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Record No. 6129

In the
Supreme Court of Appeals of Virginia
at Richmond

GARY RAY ROBINSON

v.

COMMONWEALTH OF VIRGINIA

FROM THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6129

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 26th day of April, 1965.

GARY RAY ROBINSON, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Court of Hustings for the City of Portsmouth
R. Winston Bain, Judge

Upon the petition of Gary Ray Robinson a writ of error and *supersedeas* is awarded him to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 24th day of November, 1964, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

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page 5 }

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At the Court of Hustings for the City of Portsmouth held on the 24th day of November, 1964.

* * * * *

This day came the Attorney for the Commonwealth, and the accused, Gary Ray Robinson, who stands indicted for maiming, being called, appeared in Court in answer to his recognizance, and came also Wayland P. Britton, attorney for the said Gary Ray Robinson, said attorney being of the accused's own choosing, and came also William H. Oast, Jr., Attorney at Law, who was assisting the Attorney for the Commonwealth, and upon being arraigned, tendered a plea of "Not Guilty," after private consultation and with the advice of his counsel, and the Court advised the defendant of his constitutional rights as to trial by jury, waiving jury, and pleading guilty, and the defendant, upon being asked, made known to the Court that he was ready for trial, and the defendant, in person, waived trial by jury, and with the consent of the accused, given in person, and the consent and concurrence of the Attorney for the Commonwealth and of the Court here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury; and thereupon, witnesses named on the face of the indictment were called, sworn, and testified; whereupon, evidence being heard, the Court finds the *sayd* Gary Ray Robinson guilty of unlawful wounding with intent as charged in the indictment and fixes his punishment at twelve (12) months in jail and a fine of Two Hundred Fifty Dollars ($250.00); it is therefore considered by the Court that the Commonwealth recover against the said Gary Ray Robinson the sum of
page 6 } Two Hundred Fifty Dollars ($250.00) and its costs by it about its prosecution in this behalf expended; it is further considered by the Court that the said Gary Ray Robinson be confined in the jail of this City for the term of twelve (12) months; it is further considered by the Court that the said Gary Ray Robinson be kept so confined after the expiration of the said term of twelve (12) months until he pays the fine and costs of his prosecution or is otherwise re-

leased by due process of law, provided, however, that such confinement for failure to pay the said fine and costs shall not exceed the time fixed by law, which said confinement for non-payment of said fine and costs shall be in addition to the said term of twelve (12) months as herein fixed, but this judgment is hereby declared to be subject to the right of the superintendent of the penitentiary to apply for and receive into his custody the said Gary Ray Robinson as a road prisoner for service on the public roads of the Commonwealth for the period of the aforesaid sentence or the unfinished portion thereof in accordance with the laws of the Commonwealth in such cases provided. It is further considered by the Court that a transcript of this order be forthwith transmitted to the superintendent of the penitentiary in Richmond, Virginia.

And thereupon, the said Gary Ray Robinson is granted a stay of execution for sixty (60) days from the date of this order upon the condition that he shall execute a bond in the penalty of Two Thousand Five Hundred Dollars ($2,500.00), and thereupon, the said Gary Ray Robinson is released in bond of Two Thousand Five Hundred Dollars ($2,500.00) with Maxie G. Robinson of 1015 Martin Avenue of Portsmouth, Virginia, his surety, and in open Court severally acknowledged themselves indebted to the Commonwealth in the sum of Two Thousand Five Hundred Dollars ($2,500.00), each of his respective goods and chattels, lands and tenements to be levied for the use of the Commonwealth to be

page 7 } rendered; upon the condition that the said Gary Ray Robinson shall make his appearance before this Court on the 24th day of January, next, 1965 of this Court at ten o'clock a.m., and at any time or times to which these proceedings may be continued or further heard and before any Court having cognizance of such proceedings. And the said Gary Ray Robinson and Maxie G. Robinson each waived the benefit of his homestead exemption.

And the said Gary Ray Robinson is released from custody until that time.

The Court certifies that it provided Elizabeth P. Berry, Court Reporter, to record verbatim the evidence and incidents of trial and doth further order that the expense of reporting and recording the same shall be paid by the Commonwealth of Virginia, and the charges therefor have been taxed as a part of the costs of this case.

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page 10 }

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ASSIGNMENT OF ERRORS.

The Defendant, Gary Ray Robinson, assigns the following errors, to-wit:

1. That the complaining witness, Mr. Griffin, on the cross examination, knew three people who saw the alleged offense and the three people standing in the door did not testify nor was it explained to the Court, the reason they were not *subpeonaed* or present at the trial, which constitutes error.
2. That the complaining witness could not identify the Defendant on the following day after the alleged offense nor was a warrant secured until approximately 1 week later; which failure by the Court to strike his testimony constitutes error.
3. That the witness C. D. Fleming, refused to testify as to who were the other two people in his car and such failure to testify is contrary to law and constitutes error.
4. That C. D. Fleming's refusal to tell who he was waiting for is prejudicial to the Defendant, Gary Ray Robinson, and his failure to answer the question constitutes error.
5. That the testimony of J. W. Frazier, in its *entirity*, was prejudicial to the Defendant and his entire evidence should be struck as it had no bearing on the case and was immaterial as the Commonwealth in no way connected his testimony to the alleged offense.

page 11 } 6. That the Commonwealth's case should be struck as contrary to the law and the evidence, as they did not prove the case beyond a reasonable doubt.

7. That the complaining witness did state that he would make it worth-while for the witnesses of the Commonwealth to testify; that because of this statement the evidence of these witnesses should be struck.

GARY RAY ROBINSON
By WAYLAND P. BRITTON
Of Counsel.

(on back)

Filed Jan. 25, 1965 4:37 P.M., The Court of Hustings.

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page 4 }

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CARL J. GRIFFIN, JR.,

witness having previously been sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Oast:

Q. State your name, please, sir.

page 5 } A. Carl J. Griffin, Jr.

Q. Where do you live?

A. 1103 Sterling Point Drive.

Q. Where are you employed?

A. Norfolk Naval Shipyard.

Q. Were you at the Airport Grill on June 21, 1964?

A. Yes, sir.

Q. Where is the Airport Grill located, Mr. Griffin?

A. Right close to Hodge's Ferry Bridge. There's a Seven-Eleven there, a beauty shop, and this restaurant grill.

Q. Is this in the City of Portsmouth?

A. Yes, sir.

Q Did something happen to you there that night?

A. Yes, it did.

Q. Tell His Honor what happened.

A. I was sitting there talking to Thurston Hines who lives out that way, and I had had a cheese sandwich and

page 6 } a cup of coffee, and was getting ready to leave.

I heard someone say it was raining outside, thundering and lightning. I walked to the door and saw someone waiting for his wife.

I saw my car in front of the sidewalk, no further than the step down there. The rain was pouring in the windows of this small Volkswagen I had.

I told the boy, I said—

Mr. Britton: Objection.

Mr. Oast:

Q. Tell us what you did.

A. I saw the rain pouring in the car, so I rushed out and told this boy I was going to rush out and get in my car right away.

I dashed out the door, jumped in the car, reached to the right to roll up the window on that side, and when I came back to this side to roll up this window, I got struck right in the face, right here, split the upper part of the eye here, split this open, and busted my teeth.

Carl J. Griffin, Jr.

I looked this man right in the face.

Q. What man?

page 7 } A. This man sitting right here.

Q. The Defendant, you are pointing to?

A. Right here.

Q. Go ahead.

A. I pleaded with the man to stop.

He said something about blood, hit me again, 2 knots back here, 1 knot here, hurt my back.

At the time, I got mad. I didn't know who he was. I turned my foot out the door. He slammed the door on my foot.

Some fellow had jumped out of the car next to me, and he disappeared.

I walked back into the place, blood flowing all over me. In other words, he split it enough to bleed all over me.

I walked back to the place, and as I entered the door, 3 girls were standing there and said,—

Q. You can't tell what the girls told you.

A. All right. They, well, I have to tell.

The Court: You cannot tell.

Mr. Oast: You cannot tell.

page 8 } Q. Tell what you did.

The Court: Was the Defendant present when you spoke with the girls?

A. No, sir.

The Court: You cannot say.

A. I walked in the door there, and was told—

Mr. Britton: Object to what he was told.

Mr. Oast:

Q. Tell us what you did.

A. The maid got a towel and wiped my face so I could stop the blood from bleeding.

I took the license off this car was parked behind mine, got the name of a person, which was his name, and then the man said, "Do you want me to call the police?"

Carl J. Griffin, Jr.

Mr. Britton: Object.
The Court: Tell us what you did.

A. I told the man—

Mr. Britton: Object.
Mr. Oast: He can tell what he did.

A. They did call the police.
page 9 } I stood at the door there, saw a car come up and somebody jump out of the car, jump in this car which I took the license number of, and then shot away.
I was in no shape to go get him, so I told the—excuse me—

Mr. Britton: Object to what he told the other man.

Mr. Oast:
Q. What did you do after that, Mr. Griffin?
A. Drove home to let my wife and children know what happened. I was afraid they would be worried.

The Court: What time was this?

A. 11:30 or 11:45.
I stopped at the Seven-Eleven store. My face was in a mess there, all bruised.
I told them I would go on down to City Jail and check this license that I had obtained, and then go to the hospital.
I went down—do you want me to tell I went to the police station?
Q. Right. You went to the police station?
page 10 } A. I went to the police station and gave the license number to Detective Storey who was on the desk.
He ran a check on the license, and it turned out to be in the name of Mrs. Robinson.
Then he showed me some pictures there, and I said. "Well. it looks like this fellow's here face, the face of this Mr. Robinson."
I had never seen the man before in my life.
Then I asked Detective Capossela—

Mr. Britton: Object to what he said to another party.

Carl J. Griffin, Jr.

The Court: You can't tell what you said to somebody else except in the Defendant's presence.

A. I can say he took me to the hospital?
They took 3 and 2 stitches in here, checked my teeth, checked my back and neck, and sewed me up, and then I passed out.
At about 7:00 o'clock in the morning, I went on home.

page 11 } Mr. Oast:
Q. You stayed in the hospital overnight?
A. Almost all night.
Q. What was the total number of stitches taken?
A. About 5; 3 and 2, I think is the way it was.
Q. Did you have any bruises or marks on you other than stitches?
A. Two bumps back here, a bump here, a shoulder injury here.
Q. Did you have a black eye?
A. For a while, yes, sir.
Q. Had you known this man before that night?
A. No, sir. Never seen him before.
Q. Had you said anything to him in the grill?
A. No, sir.
Q. Had you said anything to him as you walked out of the grill?
A. No, sir.
page 12 } Q. Did he say anything to you?
A. No, sir.
Q. No words one way or the other?
A. No, sir.
Q. Any lights out there on this grill?
A. I would say good lighting on the sidewalk, yes, sir.
Q. Can you describe the car that you took the license number from?
A. Well, I couldn't tell you the make of it now, but a compact car, kind of a maroonish color, kind of black top on it.
It looked like a convertible. I wasn't sure at the time when I took the license number.
Q. After this man had struck you, what did he do then?
A. I was standing at the door there.

The Court: Excuse me one moment. You said you had a Volkswagen?

Carl J. Griffin, Jr.

A. Yes, sir.
Q. Were you in your car or outside your car when you were struck?
page 13 } A. No, sir, I was in the car.

The Court:
Q. You were in the car?
A. I couldn't even get out.
Q. You were struck through the window?
A. Through the open window.
Q. The windows were rolled down and you were trying to roll them up because of the rain?
A. Your Honor, I am so tall, I can't get on the right side, once I get on the driver's seat, I can't get on the other side.
Q. Was it opposite the driver's side, the window through which you were struck?
A. No, sir.
Q. You were struck through the driver's window?
A. Yes, sir.

Mr. Oast:
Q. After you were struck, and you managed to get out of the car, did you see this man?
A. No, sir, he vanished.
page 14 } Q. Did you see him leave?
A. I saw some car drive up, a boy jump out, jump in this car I took the license number of and drive on.
Q. Did the man give you any assistance after you were beat up?
A. The Manager of the store.
Q. This Defendant?
A. No, sir.
Q. He did not help you, offer assistance in any shape or form?
A. No, sir.
Q. Are you positive this is the man that struck you?
A. Positive. It is the face of the man.
Q. No question?
A. No question.
Q. You had no words, or said nothing to him?
A. No, sir.

Carl J. Griffin, Jr.

CROSS EXAMINATION.

Examined by Mr. Britton:

* * * * *

page 21 } Mr. Britton:

Q. Will you answer it?

A. Yes, sir, I went to that boy's house.

Q. Mr. Griffin, did you not at 3:00 o'clock the next morning tell Mr. Storey that you could not identify who struck you?

A. Mr. Storey showed me 2 pictures, or one of the detectives, of these 2 boys, and I said, "It looks more like this fellow here."

The only thing I know is his face. I saw his face, because when I looked up, I looked him straight in the face.

The only thing I knew about the boy was the actual face of this boy, was the only thing I saw, and I recognized his picture.

Q. Let's get down to the face proposition, Mr. Griffin.

Q. You were inside of the Airport Grill, and you had. finished your beer?

A. No, I had a sandwich and cup of coffee.

Q. You drank another beer, now.

A. I had one beer.

page 22 } Q. You were coming out of the place, you say?

A. Yes, sir.

Q. Nobody struck you as you came out?

A. No, sir.

Q. You were by yourself?

A. Yes, sir.

Q. It was pouring down rain?

A. Yes, sir.

Q. That you went to the left side of your car, right side first, away from the driver's side, and cranked the windows of the car?

A. No, sir, I went to the driver's side, which is the left side, and jumped in the car, not looking around, and reached for the right side to roll the window up.

Q. You got in the car first?

A. Yes, sir.

Q. You did not go to the side opposite the driver's side first?

A. No, sir.

Carl J. Griffin, Jr.

Q. You didn't crank that up and go around?
page 23 } A. I was in the car, cranking.
Q. Mr. Griffin, I thought you testified that you thought it was lightning that struck you?

Mr. Oast: He hasn't said anything like that.

Mr. Britton:
Q. —that you said in the lower court that you first saw stars, that you thought lightning had struck your car, it was lightning and thundering so hard, you saw lightning and stars.
A. I saw a ball of light about this big.
Q. You saw a ball of light? Isn't it true that you could have struck the side of your face on that car as you were getting in there in a hurry, and that is how you broke your dentures on your false teeth?
A. No, sir. I was in the car, and had rolled one window up and came back and was going to roll the other window up. He struck me through the window.
Q. Not as you were getting in there, and that is the reason you saw lightning?
page 24 } A. No, sir.
Q. You deny you used the term you saw lightning, or a ball of fire?
A. I think I used that expression.
Q. You used that expression? I am not putting it in your mouth?
A. I said that.
Q. After that time, you said you turned and you saw this man?
A. I did just like this, "God Almighty," and looked at this man right at me.
He was standing right next to the car and let me have another blow.
Q. Did you get out of the car?
A. I couldn't get out of the car.
Q. Isn't it true, this car is so low down, he had to be standing away from you for you to see, as tall as you are, because you are nearly up to the roof of that car, because you are so tall on a Volkswagen?
A. In a Volkswagen I have more head room than in a regular car.
page 25 } I looked the man straight in the face.
Q. You have more head room, but don't you

Carl J. Griffin, Jr.

have part of the door you can't get in unless you twist your neck around, Mr. Griffin?

A. You can drop low in a Volkswagen, get in easy.

Q. You could not see this man unless he was standing away from you, on a Volkswagen?

A. No, sir.

Q. You deny this?

A. I didn't see him until I turned around and looked him straight in the face.

Q. Did you jump out of the car.

A. I tried to get out of the car, put it that way.

Q. You couldn't get out?

A. That is right.

Q. You are lots bigger than he is?

A. I was hoping to get out of the car, but didn't make it out of the car.

Q. Mr. Griffin, you never had any words with this man? He didn't try to rob you, did he?

page 26 } A. I don't know what his intent was.

Q. You never saw him before?

A. No, sir.

Q. You didn't know his name?

A. No, sir.

Q. You got his license number, you say, after that time?

A. Well, I was told—can I say it?

The Court: He asked you. Tell it, yes.

A. I was told that was the man, and that was the car right there, as it happened.

Q. You were told this was the man? Somebody recognized him?

A. 3 people did, yes, sir.

Q. 3 people standing there?

A. Yes, sir.

Q. Where were they standing?

A. Standing in the door, waiting.

Q. Let's get to those 3 people. Mr. Fleming?

A. No, sir.

Q. Mr. Fleming didn't tell you? Where was Fleming sitting?

page 27 } A. That came up later.

Q. What came up later?

A. Mr. Fleming was sitting back of me in another car and saw the whole thing.

Carl J. Griffin, Jr.

Q. And he saw it, you say?
A. Yes, sir.
Q. Who was he sitting back there with?
A. I don't know.
Q. You don't know who he was sitting with?
A. No, sir.
Q. Were lights on in the parking lot at the time?
A. The lights were on the overhang.
Q. Your lights were not on in the car?
A. No, sir.
Q. Your Volkswagen have lights that when you open the door, it had lights that shine when you swing that door open, do they not?
A. Yes, sir.
Q. You could have seen with lights, this face, if a man had struck you there, could you not? You had lights from your Volkswagen on?

page 28 } A. I am not sure what you said there.

Q. You had lights on your Volkswagen that go on when you open the door?
A. They go off as soon as you close the door.
Q. The door was open, wasn't it?
A. No, sir. I had the door closed. I was inside the car, the door was closed, I raised one window and came back to raise the other.
Q. You were not sitting in the car with your foot outside the door?
A. No, sir. When I tried to push my foot outside the door, this fellow hit me with whatever he hit me with, and I threw one foot out the door, and he slammed the door on my leg, and I fell right back in the Volkswagen.
Q. Isn't it true that you did not identify him, Mr. Griffin, that night, you could not identify him the next morning, that you only identified him from the 20th of June to the first day of July when you got a warrant out?

page 29 } Q. When I went to this boy's house, I looked at the boy. I said, "That is his face."

Q. Who did you tell that to?
A. Mr. Darden. I didn't speak to anybody else at that house.
Q. You didn't speak to his two sisters?
A. No. The detective spoke to his two sisters.
Q. You didn't speak to them yourself?
A. No, sir.
Q. While he was changing his clothes, dressing?

Carl J. Griffin, Jr.

A. No, sir.
Q. He thought you were a detective?
A. The two sisters did.
Q. Did he also ask you were you a detective?
A. He asked me—

Mr. Oast: Mr. Britton, give him a minute to answer. You are asking and answering all in one breath.

Mr. Britton:
Q. Go ahead and answer the question.
A. When he was brought out, I looked at the page 30 } man. Sure enough, it was his face.
I was actually shocked that such a short boy could take me like he took me.
Of course, I had to figure out why he took me, but the element of surprise of me sitting in the car, not being able to get out and then I realized a short boy could take me.
I don't understand a little short boy could almost kill me like he did. He almost killed me.

* * * * *

Q. At that time, you didn't tell Mr. Robinson or his sisters that you were a detective?
They assumed you were a detective at that time, did they not?
A. Mr. Darden told them he was a detective.
Q. At that time, did he tell them you were a detective or anything, mention that you were a detective, at page 31 } that time?
A. No, I don't think so.
Q. Didn't they ask you who was hit?
A. No.
Q. They didn't ask you this?
You didn't even tell them what happened?
A. No, sir.
Q. You didn't tell his 2 sisters that were standing there what happened?
A. No, sir.
He called them out to the car, and then he asked him was he around at the Airport Grill that night, and he said something to him, he said, "No, I haven't been around there. What do you want?" real sarcastic to the detective.

Carl J. Griffin, Jr.

So he said, "Well, weren't you at the Airport Grill?" Sergeant Darden said, "Well, where were you?"

"I weren't around there."

"Well, Mr. Griffin got the license number off your car around there."

"Well, I left my car up there during the day, and sent some boy to pick it up."

page 32 } I knew the car was there because I took the license number.

Q. You took the license number?

A. Yes, sir, I took the license number of the car.

Q. At the time, didn't he ask you if you were not a detective?

A. He asked me if I was a Detective.

Q. He didn't even recognize you, did he?

A. I had dark glasses on.

* * * * *

page 33 }

* * * * *

Mr. Britton:

Q. Didn't you have a white patch over one eye, and you had a broken denture is the only thing that happened to you?

A. He broke the teeth up here, cut here and here; I was patched here and patched here (indicating) and I had dark glasses on.

Q. Where did you go?

A. What time?

Q. When you were struck? You said you went to the hospital?

A. I went to the police station, and then Of-

page 34 } ficer Capossela drove behind me, and I drove up to the hospital there.

Q. Where did you go then?

A. To the emergency room.

Q. Who doctored you?

A. Some foreign doctor sewed me up.

Q. You don't know the doctor?

A. No.

Q. You don't know what he did to you?

A. He sewed this up, sewed this up, checked my dentures,

Carl J. Griffin, Jr.

checked the back of my head, face here, shoulder, and legs; checked me all over, and then had me lay on the slab there, and I passed out.

Q. You say your shoulders and legs?

A. He struck me about 4 times.

Q. Did you ever get out of the car?

A. Just after he disappeared.

Q. And you were sitting in the car, sitting down in the car, in a Volkswagen, and he struck you on the leg, Mr. Griffin?

A. No. The doctor checked me all over. The doctor checks the patient to make sure I am not hurt any other

page 35 } place.

Q. I am asking you where you were hurt.

A. I said I had 2 knots here, a knot here, right here on the shoulder, and the face here.

Q. On the face and head, then, you are telling the Court? Did you get any glass?

A. Bits of teeth in my mouth.

Q. Did you get a knife wound?

A. No, sir.

Q. You don't know what you were struck with, if anything?

A. It was some object.

Q. Did you see anything?

A. Well, I didn't see no object, but I saw his face.

Q. You didn't see anything in his hands?

A. I tried to find out who he was, protect myself and see who he was.

Q. You didn't see any instrument?

A. No, sir.

Q. No gun?

page 36 } A. I didn't see no gun.

Q. No knife?

Just hands?

A. Something in his hands. I don't know what it was.

Q. Can you describe it?

A. I couldn't describe it.

Q. You say it was this man?

A. Yes, sir, it was that man.

The Court: Let me ask Mr. Griffin one thing.

Q. Did I understand earlier in the testimony, after this incident took place, you went to your home to let your wife

Carl J. Griffin, Jr.

know what had happened, before you went to the police station?

A. That is because she knew I was going to be home about 12:00, and she would have worried if I didn't.

Q. You did drive home?

A. Yes.

Q. Then this Officer Capossela drove behind page 37 } you there from the police station?

A. Yes, sir. I thought it would be better, in relation to your question, I thought it would be better if my wife knew about it, because if she got a call from the police station without my letting her know, it would really upset the family.

* * * * *

Mr. Britton:

Q. Mr. Griffin, so there will be no misunderstanding in this matter, what was said when you went into the Robinson home the next day at 11:00 o'clock?

A. I didn't say anything.

The detective, Darden, is the one that told these ladies present that was Gary Robinson there. They said yes, he was in bed.

What time it was, I don't know. They got out of bed for the detective.

I didn't say anything. I just spoke to the young page 38 } child there.

Q. Do you deny you told the young ladies you could not identify who struck you?

A. I deny that.

Q. I would like to put you on your guard. Do you still deny it, that at that time you said that you could not identify him? I would like to put you on your guard.

A. That is all right, sir.

Q. Later ,when we were down in the lower court, when you came outside of the courtroom, you were talking to some witnesses.

Would you tell me the name of those witnesses you were talking to when you came out of the courtroom? At police station?

A. Well, there is a Miss Janice Cloud. There is a Doug Fleming, and there is a Joe Frazier, and this other boy I just know by sight.

Carl J. Griffin, Jr.

Q. Just put "another boy."

I believe I had left and Mr. Oast had left at that time when you were talking to them, had we not?

page 39 } A. No, I think Mr. Oast was standing in the lobby, too, with me.

Q. After he had left, didn't you make a statement to all of them that it would be worth their while?

A. No, sir.

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page 44 }

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Mr. Britton:

Q. I don't believe we have your age.

A. 45, sir.

Q. 45 years of age? Do you know how old Mr. Gary Robinson is?

A. Well, I found from information he is 24 years old, or something about that age.

Q. In other words, you are not approximately the same age, as far as age is concerned?

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page 45 }

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Q. Mr. Griffin, you stated that when you were struck, I believe your term was, "It was a bolt of lightning" or "a ball of fire," or something.

How long after that time was it that you could see out of your eyes?

A. Well, I saw right away.

In other words, when I saw this blow, whatever it was, hit me, I turned just like this. I said, "God Almighty," and looked this boy right straight in the face.

Q. You mean the blow itself did not cause you to be blinded?

A. No, sir.

Q. So that you could not see?

A. No, sir. Even the blood didn't stop me.

Carl J. Griffin, Jr.

Q. You said you had blood also?
A. Blood was pouring, all over me.

Mr. Britton: No further questions.

RE-DIRECT EXAMINATION.

Examined by Mr. Oast:

page 46 } Q. One question. You say you looked him in the eye. Did you ask him not to hit you again?
A. Yes, sir.
Q. What happened?
A. He hit me again. Hit me about 4 times with whatever he was hitting me with.
Q. No question about that?
A. No, sir.

Mr. Oast: No further questions.

RE-CROSS EXAMINATION.

Examined by Mr. Britton:

Q. You said something at that time. Did he make any remark?
A. He said something about drawing blood. That is all I remember him saying.
Q. Somebody said something?
A. He said it.
Q. You said something?
A. I said, "Don't hit me."
Q. "Don't hit me, man"?

The Court:

page 47 } Q. One thing, Mr. Griffin, you say you were under the impression you were hit by some type of object rather than a person's fist?
A. I think so, yes, sir. Nobody could hit a man that hard. The doctor said if it hadn't been for this bone—

The Court: Don't go into that.

A. —I could have lost my eye.

Charles Douglas Fleming.

The Court:

Q. In your judgment it was not just a bare fist that struck you?

A. No fist could ever hit me that hard.

RE-DIRECT EXAMINATION.

Examined by Mr. Oast:

Q. But it came from his fist?

A. It came from his hand; definitely his hand.

Mr. Oast: All right. Come down.

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page 48 }

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CHARLES DOUGLAS FLEMING,
witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Oast:

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page 51 }

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Q. Mr. Fleming, state your name and address, please, sir.

page 52 } A. Charles Douglas Fleming, 503 Coffman Boulevard.

Q. Do you know the Defendant?

A. Yes, sir.

Q. And do you know him by sight?

A. Yes, sir.

Q. Have you seen him a few times or many times?

A. Well, it depends on what you mean by few or many.

Q. You know him when you see him?

A. Yes, sir.

Charles Douglas Fleming.

Q. Were you at the Airport Grill in the City of Portsmouth on June 20 and 21 of this year?
A. Yes, sir.
Q. Did something take place while you were out there?
A. Yes, sir.
Q. Do you know what night of the week it was?
A. Right now I don't. It was on a weekend.
Q. Did something take place while you were
page 53 } out there?
A. Yes, sir.
Q. Will you tell His Honor just what you observed while you were there?
A. Yes, sir. I was sitting in my automobile, and I seen Mr. Griffin.

The Court: Give the time, please, sir.

A. I don't know exactly, but right at closing time, which is around 12:00 o'clock, around somewhere around 11:00 or 12:00, the last hour before closing time.

Mr. Griffin came out to get in his automobile, and—

Mr. Oast:
Q. What kind of car?
A. Volkswagen.
He got in his car. At the time, I didn't know who Mr. Griffin was. He got in the automobile.
I was waiting for someone to come out. I kept watching the door. I noticed Mr. Robinson come up by Mr. Griffin's automobile and reach inside the car several times, and
page 54 } from where I was sitting, it looked as if he were striking the man.
A few seconds later—

Mr. Britton: Object to what it looks like. I want to object.

Mr. Oast:
Q. Describe the motions he was making.
A. He was standing beside the car.

Mr. Oast: If you have to stand up, all right.

A. At the driver's side of the automobile, by the driver's

Charles Douglas Fleming.

window. The window was open, because Mr. Griffin had rolled the window on the other side up.

It was starting to rain. He kept reaching in the car like this (motions). All I could see was this much out of the car. I couldn't see what was going on inside the car.

Q. Who was doing that?

A. Mr. Robinson.

Q. Any question in your mind it was this man

page 55 } here?

A. No, sir.

Q. Go ahead and describe it.

A. Shortly after that, he opened the door of the automobile.

Q. Who did?

A. I couldn't tell who opened it. The door opened, and Mr. Robinson stepped around the opening of the door, and I thought he was fixing to get in the car, but then he slammed the door and run and got in another automobile and left.

Q. Did you see Mr. Griffin then?

A. No, sir. I was watching the automobile that he left in leave.

Q. How did he leave? Fast? Slow?

A. Not too fast. He ran over to the car and jumped in and the automobile left.

Q. Could you identify the other people in the car?

A. No.

Q. All right. Go ahead.

A. I didn't pay any attention to that part. The car pulled up behind him and he got in the car and left.

page 56 } I looked back and Mr. Griffin was standing at the doorway, entrance to the place, he was parked right at the front.

Several people from inside, the people that run the place, waiters and all, had come out and were gathered around him.

Shortly after that, I left. I don't know what took place after that.

Q. Did you know Mr. Griffin before this night?

A. No, sir.

Q. All right, sir. How is it lighted out there? Can you describe the lighting conditions?

A. Flourescent lighting overhead of it, something like a porch going into the place, entranceway there, supplies a good bit of lighting right in front of the place, which he was parked right in front of the door.

Charles Douglas Fleming.

Q. Are you familiar with the car Mr. Robinson has and drives?

A. Well, I know it as a small Volkswagen, light
page 57 } colored.

Q. Mr. Robinson?

A. Oh, I have seen him driving a maroon, small car, compact or some kind, Chevrolet, Ford, or something like that.

Q. Was that car parked there that night?

A. Yes, sir.

Q. That was there?

A. Yes, sir.

Q. Any question about that?

A. No, sir.

Q. You are sure he was the man reaching in the car?

A. Yes, sir. I wondered why he got in that car instead of his own.

Mr. Oast: Answer Mr. Britton.

CROSS EXAMINATION.

Examined by Mr. Britton:

Q. Mr. Fleming, this was a Saturday night, was it not, that you were parked in front of the Airport Grill? Where is the Airport Grill?

A. Almost to the city limits on the Old Suffolk
page 58 } Boulevard.

Q. City of Portsmouth?

A. Yes, sir.

Q. I believe that is off of Portsmouth Boulevard, is that correct?

A. Yes, sir.

Q. You were sitting in your own vehicle?

A. Yes, sir.

Q. Now, in regards to where the Griffin car was parked, where was that parked?

A. Where my car was?

Q. Yes.

A. Parked as far as from here to the wall there, just a driveway between us, 2 lines of parking space there, one right up at the door, all the way across, second line.

I was in the second line behind his car, as far as from over there to me.

Q. As far as from where you are to this wall?

Charles Douglas Fleming.

A. Approximately. Just a driveway's distance.
page 59 } Q. You would say that was how many feet, in your own estimation?
A. I would say 20 feet at the most.
Q. You mean this back wall is 20 feet?
A. I would say he was approximately 20 or 30 feet from me, half of my car, I was sitting in the front seat, half of his car and the driveway.
Q. Who was in the car with you, Mr. Fleming?
A. Two other people.
Q. Who are the other 2 people?
A. Well, I would rather not say.

Mr. Oast: Your Honor, this man is not on trial. It is not a matter brought out, and I don't know what relevancy it has here today.
They can't go into it. He saw it. What difference does it make?
The Court: Unless you can tie in some relevancy with the other persons in his car, I don't think it is a proper question.
Mr. Britton: I think I can. He is on cross examination.
The Court: The fact he is on cross examina-
page 60 } tion does not mean that you can ask anything in the world you want to.
Mr. Britton: I cannot, but he testified he saw a felony being committed. He was sitting in a car, and I am asking who was in the car with him.
The Court: At the moment, I overrule your objection, to which you can note your exception.

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The Court: I just said he doesn't have to answer.

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page 61 }

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Mr. Britton: If Your Honor please, I would like to be heard on that question of who was in his car with him, if Your Honor would allow me, in Chambers.

Charles Douglas Fleming.

The Court: No. I am not going to take up the time. I don't think it is pertinent. You have noted your exception, so proceed with your interrogation.

Mr. Britton:

Q. All right, sir. You were on the driver's side, or were the other 2 people in your car that you will not identify on your side, or where were you sitting in the car?

A. I was on the passenger's side of the automobile.

Q. On the passenger's side?

A. Yes, sir.

Q. In other words, were you on the front seat or back seat?

A. Front seat.

Q. Was the Griffin car on your right or left
page 62 } side?

A. On my right.

Q. On your right side?

A. Yes, sir.

Q. So you were next to the window, looking toward the Griffin car?

A. Yes, sir.

Q. Was there any car between you and the Griffin car?

A. No, sir.

Q. What was the condition of the weather, Mr. Fleming?

A. It was night, and it was a storm, I would say, was in the making, a rain.

Q. It wasn't lightning and thundering at this time?

A. Yes, sir, it was.

Q. It wasn't raining?

A. It was beginning, just dripping.

Q. Just dripping?

A. Yes, sir.

Q. What did Mr. Robinson have on this particu-
page 63 } lar night?

A. I don't remember what he was wearing.

Q. Did he have a raincoat on?

A. No. I know he didn't have a raincoat on.

Q. Did he have an overcoat?

A. It was in the summertime.

Q. In June, wasn't it?

A. Yes.

Q. Sweater?

Charles Douglas Fleming.

A. I told you I don't know what he was wearing. I couldn't identify him. I don't remember that far back what I was wearing that night.

Mr. Oast: He has identified him positively.

Mr. Britton:

Q. How can you identify him, Mr. Fleming, if you did not recognize his clothes?

A. I have seen the man several times before.

Q. Well, you seem to know right much about him, do you not? You know his car?

A. Yes, sir.

page 64 } Q. Had you ever been in an argument with Mr. Robinson?

A. No, sir.

Q. Where do you work?

A. Norfolk Naval Shipyard.

Q. You work the same place that Mr. Griffin works?

A. We both work for Norfolk Naval Shipyard, not the same department.

Q. Now, how long after Mr. Griffin came out of the grill, Airport Grill, did Mr. Robinson come out?

A. It was just a short while. I don't know exactly the time.

Q. Would you say a minute, 5 minutes?

A. No, not 5 minutes. A minute or 2.

Q. A minute or 2?

A. Yes, sir.

Q. Had Mr. Griffin cranked the windows of his car up?

A. He was rolling the window up on the passenger's side. He hadn't rolled the window up on the other side.

page 65 } Q. You were watching him?

A. Yes, sir.

Q. Was he the man you were out there watching? You said you were watching the door.

A. No, I was waiting for someone, I said.

Q. And Griffin or Robinson were not the two you were waiting for?

A. No.

Q. Will you tell the Court who you were waiting for?

Mr. Oast: Your Honor, I don't think it is relevant. It has nothing to do with it, not asking him who he was waiting for. I don't think—

The Court: Sustained. Note your exception.

Charles Douglas Fleming.

Mr. Britton:

Q. You said you saw him come to the window?

A. Yes, sir.

Q. Was it on the driver's side?

A. Yes, sir.

page 66 } Q. That was on the other side—on your side or the other side of the car from you?

A. Are you talking about he?

Q. Mr. Robinson?

A. Driver's side of the automobile.

Q. Where were you sitting in regards to him at that time?

A. To the rear. He was to my right, and forward of me.

Q. To the rear? How far to the rear?

A. I would have to go out there and measure it. I told you one time as far as to that wall.

Q. You said the cars were that far separated. How far back did you say?

A. Same distance as from there, here; I would say 30 feet or so. Just a driveway's distance between us, and half a car.

Q. Parallel?

A. No, sir, he was to my right, I would say 5 or 10 feet, give a foot or so.

Q. You mean behind you?

page 67 } A. He was forward of me.

Q. Forward of you 5 or 10 feet, and 30 feet up?

A. 20 or 30 feet, yes, sir.

Q. Did you see anything in Mr. Robinson's hand—you identify him as Robinson, now?

A. Yes, sir.

Q. You know him well enough to know who he was?

A. Yes, sir.

Q. Did you see anything in his hand?

A. No, sir, I didn't.

Q. How long did that commotion take?

A. I would say 3 minutes or something like that at the most.

Q. Did Griffin get out of the car?

A. No. Not until after Mr. Robinson left.

Q. You say he did not run, but walked over to the car and got in?

A. I said he was at a fast pace.

Q. Fast pace, but it was raining, wasn't it?

page 68 } A. Starting to rain.

Q. Mr. Fleming, are you positive this is the man that you saw at that time?

Charles Douglas Fleming.

A. Yes, sir.

Q. You are positive? All right, sir.

The day of the trial, the day you went to the police station, I believe you were in front of the police station with Miss Jackie Cloud, after the trial in the lower court, you were standing out front with Miss Jackie Cloud, were you not?

Mr. Oast: Your Honor, there is nothing on my direct examination, and he is trying to blow up smoke now that has nothing to do with the case.

If he has a complaint, it is an independent matter.

I object to this line of questioning. I certainly don't think it is proper.

The Court: I think if you are going to get off on this, you ought to lay some foundation.

page 69 } You are asking this gentleman if he was out front with somebody. What has that got to do with the case at bar?

Mr. Britton: That Mr. Griffin at that time made certain statements to him, and I would like to know if Mr. Griffin made those statements.

The Court: I would suggest you pursue your interrogation of this witness first along the lines if he saw Mr. Griffin, if he was present when Mr. Griffin made any comments that might have anything to do whatsoever with this particular case, and then I think we can try it.

Mr. Britton:

Q. The day of the trial in lower court, were you standing out front with Mr. Griffin and other witnesses?

A. Yes, sir.

Q. At that time, did Mr. Griffin tell you that he would make it worth your while to testify in this matter?

page 70 } A. No, sir.

Q. You deny he told you that?

A. Yes, sir.

Q. I would like to put you on your guard that Miss Cloud was present, you are Doug Fleming, Joe Frazier, and another boy was standing there.

Q. You did have a conversation with him?

A. We were all talking there. I don't remember hearing a statement like that, though.

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page 72 }

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JOE W. FRAZIER,
witness first having been duly sworn, was called to the witness stand, and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Oast:

Q. State your name, please.

A. Joe W. Frazier.

Q. Where do you live?

A. 106 Shea Street, Portsmouth, Virginia.

Q. Do you know the Defendant, Gary Robinson?

A. Yes, I do.

Q. Is he in the courtroom today?

A. Yes, sir, he is.

Q. Have you had a conversation—did you have a conversation with him about a fight he was involved in?

A. I don't know if you can classify it as a conversation or not.

He asked me at the Airport Grill, I don't recall
page 73 } the day, but asked me to hang around, he might want me to help him, to back him up, and I wanted nothing to do with it and I left.

Q. When was that?

A. I don't recall the date, but at the Airport Grill.

Q. Was it this past summer?

A. Summer, yes.

Q. Have you seen him since that time?

A. Passing by.

Q. Did you have a conversation with him at Chandler's?

A. Yes.

Q. What did he tell you at Chandler's regarding the fight at Airport Grill?

A. I got off work one night, and I thought I was going to have some trouble.

He was in an automobile, and I told him I didn't want any trouble.

Mr. Britton: I can't hear him.

Joe W. Frazier.

A. I said I was at Chandler's one night after I got off work, and I was approached about the matter, and
page 74 } I told them I wanted no trouble out of nobody. I had nothing to do with it.

Then another night up there, I was up there with some more people, and he was telling me—

Mr. Oast:

Q. Who was telling you?

A. Gary Robinson.—that he did beat this man up, something about the biggest man in the grill, that night. I didn't pay a lot of mind to it.

Q. Did he tell you he used any weapon on this man?

A. No, he didn't say he used any weapon on this man. He said he beat this man up.

Q. Did he say where?

A. I already knew that.

Q. Did he tell you?

A. Not at that time, but I already knew where at and who it was.

Q. Did Robinson tell you that?

A. Yes.

Q. Who did he tell you he beat up?

A. He didn't have to tell me. I knew he had had
page 75 } this fight at Airport Grill, and I assumed, you take it for what it was worth, I assumed, what it was worth.

Mr. Britton: I object to what he assumed in this case.

The Court: All right. Just testify to what you were told by the Defendant as a witness in this case. You cannot assume anything.

You tell what you know and if you don't know it, you simply say you don't know.

A. That is all I know. He asked me to back him up, and I told him I wanted nothing to do with it. and then he came up to Chandler's that night sometime after that.

The Court: Was it that same night?

A. No, sir.

The Court: Some other date?

A. Some other day after that.

Joe W. Frazier.

Mr. Oast:

Q. What did he tell you?

page 76 } A. I don't know word for word, but just, I guess, bragging on the way he beat this man up.

Q. He was bragging about the way he beat him up?

A. Bragging, talking about it, discussing it in public.

Q. Who was there with you that night?

A. At the time, I didn't notice these people's names, but I do now since I have gotten involved this far.

I still don't know the gentleman's name. This lady that was there, her last name I don't know, but her first name is Janet or Janice. First time I ever seen her.

Q. Is this the man who was bragging he beat the man up at the Airport?

A. Yes.

Mr. Oast: Answer Mr. Britton.

The Court: As I understand what the Defendant told you, as you expressed it, he was bragging about beating a man up at the Airport Grill?

page 77 } A. Yes, sir.

The Court: He didn't mention any name?

A. No, sir.

CROSS EXAMINATION.

Examined by Mr. Britton:

* * * * *

Q. The only thing you say now about this case is what somebody told you?

A. The only thing I know is what I stated to Mr. Oast there, the man in this courtroom, Gary Robinson, said he beat this man up.

Q. You were down there with William Calious, were you not, at the time?

A. As I stated to Mr. Oast, I did not know the man's name, and I do not know him now. I recognize him only by face.

Q. Was it William Calious, or do you know?

Joe W. Frazier.

A. I said I didn't know him then by name. I
page 78 } don't know him now by name. By face.

Q. Was Mr. Robinson sitting in the car with a girl by the name of Janice?

A. Mr. Robinson was in the car at one time, I believe, since you brought the matter up, and then he was out of the car discussing the situation.

Q. Just out of a clear sky; he, at that time was indicted for assaulting this man, the police were investigating it, and he goes and tells you that he assaulted this man?

Is that what you are telling this Court, Mr. Joe Frazier?

A. I am telling you what the Defendant stated that night at Chandler's, as I stated before.

Q. You don't know what night it was?

A. No, I am not in the habit of keeping up with dates.

Q. One week, 2 weeks, a month later, or how long after?

A. I wouldn't say just when it was.

Q. Would you say at least 2 weeks later?

A. I am not going to commit myself to no par-
page 79 } ticular statement or date. I don't know. It was—

I will say this, Mr. Britton, it was after Mr. Griffin, the Complainant, Carl Griffin, had been assaulted. Let's put it like that.

Q. In other words, you are telling the Court that it was after somebody was assaulted, he went and told you he assaulted somebody.

He didn't tell you who he assaulted?

A. He didn't call no names.

Q. You don't know who it was?

A. That is right.

Q. You weren't present?

A. At what time?

Q. At the time of any assault, to be a witness?

A. I wasn't present at no time no one was assaulted, but I was approached to back him in case he needed some help in a disorderly manner, which I have never participated in, and I will not ever.

Q. But you came up to see Mr. Carl Griffin and told him that this man had told you he beat him up, did you not?

A. Like I said a while ago, which I am not al-
page 80 } lowed to use in the court—

Q. You are not allowed to use what in court?

A. The Judge recommended that I could not use the word "assume" and that is the very words.

Joe W. Frazier.

Q. I am not asking what you assume. I am asking you how did they get your name?
A. How?
Q. How?
A. They came to my house.
Q. Came to your house and asked you, or did they tell you?
A. Yes, sir.
Q. Did you not go to Carl Griffin's house and tell him that yourself?
A. Mr. Britton, if my life depended on it, I could not tell you where Mr. Griffin lived.
Q. Did you see him down the street?
A. What do you mean, "down the street"?
Q. Mr. Frazier, how did they know that you knew he said these things, the Defendant said these things?
page 81 } A. I didn't write these things down. I didn't think I would have to use them.
Q. Mr. Frazier, didn't you, in front of the Courthouse, didn't Carl Griffin tell you and other people standing there that he would make it worth your while if you would testify in this case?
A. No, sir, Mr. Britton, he did not.
Q. He did not?
A. No, sir. I got a telephone call from someone downtown.

Mr. Britton: No further questions.

RE-DIRECT EXAMINATION.

Examined by Mr. Oast:
Q. You say you got a telephone call?

Mr. Britton: I object unless he can identify a phone call.

Mr. Oast:
Q. Have you been threatened?
A. Yes, sir.

Mr. Oast: That is all I want to know.
Mr. Britton: I object.

page 82 } RE-CROSS EXAMINATION.

Examined by Mr. Britton:
Q. Did you hear this man's voice over a phone?

James M. Capossela.

A. I wouldn't know Mr. Robinson's voice over a telephone.

Mr. Britton: Your Honor, I object to this type of testimony.

The Court: You opened the door to the line of testimony that came out.

Mr. Britton: I did not ask about any phone call.

The Court: You were asking this man if he was asked to do something unlawful as an outgrowth of this alleged offense.

Mr. Britton: I did not ask that question. I said did he make that statement.

I don't know what the man meant when he made the statement, if he did make the statement.

The Court: I don't want to hear any more of it.

page 83 }

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JAMES M. CAPOSSELA,

witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Oast:

Q. State your name, please, sir.

A. James M. Capossela.

Q. Are you connected with the Portsmouth Police Department?

A. I am.

page 84 } Q. What is your job with the Police Department?

A. Detective Investigator.

Q. Were you a Detective in the Police Department on June 21, 1964?

A. Yes, I was.

Q. Were you on duty that particular morning, or night?

A. I was.

Q. Did Mr. Griffin come in and make a complaint to you?

A. Yes, he did.

Q. Did you observe Mr. Griffin's physical condition?

James M. Capossela.

A. He had lacerations below his left eye, and abrasions on his right forehead, right leg near the ankle.

He was taken to Portsmouth General Hospital and he had 2 stitches taken on his upper eye.

Mr. Britton: I object to what Portsmouth General Hospital did unless the official record. The only thing page 85 } I heard is what somebody told him.

A. This is my record. I brought him to the hospital.

The Court: Let's see what develops.

Q. You made the investigation?

Mr. Britton: I withdraw my objection.

Mr. Oast:

Q. Did you see them work on him?

A. Yes.

Q. What did you see them do?

A. 2 stitches on the upper eye, 3 stitches to close the laceration on the lower part of the eye, sutured the leg, and released him.

Q. Did he turn in any license number to you?

A. No, sir, he did not. It was turned in to Detective Storey.

Q. Did you show him any pictures at the Police Department?

A. No, sir, I did not. He was in the office sometime before I came into the office. I was on the street, tied up page 86 } at the time.

Q. You, yourself, took him to the hospital?

A. Yes, I did.

Q. Did he come down in an automobile?

A. Yes, he did.

Q. Do you know what kind of car?

A. No, sir. I believe one of these little foreign cars.

Q. Have you, yourself, talked to the Defendant, or have you any further knowledge about this case?

A. No, sir, I do not.

Mr. Oast: Thank you, sir.

James M. Capossela.

CROSS EXAMINATION.

Examined by Mr. Britton:

Q. You have talked to the Defendant, have you not? You arrested him?

Yes, sir, sometime later, a couple of months later, I executed a warrant on him.

A. Not at that prior time.

Q. And you asked him did he do it, and he denied he did it?

page 87 } A. I asked him about it, and he denied it.

Q. Correct. You had a conversation with this man?

A. Not at that time. Later.

Q. How long after that was he arrested? Do you have that record, also?

A. I arrested him on the 22nd day of August.

Q. Sir?

A. 22d day of August.

Q. Arrested him on the 22d day of August?

A. I am pretty sure.

Q. Do you know the date the warrant was sworn out?

Mr. Oast: That is in the record, Your Honor.

A. I was on vacation at that time.

Mr. Britton:

Q. You say as to these injuries Mr. Griffin had, something on his leg, would you tell what kind of suture?

page 88 } A. There was an abrasion on his forehead, and the right leg near the ankle.

Q. You could not tell if they were cuts or bruises or blows?

A. Abrasions.

* * * * *

page 93 }

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Mr. Britton: I make an exception.

Also, Your Honor, I make a motion to strike the evidence also of Fleming at this time, that he was in the car, and he

refused to divulge the names of the other people that were sitting in his car at the time.

* * * * *

Mr. Britton: I would like to take another exception at this time.

* * * * *

GARY RAY ROBINSON,

Defendant, first having been duly sworn, was called to the witness stand and upon being examined, testified
page 94 } as follows:

DIRECT EXAMINATION.

Examined by Mr. Britton:

Q. Gary, how old are you?

A. 22.

Q. Were you at the Airport Grill on the 20th of June?

A. Yes, sir.

Q. Tell what happened that night.

A. Well, I used to go up there about every night, drink a few beers, shoot some pool.

That night I was up there, and a couple of my buddies, one of them wanted a ride home. The other was going to give him a ride home.

We got a 6-pack of beer and went down to his house.

Q. What were the names of your 2 buddies?

A. Sonny and Teddie Blevins.

We went down to Sonny's house. Instead of taking 2 cars. we left mine parked at the Airport Grill and went down in Teddy's car.

I was in the process of wanting to move away,
page 95 } wanting to go to Florida, wanting to sell my car, and I was talking to Sonny about it.

Sonny said,—

Mr. Oast: Object to conversation, Your Honor.

The Court: Objection sustained.

Mr. Robinson, you cannot testify as to what someone else like that said to you.

Mr. Britton: Mr. Robinson, go ahead and just say what

happened to you at that time, leaving out what you told him and what he told you.

A. He went up and got my car for me and brought it back to my house. I got my car and went home. I went to bed.

Q. What time was this?

A. I guess about 12:30 or quarter to 1:00. I guess it was 1:00 o'clock, maybe 1:30, a telephone rang, maybe later, and I was asleep.

* * * * *

page 97 }

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Q. After daylight, did anybody come to your home?

A. Yes, sir.

Q. What time was it approximately?

A. Approximately 11:00 o'clock.

Q. Who came to your home?

A. Well, a detective. I thought it was 2 detectives until they got me in the car and then they told me Mr. Griffin, the guy that was supposed to be struck, they come up and asked me a couple of questions, asked if I would take a ride with them. I said, "Yes."

Q. Were you arrested then?

A. No, sir.

page 98 } Q. Did you go of your own free will?

A. Yes, sir.

Q. Where did you go?

A. I think what they wanted to do was to check out information where I was at, at Sonny's house. Nobody home. They brought me back. That was all.

Q. Did you have any conversation with Griffin?

A. No, sir.

Q. Did he say you were the man?

A. No, sir.

Q. What day was this?

A. Sunday, the 21st.

Q. When is the next time you saw Griffin?

A. The day in court.

Q. How long after that, Mr. Robinson?

A. The next time in court.

Gary Ray Robinson.

Q. Was that the preliminary hearing?
A. The first time I seen him after he came to the house was the first time we went to court.
page 99 } The next time was the following time we went to court.
Q. Did you strike this man?
A. No, sir, I didn't.
Q. Did you know Griffin before he went there with the detective, I believe you said Darden?
A. I believe that was his name. I wouldn't swear to it.
Q. Did you know him before that time?
A. No, sir, I never seen him, never laid eyes on the man.
Q. Did you have any reason for hitting him?

* * * * *

Q. Joe Frazier made some statements here that you were bragging to him.
Tell what occurred with you and Joe Frazier.
Q. Well, I was sitting up there talking with the girl he brought up, Janice, and I don't know, I was drinking a little bit that night, but I don't remember nothing, but I won't bragging about hitting nobody.
page 100 } Q. Did you tell him you hit this boy, Griffin?
A. No, sir, I didn't.
Q. Was this after you had been arrested?
A. I can't rightly remember.
It was after the time, after the incident that was supposed to have happened.
Q. And you did not tell Joe Frazier anything of this?
A. No, sir, I didn't.

Mr. Britton: Your witness.

CROSS EXAMINATION.

Examined by Mr. Oast:
Q. Mr. Robinson, your car was there, and what kind of car do you drive, sir?
A. '63 Ford Falcon, maroon, convertible.
Q. Maroon. Your car was there that night?
A. That is right.
Q. You were there? You were at the Airport Grill on Saturday, the 20th of June?

Gary Ray Robinson.

A. Yes, sir, until quarter to 12:00, and I left.

page 101 } Q. You were right there. Do you know Mr. Fleming, the man that testified up here?

A. No, sir, I don't know him.

Q. You know him when you see him?

A. I don't know his name, no, sir.

Q. You have seen him around the Grill?

A. Yes, sir, I reckon.

Q. Ever had any difficulty with him?

A. No, sir.

Q. Any reason for him to get up here and make up a story?

A. No, sir, not as I know of.

Q. He says he positively saw you at the Airport Grill, leaning over Mr. Griffin's car, and punching Mr. Griffin.

You heard him say it?

A. Yes, sir.

Q. You heard Mr. Griffin positively identify you?

A. Yes, sir.

Q. You have never had any difficulty with Mr.

page 102 } Griffin before?

A. No, sir. Never seen him before court.

Q. Were you drinking beer, shooting pool at the Airport Grill on the 20th of June?

A. Yes, sir. I drink and shoot pool every night.

Q. Who with that night?

A. Every night. Sometimes I shoot with friends; sometimes we shoot partners. Don't go around—

Q. What time did you arrive at the Airport Grill the night Mr. Griffin was struck?

A. Get up there every night 7:30, quarter to 8:00.

Q. Do you play shuffleboard and shoot pool to get beer?

A. No, sir, I don't gamble.

Q. How many beers had you had?

A. 3 or 4.

Q. From 7:00 o'clock to midnight?

A. Yes, sir.

Q. Did you go right straight home?

page 103 } A. No, sir. When I left there, I went to Sonny's house. We drank more beer at Sonny's house, had a 6-pack.

Q. What time did you arrive at home?

A. Like I said, around 1:00 or 1:30, maybe.

Q. And you did not drive your car?

A. Yes, sir, I drove my car from Sonny's house.

Gary Ray Robinson.

Q. Who drove your car to Sonny's house?
A. Sonny.
Q. What kind of car did you leave the Grill in?
A. Chevrolet.
Q. Who took you?
A. Teddie.
Q. Teddie Blevins took you in his car?
A. Yes, sir.
Q. You were there until after midnight?
A. No, sir.
Q. Until about closing time?
A. Quarter to 12:00.
page 104 } Q. When do they close?
A. 12:00 o'clock.
Q. You testified later on at Chandler's you were so drunk you didn't know what you said?
A. I didn't say I was so drunk I didn't know what I said.
Q. You had a conversation with Janice?
A. I was sitting in the car, talking to Janice, yes, sir.
Q. Was Joe Frazier there at the same time?
A. Joe Frazier came up later.
Q. What did you tell Janice about this fight up there?
A. I didn't tell Janice, didn't mention a thing to her.
Q. Do you want to think about that a minute?
The night you were sitting up at Chandler's did you mention anything about a fight to anybody?
A. No, sir, I didn't.
Q. I am putting you on guard. I have her
page 105 } here, and I intend to contradict you.
A. No, sir.
Q. You never mentioned the fight to her?
A. I didn't say I done it.
I hadn't seen her for a while. I said I had been in a little bit of trouble, and I had been out of town.
Q. You did talk about this fight, then?
A. Like I say, she asked me where I have been, and I say I have been out of town. I have been in a little bit of trouble.
I didn't come out and say I beat a man up and had to leave town or something.
Q. Isn't it true, going back to the Airport Grill the night of the fight, it was not a fight because you weren't struck—isn't it true you told your friends you would take the biggest man in the place on?
A. No, sir.
Q. Isn't that a part of your game when you shoot pool,

try to pick out the biggest man in the place?
page 106 } A. No, sir, shoot the best man in the place. Challenge. You challenge other lawyers.

Q. You said that night you were going to take on the biggest man in that place?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. You followed Mr. Griffin out of that place that night. Did you leave before or after he was struck?

A. I don't know because I didn't know the man.

Q. What time did Teddie Blevins leave?

A. Teddie left the same time I did.

Q. What time did Sonny leave?

A. Same time I did, approximately quarter to 12:00.

Q. These people testified your car left sometime after you left in the Chevrolet. Did you hear that?

A. Yes, sir.

Q. You didn't leave together?
page 107 } A. Yes, sir.

Q. Are the witnesses wrong about everything said, even when you left?

A. I know what time I left, and when they left.

Q. You say they left with you?

A. Yes, sir, left with me.

Q. When questioned about your car, didn't you first deny you were ever up at Airport Grill?

A. No, sir.

Q. You never denied being there?

A. No, sir, I didn't.

Q. You were there?

A. I was there.

Q. You saw Mr. Griffin there?

A. I didn't know the man until he came to my house.

* * * * *

page 108 } RALPH E. BARRETT,

witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

Examined by Mr. Britton:

DIRECT EXAMINATION.

Q. Mr. Barrett, on the 20th of June, Gary Robinson was

Ralph E. Barrett.

charged with assaulting one Carl Griffin.

Were you at the Airport Grill on the 20th of June?

A. Yes, sir.

Q. What time did you get there?

A. After 11:00 o'clock. I couldn't tell you exactly.

Q. What happened while you were there?

A. I came from the bowling alley to the Airport Grill with a friend, and he didn't live in the same direction, so I told him I would see if someone in there would give me a ride home.

I went in and talked to Teddie Blevins and asked—

page 109 } Mr. Oast: Object to any conversation.
The Court: He said he talked to him.
Mr. Oast: All right.

A. I asked him if he would drop me off at his house.

The Court: Don't go into conversation.
Mr. Britton: You can tell what you did.

A. I got a 6-pack of beer and went to the car. We all went to the car.

Q. Who went with you?

A. Teddie, Gary, and I.

Q. 3 of you?

A. Yes, sir.

Q. Where did you go?

A. To my house, 2 blocks away, Portsmouth Boulevard.

Q. Where was Robinson's car?

A. Well, I didn't know at the time where his car was until we got to my house.

It was at Airport Grill.

Q. What was said there?

Mr. Oast: I object.

Mr. Britton:
page 110 } Q. What was done there? Don't say what was said.

A. We went and got in the car and left.

Q. After you got to your home, what was done there?

A. We went in my house.

Q. After that happened?

A. We drank the beer and listened to the phonograph, records.

Ralph E. Barrett.

Q. What happened after that?

A. Then, Teddie was going home, so Gary said, "My car is at Airport Grill."

So I was thinking about taking over payments on his car. He said. "I will go get it," and I said, "I want to drive it anyway. I will go and get it."

I went and drove the car back to my house.

Q. Who drove to the grill?

A. Teddie Blevins.

Q. Where was Mr. Robinson during that time?

A. At my house.

page 111 } Q. What time was this?

A. After 12:00.

Q. Did you see Mr. Robinson assault Mr. Griffin or anybody else at the Airport Grill?

A. No, sir.

Q. Did you know Mr. Griffin before this time?

A. I still don't know him, no, sir.

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page 112 }

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A. I was sitting in Chandler's Restaurant at Alexander's Corners. He came to me and said, "I heard Gary Robinson had a fight at Airport Grill."

I said, "I don't know a thing about it."

page 113 } That was 2 days later.

Q. 2 days after the fight?

A. That was all he said. I said. "I don't know a thing about it."

Q. Did you try to say anything further to Frazier?

A. No.

Q. Didn't enlarge it at all?

A. No, I didn't.

Mr. Britton: Your witness.

CROSS EXAMINATION.

Examined by Mr. Oast:

Q. Your nickname is Sonny, is that true?

A. Yes, sir.

Ralph E. Barrett.

Q. I didn't get the full name.
A. Ralph E. Barrett.
Q. Mr. Barrett, on the night that you arrived at Airport Grill, had you been drinking beer or anything that night?
A. No, sir. We had been bowling.
Q. Who is "we"?
A. This friend of mine that I was with.
page 114 } Q. You hadn't been with the Defendant earlier in the evening?
A. No, sir.
Q. Was he drinking beer when you arrived at the Airport Grill?
A. I didn't even see him when I arrived at the Airport Grill.
I was speaking to Teddie for a ride home. I didn't know they were together or not.
Q. You didn't have conversation about taking over payments until you got to your home?
A. That was previous to that.
Q. When you left. you left in the 1963 Chevrolet?
A. Mr. Blevins' car, if that is the model of it. I couldn't tell you.
Q. You all 3 left at the same time in the Chevrolet?
A. Yes, sir.
Q. Had you had a prearrangement where you were going? Weren't you going home?
A. I asked Mr. Blevins to drive me home.
page 115 } Q. The Defendant got in Mr. Blevins' car and went with you? All 3 got in the car?
A. Yes, sir.
Q. Were you surprised to find he left his car back there?
A. No, I wasn't. I asked Mr. Blevins, I said, "I will take the beer and we will go up and listen to records." I took for granted Gary and him were together.
Q. Did you know his car was up there?
A. Not until we got to my house.
Q. You didn't know his car was there?
A. No.

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page 116 }

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THEODORE E. BLEVINS,
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Britton:
Q. Mr. Blevins, on the 20th of June, were you at the Airport Grill, at approximately 10:30 or 11:00 o'clock?
What happened that night?

The Court:
Q. What is your full name?
A. Theodore E. Blevins.
Q. Do they call you Teddie?
A. Yes, sir.
page 1172} On that night, about 11:00, a little after 11:00, 11:00 or something like that, Sonny Barrett come in there and asked me to give him a ride home.
"Pug" was in there.

Mr. Britton:
Q. You mean who?
A. Gary Robinson.
Q. You call him "Pug"?
A. Yes, sir.
He bought a 6-pack of beer, and said, "Come down to my house and listen to some albums."
We got in my car and went down there. That is all there was to it except a little while later me and Sonny come back up there to get Pug's car, because I told him I had to leave to pick up my wife.
Q. Did Mr. Robinson ride back to the Airport Grill with you?
A. No, sir.
Q. Were you present, or were you with him when he left the Airport Grill?
A. Yes, sir.
page 118} Q. Mr. Robinson?
A. Yes, sir.
Q. Did he get in a fight, argument, or any other type of affair with a fellow by the name of Griffin?
A. No, sir, not that I know of. I didn't see nothing.
Q. Did you know Mr. Griffin?
A. I never saw the man before until I saw him down at lower court.

Evelyn Nordbrook.

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page 121 }

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EVELYN NORDBROOK,
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Britton:

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page 125 }

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A. The officer didn't say anything. "He was supposed to fight this man"? and he said, "Yes."
I asked him "What happened?"
He said when he came out the door at Airport Grill, somebody jumped him from behind.
"How do you know it was Gary? Did you see him?"
He said, "No, I did not see him. The waitress at the Airport Grill said it was Gary."
Q. Did he say he was in the car. or elaborate?
A. He said as he came out the door.
Q. Who else was present at the time, Mrs. Nordbrook?
A. My sister Patricia Holley.

* * * * *

page 126 } CROSS EXAMINATION.

Examined by Mr. Oast:
Q. Mrs. Nordbrook, you said you are Gary's sister?
A. Yes, sir, I am.
Q. This is Gary here?
A. Yes.
Q. He lives at home when he is in Portsmouth?
A. Yes, sir.

Evelyn Nordbrook.

Q. Do you know what time he got home on the night of June 20, 21st, Saturday night and the next morning?

A. Yes, sir. It was sometime between 12:30 and quarter to 1:00. I know it was after 12:00 because the late news had gone off.

Q. Did you talk to him?

A. Yes, sir, I did.

Q. Had he been drinking?

A. May have had a beer or so.

Q. You can't tell when he has been drinking?

page 127 } A. Yes, I could, because I don't drink myself.

Q. You didn't get that close to observe him?

A. No, I didn't. He was standing in the kitchen by me. I made a sandwich and fixed a glass of milk.

Q. Did he come home in his car?

A. Yes, he did.

Q. Is it his car?

A. It is his car, but it was in my mother's name.

Q. What kind of car?

A. 1963½ Ford Falcon.

Q. What color?

A. Maroon, winish color.

Q. Who is paying for it?

A. Right now? I am.

Q. Are the payments up to date?

A. They certainly are.

Q. Have they been behind any?

A. No, they haven't.

page 128 } Q. Could he sell the car if he wanted to?

A. He could.

Q. Your mother's car?

A. It is in my mother's name, but he bought the car.

Q. Mr. Griffin came there the 21st and complained about being assaulted?

A. Yes, he did.

Q. He came with the officer?

A. Yes, he did.

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page 131 }

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JANIE ROBINSON,
witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Britton:

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page 133 }

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A. Mr. Griffin walked out to the 4 or 5 people that were standing there, I am not sure, I know 2 of them.
Q. Do you recognize Mr. Griffin?
A. Yes, because he had been pointed out to me before as Mr. Griffin.
Q. He is the same Mr. Griffin who was in this courtroom today?
A. Yes, sir.
Q. What did he say?
A. He said it would be well worth your while when this is over with.

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page 134 }

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H. K. DARDEN,
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Britton:
Q. Give your name and address, sir.
A. Darden, Portsmouth Police. Detective.
Q. Did you go on the 21st day of June, 1964, to the home of Gary Robinson, with one Griffin, complaining witness in an alleged assault case?
A. Yes, sir, I did.

H. K. Darden.

Q. Were you present at the time the 2 sisters were asking Griffin questions?
A. Yes, sir.
Q. What did Griffin say?
A. I don't recall exactly what questions they asked him.
Q. Could he identify or couldn't he?
page 135 } A. They asked at one time was anything wrong, or had Gary done anything, and I told them we didn't know exactly at that time, whether he had or not, but Mr. Griffin had been beaten up and Gary's name had come up as a suspect on beating him.
Q. Well, I will ask the question, did Mr. Griffin identify Gary Robinson as the man who assaulted him?
A. Not positively, no, sir.

Mr. Britton: Your witness.

CROSS EXAMINATION.

Examined by Mr. Oast:
Q. Mr. Darden, he did identify him, though?
A. He said he looked like the man.
Q. There was some question about his height, is that true?
A. Yes, sir.
Q. Did you question the suspect, Gary Robinson?
A. A little bit, yes, sir.
Q. Did you ask him had he been to Airport Grill the night before?
page 136 } A. I don't recall whether I did or not.
Q. Did you ask him whether his car had been up there?
A. Yes, sir.
Q. His answer?
A. He said he didn't know; he had lent it to some friend.
Q. He said he lent his car to some friends? The very next day he told you that?
A. Yes, sir.
I am not positive whether he said they had been there or not.
Q. Did he say he had been there?
A. I can't recall.
Q. He wasn't driving that car?
A. He said he went to somebody's house and lent his car to some friends.

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page 144 }

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The Court:

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page 145 }

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That being the situation, Mr. Robinson, stand up, please, sir.

Mr. Robinson, the Court having heard the evidence in your case where you are charged with maiming, and wherein you have pled not guilty, and having considered the same thoroughly, does find you guilty of unlawfully maiming Mr. Griffin as charged in the indictment, and fixes your punishment at 12 months in jail, $250.00 fine, and costs.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Judgment—November 24, 1964	2
Assignments of Error	4
Witnesses:	
Carl J. Griffin, Jr.	5
Charles Douglas Fleming	20
Joe W. Frazier	29
James M. Capossela	34
Gary Ray Robinson	37
Ralph E. Barrett	42
Theodore E. Blevins	46
Evelyn Nordbrook	47
Janie Robinson	49
H. K. Darden	49
Proceedings	51