from Mr. Snyder was Mr. Tasker while he was looking at the watch?

(No answer—witness is thinking)

Q. If I am Snyder how far away was Tasker from him, two, or three feet, or smash up against him?
A. Comfortably close, and not touching one another; just like any two people would stand in that position.
Q. Was Mr. Tasker looking at the watch with Mr. Snyder?
A. I didn't see him turn his head so let's assume he was looking at the watches.
Q. And while looking at watches on the third counter a third man came into the place of business, is that correct?
A. Correct.
Q. No other customers came in and went out while Mr. Tasker and Mr. Snyder were in there?
A. That is a question I don't know. It has come up before, but when Mr. Tasker and Mr. Snyder walked through the door there was another man standing in the store and he was on his way out near the door. Mr. Snyder and this man spoke to one another and passed a few words in a usual conversation, which was perfectly normal, and this man left.
Q. Do you know who that man was?
A. I have since found out his name.
page 57 } A. Hoffman or Huffman.
Q. You know his first name?
A. No.
Q. You know where he's employed?
A. Yes; at VA.
Q. Do you know how long that man had been in your place of business prior to Mr. Snyder talking to him as he came in?
A. This man come in concerning a watch to be repaired,

Edward E. Foster.

and he might have been there five or six minutes; we were talking.

Q. Did you have occasion to go to your watch repair counter in the back of the second case?

A. Just what are you getting at?

Q. When you were talking with this Mr. Huffman who was in there. You said you were talking with him about repairing a watch; did you have to go over to your repair counter?

A. That is right; normally I would have to.

Q. When you went over to your repair counter where was this Mr. Huffman standing?

A. He had to be standing between those cases along in that section.

Q. Standing somewhere in here (indicating on sketch)?

A. Yes.

Q. Do you recall, and I know it's difficult, Mr. Foster, how long your back was turned to this Mr. Huffman while you were at that watch repair counter?

A. No; I couldn't recall that. I just forget what

page 58 } type of problem he had with his watch.

Q. Do you recall whether you repaired his watch while he was present in the store?

A. No; I do not.

Q. May I ask you this question. As as watch repairman would you tell the Court what are some of the very simplest types of repairs that you would make on a watch so that the Jury and the Court would determine the approximate time your back was turned?

Mr. Cuddy: That is a foreign subject with this investigation.

The Court: Let him proceed with his question.

A. Any amount of examination that I might sit down and look at a person's watch under the light?

Q. Would it be 3, 5 or ten minutes; I want to know the amount of time you took with your back to Mr. Huffman in repairing his watch or inspecting a piece of jewelery on his behalf?

A. With regard to the watch in mind I don't know whether that watch was brought there before; my records will show it. So many people come and go and it might have been left. Had he picked it up I wouldn't have set down at the bench at all. Had he had it in for inspection I could have took one, two or three minutes. I don't know the circumstances of Mr. Huffman's watch, but my records will show that, I think.

Edward E. Foster.

Q. And with reference to Mr. Huffman, he spoke to Mr. Snyder as Mr. Snyder was entering the place of business, is that what you stated, sir?

A. Yes, sir.

Q. And that was when Mr. Snyder first came into the store?

page 59 } A. Yes, he was right by the man, within two feet of him, and Mr. Snyder himself spoke to him.

Q. The two of them passing a few words?

A. The conversation was maybe thirty seconds, maybe twenty seconds, I don't know, because the man was on his way out of the building.

Q. And sometime after that this whole incident of that day happened and that is the first time you recall about Mr. Huffman being in the store immediately proceeding this incident, is that correct?

A. Let me have that again.

Q. After this ring was missing, sometime after that, did you recall Mr. Huffman being in your store?

A. Not that I recall. I know the question never came up.

Q. Have you ever told the police officials about it?

A. It was so small an incident the fact the two were coming in and the other was going out.

Mr. Honeyman: With due respect to the witness I only ask that he answer my question.

Mr. Cuddy: He is answering it.

The Court: He answered it.

By Mr. Honeyman:

Q. Mr. Foster Mr. Snyder was looking at these two watches and you were standing in back of the third counter, and Mr. Tasker was standing comfortably beside him?

A. That's right.

Q. And while looking at those two watches how

page 60 } long did it take to look at those two watches?

A. I didn't time the people, naturally, but I would assume two, five or six minutes.

Q. And you have testified that you did not know Mr. Tasker, but you did know Mr. Snyder because he had been in your store 3 to 5 weeks prior to February 26th, the date of this incidence?

A. I just knew him by sight; yes.

Q. And you had never seen Mr. Tasker; you didn't know who he was?

Edward E. Foster.

A. No.

Q. Mr. Snyder carried on a conversation with you with reference to a watch and looked at the watch?

A. As I recall he did.

Q. After looking at the watch—Mr. Snyder was looking at the watch and Mr. Tasker was standing comfortably beside him, and a man walked in the door whom you later found out to be Mr. Brizendine, and he walked toward the first and second counter, isn't that correct?

A. Up to the second counter.

Q. And Mr. Snyder said to you in a very usual manner, "Go ahead and wait on him, I'm not in a hurry"?

A. After I had spoken to Mr. Brizendine.

Q. Did you know Mr. Brizendine?

A. No.

Q. And you left the two watches out on the top of the third counter and walked away from your two customers and walked to the second counter and proceeded to wait

page 61 } on the man who you later determined to be Mr. Brizendine?

A. Correct.

Q. And he intimated to you that he was interested in diamond rings and wedding bands?

A. Yes, sir.

Q. And pursuant to that you pulled out a tray something in the shape of this folder that contains a number of little slots that you put rings in?

A. Correct.

Q. You pulled out one tray and then a second tray, and showed him rings in that tray, is that correct?

A. Yes.

Q. And you had the normal ordinary customer and owner relationship with Mr. Brizendine in showing him rings, isn't that correct?

A. Yes.

Q. And isn't it further correct that while you waited on Mr. Brizendine you were about to determine from your conversation with him that he had picked out a particular ring and band that he liked?

A. He picked out one.

Q. A ring and a band?

A. A ring and a band.

Q. And that's the one he indicated to you he liked?

A. Correct.

Q. And while he was indicating to you, at this second

counter, the ring and band that he liked, you had both trays on top of counter number two?

page 62 } A. Two trays.

Q. And at the same time that both trays were on top of counter number two, Mr. Brizendine was looking at them, and Mr. Snyder was looking at two watches at counter number three and Mr. Tasker was standing comfortably beside him, is that correct?

A. We have stated that it would be correct.

Q. While he was looking at the tray of rings Mr. Snyder asked you a question concerning the watches?

A. The price of a watch, something concerning the price.

Q. Something concerning the price of one of the two watches setting on top of counter number three?

A. Yes.

Q. And you answered that question for him?

A. Yes.

Q. In answering the question I assume you looked up and answered him?

A. Normally, I would have and I assume that's what I did.

Q. Up to that point was there anything unusual about anything that happened in that store that day; wasn't it a perfectly normal business relationship between you and your customers?

A. Yes; I guess it would be perfectly normal.

Q. You answered him about the watch and continued to wait on Mr. Brizendine?

A. Correct.

Q. And in a few minutes after that, whether 30 seconds, two or three minutes it was that Mr. Snyder said we will come back later?

page 63 } A. State that again?

Q. Was it just a few minutes after you answered the question with reference to the price of the watch to Mr. Snyder that Mr. Snyder said he would be back later?

A. It was in a few seconds.

Q. Tell me how long?

A. I answered his question and he remarked, Well, we're looking around and will be back later.

Q. Did he say I'm looking around or We are looking around?

A. I cannot recall.

Q. Can you say it was 30 seconds, one or two minutes, or can you give an estimate of the time he remained after you answered the question?

A. I would say between 20 and 60 seconds.

Edward E. Foster.

Q. It was less than a minute when he said, "We're looking around and we will be back", and Mr. Snyder and Mr. Tasker walked out the front door?

A. Correct.

Q. Do you know whether Mr. Snyder or Mr. Tasker went first?

A. I couldn't answer that.

Q. And as they walked out you continued waiting on Mr. Brizendine?

A. Correct.

Q. You continued to wait on Mr. Brizendine approximately how long after their leaving?

A. A very short time, possibly two minutes, give
page 64 } or take either way.

Q. Two minutes later Mr. Brizendine completed his transaction with you and indicated he wanted to talk with his wife and that he would see you later about the ring?

A. That afternoon.

Q. And Mr. Brizendine went out the door, went from the second counter out the door, and while you were putting the two rings you had in your hand back in the tray, which he indicated he liked, you for the first discovered that a .97 carat diamond ring was missing from one of the two trays, isn't that correct sir?

A. Yes; but in the meantime we both *at* looked at this carat diamond.

Q. Mr. Brizendine and you had looked at it like you had every other ring in both trays?

A. Yes.

Q. Was he out of the door when you discovered the ring was missing?

A. As I recall I had these two rings in my hand, and I didn't put them back in the tray, assuming he was coming back after them. As he was going out the door there were three vacant slots and two rings in my hand. I realized the fact that the large ring was missing and I took a few seconds to look for that one ring.

Q. And both trays were standing in front of you on top of the counter?

A. Yes.

Q. And you immediately looked up, was Mr.
page 65 } Brizendine anywhere in the front of your place of business?

A. As I recall when he was going out the door is when I glanced at the rings and then I looked up and he was gone.

Q. And you immediately called the police?

Edward E. Foster.

A. I went out to the door and to see his license number if he was in an automobile.

Q. You went around here to the door and you looked for this man, who at that time you didn't know who he was to see if you could get his license number?

A. Right.

Q. Did you see him walking to the north or away from Roanoke or to the south?

A. South toward town.

Q. Was he walking on the sidewalk in a normal gate or walk?

A. He was walking.

Q. He was not running?

A. No.

Q. Did you call out after him?

A. No.

Q. Would you tell the Jury whether this man was as far from you as to where the Judge is sitting when you first saw him, or was he further away?

A. (No answer)

Q. Did you yell or shout out at the man that you wanted to see him?

A. No; I didn't.

page 66 } Q. Did you wait to see whether he entered an automobile or not?

A. Nope.

Q. Do you know whether he continued walking toward town or whether he did get in an automobile?

A. I didn't see him get in an automobile. He went out of my sight. I assumed that he was walking into Toots Drive-in; that's where he disappeared from my sight.

Q. You didn't attempt to follow him?

A. No; that's the mistake I made.

Q. How long did you stand at this doorway watching him?

A. A man walking at a normal gate to walk 50 yards, oh, a few seconds.

Q. So that the Jury will have a complete picture of your place of business, your place is the end location on a row of stores that run like that, and Toots Drive-in is setting over here? (Indicating)

A. Yes.

Q. And there's parking on through here in front of these stores?

A. Yes.

Q. You went back to your place of business and called the

police and gave them a description of the man walking down the street that just left your store that you had been showing the diamond rings to?

A. Right.

Q. Mr. Foster, you have stated in response to Mr. Cuddy's question that your place of business is an exclusive
page 67 } distributor of this Columbia setting rings in the City of Roanoke on February 26th, of this year. Do you know this of your own knowledge?

A. I said to my knowledge I was the only one.

Q. Aren't you aware that there are other jewelery stores in the City of Roanoke who likewise sold and now sell Columbia setting rings, namely, such as Finks, Kingoffs, Harrison Jewelery and Barr Jewelery?

A. To my knowledge one store, who is out of business now, had this Columbia true-fit mounting. To my knowledge none of these stores have ever had them. Columbia is an unusual mounting in which the diamond sets with a lock that keeps the whole ring from turning on your finger.

Q. It is a style of mounting?

A. Columbia true-fit is a trade name that this particular company uses as a gimmick to sell their rings.

Q. But the stone itself in the ring is the quality that makes this particular diamond that was missing worth $550.00?

A. That's correct.

Q. Mr. Snyder was the man that made the original request to you to look at a watch?

A. Yes, sir.

Q. Mr. Snyder was the individual that asked you the price of the watch while you were showing the diamond rings to Mr. Brizendine?

A. Yes, sir.

Q. It was Mr. Snyder that told you a few seconds or a minute or so thereafter, "I'm just looking and we will be back later, isn't that correct?
page 68 } A. Yes.

Mr. Honeyman: That is all, sir.

Mr. Cuddy: Stand aside.

Witness stands aside.

JUNE FULLER PERROW,

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

June Fuller Perrow.

DIRECT EXAMINATION.

By Mr. Cuddy:
Q. You are June Fuller Perrow?
A. That's right.
Q. Where do you live?
A. 2118 Sanford Avenue.

Mr. Honeyman: What's her last name?
Mr. Cuddy: Perrow.
Mr. Honeyman: Miss or Mrs.

A. Mrs.

By Mr. Cuddy:
Q. How long have you known E. W. Brizendine, also known as "Mickey" Brizendine?
A. Approximately five and a half years.
Q. How long have you known John F. Snyder?
A. Not too long.
page 69 } Q. Approximately how long?
A. I have seen him around town maybe a few years.
Q. How long have you known Ewell Tasker?
A. Seven or eight years, I guess, something like that.
Q. June, on the afternoon of the 26th day of February of this year, did you see the people whom I have just named to you?
A. Yes.
Q. Where did you see them?
A. In front of my house, 2118 Sanford Avenue.
Q. How did you happen to see them in front of your house?
A. Driving by in Jack Snyder's car.
Q. Who was in the car with him?
A. Mr. Tasker was sitting next to Mr. Snyder and Brizendine was in the back and I got in beside Mr. Brizendine.
Q. And I believe you had quite a conversation and talked with them, did you not?

Mr. Honeyman: Ask her what happened.

A. Quite a bit.

The Court: Go on.

June Fuller Perrow.

Mr. Cuddy:
Q. Where did you go when you got in the car?
A. Went to the Stanley Shoe shop to pick up a pair of shoes of mine.
Q. Is that on Campbell Avenue in the one hundred block, S. W.?
A. Yes.

page 70 } Q. Was there any conversation in the car by these parties with reference to a ring as you came to town?

Mr. Honeyman: Objection. That's most leading.
The Court: Objection overruled.
Mr. Honeyman: Exception.

Mr. Cuddy:
Q. Was there a conversation as you came to town?
A. Yes.
Q. Who engaged in that conversation?
A. Mr. Tasker and Brizendine both.
Q. Just tell the Court and Jury what was said?
A. Brizendine told me he had gone to Joel Krisch's and tried to sell a ring for $300.00, and Mr. Tasker said, "I know where I can sell it for $600.00."
Q. What was the conversation about?
A. About a ring.
Q. What was said about the ring; where did it come from?
A. They told me where they had gotten it, from Mr. Foster.

Mr. Honeyman: I'm sorry to interrupt, but he's leading the witness with every question.
The Court: I don't think that's a leading question.
Mr. Honeyman: Let her tell what happened.
The Court: I don't think he has led the witness.
Mr. Honeyman: Exception.

Mr. Cuddy:
Q. What was said about where the ring came from?

page 71 } A. They said the ring came from Mr. Foster's.
Q. Who made that statement?
A. Mr. Tasker.

Q. Did you see the ring?

June Fuller Perrow.

A. Yes; Mr. Tasker pulled it out of his vest pocket and showed it to me.

Q. Where were you at the time?

A. In the back seat going toward town to pick up my shoes.

Q. As best you can describe the ring which was exhibited to you?

A. It was a large white lady's diamond, and it looked like something was on the back, a spring or something.

Q. Who did you see with the ring?

A. Mr. Tasker.

Q. What did he do with the ring after he exhibited it to you?

A. Put it back in his pocket.

Q. Where did you first stop?

A. At the Stanley Shoe Shop.

Q. What did you do there; you got some shoes I believe you said?

A. Yes.

Q. After you stopped at the Stanley Shoe Shop what did you do?

A. We went to Clem's Diner and let Brizendine and myself out.

Q. Who let you out?

A. Mr. Snyder and Mr. Tasker.

Q. Where did you go?

page 72} A. We stayed at Clem's Diner.

Q. Where is that located?

A. Third Street, S. E.

Q. What became of Snyder and Tasker?

A. They left and said they were going to sell the ring for $600.00.

Q. How long were they gone?

A. Twenty minutes or a half an hour.

Q. Did you see them later?

A. They come back and picked us up.

Q. What statement, if any, did Tasker make about the ring?

A. He said the man didn't have the money but would give it to him Saturday morning.

Q. Who made that statement?

A. Tasker.

Q. Who did he tell that?

A. Mr. Brizendine.

Q. Whose automobile was he traveling in?

A. Mr. Snyder's.

Mr. Cuddy: All right; take the witness.

CROSS EXAMINATION.

By Mr. Honeyman:

Q. You are Mrs. June Fuller Perrow?

A. That's right.

Q. Are you presently married?

page 73 } A. No; I am not.

Q. Are you presently pregnant?

A. I certainly am.

Q. Is it true that E. W. "Mickey" Brizendine is the father of your child?

A. It sure is.

Q. And E. W. "Mickey" Brizendine is presently in the State Penitentiary, is he not?

A. That's right.

Q. And he is in the Penitentiary as a result of being found guilty of taking this particular ring that you have described to the Jury, is he not?

A. Yes.

Q. And you are not married to E. W. "Mickey" Brizendine?

A. I am not.

Q. Isn't it further true, June, that you and E. W. "Mickey" Brizendine have been very close friends for the past five and a half years?

A. Yes; we have been going together.

Q. And isn't it further true, June, that you have been a party involved in a divorce action in which E. W. "Mickey" Brizendine is in in Roanoke County or Roanoke City?

A. He has been separated.

Q. And he is a married man, is he not?

A. I guess he still is; I don't know for sure.

Q. And isn't it further true that you and E. W. "Mickey" Brizendine have been jointly arrested on numerous occasions?

page 74 } Mr. Cuddy: I object to that.

The Court: I don't see that that is material.

A. I have been arrested twice.

June Fuller Perrow.

The Court: I don't see that that is material. If he wants to attack her character there are methods whereby he can do that.

Mr. Honeyman:
Q. Are you the mother of a child?

Mr. Cuddy: Objection.
Mr. Honeyman: I have a right to find out about the witness.

A. Yes, I have two children.
Q. Haven't you been convicted by a court in the City of Roanoke for contributing to the delinquency of children?

Mr. Cuddy: Objection.
The Court: Objection sustained on that.
Mr. Honeyman: Exception. I would like to see the Court in chambers.
The Court: Yes; I would be glad to see you in chambers.

In Chambers:

Mr. Honeyman: Your Honor, I am confronted with this. I am frank to tell you I think it is immaterial to the case, and I am trying to present it properly to the Jury.
There is a five and a half years relationship between "Mickey" Brizendine and June Perrow, and that is evidence that the police officers, Commonwealth's Attorney and law enforcement officers of Roanoke City and County are aware of.
The Court: You're not attacking her reputation in the proper manner. Has she been convicted of a
page 75 } felony?
Mr. Honeyman: No, sir.
The Court: Has she been convicted of any crime which involves moral turpitude?
Mr. Honeyman: No, sir.
The Court: You can show her general reputation for truth and veracity in the community and you can show she was convicted of a felony or any crime involving moral turpitude.
Mr. Lutins: We want to show—in fact she testified that she and "Mickey" Brizendine are extremely close and that she is carrying his child.

June Fuller Perrow.

The Court: If you haven't shown that I don't know what you have done.

Mr. Lutins: And the whole purpose of her testimony is to work out some deal for Brizendine.

The Court: I can see very readily that's what she's trying to do, and I sympathize with you, but I will have to go by the rules of the law.

Mr. Lutins: We can bring out in her testimony—

The Court: You have brought out that she is pregnant by Brizendine, been associating with him five and a half years; that she has two other children and has never been married to him.

Commonwealth's Attorney: They are legitimate children by her first husband.

Mr. Lutins: We want to further show that she supported him for five and a half years.

The Court: That has nothing to do with the page 76 } ring.

Mr. Honeyman: If we can show that she financially supported Brizendine to show the depth of that association, sir.

The Court: Oh, no. You're going into detailed relationship of Brizendine who is not on trial and that is going too far afield. You have shown the association now and I don't see how much closer you can get. If they were living together as man and wife I will let you show that.

Return to Courtroom.

Mr. Honeyman:

Q. June, on February 26, 1960, where were you living?

A. At the same place 2118 Sanford Avenue.

Q. Was that likewise the residence and place of abode of E. W. Brizendine?

A. No; my mother and father live there.

Q. Did you have another place of abode that you and E. W. Brizendine lived together?

A. No; we were not living together.

Q. You have known E. W. Brizendine for some five and a half years?

A. That's right.

Q. You're not presently married to him?

A. No.

Q. And he's the father of your present child?

A. That's right.

June Fuller Perrow.

Q. On March 24, 1960, when this matter was first heard before the Honorable Judge Fitzpatrick in the Municipal Court of the City of Roanoke, did you testify in the case?

A. No, sir.

page 77 } Q. Subsequent to March 24, 1960, when E. W. Brizendine was tried, charged with the larceny of a ring, did you testify in that case?

A. No, sir.

Q. E. W. Brizendine was found guilty and is now serving his time in the State Penitentiary, is he not?

Mr. Cuddy: He's been over this the second time.

Mr. Honeyman: I acknowledge it to be the second time.

The Court: Don't let's argue about it; let's get along.

Mr. Honeyman:

Q. Today is the first time you have ever testified in this matter?

A. In this case.

Q. You know Mr. Harvey Lutins?

A. Yes, I know him.

Q. Has Mr. Harvey Lutins on previous occasions as a lawyer had occasion to represent you?

A. One time for a wreck in Salem.

Q. Did you and Mr. Harvey Lutins have occasion to discuss this case in the Roanoke City Jail in the latter part of February or first of March while you were visiting one "Mickey" Brizendine at the Roanoke City Jail?

A. We didn't discuss that matter about the wreck in Salem.

Q. I am talking about March or February, 1960, when E. W. Brizendine, your boy friend, was in jail and you were up there visiting him and Mr. Lutins came up there and you had a discussion with him with reference to this particular case that you are now testifying in.

page 78 } A. I asked him to defend "Mickey."

Q. And he advised you that he couldn't?

A. "Mickey" owes him a little money.

Q. Didn't you discuss the facts of this case with him?

A. Not too much. I talked with him awhile and talked about ten or fifteen minutes.

Q. You have been sworn as a witness?

A. Yes, sir.

Q. Didn't you tell Mr. Lutins in the Roanoke City Jail

June Fuller Perrow.

that you didn't know anything about this whole transaction?

A. But I know about it.

Q. But you told him you didn't know anything about it?

A. I don't recall stating anything like that. I don't recall saying that.

Q. Do you deny making that statement?

Mr. Cuddy: He has asked her that same question several times.

The Court: Answer the question again.

A. I just don't recall saying anything like that to him.

Q. Did you discuss with Mr. Lutins the details of this case when you sought to employ him on behalf of "Mickey" Brizendine?

A. The only thing I recall is I asked him to defend "Mickey.'

Q. You talked with him around ten or fifteen minutes?

A. Something like that.

Q. It doesn't take ten or fifteen minutes to employ a lawyer, does it?

A. We talked about quite a few things.

page 79 } Q. Did you say anything to Mr. Lutins about the car ride you have just testified to in the presence of the Jury?

A. I can't recall that.

Q. Did you say anything to him about seeing the ring in question?

A. Not as I know of.

Q. Did you say anything about going to Clem's Diner?

A. I don't know what I said. I only asked him to defend "Mickey."

Q. And this took ten minutes?

A. We talked about a few other things. If you would like for me to repeat it I can. He asked me when was the last time I even had intercourse with "Mickey." He asked me that.

Q. What else did he ask you?

A. I can't recall all that.

Q. June, prior to coming up here today to testify in this case, what representatives of the Commonwealth of Virginia did you discuss this case with?

A. I talked with Captain Allman two or three times.

June Fuller Perrow.

Q. When was the first time you talked with Captain Allman?
A. I can't recall; quite a few weeks ago.

Mr. Cuddy: Certainly a discussion of the case on this line is not material.
The Court: He has a right to show who she talked with.

Mr. Honeyman:
Q. Did you discuss it with Captain Allman prior
page 80 } to the time E. W. Brizendine was tried?
A. It was after his trial.
Q. How long after his trial?
A. Not too long; maybe a week or so.
Q. I believe he was tried in April of this year?
A. I think it was the 20th of April.
Q. Then it was after the 20th of April that you talked with Captain Allman?
A. Yes.
Q. Did he request that you come down here, or did you just volunteer to come?
A. No; I volunteered.
Q. And at the time you talked with Captain Allman here were you not personally aware of the fact that E. W. Brizendine's case was being considered for appeal to the Supreme Court of Virginia?
A. I beg your pardon.

Mr. Cuddy: Objection.
The Court: The Court will have to sustain that objection.

Mr. Honeyman:
Q. June, at the time you went to see Captain Allman the first time "Mickey" was lodged in the Roanoke City Jail?
A. Yes, sir.
Q. And he was appealing his case to the Supreme Court of Appeals of Virginia, was he not?
A. Yes.

page 81 } Mr. Cuddy: Objection.
The Court: Objection sustained.

June Fuller Perrow.

Mr. Honeyman:

Q. When you first spoke to Captain Allman about this case, how long did you spend with him?

A. Not too long.

Q. And that was the first time you had told him of this car incident—car ride and seeing the ring?

A. Yes; I told everything I knew and I told the truth.

Q. When was the next time you saw him?

A. Not too long ago.

Q. You've seen him twice or three times, have you not?

A. One time was when we was all locked up and he talked with Mr. Tasker and myself.

Q. Recently?

A. A week ago maybe, something like that.

Q. Did Captain Allman take your statement down?

A. Yes; I think so, he had a piece of paper writing on it.

Q. And he made notes as you were talking?

A. I don't know.

Q. Did you sign anything?

A. No, sir.

The Court: I think you're getting too far afield.

Mr. Honeyman: I'm leading up to the next question which I think is in the field.

page 82 } Q. Did Captain Allman—I believe he is Chief of Detectives of the City of Roanoke, make any promises to you—

A. No, sir.

Q. What did I mean by my question? You answered it before I finished it, June.

Mr. Cuddy: I object. I submit that he cannot argue with the witness.

The Court: Objection sustained.

Mr. Honeyman:

Q. Did he make any statements that the Commonwealth of Virginia would be more lenient with "Mickey"?

A. No, sir.

Q. Anybody make any promises to you directly or indirectly?

A. No, sir.

Q. You're just here to volunteer to tell the truth?

A. That's right.

Mr. Honeyman: Thank you.
Mr. Cuddy: Stand aside.

Witness stands aside.

Mr. Honeyman: I want this witness kept for further questioning.

page 83 } JOEL KRISCH,

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 Krisch?
A. Yes, sir.
Q. What business are you engaged in?
A. I am a pawn broker.
Q. And you deal in precious stones, I believe?
A. Yes, sir.
Q. You buy and sell them?
A. Yes, sir.
Q. How long have you been engaged in this business?
A. Approximately fifteen years.
Q. Mr. Krisch, on the afternoon of the 26th day of February of this year did one "Mickey" Brizendine come into your store?
A. He did.
Q. As best you can, fix the approximate time you saw him?
A. It was one or two o'clock in the afternoon, after lunch.
Q. How long was he in your store?
A. Ten minutes.
Q. Did he exhibit anything to you?
A. A diamond ring.
Q. Describe the diamond ring that he exhibited
page 84 } to you and the conversation had with reference to the ring?
A. It was a one carat diamond and he asked me what would I give him for it, or what it was worth; and I looked at it and told him it was worth $300.00, and he got insulted and left.
Q. Was there anything peculiar about that ring?

Joel Krisch.

A. It was a Columbia True-fit diamond ring.
Q. Describe it?
A. The mounting has little springs up under it that holds the ring straight up on your finger. That is the only company that has that particular mounting and I recognized it and that is what it was.
Q. And I believe you notified the police that he was in there and had this ring?
A. A couple of minutes later I got a call from the Detective Bureau and I told them he had been in with the diamond.

Mr. Cuddy: You may take the witness.

CROSS EXAMINATION.

By Mr. Honeyman:
Q. How old are you, Mr. Krisch?
A. Thirty-six.
Q. You knew "Mickey" Brizendine by name and reputation in the community before he came into your store, didn't you?
A. Sure.
Q. And you knew that he had been previously convicted of a felony in the City of Roanoke?

Mr. Cuddy: I object to that.
The Court: That has no bearing on this case.

page 85 } Mr. Honeyman:
Q. When Mr. Brizendine came into your store did he ask you if you wanted to buy a ring, or did he want to pawn a ring?
A. I don't remember which it was; one or the other.
Q. Did you inspect a ring in your normal position at the counter, or did you go to some other place in the store?
A. I don't have any normal position in the store, wherever I am.
Q. Where were you in the store at this time the ring was exhibited to you?
A. At the watch maker's bench.
Q. When he handed you the ring?
A. Yes.
Q. Did you put the ring under a magnifying glass?
A. No, sir.
Q. You just looked at it?

Joel Krisch.

A. I looked at it.
Q. How long did you look at it?
A. Maybe a minute.
Q. And you said you would lend or give him $300.00 for the ring?
A. Right.
Q. And he seemed insulted at that?
A. Yes, sir.
Q. Do you know whether it was a two carat, or a half a carat or how big?
A. It was about a carat.
page 86 } Q. And that's all that happened in this one minute?
A. All in about ten minutes; I only looked at the ring for a minute.
Q. You looked at it a minute or two but you didn't put it under a magnifying glass?
A. No.
Q. And from that casual look you determined that it was a Columbia true-fit mounting?
A. I read it; it's got it written right in there.
Q. You a member of the American Diamond Institute?
A. No, sir.
Q. Anyone in your store a member?
A. No, sir.
Q. Are you classified as a specialist in diamonds?
A. I think I am.
Q. Have you had any formal training in the appraisal of rings other than what you have picked up in the course of your work?
A. No, sir.
Q. At the price you offered for the ring he left, and the police called up and asked if "Mickey" Brizendine had been in there?
A. No; thev asked if anyone with a ring of that description had been in there.
Q. And you told them that "Mickey" Brizendine had been in there.
A. Yes. sir.
Q. And his name is common knowledge to you and the police, is it?
A. Sure.
page 87 } Q. Has this man (indicating Defendant, Tasker) ever been in there with a diamond ring to sell you?
A. No, sir.

Joel Krisch.

Mr. Honeyman: That's all.

At this point Court adjourned for lunch, and after lunch proceedings were resumed.

Commonwealth rests.

In Chambers.

Mr. Lutins: Your Honor, we want to make a motion to strike the Commonwealth's evidence and enter up summary judgment on behalf of the defendant.

In interpreting the Commonwealth's evidence in a light most favorable to the Commonwealth they have established that one Foster, the owner and operator of Foster Jewelers, missed a ring on or about 2:30 P. M. of February 26, 1960, and during that time and day the defendant accompanied by one Jack Snyder and E. W. Brizendine was on the premises; that during that time Mr. Foster showed Jack Snyder, with whom Tasker was accompanied, a watch. At the same time and place E. W. Brizendine was being shown several rings. At no time did Tasker distract the attention of Mr. Foster from Brizendine in an opportunity to allegedly take the ring. At no time did Tasker attract Foster's attention to any extent. The only thing that Tasker was doing was in the company of Jack Snyder at Foster's Jewelers; and also E. W. Brizendine was in the place.

They have further attempted to show through the witness June Fuller or June Perrow, that Tasker was in the company of the other men and in her company and had a page 88 } discussion about this so-called ring; and further that Tasker exhibited a ring. There was no discussion as to whether or not Tasker aided and abetted, or was the principal man alleged in the taking of the ring. The Commonwealth failed to show that Tasker shared in any fruits of the alleged crime. In fact, Mrs. Perrow let it hang; she said he had the ring and exhibited it to her. There is no testimony that he helped do anything; no testimony that there was any arrangement between these people, and absolutely no testimony whatsoever that this man Tasker participated either before or after the alleged crime.

Mr. Honeyman: May I interrupt and add this to it, and I realize that both of us shouldn't be making a motion.

As I listened to Mr. Perrow's testimony you couldn't have gotten from her testimony or surmised from her testimony,

giving it the benefit of all doubts, that the ring in question which she referred to was the ring that was stolen from Foster Jewelery Store. She referred to a ring that was passed between them and which was discussed. That burden goes with the Commonwealth.

Mr. Lutins: Also, the credibility of the witness Perrow; her bias and prejudice which were shown by her own statements must be weighed by the Court in ascertaining what weight should be given to her testimony. She is carrying a child of Brizendine and she didn't take the stand to testify when he was tried, but all of a sudden she comes over here to testify against Tasker.

The Court: That question of weight of her testimony is a question for the Jury.

Mr. Lutins: The Commonwealth must carry the page 89 } burden beyond all reasonable doubt that there was a concerted action, not an independent action by either Snyder or Brizendine, and the concerted action must have been interlodged in all three and not one acting independently of the other. See *Whitehead* v. *Commonwealth,* 174 Virginia, 528. I submit that they have not shown that to any extent beyond all reasonable doubt. That has been approved in the Grace M. Smith case, 185 Virginia, 800.

In the *Stone* v. *Commonwealth,* 176 Virginia, 570 these facts were established. Briefly, Stone and one Shupe were out drinking together and met up with one Greene, and Greene had a roll of bills, and decided to go elsewhere that night and they walked down some path, and Shupe thereupon struck Greene and accused Stone of it, and the accused Stone saw this and knew it, but he didn't do anything other than go along. And the Court said on page 577 of the Virginia Reports that the accused didn't aid, or abet, or advise or counsel in the commission of the charge.

That is the law and we respectfully ask that the evidence be stricken and a summary judgment be entered up in favor of the defendant.

The Court: Two men enter a store and are looking at some watches and a third man entered the store while they are there and asks to see a diamond ring, and the storekeeper at the suggestion of the two men—

Mr. Honeyman: (Interrupting) One man, your Honor.

The Court: Said, "We are in no hurry, wait on the other man," which he did. While he was showing the ring and after the customer picked out, or was picking out a ring one of the other men, not this defendant, made the statement, "What is the price of this watch?" At which time the storekeeper turned his head momentarily and told the man the price

of it. He turned his head again to the rings, and
page 90 } immediately thereafter the two customers, or two
persons in the store at the back counter who were looking at the watches left.

Immediately thereafter the person who was looking at the diamonds, having selected his rings and asked them to be held, left. Immediately on reaching for the case or looking at the case the storekeeper noticed the large diamond ring was missing of a particular type. He runs to the door and looks down the street and he sees the former customer who was looking at the diamond enter a parking lot of some kind. He goes to the 'phone and calls the law enforcement officers and gives them a complete description.

At some time during the afternoon of the same date the customer, who turned out to be Brizendine, takes a diamond ring of the same description to a pawn broker, and attempts to either pawn or have it valued.

After that, on the same day, the three men, who were in the store, were together in an automobile and picked up a girl friend of Brizendine, who turns out to be June Perrow, who testifies that Snyder was driving the automobile; the defendant was in the front seat with him and her boy friend and she were in the back seat; that they drove to a shoe store on Campbell Avenue, and during the course of that ride a ring was exhibited by the defendant, who says that, "I can get $600.00 for the ring," and tells the girl, or tell it in the presence of the girl, that they got it from this particular shop.

Mr. Honeyman: Who told it to her now?

The Court: The defendant. The defendant then goes off to attempt to pawn it or sell it and returns and says the man will give $600.00 for it, but he can't pay for it until the
next day. There was no question of what became
page 91 } of the ring and the ring was never mentioned again.
There is one thing that shows in this evidence and not too strongly, that these three men were friends and companions, because this girl testifies that she had known them for a good while and they knew each other.

Mr. Cuddy: They all came to her house and picked her up.

Mr. Honeyman: And the testimony which came about on cross examination showed her relationship with "Mickey" Brizendine.

The Court: She was a bad moral character, if you want to put it that way.

Mr. Cuddy: The jury passes on her credibility.

The Court: The best the Commonwealth can do is aiding and abetting in this offense; that he was present aiding and abetting and counselling.

Mr. Cuddy: He was present aiding and abetting.

Mr. Honeyman: You haven't shown anybody picked the ring up. This man couldn't have picked it up because he had no opportunity. There's one other person. What about Huffman, the fellow who was in there when they came in?

Mr. Cuddy: He left as these men came in.

The Court: The rings were not out of the case then.

Mr. Honeyman: Do you want a motion that the Commonwealth's position is now limited to that of aiding and abetting?

The Court: I have not finished ruling on the motion yet. I overrule your motion.

page 92 } Mr. Lutins: We except to the Court's ruling for reasons set out.

Mr. Honeyman: With reference to the second factor, obviously and apparently obvious to the Court, and certainly surprising to counsel for the defendant, is the fact that when Mr. Cuddy in his opening statement referred to this conversation and discussion that took place between three and four in the afternoon regarding this ring, frankly we had no idea of that portion of the proof, and I can state unquestionably as far as myself and Mr. Lutins we were not just mildly surprised—bear in mind that we did not hear the Snyder case nor did we, either of us, hear the Brizendine case. Our information was that one June Perrow did not testify in either case.

We are now in this position and we have to meet that evidence. True we have examined June Perrow and the Court is obviously aware of the problems we had in *examing* her in order to show clearly to the Jury that she was a woman of bad character and not worthy of belief of truthfulness or otherwise in the community. We rushed through lunch and hurriedly summoned two officers of the City of Roanoke. We are satisfied that there are many officers on the police force who are well aware of her reputation in the community. I know there is a file a mile high in the F. B. I. office and I have asked Mr. Settle to testify in this case and he advises me that it is necessary for him to seek and obtain approval from the Attorney General of the United States, and I was so advised again by Jack Kiser, who is Assistant U. S. Attorney, and he cannot tell whether it will take three minutes or three hours to accomplish that over the 'phone. The only way I know how to get at this thing is with somebody on the police force to frankly testify to her reputation, or be

page 93 } permitted to. I can issue summonses to 114 police officers, every police officer in the City of Roanoke and found out which 20 or 30 know her reputation.

The Court: Reputation for what?

Mr. Honeyman: For truth and veracity, immoral character and everything else in the community, and Mr. Cuddy knows her reputation. I realize Mr. Cuddy is charged with prosecuting the defendant.

The Court: I cannot see where all of that will come in. You have a right to discredit her reputation for truth and veracity. You may discredit her in the proper manner by showing her general reputation for truth and veracity.

Mr. Honeyman: We are in a position where in less than an hour we are trying to find witnesses in a matter in which we are taken by surprise. I know Captain Allman knows her reputation.

The Court: I don't mind giving you a little while to get your witnesses in a reasonable length of time.

Return to Courtroom.

KERMIT ALLMAN,

a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Honeyman:

Q. You are Captain Kermit Allman, and Chief of the Detective Bureau of the City of Roanoke?

A. That's correct.

Q. And you were summoned on behalf of the page 94 } Commonwealth in this case?

The Court: You are calling him as your witness; proceed, please.

Mr. Honeyman:

Q. Captain Allman, how long have you been on the police force?

A. Eighteen years.

Q. And how long with the Detective Bureau?

A. Fifteen years.

Q. Do you know one E. W. Brizendine?

A. Yes, sir.

Q. Do you know June Perrow?

A. Yes, sir.

Q. How long have you known June Perrow?

Kermit Allman.

A. Approximately three or four years.

Q. How long have you known E. W. Brizendine?

A. Eighteen years.

Q. Captain Allman, were you a part of the original detective group that investigated E. W. Brizendine when he was arrested and charged with the stealing of a ring involved in this matter before the Jury?

A. Yes, sir.

Q. Isn't it true, Captain Allman, that at the time "Mickey" Brizendine was arrested June Perrow was also questioned by your office?

A. Yes, sir.

Q. And isn't it true, Captain Allman, that you questioned June Perrow prior to March 24th, which is the date they had the preliminary hearing downstairs?

A. Yes, sir.

page 95 } Q. And isn't it true that in your questioning of June Perrow that she denied any knowledge relating to this ring prior to the trial in the Municipal Court hearing, which was prior to March 24th?

Mr. Cuddy: Objection.

The Court: What is the basis of your objection?

Mr. Cuddy: He is attempting to show that she made a prior inconsistent statement. A denial is not a prior inconsistent statement.

The Court: He can ask her if she made any statement.

Mr. Honeyman: Did she make any statement of this ring transaction prior to the Municipal Court hearing of E. W. Brizendine?

A. She made statements? Will you repeat the question, please.

Q. I ask you if she made any statements prior to the Municipal Court hearing involving the ring?

A. Yes.

Q. What statements did she make?

A. She stated that after this ring was stolen on Friday, February 26, 1960, that "Mickey" Brizendine, her boy friend, Buck Tasker and Jack Snyder came to her home and picked her up; that was the reason we were holding her because we received information that she was with them immediately after the theft of the ring; and that she went with them in Jack Snyder's automobile and came down town and went to the Stanley Shoe Hospital to pick up some shoes; and

Kermit Allman.

then she and "Mickey" Brizendine got out of the car at Clem's Diner on Third Street S. E., and waited there for approximately 30 minutes, and Jack Snyder and Tasker returned to Clem's Diner and she and "Mickey" Brizendine got back in the car with them and they left. They went to Richmond.

page 96 } Q. And she made these statements to you prior to March 24, 1960, the date of the Municipal Court hearing?

A. That's right.

Q. And you were present at the Municipal Court hearing?

A. Yes, sir.

Q. And June Perrow testified from this witness stand, less than two hours ago, that she did not make these statements to you until sometime after the trial of E. W. Brizendine in the Hustings Court in April; if she made such a statement then her statement is incorrect, is it not?

Mr. Cuddy: Objection.

The Court: Objection sustained; that is a question for the Jury.

Mr. Honeyman:

Q. You were present at the trial of E. W. Brizendine in Municipal Court?

A. Yes, sir.

Q. Did June Perrow testify at that hearing?

A. No, sir.

Q. And were you present at the trial of E. W. Brizendine in Hustings Court?

A. Yes, sir.

Q. Did June Perrow testify at that hearing?

A. No, sir.

Q. Captain Allman, do you know the reputation for truth and veracity of E. W. Brizendine in the community?

Mr. Cuddy: Objection.

The Court: Objection sustained.

page 97 } Q. Captain Allman, in your capacity and from your investigations which you have conducted in the City of Roanoke, do you know the reputation for truth and veracity of one June Perrow in the City of Roanoke?

A. I am only qualified to testify to my opinion.

Paul D. Vest.

Q. I didn't ask you your opinion; I asked you a specific question.

Mr. Cuddy: Objection.
The Court: Ask if he knows the general reputation in the community in which she lives for truth and veracity.

Mr. Honeyman:
Q. Do you know the general reputation of June Perrow in the community in which she lives for truth and veracity?
A. No, sir.
Q. How many times have you talked to June Perrow, Mr. Allman?
A. Several times.
Q. Don't be evasive; just tell me what you know about her.

Mr. Cuddy: Objection.
The Court: About what?
Mr. Honeyman: His extent of knowing her personally; how many times he's talked with her and investigated her.
The Court: Objection sustained.

Mr. Honeyman:
Q. You know the whereabouts of the missing ring?
A. No, sir.
Q. Has the ring ever been located?
page 98 } A. No, sir.

Mr. Honeyman: That's all.

Witness stands aside.

PAUL D. VEST,
another witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lutins:
Q. State your full name?
A. Paul Day Vest.
Q. By whom are you employed?
A. City of Roanoke, Police Department, Detective Bureau.
Q. How long have you been so employed?

Paul D. Vest.

A. Seventeen years.
Q. Do you know June Fuller or June Perrow?
A. I know her.
Q. Do you know her reputation in the community wherein she resides for truth and veracity?
A. I know June Fuller, but I have not had that kind of contact with her as far as testing her out on truth.
Q. Do you know her reputation in the community wherein she resides?
A. I know something about her reputation.
Q. What do other people say in the community in
page 99 } which she lives, is it good or bad?
A. I know nothing about any community in which she lives.

The Court: In the City of Roanoke.

A. I know her as being a prostitute.

Mr. Cuddy: Objection.
The Court: Do you know her general reputation in the City of Roanoke for truth and veracity?

A. I cannot testify to that, sir.

Mr. Lutins:
Q. How about veracity?
A. No, sir.

Mr. Cuddy: That's the same thing.
Mr. Lutins: That's all.

Witness stands aside.

Defense rests.
Commonwealth rests.

page 100 } Mr. Lutins: We want to renew our motion to strike the Commonwealth's evidence and *and* ask that summary judgment be entered up on behalf of the defendant for the following reasons:

The Commonwealth has failed to prove beyond all reasonable doubt that Ewell Tasker did take or steal one ring, a .97 carat diamond, or did aid or abet in the taking of the same.

Further, the Commonweath has failed to prove that Tasker shared in any fruits of the crime; that he engaged in the same in any manner, or to any extent whatsoever; and

We also state that the evidence offered by the Commonwealth as to June Fuller Perrow is so incredible and inconsistent and unworthy of belief that the evidence should be as a matter of law ruled out completely,

And we further cite cases heretofore cited in our motion.

The Court: Motion overruled.

Mr. Lutins: We except.

INSTRUCTIONS.

INSTRUCTION No. 1, offered by the Commonwealth, amended and given by the Court.

INSTRUCTION No. 2, offered by the Defendant, objected to the Commonwealth, and refused by the Court.

INSTRUCTION No. 3, offered by the Defendant and was given without objection.

INSTRUCTION No. 4, offered by the Defendant and was given by the Court without objection by the Commonwealth.

INSTRUCTION No. 5, offered by the Defend-
page 101 } ant and given by the Court without objection.

INSTRUCTION No. 6, offered by the Defendant, was given by the Court without objection, after it was amended.

INSTRUCTION No. 7, offered by the Defendant, was given by the Court without objection.

INSTRUCTION No. 8, offered by the Defendant, was given by the Court without objection.

The Court: Are there any objections to the instructions as granted either the Defendant or the Commonwealth.

Mr. Lutins: We object to Instruction No. 1 in that it does not embody the independent actions by Brizendine and Snyder.

INSTRUCTION C, offered by the Defendant and refused by the Court.

Mr. Lutins: Defendant, by counsel, excepts to the Court's action in refusing Instruction C offered by the Defendant for

the reason that the witness June Fuller or June Perrow disclosed by her testimony that she was not married; that she was pregnant by E. W. Brizendine, and that her testimony was not entitled to any weight or credibility.

The Court: The Court refused this instruction because the only way you can refute a witness is by reputation for truth and veracity and this has not been shown; and the question of whether or not she is a person of immoral character is not a question bearing on the instruction to that effect.

INSTRUCTION D, offered by the Defendant and refused by the Court.

Mr. Lutins: Defendant by counsel except to the Court's action in refusing to grant Instruction D offered on behalf of the Defendant for the reason that the Commonwealth has failed in the burden of proof to the extent that the only evidence showed that Tasker was on the premises wherein the alleged crime was to have been committed; and in so much as the testimony of June Fuller is concerned it is not worthy of belief as a matter of law and this instruction is proper for the reason that this is the extent by which the Commonwealth has proven its case.

page 102

INSTRUCTION E, offered by the Defendant and refused by the Court.

Defendant excepts to the Court's ruling in refusing to grant Instruction E offered on behalf of the Defendant for the reason that the instruction embodies the theory that there exists two hypothesis in the case. One, that the accused may be found guilty, and another that he may be found innocent, and that the Jury is entitled to decide which of the two hypothesis is true.

INSTRUCTION F, offered by the Defendant and refused by the Court.

Mr. Lutins: The Defendant, by counsel, excepts to the Court's refusal to grant Instruction F, offered on behalf of the Defendant in that mere circumstances of suspicion have been created by testimony of the Commonwealth, and this being true the Jury should be properly instructed.

INSTRUCTION G, offered by the Defendant and refused by the Court.

Mr. Lutins: Defendant, by counsel, excepts to the ruling of the Court in refusing to grant Instruction G in that the instruction sets out and defines what the presumption of innocence is in a criminal case, and the Defendant believes that they should be instructed, and the law of the land is binding.

page 103 } Return to Courtroom.

(The Court instructed the Jury and the Commonwealth's Attorney summed up before the Jury in behalf of the Commonwealth.)

(Counsel for Defendant summed up before the Jury in behalf of the Defendant.)

The Court: You may retire.

(The Jury retired at 5:08 P. M. to consider of its verdict.)

(In Chambers.)

Mr. Lutins: Your Honor, please, the defendant makes a motion that a mistrial be declared on the basis of prejudicial and inflamatory argument by counsel for the Commonwealth, and also argument with reference to E. W. Brizendine's conviction, and that it should not be used as a basis for the conviction of Tasker. He so argued and intimated in his argument. Of course, this error was not cured by the Court's instruction that the Jury would be directed to disregard it.

Mr. Cuddy: There was no such reference or inference at all. Mr. Honeyman argued and repeated on two or three occasions that June Perrow was not called in the Brizendine case, and I said I would never be governed by Mr. Honeyman or any other lawyer for the purpose of proving my case. That was in direct reply to the argument by defense counsel to a witness taking the stand.

The Court: It was brought out in the evidence by counsel for the Defendant that Mr. Brizendine had been convicted of larceny. One of the instructions stated that if you page 104 } believe from the evidence that the ring had been stolen and that this man aided and abetted, the evidence would point a finger at no one else than Mr. Brizendine. I cannot see where there was any error on the part of the Commonwealth in its argument. The objection was made and out of an abundance of precaution I told the Jury that

Mr. Brizendine was not a subject of inquiry and should not be considered by the Jury. I'm not sure the Commonwealth went that far, but even if it had it is not grounds to set aside the verdict, and the Court overrules your motion.

Mr. Lutins: Exception to the Court's ruling in its failure to sustain a motion for mistrial.

(The Jury was returned to the Courtroom at 5:26 P. M. when the following occurred.)

Clerk: Gentlemen, have you reached a verdict?

(Verdict is handed to Clerk).

Clerk: (Reads verdict) "We find the Defendant guilty and fix his punishment at two years in the penitentiary.

A. E. Gormican, Foreman."

Mr. Cuddy: I suggest that the verdict be amended, the wording of the verdict.

Mr. Honeyman: I suggest that the Jury be polled as to the amended verdict.

The Court: Lady and Gentlemen of the Jury, the Court has amended the form of the verdict, that is, the form in which it's written. I am going to ask you to take the verdict as written by the Court, and if that carries out your verdict, your findings, have it signed by your foreman.

page 105 } (The Jury again retired to their room and was returned to the Courtroom when the following occurred.)

The Court: You waive the call?

(Counsel indicated in the affirmative).

The Clerk: Members of the Jury have you agreed upon your verdict.

(The Jury answered in the affirmative, whereupon the verdict of the Jury was read by the Clerk).

The Court: Is there a motion for polling the Jury?

Mr. Honeyman: I request a poll of the Jury.

The Court: Mr. Clerk, poll the Jury.

(The Jury was polled and all answered that that was their verdict.)

(The Jury was thereupon discharged from further duty on this trial.)

Mr. Lutins: We make a motion to set aside the verdict of the Jury as being contrary to the law and the evidence.
The Court: Motion overruled.
Mr. Lutins: Exception.

page 106 } CERTIFICATE.

I, Langhorne Jones, designated Judge to sit for the Hustings Court for the City of Roanoke, Virginia, in the case of the Commonwealth of Virginia *v.* Ewell Grant Tasker, do certify that the foregoing is a true and correct stenographic copy and report of the evidence and other incidents of the trial therein, all questions raised and all rulings thereon and exceptions noted in the case of Commonwealth of Virginia *v.* Ewell Grant Tasker, in said Court at Roanoke, Virginia, on July 14, 1960; and it appears in writing that the Commonwealth had reasonable notice when this report of the testimony and other incidents of the trial would be presented for certification, and which was presented to me within sixty days after final judgment and signed by me within seventy days.

I also certify that the Court Reporter reporting said case was sworn to take down and transcribe said testimony and other incidents faithfully and accurately to the best of her ability.

Given under my hand this 15 day of September, 1960.

LANGHORNE JONES, Judge.

page 107 } I, W. H. Carr, Clerk of the Hustings Court for the City of Roanoke, Virginia, do hereby certify that the foregoing stenographic copy or report of the testimony and other incidents of the trial in the case of Commonwealth of Virginia *v.* Ewell Grant Tasker, was filed with me as Clerk of said Court on the 21 day of September, 1960.

W. H. CARR
Clerk of the Hustings Court for
the City of Roanoke, Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

Page

Writ of Error and *Supersedeas awarded* 1
Record 2
Indictment 2
Judgment, July 14, 1960 2
Instructions 4, 49
Notice of Appeal and Assignments of Error 6
Proceedings 8, 15, 31, 40, 48, 51
Witnesses:
- Edward E. Foster 11
- June Fuller Perrow 26
- Joel Krisch 37
- Kermit Allman 44
- Paul D. Vest 47

Certificates 53