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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6154

In the
Supreme Court of Appeals of Virginia
at Richmond

JAMES C. HAMMER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF NEWPORT NEWS

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. 6154

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of June, 1965.

JAMES C. HAMMER, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of the City of Newport News
Douglas M. Smith, Judge

Upon the petition of James C. Hammer a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Newport News on the 14th day of December, 1964, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment No. 11); 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

* * * * *

DEF. EXH. #7.

12-1-64.

D. M. L., JR.

State of Virginia,
City of Newport News, to-wit:

To any and all Sergeants, Sheriffs, and Constables of the said City and State:

WHEREAS, Lt. F. L. Martin-Sgt. H. T. Williams of Police Department has this day made complaint and information on oath before me, Forrest B. Wall, Judge of the Municipal Court of the said City, that James Clifford Hammer on the 12th day of May, 1964, in the said City did unlawfully and feloniously walk into the home of Alma Haase, 225 Reave St., Newport News, Virginia, against the peace and dignity of the Commonwealth of Virginia.

PRELIMINARY HEARING WAIVED.

THESE ARE THEREFORE, in the name of the Commonwealth, to command you forthwith, to apprehend and bring before the Judge, Municipal Court of the said City, the body of the said James Clifford Hammer to answer the said complaint, and to be further dealt with according to law.

Given under my hand and seal this 22nd day of May, 1964.

FORREST B. WALL (Seal)
Judge, Municipal Court.

I send the accused James Clifford Hammer on to the Grand Jury of the Corporation Court of said City of Newport News, for further investigation and trial.

Given under my hand and seal this 22nd day of May, 1964.

FORREST B. WALL (Seal)
Judge, Municipal Court
City of Newport News, Va.

A Copy—Teste:

F. B. BARHAM, Clerk.

Filed 6/2/64.

F. B. BARHAM, Clerk.

(on back)

GRAND JURY.

Commonwealth of Virginia

Charged with Burglary

v.

Accused James Clifford Hammer.

Executed this .... day of ....., 19...., at ..... o'clock ....M., by arresting ..... at ..... and delivering him at the Police Station or (to the Judge, Municipal Court) of the City of Newport News.

.....
Policeman.

Accused in Jail.

* * * * *

page 2 } Virginia:

In the Municipal Court for the City of Newport News:

Commonwealth of Virginia,

v.

James C. Hammer.

WAIVER OF PRELIMINARY HEARING.

I, James C. Hammer, being arrested and charged with a felony, to-wit: Burglary (14 counts), do hereby waive preliminary hearing on this 22nd day of May, 1964.

JAMES C. HAMMER.

Filed 6/2/64.

F. B. BARHAM, Clerk.

page 3 } State of Virginia,
City of Newport News, to-wit:

In the Corporation Court of the said City:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Newport News and now attending the said Court, at its June term, nineteen hundred and sixty-four, upon their oaths do present; That James C. Hammer on the ..... day of May, in the year one thousand nine hundred and sixty-four, in the said City, a certain dwelling house known as 225 Revere Street, in the City of Newport News, then and there situated, in the night time of that day, feloniously did enter with intent to commit rape therein; and did then and there on the day aforesaid, in the city aforesaid, attempt to commit rape upon the body of one Alma Haase, against her will and by force, against the peace and dignity of the Commonwealth of Virginia. Upon the testimony of, Lt. F. L. Martin sworn in Court, and sent to the Grand Jury to give evidence.

(on back)

Ind. #11

Corporation Court of the City of Newport News, Virginia.

Commonwealth, Plaintiff,

v.

James C. Hammer, Defendant.

Indictment Burglary with Intent to Commit Rape (18.1-88 Code of Virginia), A FELONY a true bill.

.....
Foreman.

Filed 8 day of June, 1964.

* * * * *

page 4 }

* * * * *

In the Corporation Court for the City of Newport News, the 8th day of June, 1964.

The Court, pursuant to Section 19-241.1, doth appoint Harry Kostel and Herbert Bateman, attorneys practicing before the bar of this Court to represent James C. Hammer (it appearing that the said James C. Hammer has no counsel), who is charged with forty nine felonies, Indictments #1 through #49, returned by the June, 1964, Grand Jury. Said appointment being made before the pleas of the said accused are accepted by the Court. Thereupon, the said James C. Hammer and his attorneys agreed upon the dates that have been set for the trial of these cases.

* * * * *

page 7 }

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On an indictment for a felony, to-wit: Burglary with intent to commit rape (18.1-88 Code of Virginia) Indictment No. 11 returned by June 1964, Grand Jury.

This day came the attorney prosecuting for the Commonwealth and the prisoner, James C. Hammer (who was represented by Harry Kostel and Herbert Bateman, attorneys heretofore appointed by the Court), was led to the bar in the custody of the jailer of this Court, and Morris Schneider, Court appointed Court Reporter, was sworn to faithfully and

accurately take down and transcribe the proceedings herein, and the said James C. Hammer being arraigned, and upon advice of counsel, pleaded not guilty to said indictment, and upon advice of counsel and with the consent of the attorney prosecuting for the Commonwealth, and the Court, waived trial herein by jury, and the Court proceeded to hear and determine this case without the intervention of a jury. Thereupon, the attorney for the Commonwealth moved the Court to amend the indictment herein to show the time of the alleged crime to be the blank day of May instead of the blank day of April, and, there being no objection, the indictment is so amended. Thereupon, the attorney for the defendant moved the Court to quash the indictment herein upon the grounds that no warrant of arrest or any other warrant was ever served on the defendant, Hammer, which said motion the Court doth overrule, and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. And the defendant, by counsel, moved the Court to quash the indictment herein upon the ground that the wording in the warrant of arrest materially varies from the wording in the indictment; which said motion the Court doth overrule and to which action of the Court, the defendant, by counsel, excepted. And the evidence of the Commonwealth being partially heard, the defendant, by counsel, moved the Court to exclude all statements taken by police officers from the defendant, Hammer, upon the ground that the statements were taken under duress and evidence on said motion being partly heard the Court adjourned until December 1, 1964, at 10:00 A.M., and the said James C. Hammer is remanded to jail. And the record made by the Court Reporter herein of the said proceedings is filed with the papers in the case.

Entered Nov. 30, 1964.

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page 8 }

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This day came again the attorney prosecuting for the Commonwealth and the prisoner, James C. Hammer (who was represented by Harry Kostel and Herbert Bateman, attorneys heretofore appointed by the Court), was again led to the bar in the custody of the jailer of this Court, and Morris Schneider. Court appointed Court Reporter again appeared and took down the proceedings herein, and the motion made by the defendant's counsel herein on yesterday to exclude

all statements taken by police officers from the defendant, Hammer, being fully argued, the Court doth overrule the same and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. Thereupon, the defendant, by counsel, moved the Court to strike out the Commonwealth's evidence herein upon the ground that the same is insufficient to support a conviction of the defendant, which said motion the Court doth overrule, and to which action of the Court in overruling said motion the defendant, by counsel, excepted. And the defendant, by counsel, moved the Court to dismiss the charge herein against the defendant upon the ground that the docket system as used in the City of Newport News is unconstitutional, due to the fact that there is never a warrant served on the defendant, and consequently the defendant is unaware of what offense he is charged with and cannot prepare an adequate defense, which said motion being fully argued, the Court doth overrule the same, and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. And the evidence being completely heard the defendant, by counsel, moved the Court to dismiss this indictment on the ground that the evidence is not sufficient to support a verdict herein, which said motion the Court doth overrule and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. Thereupon, the Court doth find the said James C. Hammer guilty of burglary with intent to commit rape in that he entered a certain dwelling house, known as 225 Revere Street, in the City of Newport News, Virginia, in the night time, with intent to commit rape upon one Alma Haase as charged in this indictment. Thereupon, the Court, on its own motion, doth refer this case to the Parole and Probation Officer of this Court and doth direct said Officer to thoroughly investigate and report upon the history of the accused and any and all other facts relevent herein and this case is continued for further hearing to the 14th day of December, 1964. Thereupon, the said James C. Hammer is remanded to jail. And the record made by the Court Reporter herein of the said proceedings is filed with the papers in the case.

Entered Dec. 1st 1964.

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page 16 }

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This day came again the attorney prosecuting for the Com-

monwealth and the prisoner, James C. Hammer (who was represented by Harry Kostel and Herbert Bateman, attorneys heretofore appointed by the Court), was again led to the bar in the custody of the jailer of this Court, and Morris Schneider, Court appointed Court Reporter, again appeared and took down the proceedings herein, and investigation having been made herein by the Parole and Probation Officer of this Court, this case came on again to be heard in the presence of the accused and his attorneys, upon the report of the Parole and Probation Officer, the accused having been advised of the contents herein and having been given the right to cross examine said Parole and Probation Officer and present any additional facts he desired, and the said report of said Parole and Probation Officer being filed as a part of the record in this case, the Court doth fix and ascertain the punishment of the said James C. Hammer to be imprisonment in the public jail and penitentiary house of this Commonwealth for the term of four (4) years. Thereupon, the defendant, by counsel, moved the Court to set aside its judgment herein upon the ground that the same is contrary to the law and the evidence, which said motion the Court doth overrule and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. Thereupon, it being demanded of the prisoner if any thing he had or knew to say why this Court should not now proceed to pronounce judgment against him, according to law, and nothing further being offered or alleged herein, it is considered by the Court that the said James C. Hammer be imprisoned in the public jail and penitentiary house of this Commonwealth for the term of four (4) years, the terms of his imprisonment therein by the Court herein fixed and ascertained, there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law, and that the Commonwealth recover against the said James C. Hammer the costs of this prosecution. And it is ordered that no credit be allowed the said James C. Hammer for any time spent by him in confinement awaiting trial on this indictment, such credit having been allowed him on Indictment No. 4. And it is ordered that the sentence herein imposed upon the said James C. Hammer shall run concurrently with a sentence of thirty (30) years this day imposed upon him on Indictment No. 4. Thereupon, the said James C. Hammer is remanded to jail. And the record made by the Court Reporter herein of the said proceedings is filed with the papers in the case.

Entered Dec. 14, 1964.

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page 18 }

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Filed Feb. 12, 1965.

F. B. BARHAM, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To F. Baxter Barham, Clerk Corporation Court of the City of Newport News, Virginia:

Notice is hereby given that the defendant, James C. Hammer, appeals in the above styled case and will apply for a writ of error.

ASSIGNMENTS OF ERROR.

The following are assignments of error:

1. That the conviction of the defendant was contrary to due process of law guaranteed to him under Article 1, Sections 8 and 10 of the Constitution of Virginia, and the 4th, 5th, 6th and 14th Amendments to the Constitution of the United States in the following regards:

a. In that the Court failed to dismiss the subject indictment when the defendant had been taken into custody and held in confinement without any arrest warrant or other valid process contrary to statute, and without being advised until after the subject indictment as to the nature and circumstances surrounding the charges for which he was being held, and when the defendant was denied the right or opportunity to engage counsel at a crucial stage of his confinement and the investigation of charges against him.

b. In that the Court erred in admitting into evidence an incriminating statement signed by the defendant, which was extracted from him as a result of threats, promises, duress and coercion, denial of the right and opportunity to retain counsel, the wrongful and illegal nature of the defendant's

page 19 } being taken into and held in custody without a valid warrant for his arrest or reasonable notice

of the charge or charges against him and induced by the results of illegal searches and seizures.

2. That the Court erred in failing to dismiss the indictment charging the defendant for entry with intent to commit rape on the ground that there was a material variance between the charge stated in the indictment and that stated in the unserved, unexecuted arrest warrant pursuant to which he was indicted, which arrest warrant simply charged the defendant "feloniously walked into the home of Alma Haase. * * *".

3. That the Court erred in excluding the following evidence offered on behalf of the defendant for purposes of showing the incriminating statement of the defendant was inadmissible.

a. Exclusion of testimony of Police Lieutenant Mapes regarding his participation in alleged illegal searches and seizures, which defendant contends were a procuring cause of his making incriminating statements.

b. Exclusion of evidence as to investigative procedures, including continued interrogation and the execution of additional incriminating statements subsequent to defendant's signing such a statement as to this matter, and further, the Court's ruling that any evidence respecting these matters subsequent to the time of the statement in question were immaterial and were not to be considered on the question of admissibility of the said incriminating statement in this case.

c. Exclusion of testimony of the defendant's father that he was advised by the Chief of Police that charges could or might be brought for possession of stolen goods unless the defendant co-operated with the police, said testimony having been offered as tending to establish that the defendant's incriminating statement was induced by threats of officials of the Police Department.

d. Exclusion of testimony of the defendant that Police Lieutenant F. L. Martin advised that it would be unnecessary to employ an attorney for the defendant.

page 20 } e. Exclusion of evidence as to the defendant's schedule or routine during the day he was taken into custody as being immaterial to the question of the admissibility of his incriminating statement.

f. Exclusion of the defendant's testimony concerning the manner and circumstances of the investigation and interrogation to which he was subjected after he was taken into custody.

4. That the Court erred in over-ruling the motion of the defendant made at the conclusion of the Commonwealth's case to dismiss the indictment on the grounds the evidence was insufficient as a matter of law, and also that the Court erred in denying the same motion made at the conclusion of the defendant's case.

5. That the Court erred in denying defendant's motion to set aside the verdict and to dismiss the indictment against the defendant on the grounds the verdict was contrary to the law and the evidence, or in the alternative to the defendant a new trial.

JONES, BLECHMAN,
WOLTZ & KELLY
By HARRY J. KOSTEL
HERBERT H. BATEMAN

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page 21 }

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NOTICE OF TENDERING OF TRANSCRIPT TO JUDGE.

To Marvin M. Murchison, Commonwealth's Attorney for the City of Newport News, Virginia:

You are hereby notified that on the 12th day of February, 1965, at 9:30 a.m. o'clock a.m., in the Corporation Court of the City of Newport News, Virginia, the undersigned will tender to the Honorable Douglas M. Smith, Judge of the said Court, the original transcript of the evidence, reduced to writing, in the above styled cause, and respectfully ask the Honorable Judge of said Court to certify the same as a true copy of the evidence in the above styled proceeding.

JONES, BLECHMAN,
WOLTZ & KELLY
By HARRY J. KOSTEL
HERBERT H. BATEMAN
Counsel for the Defendant.

Filed Feb. 12, 1965.

F. B. BARHAM, Clerk.

* * * * *

Mr. Kostel: If your Honor please, at this time on behalf of the defendant, we would move your Honor to dismiss these indictments on the ground that none of the arrest warrants issued and which went to the Grand Jury and on which these indictments are based were not served on the defendant, James Hammer and as a result of the fact that the arrest warrants were not served on the defendant, pursuant to statute, he had no way of knowing either the seriousness of the charges or against whom the charges were perpetrated.

Court: All right, sir, the Court overrules your motion.

Mr. Kostel: All right, sir. Secondly we would ask the Court to quash the first indictment on which the defendant was arraigned here this morning, namely the entry with intent to commit rape on the ground that the arrest warrant isued and on which the indictment was returned by the Grand Jury alleges that he feloniously did walk into the

page 11 } the home of Alma Haase, 225 Revere Street, Newport News, Virginia, against the peace and dignity of the Commonwealth of Virginia and the indictment returned by the Grand Jury recites that the defendant, James C. Hammer entered a certain dwelling house known as 225 Revere Street in the City of Newport News then and there situated in the night time of that day, feloniously did enter with intent to commit rape therein and did then and there on the day aforesaid in the City aforesaid attempt to commit rape upon the body of one, Alma Haase, against her will and by force. And we submit to your Honor that based on the existing law in the Commonwealth of Virginia, that where there is a material variance between the arrest warrants and the indictment, returned by the Grand Jury pursuant to that arrest warant, the indictment should be quashed and we cite to your Honor the case of Scott vs Commonwealth in 55 Virginia, Page 687 which upholds the proposition. We submit that there is a material variance between the arrest warrant charging a feloniously walking and the indictment returned

page 12 } pursuant to the arrest warrant which charges the defendant with felonious entry with intent to commit rape.

Court: Before you sit down, Mr. Kostel, as I understand your motion to quash, it is based on the fact that what vou call an arrest warrant varies from the indictment? Is that your—

Mr. Kostel: Yes sir.

Court: And your case is 55 Virginia what?

Mr. Kostel: 687.

Court: All right, sir. All right, sir. You want to reply, Mr. Murchison?

(Mr. Murchison then argued before the Court in opposition to the motions.)

Court: All right, sir. Did he waive preliminary hearing to all charges?

Mr. Murchison: Yes sir, if my memory serves me correctly he waived all charges and was brought in within a few hours after the original arrest.

Court: All right, sir.

Mr. Murchison: And appeared before his Hon-
page 13 } or, Judge Wall.

Mr. Kostel: Addressing myself to the first motion, if your Honor please, we feel that this defendant, not knowing who the alleged victims were, was denied the right to prepare a defense of these charges. Now, we all know that when counsel is appointed to defend him, it's some time after this man is arrested and we all know that the Commonwealth Attorney always cooperates with the defense counsel but we point out to your Honor that it was—some weeks after this man was arrested that defense counsel were appointed and we feel that this man was denied the right to prepare a defense prior to the time defense counsel were appointed.

Court: All right, sir. The Court overrules your motions.

Mr. Kostel: We note our exception.

Mr. Bateman: Exception as to both—

Court: Yes sir, note your exceptions as to both. The Court overrules you as to both. All right, sir, any further motions?

* * * * *

page 14 }

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ALMA HAASE,

called as a witness by the Comonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:

Q. Will you state your name, please, mam?

A. Alma Haase.

Q. And are you married, Mrs. Haase?

A. Yes, I am.

Alma Haase.

Q. Who are you married to?
A. Richard Haase.
Q. Where do you all live?
A. We now reside at 5609 Surrey Avenue.

Mr. Murchison: May I inquire if defense counsel can hear?
Court: I think it's just the opening and shutting of the doors.

By Mr. Murchison:
Q. 56—
A. 09 Surrey Avenue.
page 15 } Q. 09 Surrey Avenue?
A. Yes sir.
Q. Is that in the City of Newport News, Virginia?
A. Yes, it is.
Q. How old are you, Mrs. Haase?
A. I'm 24.
Q. Do you have any children of your marriage?
A. No, I don't.
Q. Where is your husband employed?
A. Fort Eustis, Army.
Q. He's in the regular service?
A. Yes, sir.
Q. And are you employed?
A. Yes, I am.
Q. Whereabouts, may I ask?
A. Retail Merchants Credit Bureau.
Q. And where is that located?
A. On 28th Street.
Q. In the City of Newport News, Virginia?
A. Yes, it is.
Q. Now Mrs. Haase, directing your attention to May the 12th, 1964, would you tell the Court where you were living at that time or at the same address?
A. I was then at 225 Revere in Ferguson Park.
Q. Where is that located, Mam?
page 16 } A. In Newport News.
Q. Virginia?
A. Yes.
Q. Were you working at that time?
A. Yes, I was.
Q. Where were you working then?
A. At the Credit Bureau still.

Alma Haase.

Q. The same place?
A. Yes.
Q. Had you worked that day?
A. Yes, I had.
Q. What time do you work?
A. I go in at 8:30 and I'm usually home about a quarter after five or 20 after five.
Q. Is that a.m. or p.m. or what?
A. In the evening.
Q. Well, may I ask is it 8:30 in the morning you go in?
A. Yes, 8:30 in the morning until five thirty in the evening.
Q. Did you work on May 12,' 64?
A. Yes, I did.
Q. Does your husband come home every day or night or is he on duty at Fort Eustis or how does he work?

A. He some times—at this time which you're
page 17 } speaking, he was at TDY, at Fort Lee, Virginia.

Q. Where is that located in reference to Newport News, Virginia?
A. It's with all the traveling distance, he couldn't come home every night.
Q. I see. Now did you go to your home after work that night?
A. Yes, I did.
Q. At 225 Revere Street?
A. Yes, sir.
Q. Ferguson Park, Newport News, Virginia?
A. Yes.
Q. Do you recall what time you arrived home?
A. It was probably the usual time; we didn't stop anywhere. It was probably 5:15 or 5:20. I can't say exactly.
Q. Anything unusual to your home, your apartment?
A. No.
Q. I beg your pardon. I misled that. What type of dwelling do you have?
A. Small apartment, bath, dining area, kitchen, bedroom.
Q. It's not a home?
A. No, it's a small apartment.

Q. All right, was anything unusual had occurred
page 18 } at your home that evening before you got there that you noticed as you went in?

A. No, sir, it was the same as always.
Q. What did you do during the—the part of the evening when you were home? What was your duties? What happened?

Alma Haase.

A. Oh, I probably fixed a lunch, I can't remember if I had or not and it was raining out so I didn't plan on going anywhere and I had my door open. It was a warm evening and—I had been setting on the couch watching television.

Q. You had your door open. What kind of door is that?

A. It's a screen door; then, a large wooden door.

Q. Were both of those doors open?

A. Well, I had the wooden door open. The screen door was open. The screen door was closed but it wasn't latched.

Q. The screen door was closed. The screen door was closed?

A. Yes.

Q. Was that door damaged in any way or anything when you went home that night?

A. No.

Q. It was working normally?

A. Right.

page 19 } Q. Do you know a Mr. and Mrs. Larry and Doris Gibson?

A. Yes, sir.

Q. Are they related to you?

A. No, they're friends.

Q. Where were they living on May 12 of '64?

A. 225 I believe is their number. It was directly across the court in my apartment.

Q. Now what do you mean by directly across the court?

A. Well, there's a large green lawn which goes down between the—which separates the apartments at Ferguson and they lived right—if I would step out from my front door, I would be directly across from my apartment.

Q. I see. How far across would you estimate or could you tell?

A. Oh, I really don't know. I couldn't—

Q. As long as this Courtroom?

A. It doesn't seem that far but it could easily be. I mean when you're used to going across there, you don't pay any attention how far the distance is.

Q. I see. Were they—living there on May 12 of '64?

A. Yes, sir, they were.

page 20 } Q. Did you have occasion to see them that day or evening?

A. Well, I worked with Mrs. Gibson. I had seen her and we had come home together but she had gone to her apartment and I had to go to mine and I hadn't seen Mr. Gibson yet that evening.

Q. All right, did you see them later on in the evening?

Alma Haase.

A. Yes, sir.

Q. Now, at your apartment, did you cook supper?

A. I believe I cooked a sandwich or something. I can't remember what I had fixed that evening but it wasn't much because it was just for myself.

Q. I see. What, if anything, occurred to you there, Mrs. Haase in the evening of May the 12th of '64?

A. Well, around a little bit after eight I decided I didn't want to watch television any more so I had some underthings I wanted to rinse out so I went into the bathroom and I was in the process of doing that, washing out my underclothes and hanging them up in the bathroom and—I had finished that and was getting ready to leave and go back out and watch some more television and I had been in there about 15 or 20 minutes I'd say, making it approximately 8:30 and as I turned around to leave the bathroom, I came upon a man standing in the doorway of my bathroom.

Q. Came upon a man?

page 21 } A. Well, a boy; I thought he was a boy, young fellow.

Q. How far away from you was this person?

A. Not very far. I'd say—I don't know, about that distance (indicating), approximately. I have no idea really.

Mr. Murchison: Do you see it, Mr. Kostel or Mr. Bateman?

Mr. Kostel: Can you stipulate it was a foot to foot and a half?

By Mr. Murchison:

Q. Does that seem fair to you?

A. I guess so. I'm not good at judging distance.

Q. This person was that close to you?

A. Yes, he was very close.

Q. How was he dressed?

A. He had on a blue hooded sweatshirt and—the hood was up over his head and he had a mask or white handkerchief covering part of his face and he had a pair of pants which I—described as being a little bit darker than—than a sweatshirt.

Q. What, if anything, was said between the two of you?

A. I had screamed and I said, after I screamed, he said, "don't scream again or I'll kill you."

page 22 } Q. Did you see anything in his hand?

A. Yes, he raised a knife up toward me.

Alma Haase.

Q. Raised what?
A. A knife.
Q. What kind of a knife, could you describe it to the Court?
A. I would say it was a hunting knife which I know as a hunting knife. It wasn't a butcher knife or long carving knife or nothing like that.
Q. How did he raise it?
A. He held it in his hand and raised it up toward my face, up toward my throat and my face, up in that area and my mouth and throat.
Q. You had screamed?
A. Yes, sir.
Q. What did he tell you?
A. He said, "Don't scream again or I'll have to kill you."
Q. What happened from there on?
A. I said, "Well, what do you want" and he said, "I want all your money" and I said, "Well, I don't have any money." He said, "Yes, you do" and I said, "No, I don't" and I tried to—I stepped, took a step toward him to put my hand on his shoulder to shove him down the hallway to show him in my purse that I had no money in it. He said, "All
page 23 } right, I believe you" and he didn't push that issue any further.

Court: What?

A. He didn't push that issue any further. I mean—

Court: He didn't push it?

A. No.

By Mr. Murchison:
Q. What happened then? If anything.
A. Well, then I stepped back away from him a little bit and he raised the knife toward me again. You know, he kept—he had put it down as I stepped toward him at the time and then he raised it back up and then I—he said, he glanced which my bedroom is directly across from the bathroom. My bedroom door is exactly even with my bathroom door and he kind of glanced out of the corner of his eye over his shoulder and toward the bedroom door and he looked in there. The bedroom is completely visible and he said, "Go in there and disrobe

and take off your clothes" and I said, "I'm not going to do it" and he said, "Yes, you will." He said, "I'm going to rape you" and I said, "No." I said, "you can't do that."

Q. Where—what had happened to the knife that you—that you had testified to?

A. He had that up there.

Q. Up where?

page 24 } A. Up toward my face and I reached—after he pushed it toward me, I reached down and had a hold of it with my hand.

Q. You had a hold of the knife?

A. Yes, put one hand on his hand and my other hand on the blade and he twisted it a little bit. I tried to push—you know, get it away from it and he twisted it in my hand and I could feel it cut the skin and I let go and stepped back away from him again.

Q. What happened from there on?

A. This was in the process of me telling him that I wasn't going into the bedroom and I said, "You can't do that" and he said, "Yes, I can." He said, "I'm going to do it" and I said, "No, you're not. You can't." He said, "Why not?" I told him I was having my period. He said that doesn't bother me none and I said, "Well, it does me" and I reached back and into my wastepaper basket and took out a sanitary napkin and which I had taken off and I put it up to his face and he stepped back away from me. He said, "O.K., you're just not worth it" and he turned around and walked down my hallway and I followed him out of the bathroom and down the hallway and through my dining area out of the kitchen and out my back door which led down a little sidewalk.

Q. Did you scream or not any more?

A. No, I did not.

Q. Why?

page 25 } A. Because he said he was going to kill me if I screamed and I wasn't going to mess with him that way.

Q. How did you feel about this thing?

A. I wasn't crying at the time he left but I started—I mean I was very upset but I wasn't crying or screaming or nothing and I stayed at the back door and make sure he didn't come back toward me and I stayed there until he left and I ran and I picked up my dog and went over to the Gibson's home.

Q. Did you have any treatment for the cut on the finger?

Alma Haase.

A. No, they gave me a cold cloth, wet cloth which I held on there. It was bleeding a little bit but nothing serious that needed doctor's attention.

Q. Had you given permission for this person to come into your home that night?

A. No, sir.

Q. Or invited him as an invitee or as a guest?

A. No, no, sir.

Q. Do you know how he got in?

A. I had assumed maybe he had come through my back door because my back door was locked all evening and when I went—when he went out the back door it was open and I thought maybe he had come in the back door.

Q. Were any of your doors entering your home
page 26 } open as such?

A. My front door, my screen door was unlatched. It *hand't* been locked because I had sat in the living room all evening and I didn't think anybody would bother because it was raining and messy out, you know.

Q. Was your screen door shut or open?

A. It was shut but it wasn't latched.

Q. Was anything taken from your *your* apartment?

A. Not that I know of.

Q. Had you ever seen the person before?

A. No, sir, I had not.

Q. Did you ever see that person again?

A. Yes, later in the evening I did.

Q. What, immediately after you saw him leaving through the back door, did you do, may I ask again?

A. Well, I stayed there at the back door to make sure he didn't come back, you know. I saw him walk down the sidewalk and I thought presuming he was leaving, he wasn't going to bother any more so I ran in and I had a small puppy and I picked up the puppy and I just automatically ran across to the Gibson's home because I didn't—I don't know anyone else out there that I could have gone to. I went to them. I knew they would be home.

Q. Why did you go over there?

A. Because I wanted some help.

Q. Did you seek help?
page 27 } A. Yes, sir, I did.

Q. Did you or did you not call the police at any time?

A. I did not but Mr. Gibson went and called after he had—the police were sitting at the end of our block. right at the

Alma Haase.

end of our court and he went down there. He went to make the phone call and when he came upon the police, he told them what happened.

Q. Did you or did you not report to the police this occurrence immediately after it had happened?

A. Yes, sir, I did.

Q. And did you or did you not later see the person who had done this to you, again?

A. Yes.

Q. Where did you see him again?

A. Here at the hall, City Hall I believe or here at the jail or at the City Hall, whatever it is.

Q. When was that?

A. Later on that evening. I don't exactly know what time. I know it was probably two, two and a half hours maybe, later.

Q. The same day or night this had occurred?

A. The same night, the same evening.

Q. And how was this person dressed that you
page 28 } saw then?

A. Well, the thing that I had noticed most was of course his hooded sweatshirt and the handkerchief covering his face. I mean that's the main thing I recognized about his apparel.

Q. Did you notice anything about his physical condition?

A. Yes, his eyes. I had studied the whole time I was talking to him, I was studying his face because at first I thought it was maybe somebody I knew playing a joke on me so I was studying him very carefully to make sure it wasn't. When I discovered it wasn't and his eyes were very distinguishing feature about him. He had well groomed eye—well groomed eye brows.

Q. And did you later see him, that person again that night?

A. Yes, sir.

Q. Where?

A. Here at the City Hall.

Q. Did you or did you not identify him as that person who had been in your home doing the things you testified to?

A. Yes, sir, I did.

Q. Are you positive that was the person?

A. I wasn't the first time I saw him but—or the first time
I heard his voice or the second time I heard his
page 29 } voice I wasn't positive but I picked out the voice I
thought it was his. I told them I thought I could

Alma Haase.

positively identify him if they would take me in and let me look at him closely.

Q. Did you go in and look at the person closely?
A. Yes, sir.
Q. And did you identify that person?
A. Yes.
Q. Was that the same person that was in your home?
A. I was positive it was.
Q. You're positive it was?
A. Yes.
Q. Is that person in the Courtroom today?
A. Yes, sir.
Q. Would you tell us where he is?
A. Seated at the end bench over there.
Q. Over where?
A. On my right (indicating), at the far end.
Q. There are three people over there, Mrs. Haase.
A. At the far end on the right.
Q. Of your right?
A. Yes, sir.

page 30 } Court: All right, Mr. Hammer, stand.

(The Defendant stood up).

Court: Is that the person you're talking about?

A. Yes, sir, that is him.

Court: All right.

(The Defendant then resumed his seat).

By Mr. Murchison:

Q. Did anyone come to your aid when you screamed the first time before—these other things occurred?
A. No, sir.
Q. Do you know if anyone heard you, of your own knowledge?
A. I heard later that people next door had heard me.

Mr. Kostel: Objection. We're going to object to that, if your Honor please.

Alma Haase.

Court: Yes, sir, I sustain the objection and it will be stricken from the record.

By Mr. Murchison:

Q. At this time of the year, Mrs. Haase, did you or did you not have lights on in your apartment?

A. Yes, I had my living room light was on and
page 31 } my bathroom light was on.

Q. Were they on burning, I mean?

A. Yes, I have a large overhead light in my living room.

Q. Do you have a light—for the entrance into your—your front entrance?

A. My front door?

Q. Yes mam.

A. No, I didn't, no.

Q. And would you tell the Court and the defense counsel how far your bedroom is from the bathroom? What is the area distance in there?

A. I would say it's—

Q. Let me ask you, if I may. Do you walk from the bedroom into the bathroom?

A. Yes, you can, easily. Four medium sized steps, you'd be into the bedroom. Maybe not much more than an arm's length. It was a narrow hallway.

Q. The bathroom light was on?

A. Yes, sir.

Q. Do you know when the person came into your house that you saw the foot and a half away from you when you turned around in the bathroom?

A. No, I had no idea he had been in my home. I assume he had been there a while.

page 32 } Q. Do you know how long he had been there?

A. No, I do not.

Q. Where did the knife come from or where did you see it the first time when you saw this person? Where was he?

A. When I screamed, he raised it up toward me. He had it.

Q. Was that the first time you had seen it?

A. He had it in his hand, yes.

Q. Was it sheathed or unsheathed?

A. It was open. I mean it wasn't in a case.

Q. It wasn't in a case. Other than your hand which was cut, did you feel the blade anywhere else on your body?

Alma Haase.

A. No, sir, I did not.

Q. How close did it get to you?

A. It was within this far of my face or my throat, in this area. He didn't raise it and touch my throat with it by any means and then I would say maybe the closest was when I grabbed a hold of the blade with my hand.

Q. How far would you say that was from your face or from your throat area?

A. Approximately this far (indicating).

Mr. Murchison: Mr. Kostel and Mr. Bateman—
page 33 } Court: All right, about ten inches.
Mr. Kostel: Yes.

Mr. Murchison: All right. Witness with you.

CROSS EXAMINATION.

By Mr. Kostel:

Q. Mrs. Haase, can you pin-point the time you first saw this man in your apartment?

A. Well, I would say approximately 8:15 or 8:20.

Q. Could it have been any earlier than that?

A. I don't really think so because it was after eight when I went into the bathroom and I know I had been in there a good ten or fifteen minutes when I first—when I was finished and encountered him.

Q. And how much later than 8:15 or 8:20 could it have been? We've established that it could not have been earlier than 8:15 or 8:20. How much after that could it have been, if you know?

A. Not very much because we reported the incident at around 8:30 and I know he wasn't in my home too long. I mean maybe five—minutes, six minutes, something
page 34 } like that.

Q. You would say that this incident began and ended in a space of five or six minutes?

A. Not—it wasn't a long period of time. Of course I couldn't judge because I wasn't thinking about the time.

Q. You said earlier it was about five or six minutes?

A. Yes, I would say that. It didn't seem any longer than that.

Q. Now you say your hallway from the bathroom to the bedroom is about four short steps?

A. I would say four medium sized steps.

Q. Three feet?

Alma Haase.

A. I don't know.

Q. Where were you in the bathroom when you first saw the Defendant standing in the doorway?

A. I had finished rinsing out my things and I had stepped to the doorway to switch off the light and go out into the doorway. When I turned around, he was there. My bathroom is very small. I had taken maybe one step and he was there.

Q. And when you switch off the light, wouldn't you be facing in the hall?

A. Yes, sir, yes, sir.

Q. And he was there with his arms at his side?

page 35 } A. I didn't pay any attention. When I screamed, I noticed he had a knife. I mean—I looked into his face. That was the first place I looked to see because like I said, I thought it was someone playing a joke on me.

Q. He didn't raise the knife until you had screamed?

A. No.

Q. And—did you turn the light off in the bathroom?

A. No, sir, I did not.

Q. You never did turn it off?

A. I never did turn it off, no.

Q. The light was not on in the hall?

A. No, it was not.

Q. Where was the—the nearest light other than the light that was on in the bathroom?

A. My hallway is short. I would say it wasn't—it was in my hall—living room which is an overhead light. It wasn't a lamp light. It was an overhead light.

Q. It was in the living room?

A. Yes, sir.

Q. How long did it take you to run to your neighbors after the person you saw in your apartment had left?

A. Oh, a matter of seconds I would say. Like I said, I reached down and grabbed my dog and went out

page 36 } the front door to their place, immediately. I didn't stop to do nothing.

Q. Did your neighbor immediately go to summons somebody?

A. He did, shortly afterwards. He asked me what had happened of course and he told his wife to get me a cold towel for my hand and grabbed a golf club.

Q. I can't hear you.

A. He grabbed the golf club and went out the front door to see if anybody was out in the front yard.

Q. How long were you in his house before he left?

Alma Haase.

A. Probably two or three minutes.

Q. How long was it before he came back?

A. Oh, he just ran out the front door and looked around the front yard and stepped back in and laid his golf club down and left again.

Q. He was out for about—

A. A matter of seconds, I would say.

Q. A matter of seconds and back in and back out?

A. Right.

Q. When did he return after he went out the second time?

page 37 } A. I wouldn't say he was gone more than a minute and a half, two minutes down to the end of the court.

Q. And he returned with the uniform police officer?

A. Yes, sir.

Q. And this Police Officer interrogated you about what had happened?

A. He asked me what had happened and I explained to him.

Q. And how long did this interrogation take?

A. Well, he didn't—completely finish it in their apartment. He said, "let's go across to your place" and then we went across to my apartment.

Q. Went across to your apartment?

A. Right.

Q. How long?

A. Maybe five minutes. I really couldn't say as far as time goes.

Q. Then did he go out and radio for the detectives to come?

A. Yes—I can't remember if he left to radio or if some came. If he had radioed before he came in.

Q. Do you remember the description you furnished the uniformed Officer of the man you saw in your apartment on that night?

page 38 } A. Yes, sir, I believe I do.

Q. Tell us what it was?

A. I said he was a young boy.

Q. Did you give any age estimate?

A. I can't remember exactly the age I gave. I believe I said maybe 16, 17. I can't remember what I said.

Q. It was around 16 or 17?

A. I believe that's what it was.

Q. Height, do you remember that?

A. I said he was approximately my height. I looked pretty even with his eyes.

Alma Haase.

Q. What is your height?

A. About five—six.

Q. Did you give him any weight?

A. I can't remember what I told them as far as weight goes. I think 165, 170. I don't remember.

Q. Are you sure you told the Police Officers that this man had on a pair of trousers darker than his shirt?

A. I can't remember whether I said lighter or darker.

Q. You testified earlier you described—

A. After I said that, I realized I had made a mistake. I couldn't remember whether I said lighter or darker. I made a distinguishing. They weren't the same color as the sweat shirt.

page 39 } Q. You testified he had on a hooded sweat shirt?

A. Dark blue hooded sweat shirt.

Q. All right, and then you testified earlier on the stand that you described to the police that he had on pants darker than the sweat shirt but—now you say that you were in earror there?

A. Right.

Q. And you cannot remember?

A. What I told them. I can't remember it. I know what color pants he had on because I saw him later but I can't remember what I told the policeman.

Q. Did you remember that night what you had told the policeman about his pants?

A. I told him that night what I thought I saw about the man's pants. I don't remember today. That's been quite a few months ago.

Q. After you saw him at police headquarters and saw the man, what this man was wearing, do you remember what you told the police officer what he had been wearing?

A. I don't believe I gave him another statement about the fact what color he had on that night.

Q. Do you remember what you earlier told the police officer about the color of his pants?

A. I don't remember that crossing my mind that

page 40 } night.

Q. Didn't cross your mind there might have been a conflict in the color of his pants between the—

A. No because that wasn't the thing I was testifying. I wasn't basing my identification on his pants.

Q. Well, after you saw him at police headquarters, did he appear to be a—much older than you at first described?

Alma Haase.

A. I still didn't think he was real old. I didn't think he was the age he is. I still wouldn't say he was 25 years old. I would say 20, 21.

Q. Did he appear to be a—much taller than you thought he was?

A. Not really. He isn't real tall.

Q. Taller than you?

A. Yes, not a lot.

Q. And your base your entire identification solely on this man's eyes and eyebrows?

A. No, on his appearance, on his voice. I testified that I—I though I recognized the right voice.

Q. That wasn't a positive identification, was it?

A. No, I didn't say was but I said I know I would recognize that man's eyes.

Q. I say, you base your identification on his
page 41 } eyes?

A. On his sweat shirt, his features and his forehead, the color of his skin.

Q. You only saw his forehead?

A. That's right and the rest of his body is the same color as his forehead.

Q. The rest of his body?

A. I assume it would be.

Q. When was the first voice test conducted?

A. At the end of my block or the end of my court that evening.

Q. The end of your court. Could you see into the car where this man was sitting?

A. No, sir, I could not.

Q. What prevented you from doing so?

A. I didn't look into the car to begin with. They told me to face the highway which I did and I did not look into the car and I think—I couldn't have seen him unless I stooped down to look in, anyway. I couldn't have seen him if that was him in the car. It was dark out there and no lights around.

Q. How many men were in the car?

A. Two or three.

Q. How many men standing outside of the car?

A. Two I guess. I can't remember.

page 42 } Q. Do you know Sergeant Calhoun?

A. Yes.

Q. Was he there?

A. Yes, sir.

Q. They told you not to look into the car?

Alma Haase.

A. No.

Q. Did they give any reason why you should not look at this man?

A. No, they asked me not to look into the car.

Q. Wasn't—this man's—weren't these man's characteristics fresher to you when they brought him by your apartment where the first voice test was conducted than they were when you first saw him at the police headquarters?

A. I don't know. It wasn't that much span of time. They were fresh in my mind for quite a few days afterwards.

Q. Sir? Mam?

A. They were fresh in my mind for quite a few days afterwards. They didn't leave that night, I'll guarantee you.

Q. Was Lieutenant Hiser there?

A. I don't remember.

Q. At your apartment when you conducted the first voice test?

page 43 } A. I believe Lieutenant Hiser was there during the evening. I don't remember whether he was outside by the car or not. I can't—

Q. But you state very honestly and candidly that you could not positively identify this man's voice on either voice test, is that right?

A. That's correct. I picked out the ones I thought was his.

Q. You just thought but you weren't sure?

A. That's correct.

Q. And how far away from him were you when you first saw him and were not positive that it was he?

A. Well, I guess it was when he walked down the hallway. I can't remember if that's the first time I saw him or not. I believe he was.

Q. Walked down the hallway?

A. In City Hall.

Q. In police headquarters?

A. Yes.

Q. How far away from him were you at the time he walked down the aisleway?

A. I was sitting down and he was standing up and he was approximately the same distance as he had been in my home.

Q. 18 inches?

A. Approximately, yes, sir.

page 44 } Q. Hallway was well lighted, wasn't it?

A. Yes.

Q. I'm speaking of the hallway in police headquarters.

A. Yes.

Alma Haase.

Q. But it was only after he was taken back into detective headquarters and he had a seat that you positively identified him as the man who was in your apartment?

A. Well, after they had walked him down the hallway and brought him back, I leaned over to the Gibsons and I said, "I'm pretty sure that's him."

Q. We don't want to know what you told the Gibsons.

Mr. Murchison: You asked for it.

By Mr. Kostel:

Q. I asked her—when did you first positively identify him? Where were you?

A. When I went into the room where they had taken him. The policeman came out and asked me if I recognized him and I said, "I could identify him if you take me in and let me good and close to him".

A. You said you were not positive, isn't that what you testified earlier that you told the detectives you were not positive at first?

A. I told the Gibsons I was not positive. I said,
page 45 } "I'm pretty sure that is him" because I had—I
didn't pay a whole of attention to him when he walked down the hallway. I didn't think they would lead him out there.

Q. You testified when he walked down the hallway he was as close to you as he was in your apartment?

A. I was sitting down and he was standing up and I had to look up and I couldn't identify like that.

Q. You wanted to get eye to eye level?

A. I wanted to look at him like I had before.

Q. Did you relate to the police officer what type of shoes this man was wearing?

A. I don't remember if I had or not. I can't remember what I gave him the description of that night.

Q. You remember testifying in this case on October the 14th or 15th of last month?

A. Yes, sir.

Q. Do you remember testifying that the man in your apartment had on light blue Levis?

A. I probably said that. If it's there, I said it.

Q. And today you testify what as to his pants? You don't remember what his pants were?

A. I haven't given it any thought. At that time I probably

Alma Haase.

—was fresher to me or I had thought about it a while. Today I didn't think about it. I came up here and I
page 46 } thought I would remember everything.

* * * * *

Q. The only time the man in your apartment made any threat or gesture toward you with the knife was first when you screamed, is that right?

A. Yes.

Q. And the second time was when you went
page 47 } toward him and grabbed his hand with one hand and the knife with the other?

A. Well, he was standing within distance of me. All I did was reach down and take the knife. I didn't jump at him or nothing.

Q. Then he only twisted to free the knife from your hand, is that right?

A. Right, he twisted in my hand.

Q. Right, and freed the knife?

A. I let go. He didn't free it.

Q. You let go?

A. Yes, sir.

Q. Did he raise the knife at all?

A. He kept it at me all the time. He never lowered it by his side.

Q. After that?

A. That's correct.

Q. While you were grappling for the knife or had your hand on his hand and the other hand on the knife, could you tell whether this man was stronger than you were?

A. I didn't pay any attention. I mean he didn't done anything physical. All he did was twist the knife. I couldn't tell if he was a giant or strong man or nothing by twisting the knife.

Q. And you're five feet six?
page 48 } A. Approximately, yes.
Q. How much did you weigh at the time?

A. About 135, 140.

Q. And you estimated this man's weight to be 160 or 170?

A. I believe so.

Mr. Kostel: That's all at this time, if your Honor please.

Mr. Murchison: If your Honor pleases, I believe that the

Alma Haase.

Clerk has certain articles that were in the matter prior to today and I would like to have them, if I may, before this witness leaves the stand.

Court: All right. Mr. Robinson, will you step down and get them? Mr. Barham or somebody can find them, I assume.

Mr. Murchison: I have several questions relative to that.

Court: All right, let me ask a couple.

Mr. Murchison: Yes, sir.

Court: Now Mrs. Haase, you've testified I believe that you could not positively identify him by his voice, is that correct?

page 49 } A. That's correct.

Court: How many voice tests did you take?

A. Two.

Court: On the first occasion I believe you said was at your court when the person was in an automobile?

A. That's correct.

Court: Did you pick out a person at that time?

A. Yes, I did.

Court: A voice rather?

A. That's right.

Court: And how many voices did you hear?

A. I believe I heard just two. I'm not sure whether I heard two or three at that time. I know I heard three in the police station but in the car I can't remember.

Court: But you picked out a voice?

A. That's correct.

Court: Were you told one way or another whether you were correct or incorrect?

Alma Haase.

A. No, I was not. Nothing was ever told to me
page 50 } about the voice test.

Court: Now the second time, where did that occur?

A. In the police station.

Court: And at that time did you pick out a voice?

A. That's right.

Court: Did you at any time to any police officer or detective make an identification of the Defendant?

A. Well, I said, "that's him." When I went in there and looked at him closely.

Court: Now where did that take place?

A. In the police station.

Court: Do you know where?

A. In the main office of the—I really don't know what part it was in.

Court: Is it the office where there are a whole lot of desks or just one desk?

A. I think there's about three or four desks in there but I don't remember exactly.

Court: And at that time will you tell us, please, what you did and said at that time?

A. Well, I walked—I told the policeman if he
page 51 } would let me look at him closely, I was pretty sure
I could identify him and he said, "all right" so we went in and I walked right up close to the gentleman and—I looked in his eyes and I looked at him—

Mr. Kostel: If your Honor please, we don't see under what theory, what she did or said at the time she identified him

or failed to identify him, we don't see where that is admissible. This is some three hours after the—or two hours after the—the alleged occurrence and I don't see how it could be part of the *res gestae* in the matter.

Mr. Murchison: *Res gestae?*

Court: All right sir, go ahead. I'll overrule your objection.

Mr. Kostel: Note our exception.

Court: Yes, sir, go ahead.

A. And I went in and I looked closely at him and I studied him for a few seconds and I said, "that's him. I'm sure that's him."

Court: All right. Now how was he dressed at that time?

A. He had on his blue hooded sweat shirt.

Q. How was the hood?

page 52 } A. Over his head.

Court: Over his head?

A. Yes, sir.

Court: Did he have anything on his face?

A. I believe he had the handkerchief over part of his face.

Court: Do you know?

A. I wouldn't say for sure but I believe he did, if I remember correctly, because like I said I was looking in his eyes, his eyebrow, his forehead and so forth, in that area. I wasn't paying any attention to any other part.

Court: Of course there was no one else in there dressed like that?

A. No.

Court: Just this individual?

A. No, there was not, I believe.

Alma Haase.

Court: And what did you say after you looked at him?

A. I said, "that's him. I'm sure that's him."

Court: All right. Now after that, do you know who that person was that you identified there with the hood on and the handkerchief?

page 53 } A. No, I did not know his name. I knew nothing about him.

* * * * *

page 54 }

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Q. Was he ever in a line-up with two other men all with handkerchiefs over their faces?

A. I believe there was one but I don't remember if I identified anybody out of that line-up or what I had said about that. I can't honestly say for sure.

Q You believe there was one?

A. I believe.

Q. Would you know if that occurred before or after you saw him by himself after you identified him?

page 55 } A. Like I said, I'm not sure if I saw one or I didn't. There was men. I saw a bunch of men that night. I don't remember if they were in a line-up or anything about the situation.

* * * * *

Q. Now, do you recall what you told the officer or officers who were conducting the voice test at your apartment first and at police headquarters second as to what you thought about the voices you heard?

page 56 } Mr. Murchison: May I have the Reporter read that back? I don't even know what—he's asked.

Court: He's asked her what she recalled she told the police officers after she heard the voices.

Mr. Murchison: After the voices were heard at the court?

Court: Isn't that correct?

Alma Haase.

Mr. Kostel: Yes, sir, first and second time.
Mr. Murchison: At the court and down here too?
Mr. Kostel: No—down here, right.
Court: You understand the question, Mrs. Haase?

A. Yes.

Court: You may answer it.

A. At the car I heard the voices. I don't remember whether I heard two or three. I picked out one and said, "that sounds like the voice." I don't believe any more was said out at the car, as far as my picking out voices.

By Mr. Kostel:
Q. Did you also say that you're not sure? "It sounds like him but I'm not sure"?
page 57 } A. I said, "it sounds like him." I can't remember any exact words that night. I know I didn't positively identify his voice.
Q. What did you say down at the police station?
A. I heard the voices and I'm sure there were three down here and I heard the voices and I said, "let me hear them again." One had sounded like very similar and he let me hear them again and I picked out one that time. I said, "I'm pretty sure that's his voice."
Q. But did you make it clear you still were not positive?
A. Well, I said that. I didn't say—you understand that I don't know for sure. I just told him, "I'm pretty sure that's it. I think that's his voice."

Mr. Kostel: That's all.

RE-DIRECT EXAMINATION.

By Mr. Murchison:
Q. You weren't positive of the voice at all? You wanted to see the man eye to eye, as I understand it, is that correct?
A. That's correct.
Q. When you saw the man eye to eye, you made your positive identification then?
page 58 } A. That's correct.
Q. Is there any question in your mind the Defendant is not the person that was in your apartment?

Alma Haase.

A. No, sir.
Q. Or the person you saw in the station that night?
A. No, sir, there is not.
Q. There's no question in the world?
A. No.
Q. And the voice meant—was not the point you were concerned with?
A. No.

Mr. Kostel: I object, if your Honor please. He's leading his own witness.
Court: Sustained.
Mr. Murchison: I withdraw that part of it.

By Mr. Murchison:
Q. Now Mrs. Haase, I hand you an article of clothing. Can you tell me what that appears to be?
A. The hooded navy blue sweat shirt which the witness was wearing.
Q. Is it a type of thing that he was wearing?
A. That's correct.
Q. And is this what was on in your apartment page 59 } as you have testified to?
A. Yes, sir.
Q. And the type that was on when you identified the person, the Defendant in the police station?
A. Yes, it is.
Q. And does this—article, will you explain how the article has a hood to it or whatever this thing is?
A. Well, I mean—it's the hood. He had it over the top of his head.
Q. Is it attached or not attached, for the record?
A. Yes, it is attached.
Q. Is it permanently or not?
A. Permanently.
Q. Can you tell me if you have ever seen anything like this article I am showing you (indicating).
A. That is like the knife he had that night.

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page 60 }

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LARRY E. GIBSON,
called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:
Q. Will you state your name, please.
A. Larry E. Gibson.
Q. Where do you live, Mr. Gibson?
A. 5722 York Circle.
Q. Where is that, sir?
A. Newport News.
Q. Virginia?
A. Yes, sir.

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page 61 }

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Q. I can't hear you.
A. I'm in the Army.
Q. You're in the Army?
A. Fort Eustis.

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page 62 }

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Q. All right. Were you home on the evening of May the 12th of '64?
A. Yes, sir.
Q. Did you have an occasion to see Alma Haase?
A. Yes, sir.
Q. Will you tell us the circumstances involved in your seeing her and what you observed of her or what, if anything, you have seen yourself.
A. Well, we were sitting there watching TV and—
Q. About what time, may I ask you?
A. Around eight, eight thirty, something like that.
Q. All right. Go ahead, sir.
A. Somebody was knocking at the door so I got up and answered the door and she was—at the door. She was scream-

ing and hollering and carrying on. She wanted to come into the house.

Q. Did you let her come in?

A. Yes, sir. I let her come in and—she sat down on the couch over there and said there was a boy in her house.

Mr. Kostel: Objection, if your Honor please.

page 63 } Court: Sustained.

By Mr. Murchison:

Q. All right, she sat down on the couch?

A. Yes, sir.

Q. And what did you observe about her?

A. Well, she was crying.

Q. Did you assist her in any way?

A. No. my wife did. As soon as she came in and said what she did, well—I went out of the house.

Q. You went out of the house?

A. Yes, sir, I ran over to her house.

Q. You ran over to her house?

A. Yes, sir.

Q. Did you see anything, anybody over there?

A. No, sir.

Q. And what did you do from there?

A. Well, I was going to go across the street and call the policeman.

Q. Did you have anything with you when you went across—went over to her house?

A. I had a golf club, sir.

Q. You had a golf club?

A. Yes, sir.

Q. All right, and going over to her house, does she live in the apartment area too?

page 64 } A. Yes, sir, she lived right across the lawn from us.

Q. Across the lawn?

A. Yes, sir.

Q. About how far is that from your place?

A. Oh, a little over 200 feet I guess, something like that.

Q. Normal lawn up in the Ferguson Park section?

A. Yes, sir.

Q. All right, sir. And did you notify the police?

A. Well, I started across Warwick Boulevard there. I started to go that way and—there was a patrol car sitting right out of Kentucky Avenue there I think the street was.

Larry E. Gibson.

It was patrolman Hinman and I told him what happened and he said he would be there in just a second so I ran back to the house.

Q. You went back to the house?

A. Yes, sir.

Q. Did you see Mrs. Haase then?

A. Yes, sir.

Q. How was she then?

A. She was still crying. My wife—she had a cut on her hand. My wife gave her a wash rag.

Q. Did you see the cut?

page 65 } A. Yes, sir.

Q. Did you later on do anything else or did the police come or what happened after that, that you were involved in?

A. I went back to the house and the patrolman that was in the car came to the house there. He had another patrolman with him and they came in the house and talked for a few minutes and then went over to the—across the street to their house, Alma Haase house.

Q. Yes, sir.

A. And—and I went back out the door, started walking around, looking around.

Q. To your knowledge was Mr. Haase home that night?

A. No, sir, he wasn't.

Q. Did you do anything else after walking around your place, looking around or—did you stay on home or what happened after that?

A. Well, I was outside walking around and—and the detectives came up.

Q. Yes, sir.

A. And they went in the house. I went back in there and—they was taking—

Q. They were doing their duties as far as you know, they were?

page 66 } A. Yes, sir.

Q. All right. what happened later on, if anything? Did you go on back home or did you go to bed? What did you do?

A. No, we stayed over and I don't know, a while later two patrolmen came up and said they had somebody out in the car.

Q. Did you see anybody that was in the car?

A. No, sir, I didn't go out there.

Larry E. Gibson.

Q. Later on then what did you do?

A. I just waited around. They took—they took Alma Haase out to the house.

Q. Did what?

A. I was in the house. They took Alma Haase out to the car.

Q. Then what? What you did yourself, if anything?

A. Then I just sat around there.

Q. All right. Did you go back and go to bed?

A. No, sir, after they took the statement and everything, we took Alma Haase down to the police station.

Q. You took Mrs. Haase to the police station?

A. Yes, sir.

Q. And just accompany her down or what—for what purpose did you go down?

page 67 } A. Well, the patrolman said she could ride down with them and—we wasn't—I told her I would take her down there if she wanted me to and that way we could bring her back home and she got through doing down there.

Q. Did you have anything to do with her down at the station other than being with her?

A. No, sir, we just took her down there and waited for her and brought her back home.

Q. And then you brought her back home?

A. Yes, sir.

Q. Now you never saw—you weren't over there when anyone was supposed to have been in her apartment or you don't know anything about the actual events, do you?

A. No, sir, none other—

Q. Other than what you observed and heard?

A. Yes, sir.

Mr. Murchison: Witness with you.

CROSS EXAMINATION.

By Mr. Bateman:

Q. Mr. Gibson, what time did you say Mrs. Haase came to your home on this evening?

A. I don't know exactly what time it was. Around eight, eight thirty.

page 68 } Q. Between eight and eigh thirty. You can't pin it down any more closely than that?

Larry E. Gibson.

A. No, I don't know exactly what time it was.

Q. Well, in other words, you can't pin it down other than to say it was between eight and eight thirty?

A. It was probably closer to eight thirty.

Q. Closer to eight thirty and within how many minutes would you say you advised the patrolman of a complaint having been made?

A. It wasn't over ten minutes.

Q. Was it over ten or was it closer to ten minutes?

A. Well, about ten minutes.

Q. From the time she first came to your door?

A. Yes, sir.

Q. And the patrolman I think you said, he said he would be there in a minute?

A. He said—yes, he said he would be right there in just a second.

Q. Did he give you any reason for not coming immediately?

A. No, sir.

Q. Do you know what he did as soon as you told him of the complaint?

A. No, sir.

page 69 } Q. You went on back to the apartment?

A. Yes, sir.

Q. And about how long after you got back to your apartment was it before the patrolman came?

A. Five minutes.

Q. And was he alone?

A. No, there was another patrolman with him.

Q. Was the other patrolman in the car when you first went up to the car and talked to the patrolman?

A. No, sir.

Q. Did either of these two patrolmen leave after—very shortly after they first talked to Mrs. Haase?

A. No, I—as soon as they came over to our house, they talked to her and then they went over to her house.

Q. Both patrolmen went with her to her apartment or did one of them leave and go back to the car?

A. I don't really remember.

Q. You don't know. Do you know whether or not both patrolmen were there when the detectives arrived?

A. No, sir.

Q. Was any description furnished to a patrolman immediately by Mrs. Haase immediately after she saw the patrolman?

Larry E. Gibson.

A. I don't know.

Q. You don't know?

A. No, sir.

page 70 } Q. You weren't present during most of the original interview with Mrs. Haase?

A. No, I was outside most of the time.

Q. Do you have any idea as to the time when the policemen came and said that they had someone in the car as to what time it was then?

A. No, sir.

Q. And you did not go out to this car when they took Mrs. Haase there?

A. No, sir.

Q. Were you present at the time any voice tests were conducted before Mrs. Haase for purposes of identification or attempts at identification?

A. No, sir.

Q. Not at any point?

A. Well, I was in the house. I guess they had one out—

Q. Were you present at any voice test at police headquarters?

A. Was I right there you mean?

Q. Yes.

A. No, sir.

Q. You didn't hear the voices, don't know who was there?

A. No, sir.

page 71 } Q. Who said what?

A. No, sir.

Q. Or the circumstances under which it was said. Do you know—strike that. Did Mrs. Haase make any statement to you after she left police headquarters that night that she was surprised at the age of the man she had seen at police headquarters?

A. Yes sir, I believe she did say something like that. I don't know exactly what it was.

Q. She said something indicating that his appearance was different or she was surprised at the appearance of the man that she had seen there?

A. I don't remember exactly what it was she said but I remember her saying something like that.

Court: Something like that?

A. Something about—about the age or something.

Larry E. Gibson.

By Mr. Bateman:

Q. Wasn't the statement she made, to the effect that this man that they showed at police headquarters was a whole lot older than the boy I thought was in the apartment. Isn't that the nature of the comment she made?

A. Yes, sir, I believe something like that.

Q. Maybe not those exact words but that exact thought was what she conveyed, was it not?

page 72 } A. Yes, sir.

Q. At what time did you take Mrs. Haase or what time was it when you arrived at police headquarters with Mrs. Haase?

A. I don't know exactly.

Q. Do you have any reasonably accurate estimate of the time?

A. About 11:30, something like that.

Q. About 11:30. Approximately how long were you at the police station?

A. Couple of hours I suppose.

Q. She went with you and left with you, is that correct?

A. Yes, sir.

Q. And your best estimate is that you arrived at about 11:30?

A. Yes, sir.

Q. And that you were there for approximately two hours?

A. Yes, sir.

Q. When you were at police headquarters, you were sitting in the hall with Mrs. Haase, were you not?

A. Yes, sir.

Q. And waiting until such time as you—she was asked to do something?

page 73 } A. Yes sir.

Q. While you were sitting there in the hall, did not one or more policemen escort someone down the corridor?

A. Yes, sir.

Q. And did not Mrs. Haase at that point indicate that she was unable to identify that person they were escorting as being the man who had been in her apartment?

A. I don't know, sir. I didn't hear her say that.

Q. You did not hear her say that?

A. No, sir.

Q. Did she positively identify anyone in the corridor as having been the man she thought had been in her apartment

A. I never heard her say it.

Larry E. Gibson.

Q. Directing your attention to the Defendant, Mr. Hammer, seated over here at this end table (indicating), did you see that gentleman that evening at police headquarters?
A. Yes, sir.
Q. Was this the gentleman who was being escorted down the corridor for Mrs. Haase benefit?

Mr. Murchison: I object to that.
Court: Sustained.
Mr. Bateman: Exception.
Court: The objection is because you used the
page 74 } word, "for her benefit" I assume.
Mr. Murchison: That's correct.
Court: I don't know how he would know that.

By Mr. Bateman:
Q. All right, is this the man that was escorted down the corridor while she was seated there with you?
A. Yes, sir.
Q. How was he dressed at the time?
A. He had a blue sweat shirt on.
Q. A blue sweat shirt on. Did you see anyone else at police headquarters that night in a blue sweat shirt?
A. No, sir.
Q. Who was with the Defendant when you saw him in the corridor, if you know?
A. Two detectives I assume. I don't really know.
Q. Two detectives. One on either side?
A. Yes, sir.
Q. Were they—escorting him or—have a hold of him in any way or were they just walking down the hall as three normal people would?
A. I don't remember whether they were holding on to him or not.
page 75 } Q. It seems to be a little vague, Mr. Gibson, on the time, the sequence of things that you did after Mrs. Haase came to your door. How long was she inside before you went out with the golf club?
A. About a minute or two.
Q. About a minute or two. And how long were you outside with the gold club?
A. I don't really know. I walked over to her house and looked inside their house and walked out and saw a patrol car sitting there.
Q. Did you come back to your apartment?

Larry E. Gibson.

A. No, I went to the patrol car first and then the policeman and then went back to the apartment.

Q. You still had the golf club with you when you went out to the police car?

A. Yes.

Q. After you had talked to the policeman, you came immediately to your apartment?

A. Yes.

Q. And then the patrolman after about what period of time, did the patrolman take Mrs. Haase from your apartment to her apartment? How long were the patrolmen with her in your apartment?

A. About five minutes.

Q. When they left, they went directly to her
page 76 } apartment?

A. Yes, sir.

Q. Where did you go then?

A. We went with them.

Q. You went with them into her apartment?

A. Yes, sir.

Q. Did you stay in her apartment throughout?

A. No, sir, I—they walked in there and they started questioning her so I walked back out of the house.

Q. Did you thereafter go back into her apartment?

A. As soon as the detectives showed up, I walked in behind them.

Q. And then after these detectives showed up, someone else showed up and said they had a man in the car?

A. Yes.

Q. And approximately what period of time elapsed, if you know, from the time Mrs. Haase first came to your door and the time that the policeman came saying that he had someone in the car?

A. I don't know.

Q. Do you have any idea or can you give a reasonable estimate?

A. An hour and a half, two hours. I don't really know.

Q. Do you know whether anyone radioed a de-
page 77 } scription of a suspect to police headquarters?

A. No, sir.

Q. You don't?

A. I don't know.

Q. You don't know whether anyone did?

A. Or didn't.

Doris Gibson.

Mr. Bateman: No further questions.
Court: All right.
Mr. Murchison: Mrs. Gibson. I beg your pardon. Did you have any question?
Court: No, sir. Mrs. Gibson.
Mr. Murchison: I don't know we'll need Mr. Gibson any more unless the defense would.
Mr. Kostel: No.
Court: All right sir, you may leave when your wife gets through. You may remain in the Courtroom.
Mr. Murchison: Yes sir, you can remain out here or whatever the Judge says.

MRS. DORIS GIBSON,
called as witness by the Commonwealth, being duly sworn, testified as follows:

page 78 } DIRECT EXAMINATION.

By Mr. Murchison:
Q. Will you state your name please, mam?
A. Doris Gibson.
Q. Mrs. Gibson, are you married?
A. Yes, I am.
Q. Who to?
A. Larry Gibson.
Q. Where are you living, Mrs. Gibson?
A. Living at 5722 York Circle.
Q. Is that in Newport News?
A. Yes, sir.
Q. Were you living in Newport News on or about May the 12th, 1964?
A. Yes.
Q. Whereabouts?
A. At 224 Revere Street.
Q. Is that in Ferguson Park section of Newport News?
A. Yes, sir.
Q. Virginia. Are you related to either Mrs. Alms Haase or her husband?
A. No, I'm not.
Q. Were they—could you tell us where they
page 79 } were living?
A. Yes, they were living at 225 Revere.
Q. In the same apartment area?

Doris Gibson.

A. Yes, sir.

Q. Where you and your husband lived. Were you home on the evening of May the 12th, 1964?

A. Yes.

Q. By the way, where do you work?

A. At the Credit Bureau here.

Q. You work with Mrs. Haase?

A. Yes.

Q. Had you seen Mrs. Haase that day?

A. Yes.

Q. And you come home after your day's work?

A. Yes.

Q. Did you have occasion to see Mrs. Haase again that evening?

A. No, not until about 8:30.

Q. Mam?

A. Not until about 8:30.

Q. About 8:20. Where did you see her then?

A. She came to our house.

Q. Tell the Court and these gentlemen, please Mrs. Gibson, what you observed of Mrs. Haase when she came to your home about 8:30 that evening?

page 80 } A. Well, she was crying and was upset, hysterical, real nervous.

Q. Mam?

A. She was very nervous and upset and crying.

Q. All right. You cannot tell what she said to you by our procedure but what did you observe and what did you do? You tell what you saw and what you did?

A. Well, she came into the house, sat down on the couch and she had a cut on her hand and I went and got a wash cloth and—and washed her hand off. She put the cloth on her hand.

Q. Where was the cut on her hand?

A. On her thumb.

Q. All right, and was your husband home or not?

A. Yes sir, he was.

Q. Was he home when she came there?

A. Yes.

Q. And what happened to your husband after she came in?

A. Well, he went out the door.

Q. And you did not—what happened to you?

A. I stayed there in the house with Mrs. Haase.

Doris Gibson.

Q. With Mrs. Haase. All right, and of course you all had conversation?

page 81 } A. Yes.

Q. And then what happened later on?

A. Well, my husband came back and the policeman came and we went to—Mrs. Haase's house.

Q. Had you seen Mrs. Haase in that condition before?

A. Never.

Q. You went to her house, her apartment?

A. Yes.

Q. You went over with her?

A. Yes.

Q. All right, then what happened?

A. Well—

Q. Still what you saw and what you did yourself.

A. We went in and they started, the policeman started taking her statement and we just—more or less stayed there with her. We weren't involved in any of that.

Q. Yes mam. All right, what happened after that, if anything?

A. Well, after they got through we had the dogs and we went over to our house and we left the dogs there and brought Alma down to the station here.

Q. Did you come to the station with her?

A. Yes.

page 82 } Q. And was that just a good neighbor situation? You weren't involved in this matter that had occurred?

A. Pardon me?

Q. You were not over at her home when anything occurred?

A. No.

Q. You weren't involved in that part. You just came down to be with her?

A. Yes.

Q. Did you call the police yourself or do you know if anyone else did?

A. My husband went outside and they were there.

Q. Did you bring Mrs. Haase back to her home later on?

A. She stayed the night with us.

Q. She stayed the night with you all?

A. Yes.

Q. Had she stayed before?

A. Well, I don't believe she had before that.

Q. But she stayed this night with you?

Doris Gibson.

A. Yes.
Q. Now you did not see anything that had happened prior to her coming in there at 8:30?
A. No, I didn't.

Mr. Murchison: Witness with you.

page 83 } CROSS EXAMINATION.

By Mr. Kostel:
Q. How are you so sure of the time, Mrs. Haase—Mrs. Gibson, how are you so sure that Alma Haase came into your apartment that night?
A. It was early in the evening, I know that. It was while we were watching TV and it was while commercials were on.
Q. How do you make it at 8:30?
A. What?
Q. How do you say it was about 8:30? What do you base that on?
A. Well, right now it's been so long I don't remember but at the time it was stated that—I mean it was around that general time.
Q. And your husband immediately picked up a golf club and went out of the house?
A. Right after Alma came in.
Q. I think he testified she was there about one or two minutes before he went out. Is that right?
A. Well—
Q. How long was he gone?
A. I don't know. A few minutes.
Q. Could it have been about ten minutes?
page 84 } A. I don't really know.
Q. Then he came back?
A. Yes, he came back.
Q. Did he go back out again before you all went to Mrs. Haase's apartment?
A. I don't believe so. I think right after he came in, the officers came into our house and we went right over there then.
Q. Two uniformed officers?
A. Yes, they were.
Q. And they—began taking the statement from Mrs. Haase in her apartment, is that right?
A. I believe so, yes.
Q. I think that's what you testified to. And did your hus-

band go outside while the officers were interrogating Mrs. Haase?

A. Yes, he did.

Q. Did you?

A. No, I didn't.

Q. Where were you sitting with respect to where Mrs. Haase was sitting?

A. She was at the table in her dining area and I was in her living room.

Q. How far away from her were you?

page 85 } A. I don't know. It's—well, her dining room is connected with her living room. It's all one.

Q. Could you hear what she was saying to the officers and *vice versa?*

A. There was confusion. There were several officers there in the house and the dogs were running around, barking.

Q. Could you hear what she was saying to the officer and *vice versa?*

A. Well, I could pick up a few words now and then. Nothing—

Q. Was Mrs. Haase positive in the description she was giving the police officers, if you heard that portion of the conversation?

Mr. Murchison: I don't know what the conclusion would be from, positive. It's a matter for the witness who is being interrogated.

Court: All right, she's on cross examination. I'll let her answer it.

A. I don't remember.

By Mr. Kostel:

Q. Mam?

A. I don't remember whether she was positive.

Q. Mam?

A. During the evening I heard her say that but I don't know if it was while she was talking to them or not.

page 86 } Q. You heard her say what?

A. She was positive of his clothing, of his—sweater. She wasn't real sure about the pants. what kind of pants or shoes I don't believe but she was positive about the sweater.

Q. Was she positive about the age?

A. She seemed to be.

Doris Gibson.

Q. What age did you tell you he was?
A. 16, 17 I believe.
Q. And she later on told you the man she saw down at the police headquarters was a whole lot older than the person she saw in her apartment, didn't she?
A. She said—than she thought he was when he came into her apartment.
Q. Would you repeat that answer?
A. She said the man that she seen down at the police department she thought was a lot older than she had thought this man was at first when he came into her apartment.
Q. Were you in Mrs. Haase's apartment when she was taken outside by the two plain clothes officers?
A. Yes, I was.
Q. Did you remain there or did you go outside?
A. I stayed in the house.
Q. Did your husband then come back into the
page 87 } house?
A. Yes, he was there.
Q. Did you know what was going on outside?
A. Well, they had mentioned identifying voices but that's all.
Q. Mam?
A. They mentioned they were going to identify voices but I don't have any idea what they done.
Q. Did Mrs. Haase say to you at some time after the voice experiment was conducted that she was unable to identify the voice?
A. No, she—she said wasn't sure.
Q. Doesn't that mean to you she was unable to identify it?
A. Well, she just said she wasn't sure which one it was.
Q. Were you seated next to Mrs. Haase in the hall of police headquarters?
A. Yes.
Q. Later on that evening?
A. Yes.
Q. About what time was that?
A. I would say around eleven o'clock.
Q. Did you see James C. Hammer seated over here on the far left of counsel table, that evening?
page 88 } A. During the evening we did.
Q. Mam?
A. We did.
Q. And he—walked right by you, your husband and Mrs. Haase?

Sergeant J. C. Calhoun.

A. Him and a couple of other men.

Q. And he was dressed in a blue hooded sweat shirt, James Hammer?

A. I think he was.

Q. Mam?

A. I think he was.

Q. And the other two men, how were they dressed?

A. I think they were in *spoart* coats or had their white shirts on. I'm not real sure.

Q. Have on ties?

A. I don't remember.

Q. You would say that James Hammer was the most unusually dressed of the men you saw in the hall that evening, wouldn't you?

A. Yes.

Q. He was the only man there in a blue sweat shirt, wasn't he, with a hood?

A. Yes.

Q. And Mrs. Haase didn't make any exclamation at that time that that was the man, did she?

page 89 } A. Not while I was there.

Q. What did she say while you were there?

A. I don't remember really anything she said.

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page 90 }

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SERGEANT J. C. CALHOUN,

called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:

Q. Will you state your name, sir.

A. Sergeant J. C. Calhoun.

Q. Sergeant Calhoun, where are you employed?

A. Newport News Police Department. Detective Bureau.

Q. How long have you been employed in the Police Department?

A. I have been with them five years and about five days.

Q. And how long have you been in the Detective Bureau?

Sergeant J. C. Calhoun.

A. Since January 1st, '64.

Q. Directing your attention to on or about May
page 91 } the 12th, 1964, Sergeant Calhoun, were you on
duty that day or evening?

A. I was.

Q. Did you have an occasion to—you were on duty, official duty. You were working?

A. Yes sir, I was. In plain clothes.

Q. Did you have an occasion to have any investigation or do anything in the matter pending before the Court involving one, James C. Hammer?

A. I did, sir.

Q. Will you tell the Court in your own words what you did, what you observed and what you had done in your investigation?

A. All right, sir. On that date, approximately 8:30 p.m., I was patrolling in the downtown section of Newport News and Lieutenant Hiser and Sergeant Talbert were patrolling in the North End section.

Q. Who are those two men so we know who you mean?

A. They are also attached to the Detective Bureau of the City of Newport News.

Q. You were the two teams that night?

A. Yes sir, we were the only two teams working. I was in a car by myself and they were working in a car together.

Q. All right, I see.

page 92 } A. They received a call to go to 225 Revere Street in reference to a complaint at which time they responded. Acknowledged the—the report. We had received orders to keep constant surveillance in the Hilton area where we had been having quite a bit of trouble and upon them acknowledging the report and leaving the beat, I went to cover for them. At this time I was about 50th Street and Warwick Boulevard. I proceeded north on Warwick Boulevard to just north of the Do-Nut Dinette which is located on Warwick Boulevard at which time or just prior to this, the dispatcher from the radio room had come out with a description of a suspect in reference to the complaint at 225 Revere Street and the description was that the subject had entered the home there and—was wearing a blue hooded sweat shirt and dark pants and tennis shoes and he attempted to assail a woman there in the house. I was looking for this subject as I went north. When I got just north of the Do-Nut Dinette,, I saw a subject fitting this description walking on the east side of Warwick Boulevard. He was in front of a couple of

Sergeant J. C. Calhoun.

Doctors' offices there in the area of where the Town House—Town and Country Beauty Salon is located. I passed on by the subject and I didn't apply any brakes. I looked in my rear view mirror and I went to Main Street and Warwick Boulevard and made a right turn and went to the Municipal Lane which goes down in front of the fire department at which time I made a right turn there and came back
page 93 } around through the alleyway, on Municipal Lane to Warwick Boulevard.

Q. Where does that put you in vicinity of the Town and Country Beauty Salon there?

A. It's approximately four buildings north of the Town and Country.

Q. All right, sir.

A. When I got to this location, I didn't see this subject any longer. I looked in the immediate area there as quickly as possible and then I went directly across Warwick Boulevard in a westerly direction and headed down Hopkins Street. I looked on Hopkins Street and made a right turn on either Palen or Piez Avenue, I'm not sure exactly which one it was and I went back to Main Street and made a right turn and looked in this area and then I started south on Warwick Boulevard again. When I got back to the vicinity of the Hopkins Street and Warwick Boulevard, I saw this subject on the west side of Warwick Boulevard directly across the street from where I had seen him previously. At this time I was almost past him when I saw him and I made a "U" turn just north of the Do-Nut Dinette and came back north on Warwick Boulevard to the island of Hopkins Street. At this time I turned and I had called for assistance prior to making this quick check since I had spotted this subject and one of the police units, and I don't know who was operat-
page 94 } ing it at the time, pulled in behind me and I said, "there he is" and at this, the subject broke and ran between two houses which are located just north of the Do-Nut Dinette on the west side of Warwick Boulevard. He was running in a westerly direction toward the river. I immediately proceeded west on Hopkins Street and I went about three or four doors down and stopped in front of 94 Hopkins Street. I jumped out of the police unit and ran up the driveway in hopes that the subject would come that way. At this time I heard some noises in the weeds and bushes and I just waited and then I heard a creek on the fence which—was located just behind the garage where I was standing.

At this time the subject jumped over the fence and I stepped

Sergeant J. C. Calhoun.

out with my revolver pulled and I told him to hold it right there, it was the police. I shined my flashlight on him at the time and it was the same subject dressed with the blue hood and dark pants and tennis shoe on. I placed my gun back in the holster after he stopped and grabbed the subject by the wrist with my left hand and above the elbow with my right hand and I walked him out by the garage out to the police unit. It was rather dark back there and I didn't want to search him in that area because I couldn't see exactly what was going on myself. I walked him out to the police unit at which time I recognized the Defendant as being the subject.

page 95 } I searched him at this time and he had a—blue hooded sweat shirt on. The hood was down. He had a pouch located in the front of the sweat shirt and in the sweat shirt I found a pair of brown cotton or woolen type work clothes gloves and a small two cell flashlight. At this time one or two of the other officers arrived there and one of them put hand-cuffs on him. I don't recall which one it was and we placed him in the police unit and I went back in the vicinity where I had waited for this subject and checked to see if I could find any other evidence in the immediate area. It was raining or misting at that time and—the bushes and everything were quite wet. It was—right dark back there. We couldn't see exactly what we were doing so we decided to wait until it got daylight and we would come back and look then.

Q. Did you go back at daylight?

A. Yes, sir, sometime between 4:30 and 5:30 a.m., on the 13th we went back to the area and searched.

Q. The following morning?

A. Yes, sir.

Q. Is that what you mean?

A. Yes, sir.

Q. To the same area?

A. Yes sir, we did.

Q. What, if anything, did you find—was it daylight then?

page 96 } A. Yes sir, it was just turning daylight Lieutenant Austin and—Sergeant Talbert and myself went back and we started to search in the immediate area where I first spotted this subject in front—of Town and Country. We searched all around this area. Went across Warwick Boulevard to the two houses in which this subject had run between. We searched the flower beds and all the area there and went down through the flower beds where there was an apparent trail there. We checked through

Sergeant J. C. Calhoun.

these bushes quite thoroughly and I was ahead of the party and I walked around the fence in which the subject had jumped across. At this time I went around this fence on the lower side and came back up to the garage where I had been waiting. I worked around the far side the garage and came back the way the Defendant had crossed the fence and I looked in this immediate area and came back around to the —it would be the southwest corner of the garage. I saw a hunting knife laying there in a brown leather sheath. At this time I picked the—the knife up by the sheath itself. I called Sergeant Talbert and Lieutenant Austin to it then. I showed them what I had found and then we returned to headquarters.

Q. Sergeant Calhoun, at this moment I hand you an article of clothing. Can you tell me what this is and—

A. Well, this is a blue hooded sweat shirt, the same type the Defendant was wearing that night. I didn't take this evidence.

page 97 } Q. I realize that. Can you tell me what the article is? I just want you to tell me.

A. This is a blue hooded sweat shirt, contains a hood and a pouch on the front (indicating) of it which is similar to the same type.

Q. Similar to the type thing he had on?

A. Yes, sir.

Q. I hand you a—another article. Can you tell me what that purports to be?

A. This is a hunting knife and sheath that was found on the southwest corner of the garage by myself. At this time I initialed, "JC' 'and wrote the date and the time it was found which was 5:00 a.m.

Q. What mark is on there?

A. My initials, JC and the date, 5-13-'64 and 5:00 a.m. I placed this on there myself.

Mr. Murchison: We ask the knife be introduced.

Mr. Bateman: Your Honor, I'd like to—

Mr. Murchison: For what purpose the testimony has shown.

Mr. Bateman: I'd like to know when he put these initials on there?

Mr. Murchison: I beg your pardon, I'm sorry.

page 98 } Mr. Bateman: The chain is not complete. We would have to object to this.

Mr. Murchison: I beg your pardon.

Sergeant J. C. Calhoun.

By Mr. Murchison:
Q. When did you put those on?
A. These—
Q. The initials, when did you put them on?
A. When I picked up the knife and the sheath, I naturally looked it over and talked to Lieutenant Austin about it. We went from there and on the way to headquarters in the police car, I initialed and at the time I had found it.

Mr. Murchison: I see.
Court: Was it ever out of your possession from the time you found it until the time you put the initials on?

A. No sir, after we got in the car.

Court: That's all. It never was?

A. No, sir.

Court: All right, sir. It's being offered now as Commonwealth's Exhibit One. Any objection?
Mr. Bateman: No.
Court: Mark it.

(The knife and sheath were received and page 99 } marked Commonwealth's Exhibit No. 1).

By Mr. Murchison:
Q. Now Sergeant Calhoun—excuse me just a minute please, sir. Sergeant Calhoun, directing your attention to the testimony where I interrupted you, sir, where you had brought the Defendant back to the—out to the car and I believe you were testifying then—searched the area and I interrupted you and asked if you went back that morning as you testified to. Tell us what else you did that evening insofar as Mr. Hammer and this matter is concerned?
A. Well, after we placed him in the car and I had searched the area, I tried to contact Lieutenant Hiser or Sergeant Talbert by radio and I got no response so I assumed that they were still in the address at 225 Revere Street and I proceeded along with Officer Hennent down to this address in order to talk to Lieutenant Hiser about it, to find out what action he wanted to take further.
Q. What time was this? Do you have any idea, Sergeant Calhoun?

Sergeant J. C. Calhoun.

A. Well, I fixed the time I picked the Defendant up at approximately 9:45. It could be a few minutes either way. Correction, 8:45. I took him to this address and left him in the car with Officer Hennent and I went in the house at which time Lieutenant Hiser was taking a statement from
page 100 } Mrs. Haase and Sergeant Talbert was dusting the pocketbook for fingerprints. I stood by until Lieutenant Hiser finished his statement at which time I told him I'd like to talk to him outside. I called him out to the sidewalk in front of his apartment and explained to him that I had apprehended the subject that fit the description and that I would like for him to look at him at which time he went out to the car along with myself and looked at the Defendant and we at this time decided to take the subject to headquarters and let Mrs. Haase come down and see if she could identify him.

Q. Did you do—

A. Yes sir, we did.

Q. And did you have anything to do with the—any of the tests in the station that night?

A. I'm sorry, I couldn't hear you.

Q. Were you doing anything yourself or what happened at the station, as far as yourself was concerned?

A. After we got to the station, Lieutenant Hiser was more or less in charge and I went along with his instructions and there were a couple of Officers that were contacted by himself and they came into the Detective Bureau and stood back in the Captain's office in the dark. We turned the light out in there and in the vestibule which is between the main department and the Captain's office at which time Mrs. Haase had arrived there. I don't recall exactly what time
page 101 } that was. She said she thought she could recognize the voice of the subject. We placed the three Officers in the Captain's office along with the Defendant and instructed them as to what to say, sayings had been made while the suspect had been in Mrs. Haase apartment and they repeated these sayings themselves along with the Defendant and Mrs. Haase stood in the vestibule or at the door of the vestibule where she could not see any of the subjects and listened to the voices at that time and she never did definitely say whether she—could or could not recognize the voice. She said, "it sounded like the voice" to me at one time. After that, Lieutenant Martin was contacted and Lieutenant Austin came to Headquarters. They took the Defendant into the Bureau, in the Captain's office and talked to him and

Sergeant J. C. Calhoun.

I never did talk to him after that night. The only other participation I made in this was when I went back and searched the area where the knife was found.

Q. I see. Now, is the man that you apprehended that night and stopped in the Hilton area as you have described and was with during the police station, is he in the Courtroom today?

A. Yes sir, he is. He's the Defendant seated by Mr. Bateman.

Q. Seated by Mr. Bateman?

A. Yes.

page 102 } Mr. Murchison: Let the record show he pointed to the Defendant.

Court: He said the Defendant. All right, is that all?

Mr. Murchison: Yes sir.

Court: All right, you may cross examine.

CROSS EXAMINATION.

By Mr. Bateman:

Q. Officer Calhoun, I believe you said you were covering the downtown section of Newport News on this occasion?

A. Yes sir, I was assigned.

Q. On May 12th?

A. Yes, sir.

Q. Lieutenant Hiser and Sergeant Talbert were in another unit which was assigned to cover the Hilton Village or upper end of the City?

A. Well .they were assigned to cover the upper end of the City, yes sir.

Q. And—how did you learn that they were going—out of circulation, so to speak?

page 103 } A. I heard the radio dispatcher give them the call to 225 Revere Street and they acknowledged and were en route.

Q. You were in the downtown area when you heard this signal?

A. Yes, sir.

Q. And then what did you do immediately?

A. Well, after—they gave them the report and advised them to respond, then the radio came out with the description of the suspect who had entered this home and from there I proceeded north on Warwick Boulevard.

Q. All right. So before you proceeded north on Warwick

Sergeant J. C. Calhoun.

Boulevard to cover for them, there was the—the radio communication directing them to Revere Street, their response to it, is that correct?

A. That's right.

Q. That they had heard and were going and then a description?

A. Yes sir. I was traveling north anyhow at the time that the call came through.

Q. Now where were you when this first radio signal concerning the complaint at 225 Revere Street came in?

A. I was on Warwick Boulevard somewhere near 50th Street. I don't know exactly what street I was on but I was in that vicinity.

Q. And a minute or so later there was a re-
page 104 } sponse to this from Lieutenant Hiser?

A. Well, just as soon as they gave it out, they acknowledge receipt of the transmission, yes sir.

Q. And about how long after that did you—hear a description with reference to the Revere Street complaint?

A. As soon as the units—the—Lieutenant Hiser and Sergeant Talbert's units acknowledged the report and were responding, then they came out with a description over the radio.

Q. Who came out with the description?

A. The dispatcher. I don't know who it was.

Q. You don't know where his information came from?

A. No, I don't.

Q. What time was the first radio dispatch that you heard?

A. I don't know the exact time. I would assume it was sometime around 8:30. I'm not sure. At the time I didn't make note of it at the time.

Q. What time was it when you first saw this suspect that you say you ultimately captured?

A. I would say it was around 8:45. I'm not sure of the time. I just made note of the general time at the moment. I didn't—reach out and look at my wrist watch at that immediate time.

page 105 } Q. Did you go directly—in other words, when you heard the first bulletin you were already on Warwick Boulevard?

A. Yes sir, I was.

Q. Traveling north?

A. Yes, sir.

Q. And approximately 50th Street?

A. In that vicinity. I don't know exactly where.

Sergeant J. C. Calhoun.

Q. Did you stop anywhere en route to where you first saw this—

A. Yes, I did. I stopped just north of—I believe it's Electronics Service which is located on the west side of Warwick Boulevard and about the 9900 Block, Ninety-nine thousand Block, I don't know which one it is but I saw a subject walking along there. Also had on a hood and top jacket or ..... I stopped the subject. It was Nylon type jacket which was of a slick finish. He was a blond headed subject. I talked to him for about a minute or so and I was convinced that he did not fit the description close enough.

Q. All right. Now let's get back to this description. What description were you furnished?

A. The description we had was that the subject was wearing a blue hooded sweat shirt and was wearing
page 106 } brown woolen type gloves or cotton type gloves, had a handkerchief across his face, was wearing dark pants and tennis shoes or close to that effect, dark clothes. The subject had also had in his possession a knife and I checked this subject over and he did not have—any of the other clothes on him.

Q. Let's confine your answers to the questions. We'll get to some other things I'm sure later. That question was, what description were you furnished with and this was—was the description that you were furnished and it came from the radio dispatcher?

A. Yes sir, it did.

Q. Within minutes or a minute or two, did you say of the original radio communication?

A. As soon as Lieutenant Hiser and Sergeant Talbert acknowledged the report and they responded to the call, then the description came out over the air.

Q. Almost simultaneously with their going off the air and the description came on?

A. Yes.

Q. This took a total of how long from the time you first got the first word of such an offense and the description?

A. I don't know. It was just—what length of time it would take to say.

Q. All were in sequence just like that (in-
page 107 } dicating by snapping fingers)?

A. I would say.

Q. One right after the other?

A. One followed the other, yes sir.

Sergeant J. C. Calhoun.

Q. No interval. They didn't interrupt one another but there was no real interval between the three?

A. Naturally there was a short pause. I didn't time that either.

Q. So you made one stop as you proceeded up Warwick Boulevard to where you first saw—this Defendant or subject as you—call it?

A. That's correct, sir.

Q. Now, did you make any notes as to the description that came over the radio?

A. No sir, I did not.

Q. You're relying upon your memory as to what the description was?

A. Yes, sir.

Q. Could you have been mistaken as to what the description furnished you was?

A. No, sir.

Q. So after you—how long did it take you to—to satisfy yourself that the first person in a blue hooded garment that you saw or sweat shirt type garment was not the man you were looking for?

page 108 } A. Well, this subject I had seen before and I know him and—I know him by face and I knew his last name and he's much younger than the description we had had previously of the subject fitting the same description.

Q. Let me ask you this, Sergeant Calhoun. Had you been furnished description of someone wearing clothes of this general nature on previous occasions to this one we're talking about?

A. Yes sir, we had had previous complaints fitting this same description.

Q. Aren't you somewhat confused about the description as to—the person you were looking for on this night and other descriptions that you had been given on other occasions?

A. Of course when you get descriptions from people and they're different but there's enough general information that usually ties in.

Q. We're talking about the description of a person who allegedly came into the premises of Alma Haase on May 12.

Mr. Murchison: No sir, that wasn't your question. That's what you may want. You were asking a general description of prior evenings.

Sergeant J. C. Calhoun.

Mr. Bateman: I asked if he had other descrip-
page 109 } tions and he answered that question.
Court: Yes sir, go ahead.

By Mr. Bateman:

Q. Now the description that we're interested in today is the description of the person who allegedly went into the premises of Alma Haase on May the 12th.

A. Yes, sir.

Q. And you say that description was what as to age?

A. I don't recall what the age was at that time.

Q. Then how would you know this first suspect that you saw or subject that you had stopped didn't fit the age, if you don't?

A. He wasn't dressed right to start with.

Q. Let's answer the question first about age, if you will.

A. Well, we had—the descriptions on the age before and all the ages tied in fairly close and this boy just didn't fit in the bracket.

Q. Do you know whether or not he fitted in the bracket of the age that was furnished in the description on this particular instance?

A. I didn't have any age. I knew I could locate this subject.

page 110 } Q. No age was furnished?
A. Not that I can recall.

Q. What about weight?

A. I don't believe that was furnished either.

Q. How about height?

A. I don't believe that was furnished either.

Q. How about the color of eye or hair?

A. No, sir.

Q. Complexion?

A. No, sir.

Q. What was furnished?

A. That the subject had entered the house, was wearing a blue hooded sweat shirt with a handkerchief across his face, a white handkerchief, wearing work pants and tennis shoes. Wearing white tennis shoes and had in his possession a knife.

Q. The person that you were told to look for by this description that came over the radio was described as having on blue hooded sweat shirt, dark pants and wearing tennis shoes?

Sergeant J. C. Calhoun.

A. Yes, sir, and white handkerchief across his face.

Q. You're positive the description made reference to the fact he was wearing tennis shoes?

A. Yes sir.

page 111 } Q. How do you account for the fact Mrs. Haase says that she didn't know what kind of shoes this man had?

A. I can't account for that.

Mr. Murchison: I object to that.

Court: I'll let him answer that.

Mr. Kostel: He said he couldn't account for it.

Mr. Murchison: All right.

By Mr. Bateman:

Q. The description that you heard over the radio said that the subject had on dark trousers?

A. Yes, sir.

Q. What color trousers did the first subject you stopped have on?

A. He had on a pair of blue denim type pants.

Q. Blue denim type pants?

A. Yes, sir.

Q. Lighter in color than—

A. They were light blue, yes sir.

Q. Than for instance, this—this garment?

A. They were lighter than dark, yes sir.

Q. Were they lighter than this garment that I am holding up?

A. Yes, sir.

Q. The blue sweat shirt?

page 112 } A. Yes sir.

Q. You mentioned that you were furnished no description on this occasion as to age and no description as to color of hair or eyes. Now what did the fact that this first one you saw was blond have to do with whether or not he was the man who fitted the description?

A. Because, as I started—

Q. On this occasion.

A. As I started to say a while ago, we had previous descriptions and most of the descriptions fit a subject with black hair.

Q. You were—

A. Dark hair.

Sergeant J. C. Calhoun.

Q. You were assuming that the person that you were looking for this night must be the same person that you had been asked to look for on other occasions?

A. More or less, yes.

Q. And so that assumption led you to reject one suspect who was actually closer to the description furnished by the Complainant than the man you picked up?

A. Caused me not to pick him up at that particular time, yes sir.

Q. You haven't picked him up subsequently, have you?

A. No, sir, I have not.

page 113 } Q. Let's get back to it. Why then did you actually reject the man that you saw that generally fit the description that you had on this particular occasion because you say his hair was blond. Simply because you had had description of someone else who had dark hair earlier?

Court: He's answered that, yes sir.

Mr. Bateman: Is that his answer?

Court: Yes, sir, that's what he said.

By Mr. Bateman:

Q. Now, what time was it, Sergeant Calhoun, when you took into custody the Defendant on May the 12th?

A. Somewhere around 8:45 p.m.

Q. 8:45?

A. Yes, sir.

Q. How close to exactly correct is your 8:45 estimate? What is the range of estimate in your approximation?

A. I—would just say it was a few minutes because I did glance at my watch after I had him in my possession.

Q. It was very close to 8:45?

A. I would say it was, yes sir.

Q. Within a minute or two either way?

A. I can't break it down because I don't know how long it was afterwards that I looked at my watch.

Q. Well, was the looking at your watch con-
page 114 } nected in any with making a note of the fact that as to the time?

A. I was trying to designate approximately what time I stopped him. yes sir.

Q. Well, was it a half hour before you looked at your watch?

A. No, sir.

Sergeant J. C. Calhoun.

Q. Or was it as soon as you were free to do it after having gotten him into custody?

A. After I felt I was free to do it, yes sir.

Q. This was within a very short period of time after you actually had him in your grasp?

A. Five or ten minutes, yes sir.

Q. Five or ten minutes?

A. Yes, sir.

Q. Before you looked at your watch?

A. Yes, sir.

Q. And it was what time when you looked at the watch?

A. I don't recall. I'm just recalling it was somewhere approximately 8:45 p.m.

Q. Was 8:45 p.m. the time that was indicated on your watch when you looked or the time that you established as the point you took him into custody?

A. Well, it wasn't 8:45 when I looked at my watch, no, sir.

Q. It wasn't 8:45?

page 115 } A. No sir.

Q. It was later than 8:45?

A. Yes, sir.

Q. And estimating from the time that you looked at your watch back, you arrived at an 8:45 as the time of the arrest?

A. Approximately.

Q. Or taking him into custody?

A. Yes.

Q. And you think this is substantially accurate?

A. I would say it is fairly close, yes sir.

Q. How many minutes had transpired from the time you had heard the first bulletin to the time you took this man into custody?

A. Well, I believe I stated that I thought the call came in around 8:30 p. m. I wasn't sure of the exact time because we're not in the custom of making notes and of course the time that I noted again, I assumed it was approximately 8:45 when I first had contact with this subject.

Q. Your answer then is—if I understand you, approximately 8:30 is when you first heard the announcement over the radio about a complaint at Revere Street?

A. That's correct.

Q. At which time you were approximately 50th

page 116 } and Warwick Boulevard?

A. Yes, sir.

Sergeant J. C. Calhoun.

Q. And you made one stop between there and the time you saw the—

Court: Mr. Bateman, I want to give you every leeway possible but you're going right back over the same thing. My memory is that short and your's shouldn't be either. He's testified 8:30, 50th Street, made this stop up there and then went on up and ran into the suspect. There's no need to rehashing with him again. All right, sir.

By Mr. Bateman:

Q. How long a period did you take in stopping and talking to and rejecting the first suspect?

A. I'd say I didn't stay there with him more than three minutes.

Q. More than three minutes. Now after this three minutes that you spent with the first suspect, how much time elapsed before you actually saw this subject for the first time?

A. I don't know. I would say maybe two or three more minutes.

Q. Two or three more minutes?

A. Yes, sir.

page 117 } Q. And from 8:30, as best you can approximate it when you heard the announcement to the first time you saw the—this subject was approximately what period of time?

A. From the time I received the radio dispatch until I saw him?

Q. Yes.

A. I don't know. It was somewhere around 8:45 p.m. That's approximately 15 minutes.

Q. Well, you saw the—the Defendant I believe you said on the east side of Warwick Boulevard initially?

A. That's correct, sir.

Q. And in front of the doctor's office there?

A. Yes.

Q. And that you went up to Main Street and came back down Municipal Lane and looked for him and did not see him then?

A. That's right.

Q. When you came back down and you proceeded across Warwick Boulevard on Hopkins Street up to either Piez or Palen and up to Main and down Main to Warwick Boulevard and came south on Warwick Boulevard again?

A. That's correct.

Sergeant J. C. Calhoun.

Q. When you got back to the area of the Do-Nut Dinette and the doctors' office and the beauty salon, you again saw the subject?

page 118 } A. On the west-hand side of the road.

Q. What period of time elapsed from where you first saw him to where you second saw him or when you saw him the second time?

A. I don't know, Mr. Bateman. I wasn't watching my watch.

Q. I realize that you weren't.

A. It wasn't very long.

Q. Would you say that it was more or less than five minutes?

A. It wasn't that long.

Q. Less than three minutes?

A. I would say so.

Q. And from the time that you saw him in the second instance on the west side of Warwick Boulevard until the time you actually had him in your grasp, what period of time elapsed?

A. A minute, maybe not that long.

Q. So from the first time you saw him until the time he was actually in your grasp would have been anywhere from three to five minutes?

A. I would say so, yes, sir.

Q. And you spent three minutes with the first suspect, approximately?

A. Approximately, yes.

page 119 } Q. So this is—would you say that I am correct that it was somewhere eight to fifteen minutes from the time that you got the first bulletin to the time that you actually had the Defendant in custody?

A. I don't know what time it was.

Q. Can you tell me what the period of time from 8:30 when you first got the announcement to the time that you actually—first saw him was, this Defendant, how much time elapsed?

A. Well, I drove —from 50th Street straight up Warwick Boulevard. I didn't *exeed* the speed limit because I felt no necessity for it at that immediate time. I'd say maybe eight or ten minutes, maybe longer.

Q. Eight to ten minutes?

A. Or longer.

Q. And you did not proceed as if this was an emergency situation?

A. No, sir.

Sergeant J. C. Calhoun.

Q. But at a normal rate of speed?
A. Not at that time, no, sir.
Q. All right. Now, when you—got the Defendant there at the rear, I guess it was of 94 Hospkins Street?
A. Yes, sir.
Q. It was the rear of those premises?
page 120 } A. The rear of the garage.
Q. Well, is the garage on the back of the lot or the front?
A. No, sir, it's—situated right, the front of it—even with the rear of the house. In other words—it sits partially in the middle of the lot.
Q. O. K. Well, when you got him in your custody, did you advise him that he was suspected of having entered 224 or 225 Revere Street?
A. No, sir, when I pulled my gun I told him to hold it, police. I shined the light on him and I—placed my hands on him at that time and I told him I wanted to talk to him, come out to the police unit.
Q. You told him you wanted to talk to him?
A. Yes, sir.
Q. You didn't tell him what you wanted to talk to him about?
A. Not at that time.
Q. You took him to the police unit?
A. Yes, sir.
Q. When did you tell him what you had taken him into custody for or what reason?
A. I told him he was a suspect in a case and that I wanted him to talk with Lieutenant Hiser.
Q. Did you at any point thereafter tell him
page 121 } specifically what he was charged with or suspected of?
A. No, sir, I did not.
Q. And you took him initially from where he was taken into custody to Mrs. Haase apartment?
A. I took him—to Kentucky Avenue.
Q. Or to that area. After some conversation between you and Lieutenant Hiser, a voice test was arranged?
A. Yes, sir.
Q. And that voice test was conducted with the Defendant in the police unit, was it not?
A. The Defendant, yes, sir.
Q. And one Police Officer in the back seat with him?

Sergeant J. C. Calhoun.

A. That's correct.

Q. And Mrs. Haase was standing outside the automobile?

A. On the sidewalk at the front of the car, yes, even with the front fender.

Q. Did you give Mrs. Haase an opportunity to view the suspect and to—attempt to make an identification?

A. Not at that location, no, sir.

Q. Did you interview Mrs. Haase as to the color of the man's hair, eyes, type of shoes or other aspects of the description when you got to Revere Street?

A. No, sir, I did not. Lieutenant Hiser was

page 122 } taking a statement from her.

Q. You—did you see the statement and the description that she had furnished Lieutenant Hiser?

A. No, sir, I did not read it.

Q. You knew from your radio communication that the hair, eyes, weight, complexion and many other details were missing from the description, did you not?

A. I knew the description I had, yes, sir.

Q. Well, you testified previously that several of these items, if not all of them I have just enumerated were missing, weren't they?

A. Several of them.

Q. From the description received on this occasion?

A. Yes.

Q. You didn't seek to clarify whether or not this man fitted those descriptions at that time, did you?

A. He fitted the description I had, sir.

Q. Isn't it true that the boy you rejected fitted the description that you had on this occasion?

A. No, sir.

Q. It's not. All right, now, this voice test, how far was Mrs. Haase from the Defendant at the time the test was conducted?

A. I'd say approximately five to eight feet.

page 123 } Q. And I believe you said that you had instructed—after conversations with Lieutenant Hiser, a Police Officer, to make certain statements and the Defendant to make certain statements?

A. That's correct.

Q. And after these statements had been made, isn't it correct that Mrs. Haase indicated that she was unable to identify the voice?

A. No, sir, she said the voice sounded like that of his.

Sergeant J. C. Calhoun.

Q. The voice sounded like it?
A. Yes, sir.
Q. Did she indicate it was the voice or just like it sounded somewhat like it or might be the voice?
A. No, sir, not that I recall. She stated it sounded like the voice.
Q. Did you take this as being a positive identification?

Mr. Murchison: I object.

By Mr. Bateman:
Q. As to voice.

Court: I'll let him answer it.

A. Not at that particular time, no, sir.
Q. You did not. And it was for this reason that further voice tests were conducted at the police head-
page 124 } quarters, was it not?
A. That's correct.
Q. And isn't it a fact that two such experiments were conducted at Police Headquarters. Weren't there two sequences when people were asked to say something, including the Defendant?
A. Yes, sir, I believe you're right.
Q. And after the first of these, didn't Mrs. Haase say, "I'm not sure. I can't tell. I'd like to hear them again."
A. After the first one she did say that.
Q. In fact, that was the reason there was a second one at Police Headquarters, wasn't it?
A. Yes, sir.
Q. And following the second one did she still not indicate that she was unable to positively identify the voice as being that of the person who had come into her apartment, so far as voice was concerned?
A. She stated at the time that it sounded like the man.
Q. But that she was not sure, or words to that effect?
A. She didn't never make a definite statement in front of me again as to whether it was him or not.
Q. Did she make a definite unequivocal state-
page 125 } ment that is the man based upon the voices I have heard now for three times?
A. Not that I recall. no, sir.

Sergeant J. C. Calhoun.

Q. Now following the voice test, it seemed apparent that there was some further need to try and establish an identification of this Defendant, was it not?

Mr. Murchison: Is that—is that your testimony or is that a question?

By Mr. Bateman:
Q. The question is wasn't it apparent and did you not go forward with further efforts to establish an identification of this Defendant?
A. There were further identifications at a later time, yes, sir.
Q. All right, and would you—tell the Court what was done or the nature of these further identifications, how was it handled, the whole thing so far as the identification?

Mr. Murchison: Now this is on cross examination, if Your Honor please. I will appreciate, I think he should lay his own foundation. We don't know if this Officer was there or not.
Court: I assume he can say he wasn't there, if
page 126 } he didn't.
Mr. Murchison: He appears he's trying to make him his own witness now.
Court: Go ahead, sir.

A. Would you ask the question again?

By Mr. Bateman:
Q. The question is, what was the procedure and what was the method of handling this identification?
A. There were one or two Officers there at Police Headquarters at that time during the shift change and Lieutenant Hiser contacted these men and brought them around to the Detective Bureau. There were one or two other Officers came in at that time, Detectives. I don't recall who they were at that particular time and as well as I recall, it was a lineup of these men were congregated with various clothes on, along with the Defendant.
Q. Who directed that lineup be established or set up?
A. Well, as I stated before, Lieutenant Hiser was in charge.

Sergeant J. C. Calhoun.

Q. Well, did he—say, "we're going to stage a lineup" and stage one?

A. Well, he just said, "we'd like for you to look at this person in a group of people—men".

Q. And he procured and arranged to have a group of men there?

page 127 } A. Yes, sir.

Q. Now by a group of men, don't we really mean two men?

A. Yes, sir, there were two men.

Q. Aren't these two men off duty police officers?

A. Well, I don't know whether they were going off or coming off at that time.

Q. They were police officers?

A. They were police officers, yes, sir.

Q. And how were these two men who were in this lineup with the Defendant, dressed?

A. Well, when they first came to the Bureau they had on their uniforms and—of course they had some civilian paraphernalia put on them by that time when they were around the Bureau.

Q. By civilian paraphernalia, what did they have on?

A. They had some sport coats on and I think of them might have had a sweater on. I don't recall exactly as to what clothes they did have on. They did have some sport coats on other than their uniform.

Q. You do recall, do you not, they each had on blue uniform trousers?

A. They still had on their pants, yes, sir.

page 128 } Court: Sergeant, answer the question. He asked you if they were police officer pants? You said they still had their pants on. Were they police officer pants? You said they still had their pants on. Were they police officer pants?

A. Yes.

Court: Don't hedge. Let's answer the question.

By Mr. Bateman:

Q. Underneath these sport coats, did they have on their arms. badges or other accessories?

Sergeant J. C. Calhoun.

A. I assume they did, sir. I couldn't see under the coats but I assume they did. I didn't see them dress.

Q. You didn't see them remove any of those things, did you?

Mr. Murchison: Do I understand the answer is that he did not see how the people in the lineup were dressed?

Court: Didn't see how they were dressed underneath their coats I take his answer to be.

By Mr. Bateman:

Q. Did you see them remove any such accessories?

A. No, sir, I didn't.

Q. And who was present while these two officers and the Defendant were in the lineup?

page 129 } A. Well, I was in the Bureau myself at that time and—Lieutenant Hiser was there and I don't—recall whether the officers had come in then or whether they had not come in.

Q. Well, at the time Mrs. Haase—was Mrs. Haase brought into the room to view the Defendant and these two police officers in a line?

A. After they—got prepared, they was brought into the Bureau, yes, sir.

Q. She was brought in. Who was present when she was brought in?

A. She and Lieutenant Hiser and myself and the Defendant and two officers.

Q. Lieutenant Hiser was definitely in the room?

A. Yes, sir.

Q. And Lieutenant Hiser was definitely the man brought about this lineup that you described?

A. Well, I was following his orders. I participated. I imagine I had something to do with it, yes, sir.

Q. I didn't ask you whether you had anything to do with it. I'm asking you did Lieutenant Hiser have anything to do with it?

A. Yes, sir.

Q. Directly?

A. Yes, sir.

page 130 } Q. Now, was the Defendant taken down the corridor of the police station while Mrs. Haase was present and seated in the hall?

Sergeant J. C. Calhoun.

A. I don't recall whether he was or not.
Q. You don't recall that?
A. No, sir.
Q. Did you escort him or take him down the hall on any occasion during this evening?
A. No, sir, I didn't.
Q. What time did you get to the station with the Defendant?
A. I'd say was around 10:15 or 10:30, somewhere along in there.
Q. 10:15 to 10:30?
A. Yes, sir.
Q. And what time did Mrs. Haase get to the station?
A. I'd say within the next 15 or 30 minutes. 15, 20, 30 minutes.
Q. Anywhere from 10:30 to 10:45?
A. Or eleven o'clock, yes, sir.
Q. Could have been as late as eleven?
A. It could have been, yes, sir.
Q. Do you know what time or approximately what time Mrs. Haase left?
page 131 } A. No, sir, I don't.
Q. Did you set up this lineup and these voice tests after she arrived?
A. Yes, sir.
Q. So you had to set them up?
A. We were in the process of setting them up when was on the way down.
Q. There was some overlap and she waited until arrangements were complete?
A. Well. she didn't wait for the voice test. When she got there, she was brought right in.
Q. She didn't have to sit around in the corridor?
A. Not to my knowledge.
Q. And you don't know what time it was when she left?
A. No, sir.
Q. Now, what time did you first leave headquarters after returning with the Defendant on this occasion?
A. I didn't leave again until around 4:15, 4:30, whatever time it was we went to the Hilton area to search.
Q. This was the search that you described in your testimony with Mr. Murchison?
A. Yes, sir.
page 132 } Q. And which resulted in your finding this knife that you described?

Sergeant J. C. Calhoun.

A. Yes, sir.

Q. And what time did you say that search began?

A. I beg your pardon. I stand corrected. I left—prior to that time to go to the address of the Defendant to search for any property that might be there.

Q. What time did you leave to go on this search?

A. Well, it was approximately I'd say roughly 2:30, 3:00 o'clock somewhere along there.

Q. And where was the Defendant when you left, if you know?

A. The last time I saw him he was sitting in the Captain's office.

Q. And this was when you left to go out on the search?

A. I couldn't see him then. I said the last time I saw him he was sitting in the Captain's office. I don't know what time that was.

Q. Did you stay in and about the detectives' office from that time until the time you left to go on the search?

A. Yes, shortly after we completed this identification and then I was out in the main part of the Bureau
page 133 } and I didn't—have any further dealings with the Defendant.

Q. But he didn't—he wasn't brought out of the Captain's office while you were there in the Bureau, was he?

A. Not where I could see him, no, sir.

Q. When you left to go off on the searching party, he was still in the Captain's office?

A. As far as I know. The door was shut I couldn't tell.

Q. The door hadn't opened and he hadn't come out of it?

A. There are two entrances to the Captain's office so I don't know.

Q. Where is there another office?

A. There is an entrance located, well, what you call the west hall, hallway goes down to the identification bureau and there's a side entrance into the Captain's office there. There's also a door that comes out into the main part of the Bureau.

Q. All right. So you did go out on the searching party. What time did you get back—with the first searching party or did you come back?

A. I didn't come back. I went from there directly to the scene.

Q. And when did you commence this search at
page 134 } the scene of the arrest?

A. I would say it was approximately around 4:30. I'm not sure of the exact time.

Sergeant J. C. Calhoun.

Q. Do you recall having testified in this matter on a *privious* occasion during the month of October concerning the time of the search around the area where you had taken the Defendant into custody?

A. I believe I said it was around sometime similar to this. I don't recall exactly what I said.

Q. You don't recall what you said. Do you disagree at that time you said it was five five thirty?

A. I possibly could, yes, sir.

Q. Do you think your estimation and recollection were better then than they are now where you say four to four thirty?

A. No, sir.

Q. Was it daylight at the time you were making this search?

A. Yes, sir, it was—becoming dawn. It was—light enough that you could see without a flashlight.

Q. Is it a fact you could see without a flashlight and the fact you had discontinued the search the previous night because of wetness and darkness indicate anything to you as to the time you started the search?

A. No, sir, I don't make any connection there.

page 135 } Q. You don't. So you don't know whether the search was started between five and five thirty or whether it started as early as four thirty?

A. No, sir, I don't recall that. I just estimated the time.

Q. Well, when you estimated the time when you testified previously in this matter as five to five thirty, do you question that?

A. I believe I said approximately that.

Q. You said between five and five thirty. Does that seem to you to be a more reasonable indication of the time than four thirty to five thirty?

A. I don't know, sir.

Q. You don't know. All right. How long—

Court: All right, now. Let me ask you this. Can you give the page so the Commonwealth can check your time?

Mr. Murchison: I was trying to find it, Judge.

Mr. Kostel: Page 62 on cross.

Mr. Murchison: That's the question. Somewhere in that time. There's no place in here where the officer said. You have said—

Sergeant J. C. Calhoun.

Mr. Kostel: It's in his direct apparently because that's what he asked him.

page 136 } Mr. Murchison: All I know at this moment—it could be—I'm not saying—

Mr. Bateman: There are other references to time in direct as well as to cross. Page 51. The question was, "now, did you do anything later on in your investigation in this matter?" "Answer, yes sir the following morning or approximately that, say five or five thirty a.m. on the 13th we went back to view the scene."

Court: All right, sir.

Mr. Murchison: Now can I hear his answer or where we stopped. I was searching.

Court: You can't say this is more accurate, 4:30 than 5:30?

Mr. Murchison: Thank you, Judge.

By Mr. Bateman:

Q. Who was with you on the search?

A. Sergeant Talbert and Lieutenant Austin.

Q. And you had left from the Defendant's residence where a search had been conducted and went back to the scene where he was taken into custody?

A. Yes, sir.

Q. Went direct from one to the other?

A. Yes, sir.

page 137 } Q. Did you leave at the same time—did you leave the scene of the first search the first time as all the rest?

A. Yes, sir, we all left there about the same time.

Court: Do you anticipate this will take a little longer?

Mr. Bateman: I hate to say at this point.

Court: We'll break for lunch. Take a recess until 2:15. The witnesses who have testified, please do not discuss this matter with anyone involving your testimony, particularly you, Sergeant.

(The Court then recessed for lunch after which the Court reconvened).

(Sergeant Calhoun then resumed his seat in the witness chair).

Sergeant J. C. Calhoun.

By Mr. Bateman:

Q. Sergeant Calhoun, we have previously asked and you've answered our questions concerning this lineup that was staged at the direction of Lieutenant Hiser. Did you give me the names of the two officers that were used in the lineup? Do you recall who they were?

A. Officer Burris and Officer Mayes.

page 138 } Q. Officer Burris and Mayes?

A. Yes, sir.

Q. Was there any other lineup staged to your knowledge other than this one in which Officer Burris and Mayes were involved?

A. Not to my knowledge.

Q. Now was this—a standard lineup procedure or was this rather unusual in your experience?

A. Well, we didn't actually classify it as a lineup that night, no, sir.

Q. Well then, it wasn't a lineup. What was it?

A. Well, it was and it wasn't. It was a matter of identification purposes. That was what it was for.

Q. Well, what was done except for the selection of the people involved and the dress and what have you, of the people involved? It was a standard lineup?

A. I assume you have to assume it was, yes, sir.

Q. Considering the number of people involved, the placement of the people and the apparel or the attire they had on, it was a very unusual lineup, wasn't it?

A. Yes, sir, it was.

Q. Do you know of any reason why it needed to be staged in this fashion rather than in a more normal and proper manner?

page 139 } A. No, sir, I don't. Other than the fact it was just—it was there for the opportunity at that particular time, the person was there and she wanted to go home.

Q. You didn't have any fear that you would be able to get in touch with her or have her come back at a later time, did you?

A. No, sir.

Q. Time wasn't particularly important in the time when she attempted to make an identification, was it?

A. I wouldn't think so, no, sir.

Q. Well, you didn't think so and a few minutes after the incident you had a suspect in the police car at her apartment or within a few hundred feet of her, isn't that correct?

Sergeant J. C. Calhoun.

A. Yes, sir.

Q. You didn't ask her to try to identify him then?

A. No, sir.

Q. When matters were most vivid in her mind and when the Defendant was much more rested shall we say, than he was thereafter. Under those circumstances you didn't seek an immediate physical or visual identification, did you?

A. No, sir.

Q. Officer Calhoun, can you approximate for me or even better give me exactly, if you can, the distance
page 140 } from 225 Revere Street to where you first saw this suspect on May the 12th?

A. I would say it was about four or five blocks.

Q. Four or five blocks?

A. Yes, sir.

Q. From Revere Street to Warwick Boulevard opposite the Doctor Roberts and Finney's office?

A. Yes, sir, approximately that far.

Q. Revere Street, is this north or south of the James River Bridge access road?

A. Revere Street is south of that point.

Q. In other words, closer to Newport News than the intersection there where you—go on to the James River Bridge?

A. It was south of the James River Bridge, Mercury Boulevard, yes, sir.

Q. In other words, it would be nearer Newport News?

A. Yes, sir.

Q. And you say this is four or five blocks?

A. Well, these are not even blocks up there. They're not spaced off. I mean they're numbered naturally in numbers but they're not even blocks, no, sir.

Q. The number of blocks then wouldn't be
page 141 } particularly helpful to us. Can you approximate it to us in mile and a half, two miles?

A. Well, I never have clocked the distance. I might be way off if I gave an estimate.

Q. You are unable to give an estimate?

A. Yes, sir, I would say so.

Q. Do you recall testifying in a prior occasion in this case and being asked about the estimation of the distance from 225 Revere Street to where you first saw the—the Defendant?

A. I recall you asking several questions about that, yes, sir.

Sergeant J. C. Calhoun.

Q. You don't recall my asking that one?
A. You possibly could have, yes, sir.
Q. Would it surprise you to know if I had asked that question and that you had given me an estimate then which you seem to be concerned about it being accurate?
A. No, sir, it wouldn't surprise me.
Q. And that estimate was a mile and a half.
A. It could very well have been if I said it, yes, sir.
Q. And—did you know more then about the distance than you do now?
A. No, sir.
Q. Then are we now at a junction today where
page 142 } you don't know now and you didn't know then what the distance was?
A. Well, I just—I don't feel that I would like to assume something that—that I don't actually know.
Q. You didn't bother—you were assuming it back in October when you testified it was a mile and a half, did you?
A. Did I say it was a mile and a half or approximately a mile and a half?

Mr. Kostel: Page 99 on cross.

By Mr. Bateman:
Q. "Question, can you approximate this distance from 225 Revere Street to Doctor Finley and Roberts' home in terms of a mile and a half or some or what you think your best judgment of the distance would be? You drive that road very frequently, don't you?" "Answer. I have, yes. It may be a mile and a half." "May be as much as a mile and a half?" "Answer, yes." Are you in a position to make an estimate?
A. I can say it may be a mile and a half, yes, sir.
Q. It may be a mile and a half?
A. Yes.
Q. Do you feel this is a reasonably accurate estimate of the distance, Sergeant Calhoun?
page 143 } A. It is an estimate. I can't say whether it's accurate or not, no, sir.
Q. Sergeant Calhoun, let's see if we can't get this thing straight. I didn't ask you if you measured it and what the exact distance was. I asked you if you can estimate that distance.

Mr. Murchison: If your Honor please, we're arguing with the witness. He has estimated. He says this is it. The best I

can do and even in his answer under cross examination several months ago.

Mr. Bateman: Your Honor, if he's saying that is an estimate, fine, but I want to find out whether he can or can't estimate it and if he can, what the estimate is.

Court: All right.

By Mr. Bateman:

Q. Bearing in mind you haven't measured it precisely, can you estimate it?

A. I don't believe I can do any better, Mr. Mapes—Bateman. It may be a mile and mile and a half.

Q. Do you feel this is the best estimate of the distance?

A. As far as I know, yes, sir.

page 144 } Q. If I asked you if it was 100 miles, you'd say no, wouldn't you?

A. I think anybody else would, yes, sir.

Q. If I asked you is it approximately a mile and a half, what's your answer?

A. It's approximately a mile and a half, yes, sir.

Q. Thank you. And could you estimate the distance from the point where you saw the first suspect to the point where you first saw the Defendant on May the 12th. This is the distance from Electronics Associates where you saw him to where you first saw the Defendant?

A. It's about a block and a half, a block.

Q. About a block and a half?

A. Yes.

Q. What would be a fair estimate of the distance in terms of a percentage of a mile or—hundreds of yeards or feet? Is it as much as a half mile between those two points?

A. No, it's about two or three-tenths of a mile.

Q. Now this point where you saw the first suspect that you stopped and talked to, is this closer to 225 Revere Street than where you first saw the Defendant?

A. Yes, sir, it is.

page 145 } Q. When you took the Defendant into custody, I believe you said he had a small flashlight on him?

A. Yes, sir, he did.

Q. Did you test this flashlight?

A. Yes, sir.

Q. Did it work?

A. No, sir.

Q. Up to the time that you last saw or had anything to do

Sergeant J. C. Calhoun.

with the rest of this case and were personally in contact with the Defendant, did he admit or deny involvement in this or any other offense or offense?

A. He never did admit, no, sir.

Q. In fact, he denied involvement in this or any other offense in terms of any experience that you had with him or any questions that you put to him?

A. The one we had talked about he did deny, yes, sir.

Q. When was the last time you talked with him?

A. Just prior to this lineup or what you said was a so-called lineup.

Q. Now who else was involved in the investigation of this case on the night of May the 12th and morning of May the 13th?

A. Lieutenant Hiser and myself and there were other Officers came in and Lieutenant Martin and Lieu-
page 146 } teanant Austin and other than that, I don't know who else was involved in it this particular night.

Q. Was Lieutenant Schanz involved in it, to your knowledge?

A. Yes, Lieutenant Schanz was there.

Q. Were all of these Officers, Martin, Schanz and Austin, they were at Detective Bureau when you came in with this Defendant?

A. No, sir.

Q. What time did you arrive at the Detective Bureau?

A. I believe I estimated between 10:15 and 11:00 o'clock. I couldn't say.

Q. All right. Thereafter then, Sergeant Austin, Lieutenant Schanz—Lieutenant Austin, Lieutenant Schanz and—and who was the other one you said was involved? Martin?

A. Lieutenant Martin.

Q. Came in. Do you know what time they came in?

A. No, sir.

Q. You have no idea?

A. No, sir.

Q. Were you there?

A. Yes, sir.

page 147 } Q. When they came in. At what point were you taken off of this case so far as interrogation or questioning of the suspect was concerned?

A. After we had conducted this lineup.

Q. Was it because of this lineup?

A. No, sir. They were the ranking Officers.

Q. Is this a normal procedure that a ranking Officer im-

Sergeant J. C. Calhoun.

mediately takes over any investigation that's in course when he comes on duty?

A. No, sir but I hadn't been in the Bureau and I felt I didn't have the experience to maintain it.

Q. Did you volunteer to relinquish jurisdiction?

A. No, sir.

Q. Did the Defendant advise you where he had been or where he was coming from when you stopped him and picked him up?

A. Yes, sir, I talked to him about it. He stated he had been to the High's Ice Cream Store to get some ice cream, ice cream cone.

Q. Did he tell you anything else he had done a short time prior to your stopping him?

A. I believe he said something about he checked—he went to get his flashlight checked. I don't believe—I don't recall where he said he went.

Q. Did he advise you that anything unusual
page 148 } had happened to him going or or from the ice cream store?

A. Yes sir, he—stated that some boys in a black Ford had stopped and—and used some abusive language toward him and that was his reason for running when I stopped him because I was in a black Ford.

Q. When you first saw the Defendant as you were proceeding north on Warwick Boulevard, you say you drove on past him?

A. Yes, sir.

Q. Did you notice whether or not he was— observed or was looking in the direction of your car?

A. Yes sir, he was looking in the direction of my car.

Q. And your car was open and obvious to his view?

A. Yes, sir.

Q. When you next saw him was directly across Warwick Boulevard?

A. Yes sir, on the west-hand side.

Q. And this was approximately what distance from where he was standing or where you first saw him?

A. 55 or 60 feet. I don't recall exactly what it was. I didn't measure it.

Q. And where was this point on the west side of Warwick Boulevard when you saw him the second time
page 149 } with reference to the Do-Nut Dinette?

A. Well, the houses just—north of the Do-Nut Dinette and he was directly in front of these two houses.

Sergeant J. C. Calhoun.

Q. And he was a matter of 100 feet or so from the Do-Nut Dinette when you saw him the second time?

A. Roughly.

Q. All right. Now this ice cream—he mentioned having gone to an ice cream store. Is there a High's Ice Cream Store in the vicinity?

A. There is one in the Hilton Shopping Center, yes sir.

Q. Is that north or south of where you first saw him?

A. South.

Q. Closer in towards Newport News?

A. Yes, sir.

Q. The Defendant's residence where you went to—on the search party later is at 10371 Warwick Boulevard, am I correct?

A. I believe that's correct, yes.

Q. It's on the west side of Warwick Boulevard, is it not?

A. Yes, sir.

Q. And am I correct that where you first and the second time also saw this Defendant was between the

page 150 } High's Ice Cream Store in Hilton Shopping Center and his residence?

A. That's correct.

Q. And that his residence is on the west side of Warwick Boulevard?

A. Yes, sir.

Q. Which is the side to which he had crossed from the first time to the second time that you saw him?

A. Yes, sir.

Mr. Bateman: No further questions.

RE-DIRECT EXAMINATION.

By Mr. Murchison:

Q. What color jacket was this boy wearing that you saw the first time?

A. It was a black Nylon.

Q. Black Nylon?

A. Yes, sir.

Q. Is there or is there not a drug store on Main Street and Warwick Boulevard about six stores from his residence?

A. Well, it's a little more than six stores but there is one located on the—northwest corner of Main and Warwick Boulevard, Hilton Pharmacy.

Sergeant J. C. Calhoun.

Q. Has a fountain service in there?
page 151 } A. Yes sir, it does.
Q. And there are a number of restaurants between there and the High's Ice Cream Store that serves ice cream to your own knowledge, is there not?

Mr. Bateman: Objection, your Honor. It is extemely leading.
Court: Sustained.

A. I don't know.

Court: I sustained the objection.

By Mr. Murchison:
Q. Are there any restaurants or places of eating establishments with fountain service between Main Street and High Ice Cream at the Shopping Center?
A. Yes, sir.

Mr. Bateman: Also leading.
Court: May I ask a question. What do you call Hilton Shopping Center?

A. This is the shopping center that's located between Center Avenue and Main Street. It's directly across from Shaver's Music Store or music company.

Court: Main Street is way up in Hilton?

A. Yes, sir.

Court: Are you talking about the shopping center that starts with the A&P Store and the little Do-Nut
page 152 } beside that and runs southward down to what it is, Broadway?

A. Do-Nut Shop is located above the A&P. The A&P to the Broadway.

Court: That's right.

A. That is the Hilton Shopping Center.

Sergeant J. C. Calhoun.

Court: Is that where the High store is?

A. Yes, sir.

Court: Isn't there a High store in Hilton Village?

A. I believe it was closed at that time.

Court: It was closed at that time?

A. Yes, sir.

Mr. Murchison: That's all I have, Judge.
Court: Let me ask you this. You say your car, when it went by the person headed north, was open and obvious and that he looked at it. It that correct?

A. Yes, sir, he was looking at it.

Court: All right, what kind of car were you in?

A. I was in an unmarked police unit. It was a 1963 Ford.

Court: Did you keep your eye on the party
page 153 } after you went by him?

A. I was looking at him in my rear view mirror, yes.

Court: Did he run?

A. Not at that time, no sir.

Court: So when you came back and you rode by the individual, he did run the second time?

A. When I saw him the second time, he did run, yes sir.

Court: All right. All right. Next witness.
Mr. Murchison: Lieutenant F. L. Martin.
Mr. Bateman: We would like to reserve the right to recall Sergeant Calhoun further.
Court: All right, sir.

LIEUTENANT FRANK L. MARTIN,
called as a witness by the Comonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 154 } By Mr. Murchison:

Q. Will you state your name.

A. Lieutenant Frank L. Martin.

Q. Where are you employed?

A. Newport News Police Department, Detective Bureau.

Q. How long have you been so employed, Lieutenant?

A. I have been with the Police Department almost 18 years.

Q. Lieutenant Martin, are you familiar with one, James Hammer, James C. Hammer?

A. Yes, sir.

Q. Is he in the Courtrom today?

A. Yes, sir.

Q. Will you point him out, please, sir?

A. The gentleman sitting at the far end of the table over there (indicating).

Q. Have you had occasion to talk with him?

A. Yes, sir.

Q. While on duty as an Officer in the Police Department and Detective Bureau, were you assigned any cases that involved Mr. Hammer?

A. Yes, sir.

Q. Did you investigate the same?

page 155 } A. Yes sir.

Q. Particularly directing your attention to one, Alma Haase or Haase, did you have an occasion to investigate this matter and talk with him concerning it?

A. Yes, I did.

Q. Tell us what your investigation disclosed?

A. Mr. Hammer was arrested on the night of May the 12th, 1964. The case was assigned to me on the morning of the 14th of May. I sent upstairs and had him brought down from the jail and we went downstairs to the interrogation room where we planned on interviewing him because there wouldn't be anybody running in and out. I told him when I came in there, told him who I was and introduced Sergeant Williams was and told him what the purpose was and I advised him at that time that he didn't have to make any statements unless he

wanted to but any statement that he did make could be used as evidence either for or against him in Court. We went on and talked about the case a few minutes and then he told me he wanted to tell me all about it, which he did.

Q. Did he do that voluntarily, sir, as far as you know?

A. Yes, he did. Very much so.

Q. Sir?

A. Very much so.

page 156 } Q. Did you take a statement from him then?

A. Yes, I did.

Q. Will you give us the statement?

Mr. Kostel: Objection, if your Honor please. We object on the grounds the statement was not obtained from the Defendant in a voluntary manner. It was only obtained through the use of duress, coercion, threats and promises and we have evidence which we would like to introduce now strictly on the basis of the admisibility of statements in this case.

Court: All right, sir. Who do you want first?

Mr. Kostel: He can be excused.

Mr. Murchison: You can be excused, Lieutenant.

Mr. Kostel: For the time being. Call Lieutenant Hiser, please.

LIEUTENANT EUGENE H. HISER,

called as a witness by the Defendant, being duly sworn, testified as follows:

page 157 } DIRECT EXAMINATION.

By Mr. Kostel:

Q. State your name and occupation.

A. Eugene H. Hiser. Detective Lieutenant, Newport News Police Department.

Q. And were you on duty on the night of May 12, 1964?

A. Yes sir, I was.

Q. And were you in the apartment of one, Alma Haase, located at 225 Revere Street, Newport News, Virginia, approximately nine to nine thirty on May 12, 1964?

A. Yes sir, I was.

Q. And was the Defendant, James Hammer brought to that apartment?

A. No sir, he was not.

Q. He was not?

A. Not brought to the apartment, no sir.

Lieutenant Eugene H. Hiser.

Q. Was he brought to the front of the apartment?
A. No, sir.
Q. What was your answer?
A. No, sir.
Q. James Hammer was not?
A. He was brought to the apartment, no sir.
Q. Was he brought to a vehicle in the vicinity—
page 158 } was he brought in a vehicle to a place in the vicinity of the apartment?
A. Yes, sir.
Q. Yes sir, is that your answer?
A. Yes.
Q. And then was he later taken down to Police Headquarters?
A. Yes sir, he was.
Q. What time did you arrive at Police Headquarters?
A. I don't recall the exact time.
Q. What was done with Mr. Hammer when he got to Police Headquarters?
A. He was taken into the back office which is Captain Weaver's office.
Q. And what happened there?

Mr. Murchison: Now I object to this. This is his witness and he has to set up the proper foundation of leg procedure under direct examination. A blanket question of what happened there in an investigation I suggest to the Court is immaterial and improper. The question should be directed to the point of what they're now arguing on.

Court: I sustain the objection.

page 159 } Mr. Kostel: Well, is your Honor going to permit me to examine this witness on the conditions applicable to an adverse witness? I don't want to lead the witness.

Court: I'll let you do that but let me state now I'm not going to allow, and I think this goes to Mr. Murchison's objection, you are taking this Officer all the way—all of these Officers all the way through—if your idea and I assume it is, is to show that different people had him at different times and the length of time, that's fine. I'll go along with that but I don't—I agree with Mr. Murchison, I don't think the question what happened there is pertinent. I think we've got to stick to the issue now that you are claiming and your defense is that this is an involuntary statement and I'm not going to let you try the case from any other point of view than

Lieutenant Eugene H. Hiser.

that. That's the reason this has been interrupted at this stage because you say that this statement was coerced by duress and that's what I want to hear.

Mr. Kostel: All right, sir.

page 160 } By Mr. Kostel:

Q. He was taken to Police Headquarters in the Detective Bureau, is that right?

A. Yes, sir.

Q. All right. Did you and any other Officer question him at that time?

A. I did talk to him a few minutes at that time.

Q. You talked to him for a few minutes at that time?

A. Yes, sir.

Q. Do you have any idea what time this was?

A. I could only guess.

Q. Sir?

A. I could only guess. I don't recall any exact time.

Q. Did anyone else talk to him at that time in your presence?

A. Not to my knowledge.

Q. Not to your knowledge. How long was the Defendant kept in Police Headquarters on the evening of May 12 and the early morning of May 13, 1964?

A. I don't know.

Q. When is the last time you saw the Defendant in the evening of May 12 or the early morning on May 13, 1964?

A. Possibly one or two o'clock.

page 161 } Q. One or two o'clock?

A. Yes, sir.

Q. Was he—still in the Detective Bureau at that time?

A. Yes, sir.

Q. Do you know of your own knowledge whether he had ever gone out of the Detective Bureau from the time he was brought to Headquarters until one or two o'clock?

A. Now, I can't say because I was in and out of the office myself.

Q. You don't know then that he was ever taken out?

A. No, sir.

Q. Was the Defendant, James Hammer, in the office of the Detective Bureau every time you came back after you had left?

A. I can't recall.

Q. And did you at approximately 3:00 a.m. on the morning

Lieutenant Eugene H. Hiser.

of May 13, go out and search the residence of James Hammer?

A. It was somewhere around that time, yes sir.

Q. Did you see the Defendant, James Hammer upon your return?

A. No sir, I did not.

page 162 } Q. You did not. And did you relinquish command of the case at some point on the night of May 12 or the early morning of May 13, 1964 to one of your superiors?

A. Yes, sir.

Q. To whom did you relinquish that?

A. Lieutenant Harry Martin.

Q. At approximately what time?

A. I would have to guess. Somewhere around midnight.

Q. You were in charge of the case from the time the suspect was arrested until about midnight, is that correct?

A. Yes, sir.

Q. Did you come back to the Police Headquarters after you returned from the searching party?

A. Yes, sir.

Q. And you don't recall seeing the Defendant at that time?

A. No sir, I don't.

Q. Would it refresh your memory if I suggested he was brought down to view what had been picked up at his residence?

A. I can't—affirm it or deny it.

Q. You can't affirm or deny it. Could you tell us what time the Officers who were in the searching party re-

page 163 } turned to Police Headquarters?

A. No sir, I don't recall what time it was.

Q. Was it daylight?

A. Possibly it was dawn.

Q. Just about dawn. Were the voice tests set up under your orders?

A. Yes, sir.

Q. Were the visual lineup tests set up under your orders?

A. No. sir.

Q. They were not. Were any visual lineup tests set up, to your knowledge?

A. I can't say for sure.

Q. You recall testifying in this matter on a previous occasion. October 14 or 15, of this year?

A. On October?

Lieutenant Eugene H. Hiser.

Q. Yes, sir. You recall taking the stand in this case on the previous occasion?

A. Yes, sir.

Q. Do you recall your testimony at that time concerning a visual lineup?

A. Yes, sir.

Q. What did you testify on that occasion, sir?

A. The occasion took place in the Captain Weaver's office with the Defendant and one Police Officer.

page 164 } Q. One Police Officer?

A. Yes, sir.

Q. That's what you testified to the last time?

A. On the visual lineup, yes sir.

Q. Who was the one Police Officer?

A. Officer Berryman.

Q. Officer Berryman?

A. Yes, sir.

Q. And that was conducted prior to the time you relinquished command of the investigation?

A. No, sir.

Q. Afterwards?

A. Yes, sir.

Q. Lieutenant Hiser, do you remember testifying in the previous case in response to a question from Mr. Murchison which asked, "did you have any kind of a physical sight lineup? By that, subject standing up and Mrs. Haase identifying them to what we call the normal lineup?" "Answer. Not in the sense where there was more than one person, no sir." Do you remember that testimony?

A. Yes sir, I do.

Q. Well, was that correct at the time it was given?

A. Yes sir, that was.

Q. It was?

page 165 } A. Yes.

Q. Well, I just understood you to say that, that you had a lineup composed of the Defendant and Officer Berryman?

A. Well, that's correct. That was in reference to—not the Haase case.

Q. But in connection with another case?

A. Yes, sir.

Court: Which, Berryman, when the other Officer was there?

Lieutenant Eugene H. Hiser.

A. Sir?

Court: The lineup with the Officer Berryman was in refference to another case?

A. Yes, sir.

By Mr. Kostel:

Q. And you are positive that there was—no—you haven't testified to that today but on—on the previous trial of this matter do you recall testifying that you were positive that no lineup was arranged between the Defendant and two off duty Officers for the purpose of having Mrs. Haase made a visual identification?

A. Yes, sir.

Q. You testified that it had not been done?

A. Yes, sir.

Q. Do you remember that?

page 166 } A. Yes sir.

Q. You testify now that you don't know whether it—whether it was done or not, is that right?

A. No sir, there was no visual lineup involving the Defendant and two other men.

Q. As far as Mrs. Haase is concerned?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. Was it conducted as to any other cases with two off duty Officers and the Defendant?

A. No, sir.

Mr. Kostel: That's all we need of Officer Hiser, if your Honor please.

Court: All right.

Mr. Murchison: I have no questions to ask this witness.

Court: Did you attempt to take any statement from the Defendant, Lieutenant?

A. No sir, I did not.

Court: Did you at any time advise him of his arrest, of what he was arrested for?

A. When the Defendant was brought in the office, I advised

Lieutenant Eugene H. Hiser.

him it was in reference to a complaint we had in the Ferguson Park area where the subject had broken into the
page 167 } home and threatened a woman with a knife, yes sir.

Court: You told him that?

A. Yes, sir.

Court: Did he respond either affirmatively or deny this?

A. At that time he said he didn't know what I was talking about.

Court: Did you at any time after that attempt to further talk to him about that matter?

A. No sir, I did not.

Court: You did not. And you say about midnight you turned the matter over to Lieutenant Harry Martin?

A. Yes, sir.

Court: Was he in charge of the Bureau at that time?

A. At that time.

Court: Under Captain Weaver?

A. Yes sir, at that time he was.

Court: How long had the Defendant, Hammer, been in your presence? That is, from the first time until you relinquished him at midnight? Let me put it to you this way. At the scene of the Ferguson Park, did you bring him downtown?

page 168 } A. Yes sir.

Court: You brought him down?

A. Yes, sir.

Lieutenant Eugene H. Hiser.

Court: Did you have any discussion with him then regarding the matter?

A. No sir, other than while we were still at Ferguson Park, I had him speak a few words.

Court: Yes, I'm not talking about that but—as you were bringing him down town, did you get into a discussion with him about the matter?

A. No, sir.

Court: All right, when—who carried him upstairs to the Police Department, Detective Bureau?

A. I believe Sergeant Calhoun and myself.

Court: All right, any time while there until midnight did he ask to go to the bathroom or ask for anything to eat or did he have anything to eat and did he go to the bathroom, do you know?

A. At that time he never asked me about going to the bathroom nor wanting anything to eat and I don't know if he did get anything to eat.

Court: This was—after 8:30 at night when
page 169 } you—when you apprehended him or when he was apprehended, somewhere along there?

A. Yes, sir.

Court: All right.
Mr. Kostel: Let me ask you this, Lieutenant. Is his Honor through?
Court: Yes.

RE-DIRECT EXAMINATION.

By Mr. Kostel:
Q. What time did you advise the suspect of his arrest?
A. When he was brought into Captain Weaver's office, we sat down. He wanted to know what it was about. I told him

Lieutenant Eugene H. Hiser.

it was in reference to a complaint we had just received in the Ferguson Park area.

Q. And he denied knowing anything about it?

A. Yes, sir.

Q. Why didn't you take him downstairs and book him and send him up to his cell?

A. Because we wanted to do a little more investigation on it.

Q. You wanted to do some more investigation, is that your answer?

page 170 } A. Yes sir.

Q. Which included some more interrogation?

A. I didn't talk to the man after that.

Q. Well, you didn't send him up to the cell because you—you and some other Officers wanted to do some more investigation?

A. Not at that time, no.

Q. Isn't it the normal practice when a man is arrested and brought to Police Headquarters and advised of the nature of the charges against him, he is taken down to the Desk Sergeant and booked on those charges?

A. Not necessarily.

Q. Not necessarily?

A. No, sir.

Q. As a matter of fact, this man was not booked on the charge for which he's being tried today or on the charges for which he is being charged today until 3:20 a.m., isn't that not correct?

A. I don't know what time he was booked.

Q. Did he say anything to you about wanting to get in touch with anybody?

A. He said—the only thing he said that he wanted to get home. His wife—he told me what time his wife got off and he would like to be home when his wife got there.

page 171 } Q. Did he say he wanted to get in touch with her and tell her where he was?

A. No sir, he didn't tell me that.

Q. Did he have any indication that he might be permitted to go home when his wife got home?

A. I don't know.

Q. Did Lieutenant Shanz and Lieutenant Austin interrogate this Defendant on the evening of May 12, 1964?

Lieutenant Eugene H. Hiser.

A. I can't say if they did or didn't.
Q. Did they interrogate him in the early morning of May 13, 1964?
A. I don't know.
Q. Was any interrogation done in your presence which you did not do and if so, by whom?
A. In my presence?

Mr. Murchison: Now just a minute. I don't know how the Officer can testify was anything done when it wasn't done in his presence.
Court: He said in his presence.
Mr. Kostel: I asked him—
Mr. Murchison: I beg your pardon.

By Mr. Kostel:
Q. Was there any interrogation done in your presence and if so, by whom?
page 172 } A. No sir, not in my presence.
Q. Sir?

A. Not in my presence.

RE-CROSS EXAMINATION.

By Mr. Murchison:
Q. Lieutenant Hiser, they brought this matter up. Let me ask you this. Were other people involving other matters that are pending in this Court coming into the station that night?
A. Yes, sir.
Q. Involving other cases not yet to be tried?
A. Yes, sir.

Court: All right. Is that all?
Mr. Kostel: Yes sir.
Court: All right, you may step down. Thank you, Lieutenant. May we excuse the Lieutenant?
Mr. Murchison: As far as I'm concerned.
Mr. Kostel: Yes.
Court: All right sir, you may leave. Next witness.
Mr. Kostel: Lieutenant Shanz, please.
page 173 } Court: Lieutenant Shanz.

LIEUTENANT D. C. SHANZ, Jr.,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. Would you state you state your full name and occupation for the record?

A. Lieutenant D. C. Shanz, Jr., Newport News Police Department, Detective Bureau.

Q. And were you employed by the Detective or with the Detective Bureau on May 12, 1964?

A. Yes sir. I was.

Q. In that capacity, did you play any part in the investigation of a—complaint of an Alma Haase that's being tried today?

A. Small part, yes sir.

Q. And in that small role that you played in this investigation, did you have any occasion to see or to interview the Defendant?

page 174 } A. Yes sir.

Q. James Hammer. When did you first see the Defendant on May the 12th?

A. Sometime between 11:15 and 11:30, something like that.

Q. 11:15 and 11:30?

A. Somewhere around that time.

Q. P. M.?

A. Yes, sir.

Q. And where did you see him?

A. In the Captain Weaver's office of the Detective Bureau.

Q. Was this—who was present at the time you first saw him there?

A. There was numerous Officers in the Detective Bureau. I don't recall who was in the Captain Weaver's office with the Defendant. Lieutenant Hiser and Sergeant Calhoun were on duty that night.

Q. They were on duty?

A. Yes, sir.

Q. You don't recall whether or not they were in Captain Weaver's office with the Defendant?

A. They may or may not have been. I don't recall.

Q. Were you advised as to who had made the

page 175 } arrest of this suspect?

A. Yes sir, I was.

Q And who had made the arrest, according to your information?

Lieutenant D. C. Shanz, Jr.,

A. I was advised Sergeant Calhoun made the arrest.

Q. They were on duty?

A. Yes, sir.

Q. Were they actually there in Headquarters when you arrived?

A. Sergeant Calhoun and Lieutenant Hiser was there.

Q. Did—Lieutenant Hiser at any time, to your knowledge, ask any questions or interview or interrogate the Defendant at any time, to your knowledge?

A. He may have talked to him but if he did, it wasn't in my presence.

Q. He did not sit in while you were interrogating the Defendant, did he?

A. Not that I can recall, Mr. Bateman.

Q. You got there at 11:15 or 11:30 and found him in the offices of Captain Weaver?

A. If I remember corectly, Mr. Bateman, I believe it would be more correct to say that I was told he was in there and sometime later I went in and saw him.

page 176 } Q. Who advised you that he was in there?

A. Either Lieutenant Hiser or Sergeant Calhoun. I couldn't tell you exactly which one.

Q. And how did it come about that you thereafter played your role in the investigation of this case?

Mr. Murchison: I object.

Court: Sustained. Don't know whether he played any role or not.

Mr. Bateman: He said that he played a role in the investigation, your Honor.

Mr. Murchison: That's opening it up. Let's ask the direct question. He's your witness.

Court: All right sir, I'll ask you to rephrase it.

By Mr. Bateman:

Q. Did you, after arriving at Police Headquarters, play a role in the investigation of this case?

A. In the investigation of the Haase case, no sir, I didn't.

Q. Did you at some point or another interrogate this Defendant concerning this or other possible offenses?

A. Yes, sir.

Q. And did you interrogate or interview him in connection with this or any other offenses on the even-

page 177 } ing of May 12, 1964?

A. It would either have been May 12, or the

Lieutenant D. C. Shanz, Jr.,

early morning of May 13, one or the other.

Q. So you did interrogate him with respect to some charge or another on May 12, late that night or early morning of the 13th?

A. Yes, sir.

Q. And who was it that—did someone direct you to do this or put you or assign you to this case or to—try and get information from this suspect?

A. I talked with Lieutenant Hiser and we agreed we should call Lieutenant Martin who was acting Captain and he was contacted and brought down and then he and I together talked to Mr. Hammer.

Q. And this was on the late evening or early morning of —late evening of the 12th or early morning of the 13th?

A. Yes, sir.

Q. And how—how long did you or Lieutenant Martin or both talk to the Defendant?

A. I can't give you an exact answer to that. Maybe 30 minutes or so. Then Lieutenant Martin wanted to get the witnesses in the other cases for identification.

Q. So there was some investigative procedure going on from the time that you and Lieutenant Martin

page 178 } came into the case?

A. Yes, sir.

Q. Either in questioning or getting witnesses in for one thing or another?

A. Yes, sir.

Q. Was the Defendant put in lineups or displayed to any persons to see if they might identify him and connect him with anything?

Mr. Murchison: If your Honor please, what has that got to do with duress? I went along for a while but I don't know there's any. I object to this line.

Mr. Bateman: Your Honor, it has a great deal to duress. The only things amounting to *druess* is not continuous interrogation as such. A particular session of questioning for a particular given five or ten minutes or a half hour may be a lot less coercive in its effect upon the Defendant than a series of interrogations, a series of being put on display and under the pressures of lineups and—and very poor lineups and voice tests and what have you throughout the course the

Lieutenant D. C. Shanz, Jr.,

entire evening and for many, many hours. It's all a part of the same pattern.

page 179 } Court: All right sir, you may go ahead.

Mr. Bateman: Would the Reporter read the last question?

(The last question was read).

A. Yes. he was.

By Mr. Bateman:

Q. A number of people?

A. I believe it was three.

Q. And these people had to be contacted and given an opportunity to get down to the station for purpose of doing this?

A. Yes, sir.

Q. And all of this went on either late on the evening of the 12th or early morning of the 13th?

A. Yes, sir.

Q. When was the—did there come a time when the Defendant was booked or charged with any offense?

A. Yes, sir.

Q. And what time was that?

A. He was booked at approximately 3:20 a.m.

Q. At approximately 3:20 a.m.?

A. Yes, sir.

Q. And had he been involved in one way or another or to what extent or one extent or another as a sus-

page 180 } pect in a criminal offense from the time you came on duty until 3:20 when he was booked?

A. He had been identified by witnesses.

Q. And interrogated?

A. Yes.

Q. But—and Lieutenant Martin?

A. Yes, sir.

Q. And perhaps by others?

A. And possibly before I came on. I can't say.

Q. Would it be highly unusual for him not to have been questioned by someone prior to your coming there?

Mr. Murchison: I object.

Court: Sustained.

Lieutenant D. C. Shanz, Jr.,

By Mr. Bateman:

Q. Did you participate in a search that some reference has been made of here that took place on the morning of May the 13th?

A. I don't know which place has been reference to.

Q. Specifically the Defendant's residence at 10371 Warwick Boulevard?

A. No. sir.

Q. You did not?

A. No sir.

page 181 } Q. You did not?

A. No sir.

Q. Did Lieutenant Harry Martin?

A. They left the office and of course—

Q. He left, in any event?

A. Yes, sir.

Q. You remained at Police Headquarters?

A. Yes, sir.

Q. Did Lieutenant Martin leave for purposes, we will assume for the moment of a search or whatever reasons that he left before the Defendant was booked or after?

A. Before he was booked.

Q. Before he was booked?

A. Yes.

Q. So he left before 3:20 as you estimate the time that he was booked?

A. I would say so, yes sir.

Q. How much before he was booked?

Mr. Murchison: Now—

Court: What's this got to do with it?

Mr. Murchison: What has that got to do with the question now?

Mr. Bateman: I would like to try and develop the whole pattern of the investigation and also what happened while the search was going on elsewhere.

page 182 } Mr. Murchison: I object to that.

Mr. Bateman: And where the Defendant was and parties returned.

Court: I'll let you do that but I don't see what difference it makes when Lieutenant Martin left and where he went and when he came back. Except to establish time as to where the Defendant was.

Mr. Bateman: All right.

Lieutenant D. C. Shanz, Jr.,

By Mr. Bateman:

Q. Where was—what did you do with the Defendant following—was it you who booked him?

A. Yes, sir.

Q. And the booking procedure, what was this?

A. Before I booked him, I did what we call processing him which was to fill out a history sheet on his background and photographed him and fingerprinted him and took him around to the Desk Sergeant's office and the Desk Sergeant asked him certain information such as his age and et cetera and he asked me what he was charged with and I told him what he was charged with and then I took him upstairs.

Q. Specifically what was he charged with?

A. He was charged with four counts of rape, three counts of attempt rape and seven burglaries.

page 183 } Q. Do you know whether or not any of the charge of rape or attempted rape—that he was booked on, included this particular offense, the Haase offense?

A. From the conversation I had with other Officers, yes sir.

Q. It did include?

A. Yes, sir.

Q. When was—was this the first instance that the Defendant was advised as to the nature of the charges that he was under suspicion of being questioned concerning, to your knowledge?

A. The Defendant was faced by the witnesses that picked him out of the lineup and was told to his face that he had raped them or attempted to rape as the case may have been.

Q. You—did you advise him in the course of your interrogation or at the beginning of your interrogation that he was suspected of having raped or atempted to rape this person, that person or another person or to have committed such offenses in any particular time and place?

A. Not that I recall because when I came in, the other Officers had already talked to him, Lieutenant Hiser and I naturally assumed they had told him.

Q. You did not tell him?

A. Not at that particular time, no sir.

page 184 } Q. As a matter of fact, isn't this initial interrogation on your part became sort of a broadening inquiry?

A. What do you mean by broadening inquiry?

Lieutenant D. C. Shanz, Jr.,

Q. Didn't you get beyond what you may have—initially started talking to him about?

Mr. Murchison: I object to that until we know what he initially started talking about.

Q. What offense did you originally interrogate him concerning?

A. I can't tell you that I initially started talking to him about one particular offense. As saying didn't you do such and such a thing. After the witnesses came and identified him and told him to his face that he had committed these offenses, then I asked him to come and tell the truth about them. I didn't say come and tell me you raped Susie Godwin or whatever the case might have been but go ahead and tell me the truth about it.

Q. As a matter of fact, when you began to interrogate him. you knew that he was suspected of something, didn't you?

A. Yes, sir.

Q. But you didn't tell him—you didn't tell him what it was you suspected him of?

A. No sir, I didn't tell him, not after the wit-
page 185 } nesses had told him to his face.

Q. And when you and Lieutenant Martin concluded that certain witnesses should be brought down and that they should have a chance to view him and possibly identify him, you didn't tell him that he might be suspected of those to the extent that it was necessary to put him through a lineup or an identification procedure, did you?

A. No sir, I myself did not.

Q. All right, sir. So at 3:20 he was booked on a number of charges?

A. Yes, sir.

Q. Was there anything put on the charge book or whatever you would call it in the Desk Sergeant's office as to who the victims of these various rapes and burglaries and what have you were?

A. No sir, that's not the procedure.

Q. And so you followed the normal procedure of just saying such and such an offense but in no way connecting it as to time, place or person?

A. Not on the docket, no sir.

Q. All right, and where did the Defendant go, if you know, after he was booked at 3:20?

A. Taken upstairs to jail.

Q. Now when he is booked and you say he was booked at

Lieutenant D. C. Shanz, Jr.,

3:20, is this when the procedure begins or when
page 186 } the process is concluded?

A. That's the time that the Desk Sergeant puts down on the arrest card.

Q. Which is normally at the completion of the process?

A. Yes sir. I mean—I processed him and fingerprinted and photographed him first and took him around for that purpose.

Q. That processing isn't done at the Desk Sergeant's area?

A. No. sir.

Q. He was taken upstairs and put in a cell as soon as you had concluded the booking procedure?

A. Yes, sir.

Q. And when next did you see this Defendant?

A. Sometime after five and before 6:30 a.m., I would say.

Q. When you saw him next between five and six thirty?

A. Sometime after five and before 6:30.

Q. Between five and six thirty a.m.. you did mean a.m.?

A. Yes, sir.

Q. All right, where did you next see him?

A. I went back up to the jail and brought him
page 187 } back down.

Q. Do you know whether or not he had been in his cell throughout that period from 3:20 or whatever it was you took him up there to when you went and got him?

A. I took him up, Mr. Bateman, and turned him over to the jailer and came back. I only would be able to assume. I had no further contact with him.

Q. You yourself did not see him in anyone else's custody?

A. No. sir.

Q. Until you went and got him?

A. Yes, sir.

Q. As far as you know, he was in the cell until you went back?

A. As far as I know, yes sir.

Q. When you went back and got him, was between five and six thirty a.m.?

A. Yes, sir.

Q. What was the occasion for your going and getting him again?

A. Lieutenant Martin and other Officers had returned with various parapherernalia. Lieutenant Martin asked me to go get him bring him down to look at them.

Q. How long after the searching party returned was it be-

Lieutenant D. C. Shanz, Jr.,

fore you went and got the Defendant?

page 188 } A. Possibly ten minutes, fifteen minutes, something like that.

Q. Lieutenant Martin had left to go out on the search before 3:00 a.m.?

A. Yes, sir. I would say somewhere in that neighborhood.

Q. Now, up to the time that you went and got the Defendant, between five and six thirty a.m. on the 14th, had he admitted in any way any guilt or connection with this offense?

A. No, sir.

Q. He had denied involvement with it?

A. Yes, sir.

Q. When you got him *beteeen* five and six thirty in the morning from his cell, was he—was he awake or asleep when you got him?

A. I have no recollection on that, Mr. Bateman. I couldn't tell you.

Q. In any event, you got him and brought him down and where did you bring him to?

A. Brought him outside and took him around in the back of the station where a vehicle was parked, police vehicle was parked.

Q. And what transpired then?

A. Showed him the—the different parpher-

page 189 } nalie that was in the car and he stated to us that—

he wanted to know where we had gotten his property from and we had better get it back.

Q. And thereafter did you resume any questioning or interrogation of the Defendant?

A. To be perfectly truthful, Mr. Bateman, I'm not completely sure on that. He was taken back upstairs and then sometime around 7:30 he was brought back down. Now if there was any interrogation or questioning when I brought him down between five and six thirty, I really am not sure.

Q. You brought him down to the parking area apparently and—

A. To show him.

Q. Then you don't know how long before you took him back up?

A. In my mind it seems to have been a very short time.

Q. And after he went back up the second time, you shortly thereafter went and got him again?

A. I took him back up and then I left and then when I came back, Chief Peach was here and we talked with him.

Q. What time did you leave?

Lieutenant D. C. Shanz, Jr.,

A. Somewhere between five and six thirty, a quarter to seven, something like that.

Q. Did you leave to do anything connected with
page 190 } this case or this Defendant?

Mr. Murchison: I object to that. It hasn't got anything to do with duress with the man in the jail, not in the lock-up.

Court: I'll let him answer that one question.

A. What I did, I can't say it had anything to do with the Haase case. It had to do with other cases.

By Mr. Bateman:

Q. Other cases involving this Defendant?

A. Yes.

Q. And what time did you get back to Headquarters?

A. I would estimate sometime around 7:30, a little after, a little before, something like that.

Q. And—did you see the Defendant when you returned?

A. I went back upstairs and brought the Defendant down.

Q. As soon as you returned to Headquarters?

A. Not as soon as I returned, no. It was some conversation carried on. Maybe ten or fifteen minutes, something like that.

Q. With whom did you have this conversation when you returned?

A. Different members of the Detective Bureau
page 191 } and Chief Peach.

Q. And Chief Peach. Was this period somewhere after five and before six thirty when you left Headquarters in connection with a search?

A. Yes, it was.

Q. It had been a search of premises in Hampton?

A. Yes, it was.

Q. Approximately how long did it take you to leave Headquarters and go and effect this search and return?

A. I'm just guessing, Mr. Bateman. I'd say somewhere in the neighborhood of 30, 40 minutes, something like that.

Q. And you left on this search shortly after you had taken the Defendant back upstairs from the parking lot?

A. Yes, sir.

Q. And ten or fifteen minutes after your return, you—you resumed interrogation?

A. Ten or fifteen minutes after my return, I went back and got the Defendant.

Lieutenant D. C. Shanz, Jr.,

Q. And began talking to him concerning various offenses that he might be involved in?

Mr. Murchison: I object, the leading part there.

Court: All right. That's all right. You may page 192 } answer it.

A. I brought him back down and photograph was taken and then went back in Captain Weaver's office and talked to him some more.

Q. Photograph was taken by who, if you know?

A. It seems in my mind it was Lieutenant Tench but I'm not positive of it.

Q. Were there any photographers of the newspaper present?

A. Not that I recall.

Q. Do you recall that photographs were taken for the local press?

A. I recall there was a photograph that appeared in the local press.

Q. And in fact, this—were you not one of the people shown in the photograph?

A. Yes, sir.

Q. And was this photograph taken on the morning of May 13?

A. Yes, sir.

Q. Lieutenant Shanz, I show you this picture and ask you if you can identify it for me as to the people in it?

A. Yes sir, I am on the left. Mr. Hammer is in the center and Lieutenant Martin, Harry Martin is on page 193 } the right.

Q. And do you recall having seen this photograph in the local newspaper?

A. Yes, sir, this is the local newspaper here.

Q. And what date was this?

A. Has May the 13th on the top.

Q. Do you recall that the photograph you saw in the paper was in the afternoon paper on the same day the photograph was taken?

A. Yes sir, because I saw it in my paper at home.

Mr. Bateman: We'd ask that this be introduced as Defendant's Exhibit Number One just for the purpose of photograph, your Honor, and not the newspaper article which is physically attached to it.

Lieutenant D. C. Shanz, Jr.,

Court: All right sir, I assume you'll link this up to duress?

Mr. Bateman: I hope so, your Honor, and expect to.

Court: Mark it Defendant's Exhibit One.

(The photograph was received and marked Defendant's Exhibit No. 1).

By Mr. Bateman:

page 194 } Q. Did you, after your return from the search you participated in, I believe you said you talked to the Defendant again?

A. Yes, sir.

Q. Up to what point did you talk with him or question him?

A. What do you mean up to what point?

Q. When did you stop?

A. Sometime after nine o'clock.

Q. Was there a particular reason for your stopping at some point just before nine o'clock?

A. Yes, sir.

Q. And what was that reason?

A. Taking him to Municipal Court.

Q. Did you personally take him there?

A. I did, along with Lieutenant Martin, Harry Martin.

Q. And how long was he in Municipal Court?

A. I would say approximately about 15 minutes, something like that.

Q. And what was the purpose of his—what happened while he was there?

A. Judge Wall advised him, to the best of my recollection. what he was charged with and of his rights and a continuance was granted.

page 195 } Q. On whose motion was the continuance granted?

A. The best of my recollection, it was on the Commonwealth's.

Q. Now you say that he was advised of the charges against him. By this do you mean that there were enumerated the same things that appeared on the Police Docket Book or—or Desk Sergeant's Book?

A. Yes sir, he was told he was charged with so many charges of rape and et cetera.

Q. Without any particulars as to what person, place or times were involved?

Lieutenant D. C. Shanz, Jr.,

A. Yes, sir.
Q. And then there was a motion for a continuance?
A. Yes, sir.
Q. And then what happened to the Defendant?
A. Took him back to the Police Department to the Detective Bureau.
Q. Who was with you when you took him back?
A. Lieutenant Harry Martin.
Q. And what did you all do when you got him back to the Detective Bureau?
A. We talked to him for a little bit longer.
Q. By a little bit longer, how long?
A. It seems to me it may have been about 30, 35 minutes, something like that and then I went and left and
page 196 } went to the Chief's office.
Q. Lieutenant Martin remained?
A. Yes sir. I can't say he remained or—someone else came in to stay with him. I believe Lieutenant Martin remained though.
Q. Was Lieutenant Martin there when you got back from the Chief's office?
A. I believe he was.
Q. And am I correct, the purpose of your going to the Chief's office was to report on the progress being made in this investigation?
A. No sir, I was sent for.
Q. And were you sent for in order to give such a report?

Mr. Murchison: If your Honor please—
Court: Sustained.
Mr. Murchison: Where is a *druess* in this? This is procedure in office.

By Mr. Bateman:
Q. How long were you in Chief Peach's office?
A. Maybe 15, 20 minutes, something like that.
Q. Did Chief Peach—you say you talked to Chief Peach earlier when you came back from the search that you had participated in?
A. Yes.
page 197 } Q. Did—did not Chief Peach request that you remain on duty and stay with this case?
A. Yes sir, he did at that time.
Q. Were you regularly scheduled to be on duty this morning?

Lieutenant D. C. Shanz, Jr.,

A. No, sir.

Q. That morning rather?

A. No sir, no more than I am scheduled to be on duty right now.

Q. At what time was it when you got back to the Detective Bureau from Chief Peach's office on this second occasion?

A. I would estimate it was somewhere between nine and ten.

Q. Nine and ten?

A. Yes, sir.

Q. And what did you do when you got back to the Detective Bureau?

A. I got Sergeant Jefferson and Mr. Hammer and myself and we went out in the police car.

Q. And you went what?

A. Went out in a police vehicle.

Q. And was there anyone else present? Just the two of you and the Defendant?

A. Just the two of us and the Defendant.

page 198 } Q. This was on the morning of the 13th?

A. Yes sir.

Q. And how long did you remain out in the police vehicle?

A. Somewhere around two, two thirty, something like that.

Q. Now where did you have breakfast that morning?

A. In the Detective Bureau.

Q. Where did the Defendant have breakfast?

A. In the Detective Bureau.

Q. And what did that breakfast consist of?

A. Cup of coffee and a fried egg sandwich.

Q. Do you know whether or not he ate his sandwich?

A. Yes sir, he ate it in my presence.

Q. He did eat the sandwich?

A. He said he didn't want it and we got it for him anyway and he did eat it.

Q. What time was this?

A. I can't give you the exact time but—it was before we went to Court. Somewhere between eight and nine.

Q. It was between the time that you got him out of his cell the second time and the time you went to

page 199 } Court with him?

A. Yes sir.

Q. To your knowledge, did the Defendant make any telephone calls to anyone after—from the time you were assigned to the case?

Lieutenant D. C. Shanz, Jr.,

A. Not that I can recollect.

Q. Did he request permission to make any phone calls?

A. Not that I can recollect.

Q. You don't say that he didn't ask?

A. I don't say he didn't but I don't recall him requesting to make any.

Q. Up to the time that you went for an automobile ride, had the Defendant admitted any involvement in this offense concerning Alma Haase?

A. No, sir, he had not admitted any specific case.

Q. And had denied involvement in this specific case?

A. Well, when I say he hadn't admitted in any specific case, the only thing he said he didn't know why he had done these things.

Q. Did he deny having done or admit that he had done anything to Alma Haase?

A. Not until later that afternoon.

page 200 } Q. Now this automobile ride, where did you go?

A. We went to various places in the city where offenses had occurred.

Q. This automobile ride, in taking the Defendant to these various places, was a part of the investigative procedures concerning this Defendant, were they not?

A. Yes, sir.

Q. It was no joy ride? You weren't taking him out for fresh air and a nice drive?

A. No, sir.

Q. You got back from this drive to Police Headquarters somewhere around 2:30 in the afternoon on the 13th you say?

A. Something like that, yes sir.

Q. And what was done or said concerning the Defendant at that time?

A. I took statements from him in various cases.

Q. For what period of time did this session continue?

A. I think we finished somewhere around four, a little after.

Q. And then what was done with the Defendant?

A. The Defendant was taken back upstairs, turned over to the jailer.

page 201 } Q. This was around four to four thirty?

A. Somewhere in that time. I left at 4:30.

Q. What's the normal dinner hour at the jail, if you know?

Lieutenant D. C. Shanz, Jr.,

A. I understand it's 3:00 o'clock but I told the jailer to see that he had supper, that we had had him out.

Q. And when did you next see the Defendant after you returned him to the jail at four to four thirty on the 13th?

A. That night when I came on duty, a little after eleven.

Q. Where was he when you saw him?

A. In Captain Weaver's office in the Detective Bureau.

Q. In whose company?

A. Lieutenant Mapes.

Q. Anyone else?

A. No sir. There was other Officers in the other part of the Bureau but—he was in the office with Mapes by himself.

Q. Did you have any conversations or dealings with the Defendant when you returned after eleven o'clock on the evening of the 13th?

A. Yes, sir.

Q. What dealings or connection did you have
page 202 } with the Defendant or the case thereafter?

A. Well, I looked over the statements that he had given Lieutenant Mapes and they were admissions and in very much detail whereas when I had had him out during the afternoon he didn't deny anything but he didn't admit anything either and I asked him why didn't he tell me this when I had him with me that afternoon and he told me he decided he just *feel* that it would be better to play dumb and go along with whatever we wanted.

Q. I don't believe that question was asked but—did you advise the Defendant as to—his rights with respect to making or not making a statement?

A. I advised him whatever he told us I would tell the Judge and the Judge could use it for or against him in Court.

Q. Did you specifically advise him that he didn't have to make any statement?

A. No sir, I did not.

Q. In other words, he was not advised that he had a right to say nothing so far as your advising him?

A. No, sir.

Q. Did you advise him or indicate to him that it might be better from his own self interest to make a statement than to say nothing?

A. I told him I thought it would be better for
page 203 } him to tell the truth in the matter.

Q. By better for him to tell the truth in the matter, what did you mean?

Lieutenant D. C. Shanz, Jr.,

A. Just what I said. I think it would be better for him to tell the truth.

Q. That his interest would be served by telling you something rather than saying nothing to you or denying it?

A. That's your interpretation, Mr. Bateman. I thought it would be better if he told the truth about it.

Q. That is the interpretation that seems clear to me. Do you disagree with the interpretation?

A. Yes sir, I thought he would have felt better and get it off his mind and tell the truth.

Q. In other words, you feel it was for his spiritual betterment to tell the truth?

A. I think it had a lot to do with it.

Q. You don't think this would reasonably call to his mind that it was for his legal betterment or the betterment of his position so far as his dealings with the law?

Mr. Murchison: If your Honor please, I object this *pholosophy* we're going into now.

Court: Sustained.

By Mr. Bateman:

page 204 } Q. What period of time, to your knowledge, was the Defendant interrogated by Lieutenant Mapes or by yourself or both on the evening of May the 13th?

A. I didn't interrogate him on May—the evening of May 13. I came on somewhere between eleven and eleven thirty as I usually do and he was in there with Lieutenant Mapes.

Q. Do you know what period of time he remained in there after your return to Police Headquarters?

A. It was after 12:00 o'clock but I can't give you the exact time on it.

Q. Until sometime in the early morning hours of the 14th or after midnight?

A. It was after midnight. That's the only thing I can be sure of.

Q. You don't know whether it was an hour, two hours or three hours after midnight?

A. It seems to my mind it was something between one and two but like I say, I couldn't swear to it.

Court: That's when he was returned?

Lieutenant D. C. Shanz, Jr.,

A. That's when Lieutenant Mapes finished with him.

Mr. Kostel: That's when Lieutenant Mapes did what?

A. Finished with him.

page 205 } Mr. Kostel: Between one and two?

A. The best of my recollection.

By Mr. Bateman:

Q. Do you know of your own knowledge what time Lieutenant Mapes commenced his interrogation?

A. When I came on duty, he was already talking to him. Otherwise it would be hearsay.

Q. Did you play any part in the interrogation of the Defendant on this or any other charge on May the 14th or any date thereafter?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

Q. You say that the Defendant had made some references to not knowing why he had done certain things. When were these statements made?

A. That statement there was made sometime between eight or nine or a little after nine.

Q. Up to the time that you came back to Police Headquarters from the search that you participated in, had he done anything other than deny involvement in any offenses of any kind?

A. No, sir, he had not.

Q. He had—denied?

A. Yes, sir.

page 206 } Q. Any involvement in any criminal offense?

A. Yes, sir.

Q. At least up to that point?

A. Yes, sir.

Q. As a matter of fact, he denied it for some time thereafter?

A. He actually never admitted anything to me. He just denied it.

Mr. Bateman: No further questions.

Court: All right.

Lieutenant D. C. Shanz, Jr.,

CROSS EXAMINATION.

By Mr. Murchison:

Q. Lieutenant Shanz, did the Defendant, Hammer, ever make any complaint to you during your investigation of the matter and in your presence of his treatment by you or any body?

A. No sir, he did not.

Q. Did he ever make any complaint to you that he had not been able to use the telephone?

A. No sir, he did not.

Q. Or call anybody the way he wanted to or any matter in any way?

A. No sir.

page 207 } Q. Did he ever ask you to let him use the telephone and you deny him the privilege?

A. No sir, I did not.

Q. When you brought him over to the Municipal Court on the morning of the 13th and he was arraigned before Judge Wall, did Judge Wall speak to him directly from the Bench?

A. Yes, sir.

Q. Did he tell him the serious nature of the charges?

A. Yes, sir.

Q. Advise him of his rights for counsel and to prepare for the case?

Mr. Bateman: This is extremely leading.

Court: Yes sir, I think he's got a right to lead him.

Mr. Murchison: He's your witness.

Mr. Bateman: He's our witness to examine as an adverse witness which doesn't leave him the prerogative to cross examine. It really isn't any cross examination on his part.

Court: I'm going to let him lead him.

page 208 } Mr. Bateman: Exception.

By Mr. Murchison:

Q. Did Judge Wall advise him of his rights for counsel and prepare for these cases?

A. The Judge told him he was entitled to a continuance to make whatever arrangements he felt he might need for trial.

Q. Did the Defendant *damand* trial that morning?

A. Not to my knowledge.

Q. You were there?

A. Yes, sir.

Q. Did he?

Lieutenant D. C. Shanz, Jr.,

A. No sir, I did not hear him say so.

Q. All right. Now during these—the course of the morning of the early morning of the 13th, did he complain about coming back down from the jail and looking at this property that he said was his?

A. No, sir.

Q. When he asked you where did you all get my property, you better put it back?

A. No, sir.

Q. Did he complain about being up at 3:20, tired or anything?

A. He didn't to me, sir.

Q. You were with him and you booked him?

page 209 } A. Yes sir.

Q. Did he make any complaints at all about his physical condition?

A. No sir, not to me.

Q. Did he demand or request to go to—to have any physical needs taken care of?

A. I don't recall a specific occasion that he might have.

Q. Was he denied any time by you?

A. No, sir.

Q. During the morning, did he complain about his breakfast of fried egg sandwich and coffee?

A. No sir. In fact, he told us he didn't want anything to eat and we told him we were going to eat and we would order for him too.

Q. Now during the—the time in which you were out in the car, did he make any attempt not to want to go or demand his not to go out with you or stay back or leave or what?

A. No, sir, he was very co-operative.

Q. Very co-operative?

A. Yes, sir.

Q. Did he request any particular food or any stopping of anywhere or did he want anything that he was de-

page 210 } nied?

Q. While he was out in the car?

A. No, sir, he didn't request anything. I went and got Cokes and nabs for us. He didn't request it. We just went and got it.

Q. How many meals are served in the jail a day?

A. To my understanding it's two meals served.

Q. All right. Then when you came back to the station around two or two thirty, did he make any complaint about being tired or—do anything?

Lieutenant D. C. Shanz, Jr.,

A. No, sir.
Q. Did he complain about you talking to him?
A. No, sir.
Q. Did he complain about being hungry?
A. No, sir.
Q. After you took him back upstairs at 4:00 o'clock, I believe you testified that you asked the jailer since the hour of dinnertime has passed, to be sure he had his dinner?
A. Yes, sir.
Q. And then you left for your home?
A. Yes, sir.
Q. After 4:00 o'clock?
A. Yes, sir.
Q. And no time during that time do you tell this Court that the Defendant, Hammer, made any com-
page 211 } plaints of any mistreatment whatsoever by you or any Officer?
A. Not to me he did not.
Q. When you came back that night at eleven or eleven thirty or so and saw him with Lieutenant Mapes and talked to him about the statements there, did he make any complaints about the way Lieutenant Mapes had been treating him?
A. No. In fact, Lieutenant Mapes asked him while I was there if he was tired or if he wanted to go on and he said he didn't mind going on.
Q. He made no complaints?
A. No, sir.
Q. Did he ever demand having to get a lawyer to come to see him?
A. No sir, not to me.
Q. Did he ever ask for one?
A. Not to me.
Q. And at any time has Mr. Hammer, the Defendant, ever made any complaints to you on the treatment that he was given by you or any Officers?
A. No, sir, not to me.
Q. About any statements he made or hadn't made, anything?
A. No, sir.
Q. Would you say he was a co-operative person?
A. Yes sir, he was.
page 212 } Q. Did he tell you that anyone had threatened him or abused him or physically touched him?
A. No sir, he did not say so to me.

Lieutenant D. C. Shanz, Jr.,

Q. After the 14th, the midnight of the 14th, did you have anything, Lieutenant Shanz, to do with him? After the time with Lieutenant Mapes, that's all you had?

A. Yes, sir.

Q. You saw him last after he had given the statement to Lieutenant Mapes?

A. Yes, sir.

Mr. Murchison: I see. That's all.

RE-DIRECT EXAMINATION.

By Mr. Bateman:

Q. Did you at any time—ever, at any time advise the Defendant that he had a right to counsel?

A. No sir, I did not.

Q. Did you advise him that he had a right to call his wife or his parents or to establish contact with anyone other than the Police?

A. When I booked him, I asked him if he wanted to make a phone call. I asked that of everyone I book. He did not make a phone call.

page 213 } Q. Are you sure on this occasion you asked him this or is this just a—a general policy that you follow?

A. I'm sure I asked him because I ask everyone I book.

Q. Is this the only reason you are sure you asked this Defendant because you do it routinely?

A. Because I do it routinely to everyone I book.

Q. But you have no specific recollection of saying, "James B. Hammer, do you want to make a phone call?"

A. Only I do it to everyone.

Q. And you furnished the Defendant with a Coke a pack of nabs?

A. The same thing I had, yes sir.

Q. And this was all of the food that he had that day, to your knowledge?

A. No, sir.

Q. Since the—the fried egg sandwich?

A. Yes, sir.

Q. Who was with you on the—the search that you participated in?

A. Sergeant Talbert and Lieutenant Epling.

Q. Lieutenant Epling?

Lieutenant D. C. Shanz, Jr.,

A. Yes, sir.
Q. What premises did you search?

page 214 } Mr. Murchison: I object to that.
Court: Sustained.

By Mr. Bateman:
Q. Lieutenant Shanz, did you at any time cause any warrants for the arrest of this Defendant to be issued?
A. No sir, I did not.
Q. You did not. Did you have any warrant whatever under—pursuant to your oath as to probable cause to believe an offense has been committed, issued against this Defendant?

Mr. Murchison: I object to that, your Honor. What's that's got to do with duress?
Mr. Bateman: Your Honor, I suspect that it really does not go to the duress question but is a part of the—
Court: All right sir, sustain the objection.
Mr. Bateman: All right sir, we'll—would reserve the right to recall this witness on those matters.
Court: Yes sir.
Mr. Bateman: No further questions.

RE-CROSS EXAMINATION.

page 215 } By Mr. Murchison:
Q. By the way, just before you leave, do you know of your own knowledge—do you know of your own knowledge during the day that the Defendant was with you that he ever saw this picture while you were with him?
A. That he never saw that.
Q. That he ever saw it while you were with him?
A. No, I don't know if he ever saw it or not.
Q. Did he buy a newspaper while you were with him?
A. Not while he was with me.
Q. Did you buy one or anyone else?
A. No sir, not that I recall, no sir.
Q. Did he complain about having his picture made?
A. Not to me, no sir.
Q. While the picture was being made, did he complain to the photographer, whoever it was that took it?
A. No, sir.

Lieutenant H. D. Martin.

Q. Did he ask for his picture not to be taken?
A. No, sir.
Q. Did he ask for it not to be published?
A. No, sir.

Mr. Murchison: All right.

page 216 } RE-DIRECT EXAMINATION.

By Mr. Bateman:
Q. Do you know who or how the arrangements were made for the taking of that picture?
A. No sir, I do not.

Mr. Murchison: I object to that.
Mr. Bateman: No further questions.
Court: All right, sir. Step down. Take a ten minute recess.

(The Court then declared a recess after which the Court reconvened).

Court: All right sir, who do you want next?
Mr. Kostel: Lieutenant H. D. Martin, if your Honor please.

LIEUTENANT H. D. MARTIN,
called as a witness by the Defendant, being duly sworn, testified as follows:

Court: All right sir, go ahead.

DIRECT EXAMINATION.

By Mr. Kostel:
page 217 } Q. Lieutenant Martin, you are H. D. Martin?
A. Yes sir.
Q. Lieutenant in the Detective Bureau of the Newport News Police Department?
A. That's right, yes sir.
Q. You arrived at Police Headquarters some time between 11:00 p.m. and twelve midnight on May 12, 1964?
A. I did.
Q. Upon your arrival, did you assume charge of the investigation involving James C. Hammer?

Lieutenant H. D. Martin.

A. Yes, sir.

Q. And did you interrogate the Defendant after your arrival at Police Headquarters?

A. I did.

Q. At what hour did it begin?

A. I started talking to Mr. Hammer sometime between eleven and twelve.

Q. And you were interrogating—interrogating him with Lieutenant Shanz?

A. Yes, sir.

Q. In the presence of each other, is that right?

A. Yes, sir.

Q. Were you alternating in your interrogation?

A. No sir, the only time we would alternate, if
page 218 } I had to go outside.

Q. Who would conduct the investigation, the interrogation when both of you were present?

A. Between the two of us, Lieutenant Shanz and myself.

Q. You would alternate the questioning, is that right?

A. Yes, sir.

Q. Would you alternate in between every question or would you question for a while and then Lieutenant Shanz would question for a while?

A. No sir, well—depending—if I had something to ask him, I would wait until an opening and I would ask him.

Q. Wait until—

A. Lieutenant Shanz wasn't talking.

Q. Wait until he finished answering Lieutenant Shanz?

A. Yes, sir.

Q. Did you ever interrupt Hammer while he was answering Lieutenant Shanz's questions?

A. Not that I recall.

Q. You left Police Headquarters approximately 3:20 a.m. to go on a searching party?

A. Yes sir.

page 219 } Q. The Defendant, James Hammer, was being processed by Lieutenant Shanz when you left?

A. Yes, sir.

Q. You returned and saw the Defendant sometime between five and six thirty a.m., is that right?

A. Yes sir. The best of my recollection, yes sir. Somewhere around that time.

Q. How long did you stay on duty after you came on between eleven a.m. and twelve midnight on the 12th?

Lieutenant H. D. Martin.

A. On the 12th? How long did I stay on duty?

Q. After you came on duty between 11:00 p.m. and twelve midnight on the 12th of May, how long did you stay on duty?

A. I didn't go home until the following day.

Q. What time?

A. Around noon or a little after noon.

Q. You stayed on duty approximately twelve or thirteen hours?

A. Yes, sir.

Q. Were you instructed to remain on duty?

A. No, sir.

Q. More than the normal shift?

A. No, sir.

Q. Can you give us any reason why you should work longer than you normally do?

page 220 } A. Yes sir, because at that time I was in charge of the Detective Bureau. Captain Weaver was out sick.

Q. The arrest and apprehension of James Hammer didn't have anything to do with you staying over?

A. Yes, sir.

Q. It did?

A. Yes, sir.

Q. Then you worked—a normal shift is eight hours, is that right?

A. Yes, sir.

Q. You worked twelve to thirteen hours?

A. I had went home at 5:00 p.m. that afternoon on the 12th and returned when I was called at my home.

Q. You returned between eleven?

A. Between eleven and twelve midnight, yes, sir.

Q. You were normally supposed to return at what time?

A. The following morning at 8:00 a.m.

Q. 8:00 a.m. You will concede that the Defendant, James Hammer, had very little sleep on the night—on the morning of May 13, 1964?

Mr. Robinson: I object to conceding such as that. I don't—

Court: Sustain the objection.

By Mr. Kostel:

page 221 } Q. How much sleep did James Hammer have on the night of May 12, 1964 and the early morning of May 13, 1964?

Lieutenant H. D. Martin.

A. I don't know, sir.

Q. Do you remember testifying in the previous case involving the Defendant, James C. Hammer?

A. Yes, sir.

Q. Lieutenant Martin, I'll withdraw my last question. Was the Defendant brought back downstairs from the cell after you returned from going to search his residence?

A. He was.

Q. And you and Lieutenant Shanz were in his presence then until what hour?

A. He was brought back downstairs once and I opened the door on the paddy wagon and he was shown some merchandise that we had brought from his home and then he was returned back upstairs to his cell by Lieutenant Shanz.

Q. For how long?

A. I don't recall how long he was back up there. It wasn't much time because—

Q. Would you agree then it was for just a very few minutes?

A. Yes, sir.

Q. And he was brought back down at approximately 7:30 would you say?

A. Between seven and eight, yes sir.

page 222 } Q. For interrogation.

A. For further interrogation?

A. Yes, sir.

Q. By whom?

A. By Lieutenant Shanz and myself.

Q. In the—Detective Bureau office?

A. Yes, sir.

Q. How long did you interrogate him on that occasion?

A. Until just a few minutes before 9:00 a.m. we took him to the Court, Municipal Court.

Q. Were you and Lieutenant Shanz using the same procedure that you had used in the earlier interrogation, that is you'd ask him a question when you had something to ask him and Lieutenant Shanz would ask him a question when he had something to ask him?

A. Yes sir, the same—just about the same procedure. I was asking him about some of the merchandise we had brought in from his home.

Q. And he steadfastly denied any guilt of any criminal charge, didn't he?

Lieutenant H. D. Martin.

A. He did until right at the last. He didn't admit anything. He started making statements that he vaguely remembered certain things.

Q. And you left the Detective Bureau around
page 223 } noon on the 13th of May and did you have any
further connection with the case after you left the Detective Bureau on the 13th of May?

A. No sir, it was assigned to Lieutenant F. L. Martin. That was the last I had to do with it.

Q. Now was the paddy wagon full of articles which you had seized on the raid of the Defendants residence?

A. Yes, sir.

Q. And you brought the Defendant down to view them, is that right?

A. We did.

Q. Did you procure a warrant, a search warrant on your own to go to 10371 Warwick Boulevard, Newport News, Virginia for purposes of conducting the search?

A. 10371 Warwick Boulevard, yes sir.

Q. On the 13th day of May, 1964?

A. Yes, sir.

Q. Do you remember the hour you procured the search warrant?

A. No sir, it was after midnight. Just prior to—

Q. It was sometime after 3:20, too, wasn't it, after you left the Detective Bureau?

A. It was after we left the Detective Bureau. I stopped
en route to the home.

page 224 } Q. You left the Detective Bureau around what
time?

A. Around 3:20, sir.

Q. You stopped at the home of Mr. Williams B. Shelton, the Justice of the Peace for the City of Newport News and procured the search warrant?

A. Yes, sir.

Q. And then went from the home of the Justice of the Peace to 10371 Warwick Boulevard?

A. Went to the home with the Justice of the Peace.

Q. You went from the home of the Justice of the Peace to 10371 Warwick Boulevard?

A. Yes, sir.

Q. I hand you a piece of paper and ask you if you can identify that (indicating)?

Lieutenant H. D. Martin.

A. Yes, sir, this is the search warrant.

Q. And what does the search warrant say that you are looking for?

Mr. Robinson: I object to all this. This is not on the bearing—

Court: Sustained.

Mr. Kostel: This witness has testified that he was brought downstairs and taken to the paddy wagon and shown what was in the paddy wagon which has been seized page 225 } from his house and we submit to your Honor if that seizure was not made in accordance with the laws of the State of Virginia, the Constitution of the State of Virginia and the Conustitution of the United States, then it's illegally searched, illegally seized and this man being confronted with evidence which the Police Department of the City of Newport News has no business with, that constitutes duress.

Court: All right sir, overrule your motion.

Mr. Kostel: Note our exception. May we offer this Exhibit?

Court: No sir, I'm refusing it.

By Mr. Kostel:

Q. Did your affidavit, in making the application for the search warrant state that you were looking for stolen property?

A. I don't recall, sir. I signed an affidavit when I obtained the search warrant.

Q. Is this a copy of the affidavit you signed (indicating) when you applied for a search warrant?

A. Yes sir, there's my signature on the bottom.

page 226 } Court: I'm going to overrule myself. I'll let you put in the search warrant. Go ahead.

Mr. Kostel: All right. Thank you. May be put in the affidavit too?

Court: Yes sir.

Mr. Robinson: It could be that the search warrants are from another Court.

Mr. Kostel: We'll make copies if the Commonwealth will stipulate to them.

Mr. Robinson: One is an original—

Lieutenant H. D. Martin.

Mr. Kostel: That's the warrant. The other is not.

Mr. Robinson: May we have a moment to confer on this copy?

Court: Yes.

Mr. Kostel: We offer the search warrant as Defendant's Number One—Defendant's Exhibit Two and the affidavit for search warrant as Defendant's—copy of affidavit for each warrant as Defendant's Exhibit Number Three.

Court: Do you object?

Mr. Robinson: No sir.

Court: The search warrant is Number Two and the affidavit is Number Three.

page 227 } Mrs. Robinson: I think that's a *photoatat* on the affidavit.

(The documents were received and marked Defendant's Exhibits 2 and 3).

By Mr. Kostel:

Q. How long did it take you from the time you left Headquarters around 3:20 a.m. on the morning of May 13, 1964 until the time you returned?

A. I don't recall, sir.

Mr. Kostel: That's all. Thank you.

Court: Just a minute. Do you care to examine him?

CROSS EXAMINATION.

By Mr. Robinson:

Q. Lieutenant Martin, during the time that the Defendant, Hammer, was in your presence, at any time did he make any requests or complaints to you in the way he was being treated?

A. None.

Mr. Bateman: I would like to renew the objection to that line of questioning as being leading and—and improperly so.

Court: All right sir, I'm going to let him lead.

page 228 } Mr. Bateman: Exception.

Court: You may answer.

A. No sir, he made none.

Lieutenant H. D. Martin.

By Mr. Robinson:

Q. Were you present when he was taken before the Judge of the Municipal Court?

A. I was.

Q. Was he advised by the Judge of any charge against him?

A. Yes sir, he was.

Q. Was he advised of anything with relation to an attorney?

A. Yes sir, he was.

Q. Was he advised of the serious nature of the charges that were against him?

A. Yes sir, he was.

Q. Did the Defendant make any complaints or—to the Judge when he was before the Court?

A. He made none.

Q. Now was this in open Court or was it in the Judge's Chambers?

A. It was in the open Court downstairs on the second floor in Municipal Court.

Q. The Court was regularly in session?

page 229 } A. It was.

Mr. Robinson: That's all.

Court: Did he know you were in charge, Lieutenant?

A. Yes sir, I explained to Mr. Hammer when I came to the Detective Bureau that I was in charge.

Court: And did he make any request to you regarding the use of the telephone or that he wanted to see his father or mother or his wife?

A. No sir, he made none.

Court: Did he at any time request food?

A. No sir, he denied food.

Court: He denied food?

A. Yes sir, he did.

Lieutenant H. D. Martin.

Court: Did he at any time request the use of bathroom facilities to which he was denied?

A. No, sir.

Court: Did he at any time state he was tired?

A. No, sir.

Court: Did he appear confused by the questioning of you and Lieutenant Shanz at the same time?

page 230 }

A. No sir.

Court: And I think, as I understand your testimony, at no time did he admit to you either orally or by statement that he had done anything?

A. No, sir, except—except—no admission to any particular crime. He started naming different times that he had noted things about himself that related to some of the questions we were questioning him on.

Court: Now when did you turn this over to or assign, Lieutenant, rather Lieutenant F. L. Martin?

A. It was assigned to Lieutenant F. L. Martin the following day, on the 13th.

Court: You mean the 14th, don't you? Was it the 13th or 14th?

A. No sir, the 14th, the following day. The day I left. The following day which would have been the 14th, you're right.

Court: All right.

RE-DIRECT EXAMINATION.

By Mr. Kostel:

page 231 } Q. Lieutenant Martin, let me ask you this one more question. Were you apprised of what in-

vestigation had been turned up by the Officers who were here on duty before you arrived on May 12 1964 in connection with the Alma Haase case? Were you informed as to what had been gathered, what information had been compiled by the Police Officers when you arrived in connection with the Alma Haase case? Do you understand my question?

A. No sir, I don't believe I do.

Q. Did the Officer who you found here when you came on May 12, came to the Detective Bureau Headquarters?

A. Yes, sir.

Q. Did they inform you as to the evidence they had compiled against the Defendant in the Alma Haase case?

A. No sir, not everything; not everything that I know of this date. The only thing I was informed of was the circumstances in which he was caught.

Q. Right. Was there any more evidence at 3:20 a.m. when he was booked than there was between eleven and twelve when you arrived?

A. Yes, sir.

Q. There was. What was that initial evidence, Lieutenant Martin?

page 232 } Mr. Robinson: I object to that. I think that's going a bit far in this line of questioning. We're on duress.

Mr. Kostel: We feel one of the elements of duress is to hold a man in custody without stating the charge of an unreasonable length of time. I think the reasonable—the reasonableness of the time depends on the facts in each case. If it's a question of digging up more evidence, it might be reasonable for them to delay the booking.

Court: All right.

Mr. Kostel: But I don't think we've heard any evidence here that was different than Lieutenant Martin arrived until the time he was booked and Lieutenant Martin says there is. I want to know what it was.

Court: There has been testimony, I don't want to state it because I don't want— to put words in Lieutenant Martin's mouth but there has been testimony by Lieutenant—either Lieutenant Hiser or Lieutenant Shanz, I believe Lieutenant Shanz.

Mr. Kostel: I think that was all before midnight, your Honor. In connection with Alma Haase.

page 233 } Court: No, he said several other people. Do you recall?

Lieutenant H. D. Martin.

Mr. Murchison: I brought it out myself.

Mr. Kostel: The question why the delay in booking him on the Alma Haase.

Mr. Robinson: That wasn't the question.

Court: The question was, I thought, was—what other evidence had he learned other than what went on other than the —the way that he was arrested, had he learned.

Mr. Kostel: In connection with *Almz* Haase case.

Court: You left that out.

Mr. Kostel: Excuse me.

Court: All right, I'll let him answer that.

A. Well, I think I misunderstood your question, Mr. Kostel, because I didn't understand it was just—relating only to Alma Haase.

By Mr. Kostel:

Q. Right. Did you learn?

A. Any other evidence relating to Alma Haase, no sir, not that one specific—

page 234 } Q. Between the time you arrived and the time he was booked?

A. No, sir.

Q. In other words, you were fully informed as to the evidence that the Police Department had against this Defendant in the case of Alma Haase when you arrived?

A. I don't know, sir. I was only told— I only talked to Sergeant Calhoun for just a few minutes and he told—related to me the circumstances in which Mr. Hammer was caught. I didn't go into any detail with him.

Q. But no—strike that. Who made the decision on the charges he was to be booked on?

A. Lieutenant Shanz, Lieutenant Austin and myself.

Q. Did the charges include the charges on which he being tried now, that he was booked on at 3:20 a.m.?

A. I don't recall. We placed several charges against him.

Q. So you can't recall exactly what he was booked for?

A. No sir. I cannot.

Mr. Kostel: All right sir, thank you.

Court: All right, sir. You may step down. Next witness.

Mr. Bateman: Lieutenant Mapes.

page 235 } LIEUTENANT HERBERT MAPES
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINTION.

By Mr. Bateman:
Q. You are Lieutenant Herbert Mapes?
A. Yes, sir.
Q. Of the Detective Bureau of the Newport News Police Department?
A. Yes, sir.
Q. And were you employed in that capacity on May the 12th, 13th of this year?
A. Yes, sir.
Q. And in that capacity, were you involved in any way in the investigation of charges against one, James C. Hammer who is a defendant here today?
A. Yes, I was.
Q. And who assigned you to this case?
A. Chief Peach.
Q. Are you normally assigned to cases by Chief Peach?
A. Yes, this has been my—my duty for about the past three years.
page 236 } Q. And he normally assigns you to specific cases?
A. Cases of different types, yes sir.
Q. All right, when were you first advised or requested to involve yourself in this investigation?
A. It was the night of May 13.
Q. The night of May 13?
A. Yes.
Q. At what hour?
A. I don't—recall exactly. I believe, as I recall, I got a call at my home to be over at the Detective Bureau about 9:00 o'clock.
Q. And is it your recollection that this is the time that you arrived at the Detective Bureau?
A. I arrived there approximately 9:00 o'clock, May the 13th.
Q. Is that 9:00 p.m.?
A. Yes, sir.
Q. And had you seen James Hammer at any point prior to 9:00 p.m. or thereabouts on the evening of May 13? Had you even seen him?
A. No, I had never seen him.
Q. Had not seen him in or about Police Headquarters?

Lieutenant Herbert Mapes.

A. No. I had not.

page 237 } Q. And did you see him immediately or shortly after your arrival at Police Headquarters on the evening of the 13th?

A. Yes sir, I did.

Q. Where did you see him?

A. I first saw him up in his jail cell upstairs in the City jail. I went up to get him and bring him down.

Q. And at whose request or direction did you go and get him?

A. Chief Peach who met me at the Police Headquarters.

Q. And where did you take the Defendant from his cell?

A. I took him into the Detective Bureau into Captain Weaver's office.

Q. And this was a little after 9:00 p.m. on the 13th?

A. Yes, about that hour.

Q. And who was present when you took the Defendant into Captain Weaver's office?

A. Chief Peach.

Q. Was it apparent to you from what was said between the Defendant and Chief Peach that they had had previous conversations?

A. I didn't hear what was said between him

page 238 } and Chief Peach.

Q. You did not remain in the room while they had conversations?

A. No sir, I did not.

Q. It was just the Defendant and Chief Peach?

A. Yes, sir.

Q. Thereafter were you called into the room?

A. Yes sir, I was.

Q. And was there any conversation between the three of you at that time or did Chief Peach immediately leave when you came in?

A. Did Chief Peach immediately what?

Q. Did Chief Peach immediately leave the room when you came back in?

A. First, Chief Peached turned to me. He said to Hammer, he said, "this is Lieutenant Mapes. You just met him. He brought you down from the City jail. I want you to discuss this with him and tell him the truth about these matters", something to that effect.

Q. Did he suggest it would be better for this Defendant if he told you the truth about the matters you were to question him about?

Lieutenant Herbert Mapes.

A. No, the only thing he said, as I recall, was what I just stated, just turned to Hammer and he said, "you can tell him the truth about these matters."

page 239 } Q. Did Chief Peach in your presence in any way advise the Defendant that he was not obligated and had a right not to tell you about any matter?

A. Chief Peach did not, to my knowledge, no.

Q. To your knowledge did anyone else tell the Defendant this?

A. Yes sir, I did.

Q. You told him that?

A. Yes, sir.

Q. And what was it specifically that you told him along this line?

A. The—the specific thing I told Hammer was that anything that he stated to me could be used for or against him in Court. That's the way I put it, for or against him in Court.

Q. Anything that he said could be used for or against him?

A. In Court.

Q. You did not advise him, however, that he did not have to say anything?

A. I don't believe I said that.

Q. Only of the consequences of what he might say?

A. I—I didn't say he did not have to say anything. I do know that I did tell him anything he said could

page 240 } be used for or against him in Court.

Q. And approximately at what hour did your interview or interrogation of the Defendant begin?

A. 9:25 p.m., the night of May 13.

Q. And did you question him concerning more than one offense?

A. Yes.

Q. Had anyone instructed you or advised you as to what allegations to interrogate him on or about? In other words, how did you know what to question him about?

A. The folder containing the cases was on Captain Weaver's desk and this was given to me by Chief Peach.

Q. Did the existence and the possession by the authorities at that point of certain items of or property taken from the Defendant's home have any bearing upon the interrogation or the subject matter of the interrogation?

A. I did not know of anything that was confiscated as evidence or taken from his home at this time. I talked to Hammer with relation to the description of a stolen article, one

of the complaints specifically in the Diggs' case. It was a model boat and air paint compressor, air compressor or a paint spray but at the time I didn't know whether this was being held as evidence or not.

Q. Were you aware from your file or other information or sources that there had been a search of his

page 241 } premises?

A. No, I was not.

Q. You were not aware of that?

A. No, sir.

Q. So you made no examination or asked him no questions concerning any specific items of property which had been found?

A. No, only what was in the written sheet of complaints before me.

Q. Well, am I correct then in assuming that you had a certain number of unsolved allegations or complaints in your files and you just started through them in questioning this Defendant?

A. Yes, sir.

Q. And anything that was unsolved, you questioned this Defendant on?

A. Having access to this folder and complaints therein, I referred to these complaints during my questioning.

Q. Well, did someone furnish you with a set of folders or did you just go and get all unsolved?

A. No, this was—

Q. Allegations?

A. These complaints were all in the folder that was given to me by Chief Peach.

Q. And nothing was said to you concerning the

page 242 } fact that there had been a search and certain property brought to Headquarters?

Court: He said no, Mr. Bateman, I think three times.

By Mr. Bateman:

Q. And for what period of time did you talk with the Defendant on the evening of May 13?

A. I talked to Mr. Hammer from 9:25 p.m., May the 13th and concluded the interview at 2:15 a.m., May the 14th, 1964.

Q. Did the Defendant have any break or respite from the interrogation during this period of time?

A. At 12:35 a.m., Mr. Hammer was asked by me if he felt all right to continue and he stated yes. This is at 12:35 a.m.

Lieutenant Herbert Mapes.

Q. All right. So there was no real interruption in the proceedings. You pretty much went straight through from 9:25 to 2:15 of May 14?

A. Yes.

Q. Now you say Chief Peach indicated as you came back into the room that he could or should tell you the truth about the matters you were going to talk to him about?

A. Yes.

Q. But did not say it would be better for him if he did?

A. No.

page 243 } Q. Didn't you indicate to him that it would be better for him if he were to advise you as to what he was involved in?

A. No, I did not and I've never done it.

Q. You never advised him that it would be better for him in any way?

A. No, sir.

Q. To indicate that he was involved and to state the extent of any involvement?

A. No, sir.

Q. When did you next see the Defendant after you left him at 2:15 a.m.?

A. To my knowledge the next time I saw him was when I appeared up in this Court in the first time this case was brought to Court.

Q. So you did not thereafter interrogate or play any part in the investigation so far as Mr. Hammer personally was concerned?

A. I didn't interrogate Mr. Hammer but I played another part in the investigation, yes.

Q. Was that as a participant in a search?

A. Yes, sir.

Q. Where was that search?

Mr. Murchison: I object. The search hasn't

page 244 } anything to do with duress, Judge.

Mr. Bateman: I think we have a second—actually three searches involved here which the Defendant contends in each instances were illegal searches and any involvement that they had in the process of a—extracting admissions or confessions or statements from the Defendant makes them a part of the coercion, the duress and the unauthorized and illegal means which excludes them from admission into evidence.

Mr. Murchison: But if your Honor please, this witness

has had nothing to do with anything else but Mr. Hammer from 2:15 a.m. in the morning of which he stopped talking to him.

Court: Did he get the warrant?

Mr. Bateman: I don't believe he did.

Court: I'll sustain it.

Mr. Bateman: I'm not sure who did. May I ask the witness if he did?

Court: All right.

By Mr. Bateman:

Q. Did you obtain any warrant for this search you were involved in?

page 245 } A. No, I did not.

Q. Do you know who did?

A. No, I do not, Mr. Bateman.

Q. What were the premises which were the subject of this search?

Mr. Murchison: I object.

Court: Sustained.

Mr. Bateman: Exception, your Honor. No further questions.

CROSS EXAMINATION.

By Mr. Murchison:

Q. Lieutenant Mapes, did you while you were talking with the Defendant, Hammer, ever have him complain to you in any manner of the treatment in which he had received by you or any other Officer prior to your talking to him?

A. No sir, the time I talked to Mr. Hammer he was very co-operative. As a matter of fact, he was, to be perfectly frank to the Court, he was so co-operative I was surprised.

Q. Did he make any complaint in any manner about not being able to use the telephone or did he request to use the telephone by you?

A. No sir, he did not.

page 246 } Q. Did he request not having been able to have counsel or wanting counsel?

A. No sir, he made no mention of it.

Q. Did he make any complaint to you about coming down to the Captain's room when you went up to get him at 9:15 or twenty, whenever you started talking to him?

A. No, sir.

Lieutenant Herbert Mapes.

Q. Did he complain about coming down to talk at all, that he was sleepy or tired?

A. No sir, he did not. I concluded the interview at 2:15 because he appeared tired to me even though he stated it was all right to continue.

Q. You mean he stated it was all right to continue but you stopped?

A. I stopped because in my opinion he appeared to be tired.

Q. He wanted to go ahead?

A. He said it was all right.

Q. You stopped the interview?

A. Yes.

Q. Well now, during the time that you were talking to him from 9:25 to 2:15, is it not true that you were talking to him about a number of different complaints?

A. Yes, sir.

Q. Not only involving the trial of the moment,
page 247 } the Alma Haase case but in other matters too?

A. Yes sir.

Q. And he was co-operative and willing to talk to you?

A. Yes sir, he was.

Q. So far as you know?

A. He was a gentleman and co-operative.

Q. No rancor or bitterness to anybody he had been with before, given by you to him?

A. No sir, none—there was no complaints at all of that nature.

Q. Did he object to you talking to him?

A. No, he did not object to me talking to him. He said he was going to tell me the truth because he had not done so earlier and that he would tell me the truth about these matters and I wrote down what he told me.

Q. And you had warned him that anything that he said would be used for or against him?

A. I warned him of this at the beginning of the interview and also prior to writing down any statement as he gave it.

Q. I see. Did he make any complaints about not having any food to eat or—not having been fed or water or bathroom facilities?

A. No, he did not. I was hungry myself. I
page 248 } sent for food and got it. I asked him if he wanted
some. He refused it and I sat there eating a part

of it in front of him and I put it in a bag and he didn't finish it and I offered him nabs and I offered him a cigarette and I believe I am correct, he did not smoke.

Q. In Captain Weaver's office, is there a telephone on the desk?

A. Yes, to his right as he's facing me.

Q. Not a pay telephone, is it?

A. No, it's just a phone you can pick up and dial.

Mr. Murchison: That's all.

RE-DIRECT EXAMINATION.

By Mr. Bateman:

Q. Let me make sure of my understanding on one thing, Lieutenant Mapes. You say that you stopped your interrogation at 2:15 a.m.?

A. Yes.

Q. On the morning of the 14th?

A. Yes.

Q. Was that the time you began the last statement or the time you ended the last statement?

page 249 } A. No, the time that the last statement was given was at 12:50 a.m. This is ten minutes to one, the morning of the 12:55 we discussed the —another matter involving a specific location in the area with these other thefts and then at 1:25 we discussed a matter of an entirely different nature, more—that happened in another area of the City.

Q. And so the 2:15 was the beginning of the last statement or the end of the last statement?

A. No, from 1:25 a.m. to 2:15 a.m. we discussed this other serious crime that had been committed.

Q. That was the concluding time, not the beginning of the last statement?

A. 2:15 was not the concluding of any statement, Mr. Bateman.

Q. But the conclusion of the whole interview?

A. Was at 2:15. The conclusion of any statement was at 12:50 a.m.

Q. Now, all right, now was it—your understanding that this Defendant had denied any involvement in any offenses up to the time you talked to him?

Lieutenant Herbert Mapes.

A. Yes.

Q. Do you know of any apparent reason why following some sessions with you he changed his mind and admitted involvement in certain things?

A. No, I do not. That's an unanswerable ques-
page 250 } tion sometimes.

Q. And you say at 2:15 a.m. you thought that he looked tired?

A. Yes, he did.

Q. Did you know what period of time he had been interrogated and under investigation prior to your seeing him at nine or nine fifteen?

A. Yes, he told me.

Q. He told you?

A. Yes.

Q. And what periods of time were they?

A. He told me the only thing he told me because I asked him was the last time he was talked to was at 4:00 o'clock the 13th of May.

Q. The last time he was talked to was at 4:00 o'clock?

A. Yes, sir.

Q. By whom, do you know?

A. No, I do not know who it was.

Q. You don't know for what periods of time prior to four he had been—interrogated?

A. No, I was not aware of that at the time. I just know that he said he was last talked to at 4:00 o'clock.

Q. You don't know how much sleep or how little sleep he might have had on the night of the 12th and the
page 251 } morning of the 13th?

A. No sir, I do not but he stated to me that he had been sleeping about a half—half an hour before I came and got him from his cell.

Q. Well, at 2:15 did he suddenly look tired or did he begin looking tired and you thought at 2:15 that he looked tired enough that you better stop?

A. As I recall, we were discussing this other case. That's not involved with anything he's charged with and—we were discussing what he was doing at the time it happened because it seemed to be important to him and it was important to me. If he was doing one thing and he did something else, he couldn't have been guilty of it. We started talking about it and I noticed he started yawning, a long drawn out yawn.

Lieutenant Herbert Mapes.

He got to making me yawn. I told him I don't think there's any point in going any further.

Q. As a matter of fact, you were a little tired by 2:15 a.m., weren't you?

A. Put it any way you want to put it, that's about the way it was too. I was up myself since 6:00 o'clock the previous morning.

Q. When you are questioning a suspect in relation to an offense and you told him that anything he says may be used for or against him and he says, "no, I didn't do it", is that the end of the matter?

page 252 } Mr. Murchison: I object. I object. I think we should stick to this case. We shouldn't have to go into the history of the Police Department.

Court: Yes sir, I think we have to stick to this case.

Mr. Bateman: Your Honor, the point of the question is to ascertain what the methods and procedures are as used by this Detective and others are in this particular case.

Court: The only thing I'm interested is what this Defendant did. He asked him that, fine. If he didn't, it's irrelevant.

Mr. Bateman: That's all, your Honor.

Court: All right, Lieutenant. let me ask you a couple of questions. The word, "interrogation" has been used here quite a bit today and you've stated that the Defendant was very co-operative to the extent that it surprised you. Now what I want to know is when you interrogated him from 9:25 p.m. until 2:15 a.m., was this a matter of grilling by questions and answers or was this a matter of where it was rather freely flowing from the Defendant?

page 253 } A. It was a matter of freely flowing to this extent. I would have the complaint *complaint* before me. I would question him with relation to it and I would give him the complaints, the date and time it happened, where it happened and I would ask him, "now, what is your version of this complaint? Did you or did you not do this" and he would relate to me what he did do.

Court: He would just relate off to you what he did?

A. Yes, and in the beginning of the interview he said he was going to tell the truth. He had not told the truth earlier

that day but he was ready to tell the truth now and was going to. That's the basis under which I had to talk to Mr. Hammer.

Court: You didn't really have to pull the information out of him then, is that correct or not?

A. No, that's correct. It wasn't of a case where I had to ask pointed questions. Mr. Hammer really spoke about his involvement in the particular matters I talked to him about.

Court: All right. Anything further?

Mr. Bateman: Your Honor, we—would like to interpose an objection to the phraseology of that last ques-
page 254 } tion, "did you have to pull the information from him". I think the same objection lies very respectfully, your Honor as we have interposed to the form of the questioning of the *Commonwealth* of these witnesses and for the record would like to note an appeal.

Court: You mean the Court can't lead? All right, sir.

Mr. Bateman: I think there's a flavor given to the question as it comes.

Court: I'm the one who has to decide. If he doesn't understand what I mean by pulling the answers out of him or —the other term I used was grilling, then I expect him to tell me that he doesn't know what they mean but I—I consider that these are terminology that ought not to be foreign to a Detective Lieutenant in criminal work.

Mr. Bateman: Your Honor, I appreciate and respect the Court's intent and desire in it. We would like to note the exception.

Court: Yes sir, I note your exception. Is that all from the Lieutenant?

Mr. Kostel: Yes sir.

page 255 } Court: All right, you may step down and gentlemen, the hour is five to five. Who did you have in mind? Is he your last one?

Mr. Kostel: No sir.

Court: On your last line?

Mr. Murchison: That will take time.

Court: Let's adjourn until tomorrow morning at 10:00 o'clock.

Mr. Murchison: Can we let Mrs. Haase go to work and she's within a half hour if we need her.

Court: Can we let her go and we can call her when we need her.

Mr. Kostel: Yes sir.
Court: Bring all the witnesses who are waiting.

(All the witnesses were then returned to the Courtroom).

Court: All right. gentleman and Mrs. Haase who have testified or not testified, I'm instructing you now please do not discuss your testimony with anyone. Do not discuss this matter at all because I don't want any evidence that's gone on in Court to get *to get* to those who have not page 256 } testified and those of you who might be subject to be recalled so I ask then particularly the Police Officers now to please refrain from discussing this case at all among yourselves. All right, the Court stands adjourned until 10:00 o'clock tomorrow morning. Mrs. Haase, we have arranged for you to go back to work. We'll call you if we need you.

(The Court then adjourned).

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page 259 }

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LIEUTENANT F. L. MARTIN,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:
Q. State your name and occupation.
A. Lieutenant F. L. Martin, Detective Bureau, Newport News, Police Department.
Q. Do you know the Defendant, James C. Hammer?
A. Yes, sir.
Q. When did you first make his acquaintance?
A. On the 14th of May.
Q. Approximately what time, sir?
A. Approximately 9:00 o'clock in the morning.
Q. And who introduced you to him?
A. I introduced myself to him.
Q. Were you in company of anyone when you made his ac-

Lieutenant F. L. Martin.

quaintance?
page 260 } A. Sergeant Williams.
Q. And where was this acquaintance made?
A. Down in the interrogation room of the Police Department building.
Q. And did you tell the Defendant that you had been assigned to the case and your purpose in the case was to interrogate him and to try to obtain statements from him concerning many offenses which had occurred in the City of Newport News?

Mr. Murchison: I object to that. The whole question is leading from the beginning to the end.
Court: I'm letting him lead.
Mr. Kostel: Read the question back, Mr. Reporter.

(The last question was read).

A. No, I was assigned to the Haase case which later on the other cases came up from time to time. Some of them I had never been assigned to.
Q. So you began interrogating the Defendant on the Haase case?
A. Yes, sir.
Q. At what time, sir?
A. Well, the statement on the Haase case was taken at 11:20 but we talked about several other state-
page 261 } ments before then.
Q. Well then, you had been assigned to several cases, unsolved cases which had occurred in the City of Newport News?
A. Yes, I pulled a whole lot of jackets, a lot of them. He was not involved. Some of them he was involved.
Q. How long did you interrogate this Defendant on May 14, 1964?
A. Off and on throughout the day and then after dinner in the evening.
Q. I didn't hear your answer.
A. I say off and on all day. I mean—and then after dinner in the evening we went back and he wanted to stay and talk some more.
Q. Could you tell us what time you ended your interrogation on May 14, 1964?
A. It's in the files.
Q. Do you know, sir?

Lieutenant F. L. Martin.

A. It was—it was late.

Q. Did you begin taking a statement from him regard to a case at 11:15 p.m. on May 14, 1964?

A. It's possible.

Q. Wouldn't the record show that?

(A document was then handed to the witness for his perusal).

page 262 } By Mr. Kostal:

Q. You took a statement from the Defendant beginning at 11:15 p.m. on another case, is that right?

A. That's correct.

Q. Could you tell us approximately what time you finished with that statement?

A. I don't know exactly what time it was. It was a short case. It was—just involving a burglary and grand larceny. I would say for 20 minutes.

Q. So you would say that the Defendant was taken upstairs around midnight on the 14th of May?

A. It may be that late. It may have been a little bit before.

Q. Would you tell us now, sir, the number of statement you obtained from this Defendant on May 14, 1964 and the times that you took those statements?

Mr. Murchison: If your Honor please, may I get some groundwork here. I understand this line of attack of the defense is for the—is for the case which we're trying, Haase. If I recall the testimony of Lieutenant Martin, that he took that around 11:20 a.m. on the 14th. Now I don't know what purpose would serve the Court or anyone or anything that occurred after 11:20 of the Haase statement on page 263 } 11:20 a.m. on May 14, what remote possibility that could have with that statement made at that time. I don't want to continually rise but I would like to make the observation and object to anything that would flow from this type of evidence after the statement made at 11:20 a.m. on May the 14th. That case I'm satisfied was finished.

Mr. Kostel: If your Honor please, we're trying to show the over-all pattern, constant interrogation of this Defendant by the Police Department of many unsolved crimes, many of which he was not even connected with. Now we recognize the fact that the Haase statement was taken at 11:20 a.m. and that's the statement that the Commonwealth has sought to introduce but we want to show that this man was

questioned on many cases prior to the time he gave the statement in the Haase matter and after the time he gave the statement in the Haase matter and we feel that—it is relevant, it is material for purposes of showing that he was subject to constant interrogation.

page 264 } Court: All right sir, well I think the Commonwealth objection is well taken. Of course that's a difficulty that the Court runs into when he has a Defendant that's charged with so many crimes and—and the Police Officers of course take statements and examine him on numerous number but the Court has to be ever mindful of the fact that the Haase case is the one before this Court and as I previously ruled, but not in this trial, anything that happened in my opinion after the Haase case was taken, I don't see how it could in any way effect the Haase statement. Let's assume that the boy was beaten afterwards. If everything was all right up to the Haase—up to that statement, to put it on a level of his kind, suppose there had been none of this interrogation, nothing had happened. They brought him down one morning after twelve hours sleep and he gives a statement on the Haase matter and then suppose the Police decide, "well, we know he's guilty of some other cases. Now we're really going to work him over" and they

page 265 } start working him over. Is the Court to throw out the Haase statement? I don't think so but for the purpose of this trial and for the record, as I stated, I think the Commonwealth objection is well taken. I'm going to sustain the objection but for the purpose of the record and because I'm sitting as Judge and jury and because of the fact that there is no jury present, I'll allow you to put in the record the number of statements taken but as far as the Court is concerned, I see where these statements—I don't see where anything that happened after the Haase statement which is what I am concerned with here today, is pertinent. All right, sir.

Mr. Kostel: I think in the interest of time, we'll avoid having to call him back in the other cases. I see the Court's point.

Mr. Murchison: I want to save the point while we're at it.

By Mr. Kostel:

Q. Would you relate the times you took statements from him on May 14, 1964 and the cases in which you took state-

ments from him, please.

page 266 } A. Yes sir. At 9:15 a.m. on—all these will be the 14th, on the 14th, I took a statement from him in the Mary Ann Lubo case. At 10, 10:00 a.m. I took a statement in the Susan Godwin case which he's charged with burglary and attempted rape on this case. At 11:20 a.m. I took a statement in the Alma Haase case. At 12:05 p.m. I took a statement in the Herbert Diggs case. At 1:00 p.m. I took a statement in the Susan Godwin case, charged with burglary and rape. At 4:05 p.m. I took a statement in the Mason Read case. At 5:45 p.m. I took a statement in the R. C. Van Noy case. At 6:40 p.m. I took a statement in the R. F. Cutler case At 11:15 p.m. I took the last statement of the day in the Roy W. Mcgee case. I took nine statements in all the first day.

Q. All right. Can you tell us what happened to the Defendant between the time you obtained the Cutler statement at 6:40 p.m. and the Mcgee statement at 11:15 p.m.?

A. We took him back up to the jail for dinner. He didn't want to go earlier. We took him back later on, whether he wanted to or not. I felt like he ought to be entitled to some rest. Then we went out to eat ourself. Then we came back later in the evening and brought him back down.

Q. And resumed the interrogation?

A. We sat and talked for a little while. Nothing in particular. Just passing the time of day. He didn't

page 267 } want to go back upstairs.

Q. Do you have any idea what time you brought him back downstairs after you returned from dinner?

A. I don't know. It would be a guess. I would say about 9:00 o'clock or maybe later than that.

Q. Could you tell us what happened in the interval between 1:00 p.m. and 4:05 p.m.?

A. Yes, I sent him back upstairs again.

Q. You sent him back upstairs?

A. Yes, sir.

Q. How long did he stay upstairs in that interval?

A. We brought him back, like I say, it's a guess; about 3:45, 3:50.

Q. Do you have your chronology of statements taken on the 15th of May, 1964?

A. Yes, sir.

Lieutenant F. L. Martin.

Mr. Kostel: I assume that's subject to the same objection?

Mr. Murchison: The same objection.

By Mr. Kostel:

Q. Would you relate them for the record, the times and names of the cases?

A. Let me get them in order for you.

Q. I got them if you don't have them.

page 268 } A. I got them but I don't know whether I have them in order or not. You got one more than I got. I might have overlooked one.

Q. Rely on your notes. Don't rely on mine.

Court: All right sir, do you have them? Are you ready, Lieutenant?

A. I still come out one figure different.

Court: All right, give what you have.

A. I get the same list but I come out a different figure.

Court: All right.

A. All right, sir, on the morning of May 15, I took a statement, the first statment in the James Hill case at 11:15 a.m. At 12:45 p.m. I took a statement in the H. G. Phillips case. Mrs. H. G. Phillips. At 1:30 p.m I took a statement in William R. Forrest case.

Court: William R. what?

A. R. Forrest. At 4:15 p.m. I took a statement in the Robert Ryan case. At 4:45 p.m. I took a statement in the Sears Roebuck and Company case. At 6:50 p.m. I took a statement in the P. R. Cheatham case. At 7:15 p.m. I took a statement in the Robert Barclay case. At 7:55 p.m. I took another statement in the Herbert Strothman case. That's the cases I have listed for the 15th.

By Mr. Kostel:

page 269 } Q. What time did the Defendant go back to his cell on the night of May 15. 1964?

Lieutenant F. L. Martin.

A. I would say it was in the neighborhood of 9:00 o'clock. We usually set around and talked for a while afterwards.

Q. What time did he have his dinner?

A. Each day when we was interrogating, he didn't want to go upstairs for lunch or anything. We'd always buy sandwich or whatever he wanted for lunch downstairs. Then I would take him up in the evening, we'd call up and find out what time they were serving and take him up there in time to serve and sometimes we'd take him up there and leave him for two or three hours. On this particular day I would say he wasn't up there too awfully long.

Q. What procedures did you and Sergeant Williams employ in interrogating the Defendant?

A. What do you mean?

Q. How was the questioning handled by you and Sergeant Williams?

Mr. Murchison: Is this in the Haase case or is it all of them? I don't want to be rising too many times.

Court: Well, I'll let the—

Mr. Murchison: All right, sir.

Court: I assume he operated the same way page 270 } in all of them.

Mr. Murchison: All right, sir.

A. Like I say, the first day we took different jackets downstairs with us on cases. During the day we would be talking about one thing and another. I mean he was so truthful about the thing that all I had to do was just show him the case. I'd let him read them and he'd say, "no". I didn't even fool with the case no more. I laid it aside. Then he would tell me about—oh, another place that he had went and maybe for *examply,* took a saw or something like that. Then at nights after I would take him back, I would go back to our files and try to pull those out and for *examply,* we may have—a half dozen skill saws was taken but he could always tell me about where the address was.

Q. Did Sergeant Williams do any questioning?

A. I done most of the questioning.

Q. What did Sergeant Williams do?

A. He was just there with me. This was his first big case.

Q. Who was doing the writing?

A. I done most of it. Sergeant Williams, he wrote maybe two or three statements but I done most of it myself.

Lieutenant F. L. Martin.

Q. And most of those statements were condensed by you?

A. I wrote most of them, yes sir.

page 271 } Q. Were they condensed? In other words, were they—shortened from what the Defendant actually had told you about the particular case or were they his exact words?

A. No, I tried to put them just as he would give it to me and I would always let him read it to make sure is the way he give it to me. In one or two things I had something wrong which we would scratch out which we would change at that point. I told him not to sign no statements if it wasn't right.

Q. You went through a general discussion and a narrative with him and then you reduced it to writing, is that right?

A. We would—well, for example, we would pick a case and he's say, yes, he done that. So in each case he was warned of his statements right on down the line. Then he would tell me about how he done it and I'd say, "now, let's go back to the first one and we'll try to put it in writing as we go through it again." Then he would start and then I'd stop him. I'd say, "wait there and let me catch up here." Then he—we would go on some more from there.

Q. Now, you questioned him about a lot of unsolved larcenies and burglaries, didn't you?

A. Yes, an awful lot of them.

Q. Did you tell him that you had found some

page 272 } articles which had been reported stolen previously at his house?

A. Yes.

Q. Did you tell him that the Police Department had in its possession some articles which had been reported stolen previously which were found at his father's house in Hampton?

A. I knew they came from over there but I wasn't there when they was brought from there.

Q. No sir, did you tell him that the Police Department had in its possession articles which had previously been reported stolen which were obtained from the Defendant's father's house in Hampton?

A. Yes, I took him over to the vault. We went over there several times to look at the merchandise. That's where he helped us out an awful lot. We had cameras and stuff that we had no idea where these cameras come from. Some of them we had no complaints at the time. He told us where they come from. Then we got in the car and—he showed us the house and then I went in and the people had never missed the stuff.

Lieutenant F. L. Martin.

Court: Lieutenant, are you saying that he volunteered so much information that he solved a whole lot of crimes for you that you didn't have linked with him?

page 273 } A. Yes sir, we had no reports of it.

By Mr. Kostel:

Q. Did you take any statements from him after May 15, 1964?

A. Yes, sir.

Q. What date was that, sir?

A. The 16th, the 17th and the 18th.

Q. Would you give us the times and the names of the cases, please sir?

A. On the 16th of May, 1964 I took a statement from James Hammer in the W. H. Blanchard case at 9:15 a.m. I took three other statements from him on the 16th. It was in the afternoon. We changed secretaries about that time and she put everything in the—there but the time—the times and a couple of them I forgot to put in there myself.

Q. But you did take three in the afternoon of May—

A. I have, "P.M." on them. Evidently I had stopped after I wrote the warning down and we got to talking and I forgot to put the case. It was Marian Murphy statement. It was a P.M. statement and he was charged with burglary and larceny. The Irvin G. M. Tripp was charged with burglary and grand larceny. That was P. M. and the Kenneth Pearce charged with burglary and grand larceny. That was P.M. I don't know what time of the day it was.

page 274 } Q. Those are all the statements you took on May 16?

A. I think it was four that day.

A. On the 17th I took—I took a statement at 10:00 o'clock a.m. in the Larry Bravo case. I took another statement on John Hall case at 10:30 a.m. At 11:00 a.m. I took a statement on the Joseph Brooks case. At 10:45 I took a statement in the Lewis Bradshaw case. At 11:30 a.m. I took a statement in the Virgil Lee case. At 1:00 p.m.—correction. I have another one here with a P.M. on it. It was in the afternoon sometime. I don't know. It was on Montgomery Ward Company. Charged with grand larceny. That was the 17th.

Q. The 18th?

A. On the 18th I have two statements here. One at 1:00 p.m. on the Carl Smith case and one at 2:45 on the Dorothy Mariner case.

Lieutenant F. L. Martin.

Q. How many unsolved cases did you interrogate this Defendant about on May 14, 15, 16 and 17 and 18th on which you did not obtain a statement from him?

A. A lot of the cases that I looked at, at right from our files, I never took downstairs. It wasn't—*acording* to the way—he done all these others. It wasn't his type. I never even took them down and never questioned him page 275 } about a lot of them. I'd say in the four days I questioned him roughly around 20 others.

Q. On which you were satisfied that he was not guilty of?

A. I was positive he wasn't.

Q. And no memorandum was made of the denials in cases which he made denials in?

A. No, I would read the statement and I'd always let him read them—I mean the offense. I'd say, "now look at this." He'd say, "no". I put it back in the folder. I didn't bother no more.

Q. You didn't make any written memorandum of his denial, did you?

A. No, no.

Q. Did you go with this Defendant to Municipal Court on May 22, 1964?

A. Yes.

Q. Could you tell us the number of charges on which he was arraigned that day?

A. No, sir.

Q. Could you tell us when he was booked on the charges that he was arraigned for?

A. Not unless I checked the docket. You see, we went to the Court twice. We went to Juvenile Court on the afternoon of the 22nd.

page 276 } Court: All right, sir.

By Mr. Kostel:

Q. Did you conduct a search at 10371 Warwick Boulevard—

Mr. Murchison: If your Honor please, this is the way the defense apparently are trying to get in on what your Honor ruled against yesterday. They're now setting up the resident number where they were asking yesterday in Court where it was where they conducted the search. I see no possible connection between a search and whatever happened there in the statements being taken.

Lieutenant F. L. Martin.

Mr. Kostel: I think—Mr. Murchison—

Mr. Murchison: This is the point we're on duress. If it is another attack of the search, that's something else but this is the point in which we went into yesterday and overnight this is a new approach to it. They're giving the day and you're allowing them to lead but I don't know where a search can have any bearing on this—line of attack that is being taken down.

page 277 } Mr. Kostel: I think, Mr. Murchison was out of the Courtroom when your Honor ruled that the search warrant would be admissible and the affidavit would be admissible for the purpose of showing coercion after he was confronted with this illegal seized—the Court didn't rule it was illegally seized. After he was confronted with this seized property based on the search warrant which we contend was illegal. Then that would enter into the consideration on the question of coercion and duress.

Mr. Murchison: This is the Haase case. We're still on this case. Nothing has been introduced or anything remotely connected with any search in the Haase matter. My point is still saved for the others.

Court: I'll let him answer the question.

By Mr. Kostel:

Q. Did you conduct a search on May 13, 1964 at 10371 Warwick Boulevard?

A. On the 14th?

Q. 13th.

page 278 } A. No sir.

Q. Did you make an affidavit for a search warrant on May 13, 1964 in the presence of William B. Shelton, a Justice of the Peace for the City of Newport News, Virginia?

A. I wasn't assigned to the case until the 14th.

(Mr. Kostel then handed Mr. Murchison a document for his perusal).

By Mr. Kostel:

Q. Did you make a search on the first day you were assigned to this case at 10371 Warwick Boulevard, Newport News, Virginia?

A. I went up there—I believe twice. If I went up there on the 13th, it was before I was assigned to the case. For what purpose, would be to pick up what was left. It's possible.

Lieutenant F. L. Martin.

Q. Why—
A. I believe I went back again on the 15th. I'm not sure.
Q. Why would you go up there if you had not been assigned to the case?
A. Everybody was sent out here, there and to his father's home.
Q. Do you know what time of day you went out there on the 13th?
page 279 } A. Out where?
10371 Warwick Boulevard.
A. No, sir, I do not. It would have been during the day because I was working—
Q. I hand you what is a copy of an affidavit for a search warrant and ask you if that's your signature?
A. Yes, sir, that's my signature.
Q. And what is the date of that affidavit?
A. The 13th of May.

Mr. Kostel: I offer that as Defendant's Exhibit Number Four please, sir.

(The document was received and marked Defendant's Exhibit No. 4).

By Mr. Kostel:
Q. Do you know what you found, if anything?
A. No, sir, right now I do not.
Q. Were you and Sergeant Williams working overtime on this case?
A. Yes, sir.
Q. Could you tell us how much?
A. About 50 hours.
Q. 50 hours overtime?
A. Yes, sir.
Q. Within a period of how long?
A. About a week.
page 280 } Q. And the normal work week is how long?
A. Eight to five.
Q. 40 hours per week?
A. No, we work—we work a nine hour day.
Q. Sir?
A. We work a nine hour day in the Bureau which is an hour for lunch which you never get.
Q. 45 hours per week?
A. Yes, sir.

Lieutenant F. L. Martin.

Q. So you worked over twice as long as the normal work week?
A. Yes, sir.

Mr. Kostel: That's all we have of this witness.

CROSS EXAMINATION.

By Mr. Murchison:
Q. Lieutenant, let's develop that last point. The question here, your overtime. Was that not also in the line of questioning other witnesses instead of Hammer himself and going to other areas yourself without Hammer?
A. Oh, yes.
Q. And also reviewing other work in which he had voluntarily told you which you didn't know anything
page 281 } about. You had to go out and check stuff he had told you he had done that you didn't have a report on?
A. That's correct.
Q. Those cases were solved during the 50 hours overtime when you had nothing to do unless Hammer told you about it?
A. That's correct.
Q. Your 50 hours wasn't spent with Hammer all that time?
A. Oh no, no.
Q. Now let me ask you, Lieutenant, did James C. Hammer, the Defendant, at any time and particularly directing my question to May the 14th at 11:20 a.m., ever complain to you about any treatment he had received at the hands or voice or *insinunations* or any way by any of the Officers, anyone that had anything to do with it?
A. No, the only that—James said to me he took a liking to me. He said I treat him like a man. He didn't like the rest of them's attitude.
Q. Did he tell you that he had been without sleep and without food and that he was tired and hungry?
A. No, sir.
Q. Did he ever complain about coming down when you or Sergeant Williams would go up and get him during all this period of time, for the record?
page 282 } A. No, he never complained. In fact, he sent for us several times.
Q. That's what I had understood. He did send for you himself several times?
A. Yes, sir.

Lieutenant F. L. Martin.

Q. When he would send for you, for what purpose would he send for you?

A. A lot of times he just wanted to come down and talk. He would think of something else and he wanted to clear up another little case or something and sat and talked. He said he rather be downstairs talking with us than sitting up there in the cell.

Q. Did he ever complain about—lack of sleep?

A. No, sir.

Q. Did he ever complain to you about lack of food?

A. No, sir.

Q. Did he ever complain to you about any physical treatment?

A. No, sir.

Q. At the hands of anybody?

A. No, sir.

Q. Did he ever complain to you or to Sergeant Williams in your presence about how you or Sergeant Williams were treating him?

page 283 } A. No, sir, he said we treated him fine. He made some requests. I mean—during the investigation and from time to time he wanted me to make arrangements for his wife to come down and see him and I told him at the time, I said, "any time she wants to come down"I said—"I'm more than willing to let you talk with her as long as want to talk with her." I even went to Hilton and talked her and delivered his message that he would like to see her. On one occasion his wife came down and her mother and spent—I would say about an hour with him downstairs in the interrogation room. I stayed in there with them. On another occasion his wife came down and her Aunt. I think it was the only two times that they came down. The Aunt waited out in the hall. His father came down. I told his father the same thing. Any time he wanted to see him, he could see him. The first time Mr. Hammer came down, he saw James, he was by himself. I remember on another occasion I told Mr. Hammer at the time. I said, "Mr. Hammer, any time you want to come, just give me a call to make sure we're going to be in the office. There's a possibility we might be out riding around looking at some houses or some other places." I said, "so we'll be sure to be there." He called me several times. Then he asked me would it be all right if he brought his little daughter down. It was about 16 years old. Couldn't get into the jail.

Lieutenant F. L. Martin.

I told him yes. I made arrangements for him.

page 284 } Q. What do you mean little daughter?

A. That's Mr. Hammer's, Senior, James' sister. I made arrangements for them all to come down one day they wanted to see him down in the interrogation room. Another day they wanted to come down and I had him up in the office. On each time when they got ready to come, I always tell him to go shave and get cleaned up for them and everything. Then his father called me again and wanted to bring the pastor down. I told him I would be glad to and made arrangements for the pastor to talk to him.

Q. The pastor come down?

A. His pastor came down with James' father. Then Mr. Hammer, he would stop from time to time in the evening on the way home. He would spend maybe fifteen, twenty minutes with him, sometimes ten minutes. He said that he didn't want to—bother us because he knew we were busy. I told him it didn't matter. Any time you want to come, you stay as long as you want to. I let him be his own judge how long he wanted to stay. Nobody hurried him. He wasn't in no hurry.

Q. Did the Defendant, James C. Hammer, ever request to use a telephone call and you deny him the privilege?

A. I let him use the telephone on several occasions. He called his wife once or twice. I'm not sure whether he called his parents or not but he did talk to his wife by

page 285 } phone.

Q. Did he ever ask to have an attorney with him to hire one or get in touch with an attorney and you deny it?

A. No, he didn't say anything to me about an attorney. His father come and talked to me about an attorney. I told him that would be up to him. He could go get anybody he wanted to get. He came back the next day and told me he went and talked to an attorney.

Mr. Kostel: We object to what Mr. Hammer told this witness, if your Honor please.

Court: All right sir, sustained.

By Mr. Murchison:

Q. Did you ever deny him the request to have an attorney?

A. No, sir, I—I told Mr. Hammer if he employed an attorney he could talk to him any time he wanted to.

Lieutenant F. L. Martin.

Q. Did he ever request an attorney?

A. No, he said he couldn't afford it.

Q. All right. When the wife of the Defendant or the wife's mother or her Aunt or the Defendant's father and sister would come or the pastor, was that during the time the statement, these various statements you've enumerated to were being taken or in between the time or was that all

page 286 } after all the statements had been taken?

A. No, we was in the process then of taking statements day by day *though* the 18th. After the 22nd that he went to the Court and waived, Mr. Hammer never came to see me no more. He always went and dealt with Mr. Gardner upstairs.

Q. So all the statements that his Honor has allowed to come in for the record, including the case in which we're trying today, the Haase matter, all these visits were made then by the parties during the time of taking statements?

A. That's correct.

Q. And he saw these people?

A. Yes, sir.

Q. In your presence and in the Defendant's presence, did he ever make any complaint to the people who were visiting him while you were present with the Defendant?

A. No, his father each time his father came down, he would tell him the same thing. That he said James, he said, "you've done wrong. Now go ahead and tell the truth and get it straight. Once you're out of it, you're out of it."

Mr. Kostel: We object to that, if your Honor please.

Court: All right, sir.

Mr. Kostel: Going mighty far afield with this

page 287 } witness.

Court: All right.

By Mr. Murchison:

Q. Did James C. Hammer, Lieutenant, ever make any complaint in your presence to his father or his wife or the other people that visited him about anything that was being done or that he didn't have or what?

A. No, sir, he made no complaints to none of them because I was there every time they came.

Mr. Murchison: Witness with you.

Lieutenant F. L. Martin.

RE-DIRECT EXAMINATION.

By Mr. Kostel:

Q. When were these visits made, Lieutenant Martin?

A. His father came, like I say, this is from memory now but it would be in the evenings after work. Sometimes he wanted to go home and change clothes and then come back.

Q. The dates.

A. I don't know. I remember he was down on the 14th but after that, it was just day by day. Some days he wouldn't come.

Q. How many days after the 14th was it before
page 288 } he came again?

A. I can't tell you that. I don't know.

Q. When did his wife come?

A. I know he brought his little girl on Saturday because she was off from school.

Q. When did his wife come?

A. It was a day or so after he was arrested. It might have been the following day. The 14th, it may have been the 15th. I don't know. She came twice.

Q. When did she come the second time?

A. She came in the morning both times.

Q. Do you remember the date of the second visit?

A. No, I do not remember the date.

Q. His father saw him on the 14th?

A. I'm pretty sure it was the 14th he came down because he came and talked to me.

Q. Who was in charge of the Detective Bureau during the —the daylight hours on May 13, 1964?

A. I believe at that time, this is from memory now, that Captain Weaver was off sick for a week at the time and I believe Captain Meck was sent down by the Chief's office. I may be wrong about that but I know he was down there. Whether he was there the 13th, I don't know.

Q. Would you have been second in command if
page 289 } he was not there, Captain Meck?

A. I don't know.

Q. He had no visitors on the 13th?

A. I don't know. I didn't talk to him on the 13th.

Q. Were you on duty on the 13th of May?

A. Yes, I was on duty.

Q. What time did you arrive at Police Headquarters?

Lieutenant F. L. Martin.

A. Eight o'clock.
Q. And what time did you leave, if you remember?
A. I left at five on the 13th.

Court: All right, these visits made by the father and the wife, do you know what visitors are allowed in the jail? That is how often they can see him in jail?

A. I believe it's on a Thursday afternoon—it's one afternoon. One day a week they can get in the jail. I don't know exactly what day it is.

Court: So actually weren't you extending a little bit of special privilege to these people to come and see him?

A. Yes, sir.

page 290 } Court: Had he been in jail, the only time he would have been allowed to have visitors would have been on a Thursday, is that right?

A. Whatever day it is. I didn't have to let him see him.

Court: One other question. This property that was taken from the home, was that—did that have to be used to obtain statements from the Defendant? By that I mean did you have to tell him that you had this property and—in order to get a confession from him?

A. No.

Court: All right. Are you through with this witness?
Mr. Kostel: No, sir, I want to ask him if he's positive about the visiting hours in the jail?

A. All I know, it might be one day or it might be two days. I don't have nothing to do with the jail.

By Mr. Kostel:
Q. You don't know, in response to the Court's question?
page 291 } A. I don't know whether it's one day or two days.
Q. It might have been more than two days, do you know?
A. I know I didn't have to let James Hammer's father see

him. I could have took him back to jail and said, "go to the jail."

Q. You don't know whether you were extending James Hammer more of a privilege by letting these people see him downstairs even he would have had if he had been upstairs in the jail?

Mr. Murchison: I object to that. That's argumentative.
Mr. Kostel: He already answered it.
Court: I'll let him answer it.

A. I—like I say, I don't work at the jail. I don't know what arrangements they make for—talking with prisoners up there.

Mr. Kostel: All right, sir.
Court: You do know, don't you, Lieutenant, from your own experience that they don't let a parent go up to the jail any time during the day or night, don't you?

A. That's what I've heard.

Court: You just heard that?

A. Yes.

Court: All right. All right, sir, come on, gen-
page 292 } tlemen. Let's move along.
Mr. Kostel: That's all.
Court: All right, you may step down. Next witness.
Mr. Kostel: Let me ask you one more question. Do you know Charles Hammer, the Defendant's brother?

A. I met him one time.

Mr. Kostel: Do you remember the date?

A. No, he came with his mother and father and his sister and it may have been two days. I'm not sure but I remember the one day.

Mr. Kostel: You saw him one time?

A. I know of one time I did see him.

Clifford Hammer.

Mr. Kostel: All right, thank you.
Court: All right, sir.
Mr. Kostel: Call Clifford Hammer, please.

CLIFFORD HAMMER,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 293 } By Mr. Bateman:

Q. State your name please, sir?

A. My name is Clifford Hammer.

Q. Are you related to the Defendant in this matter, Mr. Hammer?

A. Yes, sir. I'm his father.

Q. And where do you live, sir?

A. 814 Thornbriar Court, Hampton.

Q. In Hampton?

A. Yes, sir.

Q. When did you first learn, Mr. Hammer, that your son was in any difficulty with the authorities?

A. Approximately 8:30 on the morning of May the 13th.

Q. And what did you do when you learned of this?

A. Well, I immediately left the Shipyard and went home.

Q. And after getting to your home, what did you do?

A. Well, I stayed at home from then until almost 12:00 o'clock, after arriving home at approximately 9:30. I stayed at home until almost twelve.

Q. Then where did you go and who did you see?

page 294 } A. I went back to the Shipyard and picked up my younger son that I had borrowed his car to go home in. I went back to the Shipyard to the Apprentice School to pick up my youngest son and then we went back home after we left there and had lunch.

Q. And then where did you go? What did you do?

A. Then, then approximately 1:30 I would say we came to Police Headquarters.

Q. And where did you go when you came to Police Headquarters?

A. I first went to the Desk Sergeant's office and asked for information.

Q. Information concerning what?

A. Concerning my son, James Hammer.

Clifford Hammer.

Q. And what did you do then?

A. He told me that he would advise me to go to the Detective Bureau. That they could give me more information than he could.

Q. And did you go the Detective Bureau?

A. Yes, sir, I immediately went to the Detective Bureau and I was told that—Lieutenant Martin wanted to talk to me.

Q. That Lieutenant Martin wanted to talk to you?

A. Yes, sir.

Q. All right, which Lieutenant—are you aware
page 295 } that there is more than one Lieutenant Martin?

A. Yes, sir, the one they call Pepper, F. L. I believe is his initials. They call him Pepper. I do know that.

Q. Did you then have conversations with Lieutenant F. L. or Pepper Martin?

A. A few minutes later I did, yes, sir. He was not in the office and he came in approximately ten minutes later.

Q. And you had conversations with him?

A. Yes, sir.

Q. What was the purpose of your having gone to the Detective Bureau from the Desk Sergeant's office?

A. From the Desk Sergeant?

Q. Yes. Why did you go there?

A. I wanted information concerning the boy.

Q. Were you—

A. And I wanted to see the boy.

Q. Did you advise anyone in the Detective Bureau that you wished to see your son?

A. Yes, sir, I asked Lieutenant Martin could I see the boy and he said it was impossible to see him now.

Q. And did you talk to anyone else on this—what happened after you had asked to see the boy and permission at that time had been refused? What did you then do?

page 296 } A. Well, we talked with Lieutenant Martin approximately, oh, maybe 20 or 30 minutes. I don't know exactly but I would say approximately 20 or 30 minutes and during the time of this, we were carried from the Detective—this end of the Detective Bureau over in Captain Weaver's office.

Q. And what did you do in Captain Weaver's office?

A. After we went to Captain Weaver's office. Lieutenant Martin instructed Sergeant Williams to take a written statement from me of my knowledge of the things that were taken

in my son's apartment or in the attic of his apartment rather.

Q. Only as to your knowledge of those things or of any other things?

Court: What's this got to do with it?

Mr. Murchison: What's that got—

Court: He's not on trial. Neither is the Detective Bureau.

By Mr. Bateman:

Q. So this statement was taken?

A. Yes, sir, a written statement was taken.

Q. Excuse me. Did you thereafter see anyone else in a position of authority in the Police Department?

A. Yes, sir, I was told that Chief Peach wanted

page 297 } to talk to me.

Q. Did you have conversations with Chief Peach?

A. Yes, sir, Chief Peach came in Captain Weaver's office and I talked with him some, approximately ten or fifteen minutes, I would say, maybe twenty. I'm not sure of the time.

Q. What was the nature of your discussion or conversation with Chief Peach?

Mr. Murchison: I object to anything that's said by Chief Peach.

Court: Sustained.

Mr. Bateman: Your Honor, the purpose—

Court: It's hearsay, Mr. Bateman. All of it is hearsay. Every bit he's testified to that any Officer has told him is hearsay. The only way possibly to get in would be if you had warned the Lieutenant or the Police Officer that you had here that you intended to contradict him by statements from Mr. Hammer and there has been no framework laid. You can't have him testify what the Police Officer told him any more than Lieutenant Martin was allowed to testify what Mr. Hammer told him.

Mr. Bateman: We respectfully disagree with

page 298 } the Court and we have to serve notice on previous witnesses that someone else might be asked the question which would contradict something that they said or inferences from what they said. There has been no testimony one way or another from Lieutenant—

Court: You can contradict him, yes, sir. I go along with that but not by hearsay.

Mr. Bateman: All right, sir. I would agree, your Honor,

that we have no—permission to get or no right to get into the record hearsay.

By Mr. Bateman:

Q. Did you seek permission to see your son on the afternoon of May the 13th?

A. Yes, sir, I did.

Q. Were you allowed to see him?

A. No, sir, I was told that it would be impossible to see him.

Mr. Murchison: I object.

Mr. Bateman: Your Honor, on the question of him being permitted—

Court: He's testified he was not allowed to see his son. I'll let that in.

page 299 } Mr. Murchison: I didn't object to that.

By Mr. Bateman:

Q. All right, sir. What did you do after you—you left the Police Station on the afternoon of the 13th?

A. After I left Captain Weaver's office, Chief Peach carried me across the street to the place where they had the stuff that they had—secured. Then from there I went home and in turn I learned—

Court: This is all irrelevant. All right, sir.

A. That my son—

Court: This is irrelevant, Mr. Hammer.

By Mr. Bateman:

Q. Mr. Hammer, let's go on to another question. Did you go home?

A. Yes, sir.

Q. After you had gone and looked at this?

A. Yes, sir.

Q. When did you next come back to the Police Station?

A. Well, I came back that afternoon.

Q. And—

A. But I didn't come in. I only saw Chief

page 300 } Peach and talked to him out on the street that afternoon.

Q. And then did you leave?

Clifford Hammer.

A. Yes, sir.

Q. When did you next come back to the Police Headquarters?

A. On the afternoon of the 14th as I had been instructed to come back. That I would be able to see the boy if I come back on the afternoon of the 14th.

Q. This was the first opportunity that you had been accorded to see your son?

A. Yes, sir.

Q. Did you see him on the 14th?

A. Yes, sir.

Q. Would you describe his physical appearance on that occasion?

A. I would say it was very poor. His eyes looked red. His eyes were soaked deeply in his head and I asked him what made him look so bad. He said, "if you had been"—

Mr. Murchison: I object.

A. "What I had"—

Court: Sustained.

By Mr. Bateman:

Q. Was his appearance other than—what you had normally seen of your son or in your son? Was his appearance normal for your son?

page 301

A. No, sir, I wouldn't say it was.

Mr. Bateman: May I have a moment, your Honor?

Court: Yes, sir.

By Mr. Bateman:

Q. Mr. Hammer, who was present during your conversations with Lieutenant Martin on the afternoon of May 13?

A. Sergeant Williams and of course there were other detectives but who they were, I'm not in a position to call their names. There was others in the—Bureau at that time.

Q. And who was present during your conversation or conversations with Chief Peach on the afternoon of the 13th?

A. No one. Everyone had gone out when I talked to him.

Q. Was your son present?

A. Yes, sir, my son was with me all the time that afternoon. I'm sorry, I thought you were speaking of the Detectives.

Q. This is—which son was with you on the 13th?

Clifford Hammer.

A. The younger son, Charles.

Q. The youngest?

page 302 } A. Yes, sir.

Q. And who was—with you at the time of your —did you have any conversations with Chief Peach on the 14th?

A. Yes, sir.

Q. Who was present with you at that time?

A. I was by myself on that occasion.

Q. Was anyone else present when you were talking with Chief Peach?

A. On the 14th?

Q. Yes.

A. No, sir, none other than he called in Captain Meck or Meets, whichever it is, to carry me down to see him.

Q. What time was this on the 14th?

A. I would say approximately two o'clock. May have been two thirty.

Court: Where was he then, Mr. Hammer, if you know?

A. He was down in the basement in the other end of the Police building. That would be the west end, right?

By Mr. Bateman:

Q. Did your youngest son miss any time from the Shipyard on the 13th?

A. Yes, sir.

page 303 } Q. When he came down with you?

A. Yes, sir, he missed the afternoon of the 13th.

Q. You yourself miss any time from the Shipyard?

A. Yes, sir.

Court: Is there any denial that he didn't see his son on May the 13th?

Mr. Kostel: Chief Peach denied it in the previous case.

Court: Oh, all right.

Mr. Bateman: There is nothing in the record in this trial to this point.

Court: I'm just trying to save some time.

Mr. Bateman: I appreciate your Honor's question. We have no further questions at this time.

Mr. Murchison: Your Honor, would you grant me a few minutes before I take cross examination.

Clifford Hammer.

Court: Yes, sir.

(At this time the Court declared a recess after which the Court reconvened).

By Mr. Bateman:

page 304 } Q. Mr. Hammer, returning to the afternoon of May the 13th, I believe you said that you had conversations with Chief Peach?

A. Yes, sir.

Q. Where were those conversations?

A. In Captain Weaver's office in the Detective Bureau.

Q. In the course of that conversation, were you advised by Captain Peach that any charges could or might be brought against you?

Mr. Murchison: I object.

Court: Sustained.

Mr. Bateman: Might I know the basis of objection and ruling, your Honor?

Court: Yes, sir, hearsay.

Mr. Bateman: Your Honor, we submit that this is not hearsay since the evidence is not being adduced for the purposes of establishing the truth that he was going to be or might be but only as to whether or not he was told that he would or might and this takes it out of the *hearsy* rule. It doesn't make it hearsay and you don't even need an exception to the rule simply because it is not hearsay, not

page 305 } being offered to prove the truth of the statement made but only the fact that such a statement was made.

Court: For what purpose?

Mr. Bateman: It would be material if such a statement was communicated to this Defendant and will be related to subsequent testimony.

Court: The truth of it, for the truth of it.

Mr. Bateman: No, sir.

Court: Yes, sir. That would be the only way that this Defendant could accept it. I assume that's what you want to show, it was made to the Defendant or told to the Defendant by somebody so it would have to be for the truth of it.

Mr. Bateman: No, your Honor.

Court: All right, overruled—sustain the objection.

Mr. Bateman: I execept to the Court's ruling.

Court: Yes, sir.

Clifford Hammer.

Mr. Bateman: We have no further questions.

page 306 } CROSS EXAMINATION.

By Mr. Murchison:

Q. Mr. Hammer, I just have about two or maybe three questions, please, sir. Did your son, James C. Hammer live with you and your wife and your daughter?

A. He had prior—

Q. Did he live with you at the time in May?

A. No, sir.

Q. When is the last time he has lived with you?

A. September of '63 I believe. I'm not sure of that day now.

Q. Now directing your attention to May the 13th, as you have testified, when had you last seen your son from May 13? When is the last day you saw him?

A. I believe on Sunday before which would have been the 10th I believe.

Q. So you saw your son the Sunday before this matter occurred?

A. Yes, sir.

Q. And that would be the 10th, some two or three days or four before you saw him again?

A. Yes, sir.

Q. So you don't know what he had done or
page 307 } where he had been on May the 12th or in the evening of May the 12th himself, do you?

A. No, sir.

Q. You don't know what he had been doing from May 10th, 11th or 12th then, do you?

A. I do know that he worked.

Mr. Bateman: I object. This is irrelevant to anything that we're—dealing with.

Court: All right sir, what's the relevancy of this?

Mr. Murchison: The relevancy is that the testimony has been that he saw his son on the 14th and he had red eves. I asked when was the last time he saw him. He got a four day span in there he has not seen him.

Mr. Bateman: His testimony was that he had seen him on the 13th.

Mr. Murchison: No, he did not.

Mr. Bateman: I beg your pardon.

Court: Go ahead.

Clifford Hammer.

By Mr. Murchison:

Q. From the 10th through the 14th you saw him, you don't know what your son had been doing, whatever he had been, do you?

page 307A } A. No, sir.

Q. Outside or inside the police custody?

A. No, sir.

Q. Now you did see him on May the 14th?

A. Yes, sir.

Q. And you saw him other times after May 14?

A. Yes, sir.

Q. Any time you wanted to?

A. Well, I don't believe I was refused after that day.

Q. After the 13th?

A. I don't believe—I don't remember of any occasion that I was refused seeing him after the—the 13th.

Q. And you saw him frequently, didn't you?

A. Well, I saw him—I don't know just the date but I did see him the first—the 14th, 15th and 16th I remember.

Q. Three consecutive days?

A. Well, for a short period. I was only allowed to stay maybe 20 or 25 minutes at any time.

Q. But you did stay 20, 25 minutes with him?

A. Approximately that time, yes sir.

Mr. Murchison: I don't have anything else.

page 308 } Court: All right.

RE-DIRECT EXAMINATION.

By Mr. Bateman:

Q. Mr. Hammer, when you saw him finally on the 14th, you were aware and knew that he had been in the custody of the police since sometime on the evening of the 12th, did you not?

A. Yes, sir.

Q. Were there any discussions in your presence between yourself, your son and Lieutenant Martin concerning retaining an attorney?

A. No—not on the 14th there wasn't. On the 15th there was.

Court: I assume you're referring to Lieutenant F. L. Martin?

Mr. Bateman: F. L. Martin.

Clifford Hammer.

A. Yes, F. L. Pepper.

By Mr. Bateman:

Q. And what, if anything, did Lieutenant—F. L. Martin say to you or to your son regarding the retaining of an attorney?

Mr. Murchison: I object to that.

Court: Sustained.

page 309 } Mr. Bateman: This is offered for purposes of impeachment. This is a matter that was gone into.

Court: Then you have to warn Lieutenant Martin.

Mr. Bateman: Your Honor, the testimony concerning discussions as to a counsel came on examination by the Commonwealth.

Court: Mr. Bateman, the law is very clear on that. Whenever you are going to impeach a witness, you got to warn him of impeachment. The law is very clear on that.

Mr. Bateman: Your Honor, this is a point of law that I have not come across and that I have—

Court: I'm sorry you can't come across it but my ruling stands.

Mr. Bateman: We except to it, your Honor. We would also like to point out to the Court there will be further testimony in regard to that.

Court: Let me point out to you now, there is no rule of law that I am aware of and until you can show me some authority, you will know where this Court stands,

page 310 } and the law will remain this way until it is changed. There is no rule under the sun that I know of that you can let anybody repeat what a detective told them. It is hearsay. Anything that Mr. Hammer heard is hearsay. The same as when you would not and did object when Lieutenant Martin tried to tell you of a conversation with Mr. Hammer. There is no difference in the reversal and the mere fact that you want to contradict. Then you have to warn the person in order that he can change his testimony if he so desires. This is the ruling of the Court and will continue to be throughout this trial.

Mr. Bateman: Your Honor—

Court: And you may vote your exception and I don't want to hear any more argument on it because that's it.

Mr. Bateman: Your Honor is perfectly clear. There's no

point in any further argument and I don't wish to argue it further.

Court: All right.

page 311 } Mr. Bateman: In the interest of a full and abundant understanding of what I can and can't do at this point, do I understand that questions of this nature and the answers they call for will be admissible as a basis for impeaching the credibility of other witnesses? Am I correct to that extent?

Court: In what now?

Mr. Bateman: Would this question and a responsive answer to it be admissible for purposes of impeaching credibility?

Court: No sir. The only way that I can let Mr. Hammer testify to something that Mr.—that Lieutenant Martin said would be for the purpose of impeachment and the groundwork would have had to have been laid.

Mr. Bateman: Well, we would like to make the record clear, your Honor, that our purpose in asking the question was to impeach credibility.

Court: All right, sir.

Mr. Bateman: No further questions.

Court: All right.

page 312 } Mr. Murchison: I have no further questions.

Court: I think you're confusing credibility and contradiction. All right, sir. Next witness.

Mr. Kostel: Charles Hammer.

CHARLES WILLIAM HAMMER,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:

Q. State your name, please.

A. Charles William Hammer.

Q. How old are you?

A. Twenty.

Q. Are you related to the Defendant, James C. Hammer?

A. Yes sir, he's my brother.

Q. Did you come to Police Headquarters in the City of Newport News on May 13, 1964?

A. Yes, sir.

Charles William Hammer.

Q. With whom did you come?
page 313 } A. My father.
Q. Tell us what happened when you arrived at Police Headquarters?

A. Well, we went to the Desk Sergeant's office first. We were told then we would have to go around to the Detective Bureau. We went around there and they said that Lieutenant Martin would want to see us. We sat towards the back of the room and Lieutenant Martin and Sergeant Williams come in and talked to us for a while. They asked us different things and then we went over into Captain Weaver's office. While we were in the Lieutenant's—with Lieutenant Martin, my father asked if we could see my brother.

Q. Was that request permitted or denied?

A. It was denied.

Q. Any reasons given?

A. No, sir.

Q. All right sir, what happened next?

A. We went over into Captain Weaver's office and sat there a few minutes and then they took a statement from my father about did he know anything—

Mr. Murchison: I object.

By Mr. Kostel:

Q. Don't tell us what the statement was. They took a statement. Then what happened?

A. Then it was in my presence and he signed
page 314 } it and then they were—we were told that Captain Peach wanted to see us, Chief Peach.

Q. Chief Peach?

A. Yes, right, wanted to see us. Lieutenant Martin and Weaver left. Williams left and we talked to Chief Peach for a while.

Q. Did your father make any request of Chief Peach in your presence?

A. The same request was made to see my brother and—

Q. And was that request denied or granted?

A. Denied.

Q. Any reason given?

A. No sir, no reason whatsoever.

Q. What time of day was this on the 13th of May that you —that you were at Police Headquarters?

Charles William Hammer.

A. That was in the afternoon. Sometime I guess after one o'clock, around one o'clock.

Q. You are positive it was on the 13th?

A. Positive. I was in class that morning when I learned of the news.

Q. And what—do you do in the afternoon? You go to class in the morning?

A. I go to class on Monday and we had mornings and then I work that afternoon.

page 315 } Q. Did you work on the afternoon of May 13?

A. No sir.

Q. Where do you work?

A. Shipyard, Newport News Shipyard. I'm an apprentice there.

Court: All right, anything further?

By Mr. Kostel:

Q. When did you next see your brother? Excuse me. Strike that. You didn't see him. When did you see your brother after his arrest? When did you first see him after his arrest?

A. That was—oh, I didn't see him until about two weeks after that.

Q. Did you see him up in the jail?

A. We went up to—I forget his name. We did see him up there, yes. I went with my mother and father.

Mr. Kostel: Witness with you.

Mr. Murchison: No questions.

Court: All right sir, step down. All right sir, next witness.

Mr. Bateman: The Defendant.

Court: Just a matter of curiosity, do you have any authority that says you can put him for this limited matter?

page 316 } Mr. Bateman: Yes sir. Well, your Honor, I have checked the law. The law is clear on it. I don't have the reference readily at hand that this is the case. Does the Commonwealth have any different understanding?

Court: That the Defendant can be put on just for this and nothing else?

Mr. Bateman: This is the purpose for which we call him

to the stand, your Honor, is for the limited purposes of showing the admissibility of the confession and this is consistent with our understanding of the law.

Court: But you haven't said any authority that specifically says that, have you?

Mr. Bateman: Yes sir, I have. I did not know that it would be—

Court: I'm raising it myself. I haven't seen any.

Mr. Bateman: I have read the authorities, your Honor, and just made no notation of them or no memorandum of them.

Court: All right, sir.

Mr. Bateman: If the Commonwealth has a
page 317 } question on it, I'll be glad to search my notes.

Court: I haven't heard any objection and hasn't been sworn?

Mr. James C. Hammer: No sir.

Court: I'd like to see some authority on that, just as a matter of reference.

Mr. Bateman: I'd be happy to furnish it to the Court.

Court: All right.

Mr. Bateman: And we would like for it to clearly reflect without objection at this point.

Court: There isn't any objection to it.

Mr. Murchison: We have no objection. We're trying to be—

Court: I'm curious to see an authority where a Defendant can be called for a limited purpose in a criminal case.

JAMES C. HAMMER,

called as a witness in his own behalf, being duly
page 318 } sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. Your name is James C. Hammer?

A. Yes, sir.

Q. You are the Defendant in this proceeding?

A. Yes, sir.

Q. When were you first taken into custody by the authorities, Mr. Hammer?

James C. Hammer.

A. Approximately 8:45 on the night of May 12.

Q. And had you ever been in the custody of the police prior to that time?

Mr. Murchison: I object.

Court: Sustained.

Mr. Bateman: Your Honor, this is pertinent to show his familiarity with police procedures and what the routine of investigation and particularly the manner of investigation of this case, what effect these elements might have had on this Defendant in terms of—the voluntariness or unvoluntariness of the confession.

Mr. Murchison: You mean you're trying to
page 319 } show he's a seasoned criminal or what?

Mr. Bateman: I'm trying to get from him an answer as to whether or not he has ever been under investigation and custody of the police.

Mr. Murchison: I object to it.

Court: Well, I've gone overboard for him anyway. I'll let him answer.

By Mr. Bateman:

Q. Had you ever been in the custody of the police and under investigation for any criminal offense prior to May 12, 1964?

A. No, sir.

Q. What is your age?

A. 26.

Q. What was your age at the time you were taken into custody?

A. 25.

Q. And where were you taken into custody?

A. At the corner of Warwick Boulevard and Hopkins Street.

Q. And what had been your schedule or routine on the day that you were taken into custody?

Mr. Murchison: I object.

Court: Sustained.

page 320 } Mr. Bateman: Your Honor, again it's pertinent as to what his physical condition to withstand what he was put through as to what his activities had been prior to that time particularly with cross examination from

Mr. Murchison of Mr. Hammer as to whether to had done anything.

Court: I'm not going to let you carry him through all of his activities.

Mr. Bateman: Exception.

By Mr. Bateman:

Q. After you were taken into custody at 8:45 p.m. on the 13th, what happened to you or what was done with you after that?

Mr. Murchison: I object.

Court: I'll let him answer it.

A. I was asked quite a few questions by different officers.

By Mr. Bateman:

Q. Where?

A. Well, the first questions were taken place at—the lady's house, not her house but down the street from where her house where the incident was supposed to have happened on this particular night. The crest of them occurred in Captain Weaver's office.

page 321 } Q. Were you advised—when were you advised of why you were taken into custody and for what purpose you were taken into custody?

A. I was not advised until aproximately three o'clock on the morning of the 13th.

Q. The morning of the 13th?

A. When I was finally booked.

Q. All right, you were taken to some lady's house?

A. Yes, sir.

Q. Did you actually go into the house?

A. No sir, I sat in the car.

Q. And what went on while you sat in the car?

Mr. Murchison: I object to that, if your Honor please. This is going to open up the whole case.

Court: I agree, Mr. Bateman. You're not going to get this boy's testimony in, in this manner. You're perfectly at liberty to show duress, to show the questions and that sort

of thing but not—not what was he asked or any of that. I don't think that's pertinent.

Mr. Bateman: I had no intent in this questioning of having him say what the results of any questions
page 322 } were.

Court: Bearing in mind that the Commonwealth's evidence itself has shown that he was examined at the automobile all of this has been shown. You're just corroborating it but I'm not going to let him testify in this manner.

Mr. Bateman: All right, sir. I would like to note an exception.

Court: Yes sir.

By Mr. Bateman:

Q. What time did you arrive at the Police Station or were you taken to the Police Station?

A. I was brought down to the Police Station approximately around ten, ten fifteen.

Q. And were you—where were you taken when you got to the Police Station?

A. Into Captain Weaver's office, in the Detective Bureau.

Q. And how long did you remain there?

A. Until about 3:00 o'clock the next morning.

Q. And where were you taken when you left?

A. I was carried upstairs and put in the cell.

Q. How long did you remain in the cell?

A. Just a short time.

page 323 } Q. Well, can you tell the Court for what period of time this was?

A. Well, I didn't have a watch and I would say it was approximately maybe 45 minutes or maybe an hour.

Q. And what happened after this elapse of time?

A. I was brought back downstairs by Lieutenant Martin to view what had been taken from my house.

Court: Which Lieutenant Martin?

A. I don't know his name. It's not the one that was on the stand this morning.

By Mr. Bateman:

Q. It was not F. L. Martin who testified earlier this morning?

A. No, sir.

James C. Hammer.

Q. All right, and—what happened after you were taken down to view this material?

A. I was carried back into the Detective Bureau.

Q. And how long did you remain in the Detective Bureau?

A. Well, I remained there until I was brought over to stand in front of Judge Wall that morning.

Q. All right, and generally and briefly, what was done concerning you from the time you were taken
page 324 } back to the Detective Bureau until the time that you were taken over before Judge Wall?

Mr. Murchison: I object. If we get into that, I certainly think the Commonwealth has a right to explore everything you're asking and that gets to the merit of this case, that you don't want me to get into it.

Court: I'll let him answer it.

By Mr. Bateman:

Q. Generally and briefly what—what went on concerning you during this period?

A. I was questioned some by Lieutenant Shanz and Lieutenant Martin.

Q. Was there any communication between you and any other person from the time you were taken into custody to—well, what was the first communication you had with any person other than members of the Police Department from the time you were taken into custody?

A. The first communication I believe was on the 14th which would have been a Thursday.

Q. And with whom?

A. That was my father.

Q. What, if you know, or why was there no such communication?

A. Well, I asked when I first came in that night
page 325 } to call and was denied to make a phone call. My wife was pregnant at the time and she was supposed to be home from work at 10:00 o'clock and I was worried about her and we didn't have a phone in the house so I asked to call my father so that I could tell him what had happened and he could go over and relate to her but I was denied to make that phone call.

Q. You say that you—

Court: Would you ask him please, who denied him, if he knows and approximately what time this was where it was?

James C. Hammer.

By Mr. Bateman:

Q. Who, if you know, denied this request on your part?

A. Sergeant Calhoun and Lieutenant Hiser were the two men in the office at the time I made the request and it was made approximately five minutes after I arrived in the Detective Bureau which was somewhere around 10:00 o'clock.

Q. Were any reasons given for the refusal?

Mr. Murchison: I object.

Court: I'll let him answer.

A. No, they didn't give me any reason.

By Mr. Bateman:

Q. Now, how long were you before Judge Wall?

A. Well, I'd say I was there approximately
page 326 } three minutes.

Q. And what time was this that you went before the Judge?

A. It was sometime after nine o'clock.

Q. Would you advise the Court what transpired while you were in the Municipal Court that morning.

Mr. Murchison: I don't want to object to all this. If you want to let it all in—it's hearsay.

Court: All right, I'll let him tell.

A. Well, I was told to go in and stand by the end of the Bench and Judge Wall read out something. I don't remember what he said. He said you're charged with three or four offenses that are very serious and then the Commonwealth got up and said, "we want to continue this case until a later date" and that's all that was said.

By Mr. Bateman:

Q. Was any reference made as to—to the time, place or persons involved in these serious offenses that reference was made to?

A. No, sir.

Q. And where did you go and what happened after you left Municipal Court?

A. I was carried back to the Detective Bureau.

Q. And what—for what purpose?
page 327 } A. Questioning.

Q. And how long did this continue?

James C. Hammer.

A. Throughout the day.
Q. And by whom?
A. Lieutenant Shanz and Lieutenant Martin.
Q. And you say it continued throughout the day. Until what hour, if you recall?
A. Well, I don't recall the hour but was after dark.
Q. Did all of the questioning take place in Police Headquarters?
A. No, sir. I was—part of the time we were out on the road. They carried me to the houses where the offenses happened. Lieutenant Shanz and—and Sergeant Jefferson.
Q. What food or refreshments did you have from the time you were taken into custody from 8:45 p.m. on the 12th to the late afternoon of the 14th of May?
A. I had a Coke.
Q. Anything else?
A. No, sir.

Court: No egg sandwich?

A. No sir, I did not.

Mr. Bateman: My question, your Honor, and Mr. Murchison, was with reference to any nourishment up
page 328 } to the late afternoon hours of the 13th. I don't know whether that was understood.
Court: He answered to the 14th he had a Coco-Cola.

By Mr. Bateman:
Q My question was with regard to the late afternoon of the 13th or the day following your being taken into custody.
A. I had a Coke on the afternoon of the 13th and that was the first thing I had had since I had been arrested.
Q. Had you requested food?
A. No sir, I had not requested any food.
Q. Now, do you recall at what hour at or about dark on the 13th, interrogation ceased?
A. It ceased for a moment around I guess, around seven or seven thirty on the night of the 13th and I was carried upstairs and placed in a cell.
Q. Who carried you upstairs?
A. I believe it was Lieutenant Shanz who carried me up.
Q. Did you have any dinner or nourishment after that?

James C. Hammer.

A. No sir.

page 329 } Q. All right. And how long did you remain in the jail on the early evening of May the 13th?

A. When I was upstairs approximately an hour, hour and a half.

Q. Then what happened?

A. Lieutenant Mapes came up and got me sometime around 9:00 o'clock.

Q. And where were you taken?

A. Back down to Captain Weaver's office.

Q. And what happened when you got back to Captain Weaver's office?

A. I was introduced to Chief Peach and—Chief Peach told me who Lieutenant Mapes was.

Q. And did you have any conversation with Chief Peach?

A. Yes, sir.

Q. And for what period of time?

A. Approximately 20 minutes.

Q. Was this the first conversation that you had with Chief Peach?

A. Yes, sir.

Q. And what happened after your conversation with Chief Peach?

A. Chief Peach left the room.

Court: I'll let you ask him here if you want

page 330 } to, if the Chief made any such statement to him about his father.

Mr. Bateman: All right, sir.

Court: For the purpose not of the truth of it but of the fact that it was stated if this is where it comes in, I'll let you ask him.

Mr. Bateman: This has been the desire on the part of the defense, your Honor. I would like to have this last question read back and then return to that, if I might.

(The last question was read).

By Mr. Bateman:

Q. Would you tell the Court the substance of your conversation with Chief Peach or—strike that. Let me ask it more directly, if the Court please. In your conversations with Chief Peach, were any promises or threats made to you?

A. Yes, sir.

James C. Hammer.

Q. Would you tell the Court the nature of those promises or threats?

A. Chief Peach related to me that I had caused my parents enough embarrassment already and to save them the embarrassment of being drug through Court and pos-
page 331 } session of stolen property charge, if I would agree to sign statements that were wrote by them, he would not prosecute them.

Q. Up to the time—

Mr. Murchison: If your Honor please, at this moment it would become more important for the Commonwealth to advise you that I have talked with Mr. Kostel and with Mr. Bateman. Chief Peach is out of town today. We're expecting him back this afternoon and I would respectfully reserve that point at a moment in my area of taking over.

Court: All right.

Mr. Murchison: I'd ask permission of Mr. Bateman and Mr. Kostel.

By Mr. Bateman:

Q. Up to the point where—were there any other statements of Chief Peach in the nature of a threat or a promise?

A. No sir, that was the only thing.

Q. And up to the time that this statement was made to you by Chief Peach, had you given any statement incriminating yourself?

A. No, sir.

Q. Did you know who Chief Peach was?

A. No sir, I did not until I was introduced to
page 332 } him.

Q. How were you introduced to him?

A. When Lieutenant Mapes brought me into the office, he said, "I'd like to present Chief of Police, W. F. Peach."

Q. Following the conversation with Chief Peach, what did he do?

A. He left the room then.

Q. And then what happened?

A. I had a talk with Lieutenant Mapes then and he had some statements there he wanted me to sign.

Court: He had statements that he wanted you to sign?

A He had statements that had been taken earlier that by

James C. Hammer.

Shanz that I had not said anything but something they wrote down and I signed and he wanted me to re-write it and me to sign it again.

By Mr. Bateman:

Q. Then you went through and reviewed unsigned statements?

A. That's right.

Q. Is that correct?

A. Yes.

Q. And how long did you go through this procedure?

A. Until sometime after midnight.

page 333 } Q. Do you recall when?

A. No sir, I do not.

Q. It stopped. All right, then at some point after midnight, as you recall, this procedure was interrupted and where were you then taken?

A. I was carried back upstairs.

Q. You don't recall the time that you got back upstairs?

A. No, sir.

Q. All right. How long were you up there?

A. Until about 8:00 o'clock the next morning or that same morning. That was morning then.

Q. And what day would this have been?

A. That would have been on the 14th.

Q. Around 8:00 o'clock on the morning of the 14th?

A. Yes, sir.

Q. And what happened then?

A. I was carried downstairs and carried down into the basement to interrogating room; was Lieutenant F. L. Martin was waiting.

Q. All right. Now up this point, had you had any nourishment during the time from the early evening of May 13, to 8:00 o'clock or thereabouts on the morning of

page 334 } the 14th when you met Lieutenant Martin?

A. I ate a little breakfast that morning.

Q. You had breakfast that morning?

A. Yes, sir.

Q. All right, and what was the purpose or what did you do when you got down to the basement and met Lieutenant Martin?

A. The purpose was to sign statements.

Q. To sign statements?

A. Yes, sir.

James C. Hammer.

Q. Were you—were you asked any questions?
A. No, sir.
Q. Were the statements already prepared?
A. No, sir.
Q. Then what was the procedure that was resorted to?
A. Well, he took out the complaints he had and he wrote his statement from the complaint and then I signed it.
Q. Were you advised by any of the detectives who interrogated you that there were items of property which had been thieved or found at your residence?
A. Yes, sir.

Court: What was that? I'm sorry. Would you read that?

page 335 } (The last answer was read).

By Mr. Bateman:
Q. Mr. Hammer, I'd like to read to you some notations regarding the time of the making of statements by Lieutenant Martin and ask you if you know whether or not these times are correct.

Mr. Murchison: I object to that.
Court: It's the Commonwealth's evidence—no, it isn't the Commonwealth's evidence either.
Mr. Murchison: He's now telling him.
Court: No, what I am saying is this. The Lieutenant has testified to these times. I don't know why you want to corrobrate them from the Defendant.
Mr. Bateman: I think the Court is probably correct, that it would add nothing unless the Commonwealth disputes—
Court: I don't see how he's going to dispute his own Detective Lieutenant. Maybe he will. If he does, I'll let you put him back.

By Mr. Bateman:
Q. For what period of time did the interrogation by Lieutenant Martin continue on the day of the 14th?
page 336 } A. Throughout the entire day.
Q. Was there any interrogation on the evening of the 14th?
A. Yes, sir.
Q. To what hours, do you recall?
A. Well, I do not—

James C. Hammer.

Court: Wait a minute now. Let's clear up this word, "interrogation". You used the word, "interrogation" but I understood him to say that he wasn't asked any questions. That they just wrote the statements out and he signed it. What do you mean by "interrogation", Mr. Hammer?

A. Well, he did ask me questions after that but when I first met him he just wrote down from his notes and from his complaints, statements and I signed that.

Court: You just sat there then and he wrote and you took it and signed it?

A. Yes, sir.

Court: All right.

By Mr. Bateman:

Q. How long did the interview or the session continue in that manner?

A. Well, it continued in that manner until—oh, around noon I guess it was.

page 337 } Q. And then was there a change—any change in the procedure?

A. Then they begin to get into other cases and asking me questions about them.

Q. And was anyone present other than yourself and Lieutenant Martin?

A. Sergeant Williams.

Q. Were you asked questions by more than one person?

A. Sergeant Williams would ask me something and then Lieutenant Martin would ask me something and almost simultaneously.

Q. And—how long did this procedure continue?

A. Oh, up into the night.

Q. Do you recall how late into the night?

A. No, sir.

Q. Were you the subject of questioning or interrogation in any way on the 15th of May?

A. Yes, sir.

Q. On the 16th of May?

A. Yes, sir.

Q. On any date subsequent to the 16th of May. Do you know how long interrogation continued or for how many days it continued?

James C. Hammer.

A. No, sir, I do not.

page 338 } Q. Do you know whether or not it continued at all beyond the 16th of May?

A. No, sir.

Q. Were there any discussions between you and Lieutenant Martin regarding or any other persons regarding the—whether or not you should or would retain counsel?

A. Yes, sir.

Q. What was the nature—did Lieutenant Martin express any views or make any recommendations in that regard?

A. He made the statement that I couldn't afford to hire an attorney to represent me, being as all the cases were against me, it was so much, it would cost money that I didn't have. He told me just to wait and let the Court appoint me an attorney.

Court: Which Lieutenant Martin is this now?

A. F. L. Martin.

By Mr. Bateman:

Q. Did any Police Officers who were involved or participated in this investigation directly with you indicate to you that you would be better off to tell them what you had done?

A. Well, I asked one question. I told them that I had in possession the property but I didn't think that it

page 339 } was too bad and I was advised that taking it or possession was just as bad as taking it so I would be better off to go ahead and sign the statement.

Q. Were you advised by any of the Detectives that you had a right to make no statement whatever?

A. No, sir.

Court: Who made this statement, please, that the taking was—possession was as bad—

A. Lieutenant F. L. Martin. The theft was just as bad as having possession of it.

Court: The theft was as bad as as having possession?

A. Yes, sir.

Court: Are you sure you haven't got that backwards now?

James C. Hammer.

A. He told me. I told him that I had it in my possession, the property, and he said, "well, you've got it." He said, "that's just as bad as taking it."

Court: All right, that's—you said the theft was as bad as taking it. You mean possession was as bad as taking it?

A. Yes, sir.

Court: All right.

Mr. Bateman: No further question, your
page 340 } Honor.

CROSS EXAMINATION.

By Mr. Murchison:

Q. Did you have all the stuff in your possession and you told the Lieutenant that?

A. No, sir.

Q. You didn't have it all up there?

A. I didn't tell him I had it.

Q. I thought that's what you said.

A. I didn't have it in my possession at the time. They told me what they had taken at my house.

Q. You saw it, didn't you?

A. No, sir, I saw part of it. I saw some of the things I could identify as mine but I did not see everything that was taken.

Q. You also knew of the things that you are testifying to about your father, aren't you? You knew of that, didn't you?

A. That were taken from his house?

Q. Yes.

A. No, sir.

Q. You knew what was there, didn't you?

A. I didn't—

page 341 } Mr. Bateman: I object.

Court: Sustained.

Mr. Bateman: To what he might have known or not known about the location of the *poperty.*

Court: Well, I don't think it's in the line of questioning.

By Mr. Murchison:

Q. All right. Now Mr. Hammer, you said that—you went downstairs with Lieutenant Mapes and he wanted you to

sign a statement that had been taken by Lieutenant Shanz, is that right?

A. No, sir. He wanted to re-write the statement that Lieutenant Shanz had taken.

Q. I thought you said you had not signed a statement?

A. No, I had signed Lieutenant Shanz had but he wanted to re-write it.

Court: You had signed Lieutenant Shanz?

By Mr. Murchison:

Q. I thought you testified—

A. I had signed.

Q. You did sign the statement you gave to Lieutenant Shanz?

page 342 } A. That's right.

Q. Now I believe you have already testified that when Lieutenant F. L. Martin, known as Pepper, since we have two Martins in the matter, talked to you, that he had a complaint sheet; that is your words and a statement that he wrote out—without talking to you at all?

A. He wrote the statement from his complains.

Q. And then you just signed it?

A. Yes, sir.

Q. Can you read?

A. Yes, sir.

Q. You read the English language. I'm not being sarcastic I assure you.

A. Yes, sir.

Q. And you just signed a statement without reading anything?

A. Yes, sir.

Q. While you were being—while you were—being investigated for these various complaints?

A. Yes, sir.

Q. Now, did you read any of these statements?

A. No, sir.

Q. You didn't read any. All right, sir. I hand you a written paper in ink and ask you—this is not for the purpose—if your Honor please, for the statement or the con-

page 343 } text or anything to do with it other than my questioning the veracity of this.

Court: All right, sir.

James C. Hammer.

By Mr. Murchison:

Q. And ask you if you have ever seen this paper under the title of Susan T. Godwin.

A. I don't remember the title.

Q. All right, have you ever seen this paper? Will you take a hold of it in your hand.

A. It has my initial on the bottom of it.

Q. All right, sir. Look on the second or third or fourth sheet.

A. Yes, sir.

Q. What is on the bottom of that statement?

A. My initial.

Q. What's on the last sheet, if you will, sir?

A. My signature.

Q. All right, sir. Now on the—on the fourth sheet of this statement, will you tell me if your initials appear anywhere there?

A. On the bottom.

Q. Directing your attention to two lines up, is that not your own initial (indicating) where it is scratched out a word is scratched out and you have initialed the scratched out word?

page 344 } A. No, sir, that's JAS.

Q. You did not read this statement?

A. No, sir.

Q. Will you tell me the difference between your initial at the bottom within four inches from that JAS?

A. My initial at the bottom is JCH and this *appearas* to be JAS.

Q. JAS.

Court: That's not your initial?

A. No, sir, my initial is JCH.

Court: I'm not asking you that. I'm asking you, you did not put your initial up here?

A. No, sir.

Court: This is not your's?

A. No, sir.

James C. Hammer.

By Mr. Murchison:

Q. And you say you've never seen that except that you signed it without looking at anything?

A. Yes, sir.

Q. All right, sir. Moving on then, Mr. Hammer—now, Mr. Hammer, moving to a matter of another ink written statement for the same reason, not for the statement at all but to contradict, in the Mason D. Read matter. Do you remember seeing this statement?

page 345 } A. That is my initial on the bottom.

Q. All right, sir, on the second sheet does it have your initials?

A. Yes, sir, on the bottom.

Q. And what are your initials on these two sheets?

A. JCH.

Q. On the third and last sheet, what is at the bottom?

A. My name.

Q. What is that?

A. James C. Hammer.

Q. Directing your attention to three or four lines above and the fifth line above, are there any words scratched through and initialed?

A. Yes, sir, a word scratched through and it has my initial.

Q. Has your initial. Then you have seen that statement and you read it?

A. No, sir, I did not read it.

Q. Why did you scratch through something and initial it?

A. I did not scratch through it.

Q. Why did you initial it?

A. Because he told me he had made a mistake

page 346 } and I initialed his mistake. He said I would have to do it.

Q. You didn't bother to read your mistake?

A. I didn't make it.

Q. His mistake?

A. He said all he had to change for one word and for him to initial it.

Q. And you tell this Court—Mr. Hammer, directing your attention again to a written ink paper for the purposes as I have alluded to before, in the May Ann Lubo matter, have you seen that written statement before?

A. That's my initial on the bottom.

Q. Does it have it on the second sheet?

James C. Hammer.

A. Yes, sir.
Q. Your initials are the same JCH?
A. Yes, sir.
Q. Does it have it on the fourth sheet?
A. Yes, sir.
Q. Does it have it on the fifth sheet?
A. Yes, sir.
Q. Does it have it on the sixth sheet—fifth sheet, yes, sir.
A. Has my name.
Q. And five lines above that, are there any words struck out and initialed there?
A. Words scratched out and has my initial.
page 347 } Q. Then did you see this statement?
A. I signed it.
Q. Did you read it?
A. No, sir.
Q. You mean you're now telling the Court that all of these matters in which Lieutenant Martin, F. L. Martin took from you, he wrote them down from a—the complaint sheet?
A. Yes, sir.
Q. In his own words and where and what and all the facts are in them, assuming there are any, that all of the information is in the statement and you signed it, able to read, able to read the English language and also made corrections with your initial and you tell this Court you never read those statements?
A. I do.
Q. You never read any of the statements in which you signed them?
A. No, sir.
Q. Did you see your mother and father?
A. Yes, sir.
Q. Did you see your brother and sister?
A. I saw my brother approximately two weeks after.
Q. Did you see your brother and your sister
page 348 } while you were in jail?
A. Yes, sir.
Q. Did you see items in the building across the street?
A. Yes, sir.
Q. And you saw them downstairs from the jail?
A. Some of them.
Q. Sir?
A. Some of them.
Q. And you talked to Lieutenant Martin about all these matters?

James C. Hammer.

A. I discussed all of them with him.

Q. Did you discuss items with him in which you were not charged?

A. The previous times.

Q. So you were not charged with item that you discussed with him at times?

A. Sometimes there wasn't.

Mr. Murchison: All right, in other cases.

Court: Are you through?

Mr. Murchison: Yes.

Court: Let me ask you, Mr. Hammer. Did you give a statement in the Alma Haase case?

A. Not to my knowledge, no, sir.

page 349 } Court: You did not give a statement as to her?

A. No, sir.

Court: Then if there is a statement, then it was made up by Lieutenant Martin?

A. If there is a statement and I signed it, it was without my knowledge.

Court: You didn't sign it?

A. I didn't read it if I signed it.

Court: If you signed it, you didn't read it?

A. No, sir.

Court: And you didn't give the facts in it?

A. No, sir.

Court: All right sir. Were you—bearing in mind and you've heard the testimony and I think everyone agrees, that statement was started at 11:20 on May the 14th. Were you tired or hungry then?

A. I was tired.

James C. Hammer.

Court: You were tired?

A. I had been up practically all night and—and the day and night before that.

Court: Well, what time—didn't you testify
page 350 } you went to bed a little after midnight on May the 13th?

A. Yes, sir.

Court: You were brought downstairs and the first statement taken at 9:15 on May the 14th?

A. Somewhere around that time. I don't know.

Court: And the Haase statement was the third—Haase, rather, was the third one taken. You were tired, is that correct?

A. Yes, sir.

Court: You had not had anything to eat at that time but you had had breakfast, had you not?

A. I had breakfast that morning, yes, sir.

Court: Not the property that was taken of course had nothing to do with the Alma Haase case, did it?

A. No, sir.

Court: Or the fact that your father would be charged with possession of stolen goods if Chief Peach told you that. You didn't steal anything from Alma Haase, did you?

page 351 } A. No, sir.

Court: You knew nothing about it as a matter of fact?

A. No, sir.

Court: All right.

James C. Hammer.

RE-DIRECT EXAMINATION.

By Mr. Bateman:

Q. Mr. Hammer, did you get any sleep on the night of May the 12th or early morning hours of May the 13th?

A. Very little.

Q. What sleep did you get on the night of the 13th or early morning hours of the 14th?

A. About three and a half hours, four hours probably.

Q. When you had your conversation with Chief Peach and which you say that he made some reference to your mother and father not being put through the embarrassment of charges of possessing stolen property, did he *indicated* that you should make statements only in certain types of cases or just say you should tell everything that you knew if you didn't want these things to happen?

Mr. Murchison: I object to that.

Court: That's rather leading of your own page 352 } witness.

Mr. Bateman: I suspect it is.

Court: I'll let him answer. I know his answer but I'll let him answer.

Mr. Murchison: I do too.

Court: Go ahead. You may answer.

A. Repeat the question.

Mr. Murchison: I don't think you can.

Mr. Bateman: I'm sure I can't.

Court: Did he tell you not to make statements in some cases and in others.

A. Well, at that time I didn't know of any other thing except the stolen property.

By Mr. Bateman:

Q. Were you questioned regarding matters where there were no charges at all placed against you?

A. Yes, sir.

Q. Were you questioned about matters in addition to those which were ultimately placed against you?

A. Yes, sir, I believe so.

James C. Hammer.

Q. Was there any relationship between what you were questioned on and what you were charged on at any particular time?

A. I don't know. I don't think so.

Q. Were you advised as you launched into each
page 353 } subject of inquiry that you had or had not been charged or—anything of this kind?

A. No, sir.

Q. Were you at any time served with any process or shown anything indicating what the charges were?

A. No, sir.

Q. Were you furnished any list of the names, dates and places of persons that you were accused with having committed some offense against or whose property you might have taken?

A. No, sir.

Q. Not at any point?

A. No, sir.

Mr. Bateman: No further questions.

RE-CROSS EXAMINATION.

By Mr. Murchison:

Q. Just two from that questioning. Now, do I understand, Mr. Hammer, your answer to your attorney that when you were with Chief Peach that night, do I understand, was that when it was, on the 13th?

A. Yes, sir, on the 13th.

Q. You were told by him it was on the burglary charges you talked to him about?

page 354 } A. No, he said I had been charged with numerous charges but the particular one he referred to were the burglaries.

Q. And you then said you knew nothing else about the other matters?

A. I hadn't been charged with anything else to my knowledge.

Q. Had you not been in Judge Wall's Court on the morning, as you testified yourself, on May the 13th and told by Judge Wall of your charges?

A. No, sir, I had not.

James C. Hammer.

Q. They were not read from the docket to you?

A. No, sir, he told me I was charged with serious offenses and then it was moved to be continued. I was not told what I was charged with.

Q. Did you ask the Court then about an attorney or make any complaints to a Judge in which you were standing in front of him?

A. No, sir, no, sir.

Q. By the way, let me ask you something, Mr. Hammer. You have stated that you did not have any food. Were you offered food on the 13th?

A. Something was said at one point but then nothing else was brought up about it.

Q. You and no one else ever ate then?

A. Lieutenant Schanz had breakfast in the of-
page 355 } fice that morning.

Q. What did he have to eat?

A. I believe he had egg sandwiches and coffee.

Q. Did he have one for you?

A. He said he bought one for me but I told him I couldn't eat.

Q. You're not telling the Court you didn't have something there to eat if you had wanted it yourself?

A. No, sir.

Mr. Murchison: I see. I thought I had to clear that up.

Court: All right, anything further?

Mr. Murchison: That's all.

Court: All right, step down. Next witness.

Mr. Bateman: That's it on the confession, your Honor.

Court: All right, sir.

Mr. Bateman: Your Honor, at this point we would move that the confessions be excluded on the grounds that they were obtained as a result of what amounts in law to duress and coercion and because they were based upon promises as well as there having been evidence that threats
page 356 } were made.

Court: Now let's—let's wait a minute now. You want to put on any rebuttal to this?

Mr. Murchison: If your Honor please, I'm met with this proposition. I had talked to both of these attorneys about Chief Peach being out of town the first two days of this week

and of course they had a right and we did too and we were trying to work along with all of us knowing the gravity and longness of this case.

Court: Let me put it to you this way. Do you want to call any other officers back?

Mr. Murchison: Myself?

Court: Yes, sir.

Mr. Murchison: No, sir, I don't think so, Judge.

Court: Then the only person you want to call is Chief Peach?

Mr. Murchison: Would be—yes, sir, because of the—

Court: All right, let's see if he's over there. We'll take a five minute recess.

(The Court then declared a recess after which the Court reconvened.)

page 357 } (At this time, a witness who had testified returned to the Courtroom.)

Court: You're not planning on using young Mr. Hammer again, are you?

Mr. Kostel: No, we checked with the Commonwealth Attorney.

Mr. Murchison: Lieutenant Martin, please.

Court: All right, Lieutenant Martin.

LIEUTENANT F. L. MARTIN,

called as a witness by the Commonwealth, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:

Q. Lieutenant Martin, as you have previously testified and directing your attention to the time in which you took certain statements from the Defendant, James C. Hammer, at the various times that you have testified to this morning, will you tell the Court whether or not you had the statements written out and handed to him without discussing the cases with him prior to writing the statements?

page 358 } A. No. The cases were discussed, then wrote out.

Q. With who?

A. With James Hammer.

Lieutenant F. L. Martin.

Q. Did James Hammer—you testified too, I believe, that you would write the statement and you'd have to stop until you caught up. Did you write the statements then as such?

A. I wrote it and then I would stop him and then I'd bring it up to that point and then we'd go from there again.

Q. Bringing it up to that point, what would you do in bring it up to that point? What do you mean by that?

A. I would write it.

Q. Then what would happen after you brought it up to that point?

A. Then I would tell him to go ahead from there on.

Q. What would he do?

A. He would tell me a few lines on, step by step.

Q. Then what would you do?

A. I would put that in writing.

Q. When the statement was finally concluded, what then did you do with the statement after you had writ-
page 359 } ten it?

A. I gave it to him to read.

Q. And did he, to your knowledge, read it?

A. Yes.

Q. Did he then—then what did he do with the statement?

A. If it was right, he would sign it.

Q. If it was not right, what would he do?

A. He would show me, maybe I would have something wrong in it; maybe one line or a couple of words and we would change that.

Q. And what—after the changing of that, what would happen to that word or line?

A. I would scratch it.

Q. And what would he do, if anything?

A. He initialled it.

Q. I hand you, Lieutenant, for the purposes only of identification of scratches or purported initials, a statement in the matter of Susan Godwin and ask you if on Page One which I've shown counsel, of this statement if there's any scratching and any initial by a word?

A. Yes, I spelled the word, "revolver" wrong. I scratched that and rewrote it underneath and got him to initial it by the word that I rewrote.

Q. Is that initialed by him?

A. Yes, sir.

page 360 } Q. Now, in the matter of a statement of Mary Ann Lubo, on page five, is there any scratching out and any initial on that?

Lieutenant F. L. Martin.

A. Yes, I had on there "hold her" which he told me was wrong. I made a mistake or something at that point as he read it. We went back to that. I scratched that and he initialed that with his initials just above it.

Q. How did he know those words were in there for him to tell you they were wrong for you to take it out?

A. He read the statement after I wrote it and as he went along he told me it was wrong. Then he handed it to—back to me and we went back to that and I read it and he told me what was wrong and I would scratch it and he would read it and it was right and he would initial it.

Q. In the matter of the same line of question, in the Mason D. Read statement, on Page three, are there any scratches out of words or sentences and any initialling?

A. Yes, I used the word, "attic" instead of "kitchen" in one paragraph and then the next paragraph I used the word "attic" instead of "kitchen" and he initialled both of those.

Q. Are those words of "attic" struck out and "kitchen" put in place?

A. That's correct.

Q. Who told you to do that?

page 361 } A. He did.

Q. Did he then read those statements?

A. Yes.

Q. Did you ever have any statement written and handed to him without him having told you what—the complaint was about and the—in narrative form of the substance in what he wanted put in these statements?

A. No, I couldn't get it in his own words that way.

Q. Did you know anything about the narrative part about it unless he told you?

A. No, all I knew was the complaint was and what some of the complainants had told me but not in detail like he gave it to me.

Q. In the case of Alma Haase in which we're involved in this morning, did he give you that statement?

A. Yes.

Q. And did he give it to you in his words?

A. Yes, sir.

Q. Did you have a statement written out by you that you gave him without him telling you what it was about first?

A. No, in that particular case I wasn't too familiar with it. All I had was the offense report.

Lieutenant F. L. Martin.

Q. Your information came from who?
page 362 } A. From James Hammer. I knew nothing about it.
Q. And he signed that statement?
A. That's correct.
Q. Did he read that statement?
A. Yes, sir.
Q. Did he ever sign any statement during the days in which you have testified to, that is of record, on any of the statements that you wrote and and just handed to him without him ever looking at anything?
A. No, sir.
Q. Could you have done that?
A. Some of them I may have been able to guess at it but I wouldn't have had it exactly right.
Q. Was there any property involved in this case in the Alma Haase matter?
A. No, sir.

Court: All right.

CROSS EXAMINATION.

By Mr. Kostel:
Q. Lieutenant Martin, directing your attention to the statement taken from the defendant in connection with the Susan Godwin case, I believe you testified you scratched out the word, "revolver" and—because it was incorrect-
page 363 } ly spelled and you had the defendant initial it, is that right?
A. Yes, I think that's the reason.
Q. How do you spell the word, "carrying"?
A. C A R R Y I N G.
Q. C A R R Y I N G?
A. Yes.
Q. I ask you to look at Page one of the statement, three lines from the top and see how you spelled the word, "carrying"?
A. I have it here "I N G".
Q. Spell the whole thing.
A. C A R R I N G.
Q. That words was not scratched out and initialed?
A No, he called this to my attention.

Lieutenant F. L. Martin.

Q. I understood you to say that you misspelled the word?
A. No, he called it to my attention.
Q. How is the word, "handkerchief" spelled on Page two of the statement. four lines from the top?
A. I have "H A N D E R C H I E F".
Q. He did not call the—mistake in spelling to your attention?
A. No, you see after we wrote the statement as he read it, as he got down to it, he's say. "this is wrong." I would scratch it at the time and then we'd go back and page 364 } I'd give it to him to sign it.
Q. You are sure these scratches and initials made pursuant to the scratches were not made to give the statement a flavor of authenticity?
A. I'm positive.

Court: Is that all, sir?

By Mr. Kostel:
Q. Lieutenant Martin, why didn't you let the defendant write out his own statement?
A. We never do.
Q. Nothing to prohibit you from doing it in this case, was it?
A. I've never did it since I have been in the Police Department.
Q. Nothing to prohibit you from doing it in this case, was there?
A. No.

Mr. Kostel: All right, sir. Thank you.
Court: All right, Lieutenant. On May 13, 1964, did you deny Mr. Clifford Hammer and Mr. Charles Hammer I believe, the right to see the boy. James Hammer, the defendant?

A. On May the 13th I had nothing to do with page 365 } James Hammer.

Court: Did you deny the father and brother the right to see him on May the 13th?

A. I don't know whether I even saw them that day or not.

Lieutenant F. L. Martin.

Court: But you had nothing to do with the defendant's case on May 13?

A. I had not been assigned to the case. I went up, I believe I searched his home on the 13th is all I did.

Court: Well, its been testified here that—by Mr. Hammer, both Mr. Hammers that you wanted to see them and that they asked to see James and you refused them. Now, is that correct or not, on May 13?

A. I don't know because I had never seen James at that time.

Court: All right, sir. Did you ever make a statement to James Hammer that he couldn't afford an attorney in these matters?

A. No, Mr. Hammer told me that he couldn't afford an attorney.

Court: Did you ever tell Mr. Hammer that possession of things was as bad as having taken them?

page 366 } A. No, sir.

Court: All right, sir. Step down. Next witness.

By Mr. Kostel:
Q. Let me ask Lieutenant Martin one more question. You can't deny that you saw Mr. Clifford Hammer and his son, Mr. Charles Hammer on May 13, 1964 at police headquarters?
A. Like I said, I may have seen Mr. Hammer. I don't know but I had never talked to James at that time.
Q. I'm not talking about James. I'm talking about you can't deny you saw Mr. Hammer, Mr. Clifford Hammer and his son, Mr. Charles Hammer at Police Headquarters on May 13?
A I can't say I did or I didn't.

Mr. Kostel: All right. Thank you.
Court: You may step down. Next witness. Do you have any more?
Mr Murchison: No, sir.

Court: Now I'm ready for your motion.

Mr. Bateman: Your Honor, our motion is that the statement which was proposed for admission into evidence in this proceeding be excluded on the grounds that the statement was a product of what amounts in law to duress
page 367 } and coercion and after a systematic denial of the rights which should have been accorded to this defendant and not a products of his free will or a desire to have made any such statement. Further, that the statement was a result of promises having been made to him and of threats having been made to him and in addition, that the statement which was made induced by evidence illegally and wrongfully seized from the home of the defendant and his parents' home pursuant to an improper general search warrant making the evidence seized or the search being or constituting an illegal search and seizure with the product or the evidence derived thereby being used as a method of inducing the confessions, from him.

Now, we have a number of authorities to support this position. First I'd like to review the salient facts on which the motion rests. It's the position of the defense that this man was subjected to almost ceaselessly and uninterrupted interrogation or investigating processes in which he was personally involved for many hours following his being
page 368 } taken into custody at 8:45 p.m. on the 12th of May of this year.

(Mr Bateman then continued his argument before the Court in support of his motion.)

Court: Are you through with your argument?

Mr. Bateman: I would like to inquire of the Court whether the Court holds as a matter of law—

Court: I'm going to hold that the statement can come in.

Mr. Bateman: We would respectfully except to the Court's ruling as to the admissibility of the statement and further except to the Court's ruling or indication that these search warrants do not on their face reflect an illegal search and seizure.

Court: I'm holding that the statement can come in. I'll listen to more argument if you want to give it but—I don't even care to hear from the Commonwealth.

Mr. Bateman: Your Honor, by the Court's ruling is that

the factor of an illegal search and seizure is not
page 369 } involved—

Court: You're not going to get me to say anything more than I want to say which is I'm going to allow the statement to come in.

Mr. Bateman: And we except to the Court's ruling.

Court: Yes, sir. All right, sir. We'll adjourn now until 2:15 at which time we'll proceed with Lieutenant Martin.

(The Court then recessed for lunch, after which the Court reconvened.)

Court: All right, sir, let's call Lieutenant Martin back to the stand.

LIEUTENANT F. L. MARTIN,
recalled as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:

Q. I believe that, Mr. Martin, Lieutenant Martin, I had asked you about a statement that you had taken
page 370 } from the defendant, James C. Hammer in the matter of Alma Haase, is that correct?

A. Yes, sir.

Q. Did you take such a statement from him? I believe you had answered it.

A. Yes, sir.

Q. I hand you, sir, a hand written statement. Will you tell me, if you know any about that?

A. Yes, sir, that's the statement I took from James Hammer in the Alma Haase case.

Q. Is that statement signed by James C. Hammer?

A. Yes, sir.

Mr. Kostel: If your Honor please, for the record we renew the objection so as not to be construed as a waiver.

Court: All right, sir.

By Mr. Murchison:

Q. Will you read us the statement, Lieutenant Martin?

Lieutenant F. L. Martin.

A. Yes, sir. "After being advised of any statement that he made could be used as evidence either for or against him in Court, James C. Hammer, *while* male, 25, of 10371 Warwick Boulevard made the following statement to Lieutenant F. L. Martin and Sergeant H. T. Williams in the Detective Bureau on May 14, 1964 at 11:20 a.m.

page 371 } "On Tuesday, May 12, 1964, I left home about 6:30 p.m. I walked down to the Hilton pier. Then I started walking down the beach towards the shipyard. When I got to the big ditch at Huntington Park I went up over the bank and I walked through Huntington Park towards Ferguson Park. I walked around Ferguson Park for a little while. About 8:30 p.m. I arrived at 225 Revere Street. I was wearing a Navy blue sweatshirt with a hood. I could see that the front door was open but the screen door was closed. I saw a light burning in the living room but I did not see anyone in the house. I pulled the—the hood down that was attached to my sweatshirt. I tied a white handkerchief over my face and then I pushed the hood back over my head. I was carry my hunting knife in my right rear pants pocket. I walked up to the front door and pulled the screen door open and walked inside the living room. I did not see anything. I walked over to a hallway. I met a white woman walking down the hall.

"This woman screamed and asked me what I wanted. I pulled my hunting knife out of my right rear pocket. I said, 'shut up and give me your money.' She said, 'I don't have any.' I said, 'if you don't have any money we will go to bed.' She then said, 'no, we won't.' Then this woman walked over to me and grabbed a hold of my knife. I said, 'let go of the knife. It is not worth it.' She let go of the knife and stepped back. I turned and walked out the back door. I walked up to Warwick Boulevard; then I walked north on

page 372 } Warwick Boulevard towards Hilton. I moved from one side of the street to the other side of the street, on several occasions. I was arrested by police on Hopkins Street about three houses off Warwick Boulevard. Signed, James C. Hammer."

Q. Lieutenant Martin, is the James C. Hammer whose statement you have just read, in the Courtroom?

A. Yes, sir.

Q. Will you point him out?

A. The gentleman sitting next to Mr. Bateman over there (indicating).

Lieutenant F. L. Martin.

Mr. Murchison: May the record show he's pointing to the defendant?

Court: Yes, sir.

By Mr. Murchison:

Q. Lieutenant Martin, did you in your investigation and with Mr. Hammer ever had occasion to see the Commonwealth's Exhibit One, a knife in a sheath (indicating)?

A. Yes, sir.

Q. How do you recognize that?

A. This had been initialed, "JC" on 5-13-64.

Mr. Bateman: I hate to interrupt you at this point but I'd like to inquire whether or not it was initialed in his presence or how he came to know when it was initialed.

page 373 } Court: All right, sir, overrule the objection.

By Mr. Murchison:

Q. Was this knife shown to Mr. Hammer?

A. Yes, we went over to the vault where this was kept and I showed it to James and he said that was his knife and that was the knife that he was carrying that night.

Q. Did you show him any wearing apparel?

A. I showed him a Navy sweatshirt but that sweatshirt was rolled up at the time that he saw it in my presence. It had a—it was labeled and everything with scotch tape around it.

Q. Did Mr. Hammer tell you anything else about the knife?

A. He said that it was his knife and that was the knife that he had in his pocket when he went down to Ferguson Park on Revere Street the night before.

Q. Did he tell you what had happened to it, if anything?

A. No, he didn't say anything to me what happened to it.

Q. Sir?

A. He didn't say anything to me what happened to the knife.

Q. Was anything else involved in the investi-
page 374 } gation of your part on Mr. Hammer in the Alma Haase matter?

A. No, sir.

Q. That's the extent on this case?

A. That's correct.

Mr. Murchison: All right, sir. Witness with you.

Lieutenant F. L. Martin.

CROSS EXAMINATION.

By Mr. Kostel:

Q. Was the investigation of Alma Haase matter completed upon the obtaining of this statement?

A. Other than the Court—Court action afterwards.

Q. Other than what, sir?

A. Going to Court.

Q. When was he booked on these charges involving Alma Haase?

A. I don't know, sir. He was booked on the night of the morning of the 13th on—

Q. On some charges?

A. Some charges.

Q. You don't know whether they involved Alma Haase or not, do you?

A. Not to my knowledge.

page 375 } Q. Suppose I told you that the arrest warrant issued in connection with the three indictment we're trying today has your name on it as a complaining witness. Would you then say that you booked this man on these three charges?

A. I never saw a warrant.

Q. I know but let's assume—

Court: Does he have to be booked on every charge?

Mr. Kostel: I think he does, sir, under this system if you're not going to leave a copy of the arrest warrant with him. You got to have—

Court: What do you mean by "booked"?

Mr. Kostel: By putting a notation on the book that this man is charged.

Court: In the Desk Sergeant's office.

Mr. Kostel: Yes, sir.

By Mr. Kostel:

Q. Did you book him on any charges in the Desk Sergeant's office?

A. Yes.

Q. How many?

page 376 } A. I don't know.

Q. When?

A. It was several days later.

Lieutenant F. L. Martin.

Q. Could it have been on May 21 or May 22, 1964 just prior to the preliminary hearing?

A. I believe it would have been about the 21st.

Q. If he was not booked in the Alma Haase case at 3:20 a.m. on May 13, 1964, then he would have been booked when you booked him at a later time on that case, is that right?

A. I don't know what they booked him on. I knew the charges but I don't know what the complaints would be.

Q. You know that you booked him on many charges but you don't know what the complaints were or who made the complaints?

A. Yes, I know that but I don't know what day.

Q. You just testified that you didn't know whether you booked him on the complaints involving Alma Haase.

A. Some of those charges that were placed on the morning of the 13th stood. Some of them were—*nol pros'd.*

Q. And then you also placed some charges against him?

A. That's correct.

Q. But you didn't know who the complaining

page 377 } witnesses were on the charges you placed against him, do you?

A. No.

Q. And you don't know who the complaining witnesses were on the charges placed against him at 3:20 a.m. on the 13th of May, 1964?

A. I don't know.

Q. You didn't have anything to do with that, did you?

A. No, I wasn't present.

Q. You took statements from this man in how many cases, would you estimate?

A. I would estimate 30.

Q. 30 cases?

A. Yes, sir.

Q. Which you obtained statements in?

A. Yes, sir.

Q. And approximately 20 in which you did not obtain statements in?

A. That would be a guess.

Q. Was this statement that he made to you concerning the knife reduced to writing?

A. Yes, I wrote that up myself.

Q. I'm speaking now, sir, of the statement which you say James Hammer made to you saying that the knife which Mr.

Murchison just showed you was his knife.

page 378 } A. Yes, he said it was his knife.

Q. Was that statement reduced to writing?

A. Yes, I just read it.

Q. I think the statement you read says that he had a knife but not that particular knife which you described here today. Isn't that right?

Court: He means did you put in writing the fact that this knife I have in my hand is the knife that you used. Did you put that in the statement?

A. No, I didn't put that in the statement.

By Mr. Kostel:

Q. You're relying strictly on your memory that he made that statement to you about that knife?

A. I know he was over there because I took him over there.

Q. I understand but are you relying strictly on your memory that James Hammer admitted to you that that knife marked "JC 5-13-64" was his knife?

A. Yes, sir.

Q. That's the knife that he had on his person on May 12, 1964?

A. Yes, sir, because that was the only knife in question.

Court: All right, sir.

page 379 } By Mr. Kostel:

Q. Was this defendant picked up in connection with the Alma Haase case?

A. I wasn't working when he was arrested.

Q. Do you know?

A. I would say yes.

Q. Lieutenant Martin, why was he questioned in connection with two other cases prior to the time he was questioned with regard to the Alma Haase case?

Mr. Murchison: I object. He wasn't there. He doesn't know anything about it, what happened that night. He said it repeatedly.

Mr. Kostel: It's a question on 9:15 a.m. by Lieutenant Martin.

Lieutenant F. L. Martin.

Mr. Murchison: Is that the—

Court: May 14. You mean why he took statements on May 14?

Mr. Kostel: In two other cases when he was picked up on the Alma Haase case.

A. There was no pattern set. Nobody said I had to go take the Alma Haase case first and then the Godwin case. I had no instructions what to do. I could take any one I chose.

Mr. Kostel: That's all we have, your Honor.

page 380 } Court: All right. Anything further?

Mr. Murchison: No.

Court: All right, step down.

Mr. Murchison: The Commonwealth rests in the Alma Haase matter.

Court: All right, sir. The Commonwealth rests. Call your first witness.

Mr. Kostel: Well sir, at this time we would ask the Court to make—to reduce the charge of attempted rape to a charge of assault. We submit to your Honor as a matter of law the evidence is insufficient to convict this defendant of the charge of attempted rape. The fact that he said get in the bedroom, I'm going to rape you, even though it *ma* reveal his intent does not constitute an overt act or the beginning of the overt act necessary to consummate the crime and we have authority on that point if your Honor would care to listen to it.

(Mr. Kostel then continued his argument be-

page 381 } fore the Court in support of his motion.)

Court: All right, sir, do you have any other motions?

Mr. Kostel: For the record we would move to dismiss the charge because the evidence of the Commonwealth, dismiss the three charges because the evidence of the Commonwealth is not sufficient in law to sustain a conviction on any of the indictments.

Court: All right, sir. All right, sir, do you have anything you want to say?

Mr. Murchison: No, sir, at this moment all the inferences are allowed to go to the Commonwealth on a motion to strike.

(Mr. Murchison then continued his argument in opposition to the motions.)

Lieutenant E. H. Hiser.

Court: I think the charge should be burglary with the intent to commit rape and robbery which is the indictment—one of the indictments.

(Mr. Bateman then continued the argument for
page 382 } the defense in support of the motions.)

Court: I've already agreed I thought they ought to be merged into one charge of burglary with intent to commit rape and robbery or to commit rape. I don't think it makes much difference whether you add robbery or not. He went in there with that intent. Whether he had an overt act I don't think is necessary in the burglary. He went in there for an unlawful purpose and he went in there with the intent to rob and with the intent to rape. He did neither but he intended to do that by his act. He said he was so I'm willing to merge them all into one indictment. All right, sir. Ready for your evidence.

* * * * *

LIEUTENANT E. H. HISER,
called as a witness the Defendant, being duly sworn, testified as follows:

page 383 } DIRECT EXAMINATION.

* * * * *

By Mr. Kostel:
Q. I hand you a copy of what purports to be a special report. Can you identify that please?
A. Yes, sir, this is a statement I took from Mrs. Haase.

* * * * *

page 384 }

* * * * *

By Mr. Kostel:
Q. How did she identify the man who was in her apartment on the night of May 12, 1964, to you?
A. As it's written in the statement, this person is as follows. "A white male, 16 to 17, five-six, 160 pounds, dark eyes,

wearing blue hooded sweatshirt, white handkerchief covering lower part of face, pants lighter in color than sweatshirt which was Navy blue in color, shoes unknown."

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page 386 }

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JAMES C. HAMMER,
called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:

page 387 } Q. State your name, please?

A. James C. Hammer.

Q. You are the defendant in this matter?

A. Yes, sir.

Q. How old are you?

A. 26.

Q. How tall are you?

A. Five eight and a half.

Q. How much do you weigh?

A. 162 pounds.

Q. How much did you weigh on the night of May 12, 1964?

A. Approximately 144.

Q. Tell His Honor where you were in the early afternoon hours of May 12 and the early evening hours of May 12, 1964?

A. Well, I got home from work and after taking a bath and eating supper, my wife left for work which was around 5:30 and I walked my dog down to the beach. I stayed down there until about an hour and a half or two hours, let the dog play and then came back home, upon which time I stayed around the house a little while longer and then I left and went down to the drugstore to purchase some flashlight batteries which they didn't have so I didn't have anything but time on my hands so I walked on down to the shopping center

page 388 } which is Hilton Shopping Center. They didn't have the batteries so I stopped at High's Ice Cream Store and got an Ice cream cone and proceeded on back. On my way down, I was walking—as I walked—the Do-

James C. Hammer.

Nut Dinette, a car backed out from the Do-Nut Dinette with three occupants in it and almost hit me so I asked them—kindly watch where they were driving and I think they had been drinking. They—they wanted to get smart and all. I told them to go and mind their own business and I walked around the car and went on down the street and when I came back, I—this car came by me as I was walking across the street and somebody hollered, "there he is" so in order to avoid any trouble which I thought was the same three boys, I ran behind this house which I found out later the man in the car was Sergeant Calhoun.

Q. What kind of car were the three people you saw earlier driving?

A. Black Ford.

Q. Black Ford?

A. Ford.

Q. Do you remember the year?

A. Either '63 or '64.

Q. What kind of car was Officer Calhoun driving?

A. He was driving a '63 Ford I think.

Q. What color?

page 389 } A. Black.

Q. All right, sir, what happened then after you ran?

A. After I ran, then I just stopped and I walked on out and I started to walk around this fence and that's when Sergeant Calhoun confronted me.

Q. Had you been in the area of Ferguson Park at any time during that evening?

A. No, sir.

Q. Are you familiar at all with Ferguson Park?

A. Yes, sir.

Q. Do you know Revere Street?

A. I know about where it's at.

Q. How far would you estimate the distance to be between Revere Street and the front of Doctor Robert's office in Hilton?

A. It would be somewhere around two miles.

Q. What time had you arisen on the morning of May 12, 1964?

A. 5:30, a quarter to six.

Q. Were you employed at that time?

A. Yes, sir.

Q. Where were you employed?

A. Horne Brothers.

James C. Hammer.

Q. And how late did you work?
page 390 } A. Until four o'clock.
Q. Where was your wife employed at that time?
A. Telephone company.
Q. Do you have any children?
A. No sir. I do now but didn't at the time.
Q. Was your wife expecting a child at the time?
A. She was expecting at the time.

Mr. Kostel: Your witness.

CROSS EXAMINATION.

By Mr. Murchison:
Q. What was wrong with your flashlight, Hammer?
A. I guess the batteries wouldn't work.
Q. Batteries wouldn't. May I ask you again where were you going to get batteries?
A. I first stopped at the drugstore in Hilton at the corner of Hilton and Main Street which they didn't have them. They were out so I walked on down to the shopping center.
Q. Where was your car?
A. My wife drove it to work.
Q. And you had need for your flashlight that night?
A. No, I needed it the next day.
page 391 } Q. The next day?
A. That's right.
Q. You use it in your job?
A. I use it at work.
Q. Where, in dark places in the daytime?
A. That's right.
Q. The employer doesn't have flashlights or anything down there?
A. No sir, they do not furnish them.
Q. And—is this your flashlight, sir?
A. Yes, sir.
Q. Is this the one that didn't have any batteries?
A. That was the one that was taken from me. It had batteries but they were dead.
Q. This is the kind of two cell flashlight you used?
A. Yes, sir.
Q. What kind of work do you do?
A. Shipfitter.
Q. And you use this to find out how to ship-fit things?

James C. Hammer.

A. No, you use it when it's dark and I need a light to see what I'm doing.

Q. They don't have the big lights to show you
page 392 } how to cut and put things together?

A. They have big lights when you're working but some times you go in a hold, you don't carry a light with you. You carry a flashlight.

Q. You carry a hand flashlight?

A. That's right.

Q. They don't furnish it to you?

A. No, sir.

Q. These your gloves?

A. Yes, sir.

Q. May the 12th was cold?

A. No, sir.

Q. Now when—where did you go—by the way, did you stop in People's Drug Store there in the shopping center to get your lights?

A. Where?

Q. People's.

A. I don't know what the name of the drugstore is.

Q. The shopping center?

A. Shopping center is People's.

Q. That's next to the A&P?

A. That's right, that's People's down there. I thought you said down in Hilton.

Q. Did you get your flashlights down there at
page 393 } People's?

A. They didn't have them. They only had the small ones and large ones.

Q. Two drugstores didn't have flashlight batteries?

A. That's right.

Q. How about the Five and Ten Cent Store next to High's Ice Cream Store?

A. Closed.

Q. How about A&P?

A. I don't think they carry them.

Q. Did you go in there?

A. No, sir.

Q. You don't know if they carried them or not for the job the next day?

A. No, I don't know whether they carried them or not.

Q. Now coming back, this car that came out and you made some remark to and then later on I believe you testified that someone yelled, "there he is", is that correct?

James C. Hammer.

A. Yes, sir.
Q. You looked up then?
A. I just glanced.
Q. And who did you see?
A. I just saw a black car.
page 394 } Q. How many people in it?
A. I didn't notice.
Q. You didn't notice?
A. No, sir.
Q. How close was it to you?
A. About 150 feet.
Q. Street lights on and all lit up in that area?
A. Street lights on in that area.
Q. But you didn't notice who was in the car?
A. No, sir.
Q. But you could hear a moving car, someone yell from it 150 feet away, "there he is."
A. That's right.
Q. Have you ever seen anything like this, Mr. Hammer?
A. Yes, sir.
Q. You know whose it is?
A. I believe it's mine.
Q. Were you wearing this that night?
A. I was wearing it the night I was arrested.
Q. Were you with your dog that night?
A. My dog was at home at the time I was arrested. I was with my dog earlier.
Q. You were with your dog earlier in the even-
page 395 } ing?
A. That's right.
Q. You mean you walked the dog out?
A. I took the dog down to the beach.
Q. You took the dog down to the beach?
A. That's right.
Q. Took the dog back home then?
A. That's right.
Q. And then you walked back up to the Hilton Shopping Center?
A. That's right.
Q. And it was raining?
A. No, it was drizzling.
Q. It was drizzling?
A. Yes. At that time. It hadn't been earlier in the evening. It started after around 7:15, 7:30.
Q. You didn't wear a raincoat?

James C. Hammer.

A. No, that's the reason I put on the sweatshirt because it was drizzling.

Q. Because it was drizzling. Well now, this was about an hour and what time did you say the police stopped you?

A. The time the police stopped me and the time I left home was approximately an hour.

Q. About an hour. Took you an hour to walk up from Hilton proper, your place of business there on Main
page 396 } Street up to the shopping center and back, is that right?

A. I stopped in the other drugstore first and then went up there and was on my way back. Actually, it was about 45 minutes because I left home at 8:00 o'clock and I was—Sergeant Calhoun picked me up at a quarter to nine.

Q. You left home at eight?

A. That's right.

Q. You are familiar with Ferguson Park where the grass plots are in between the apartment areas up there, are you not?

A. Yes, sir.

Q. You have been in the apartments in Ferguson Park. You know about those, don't you?

A. I have been in them on occasions.

Q. Do you remember talking to Lieutenant F. L. Martin?

A. What?

Q. Do you remember talking to Lieutenant F. L. Martin?

A. When?

Q. Any time.

A. Oh, yes.

Q. Do you remember talking to him about the matter of Alma Haase?

A. No.

page 397 } Q. You don't ever remember discussing that with him?

A. No, sir.

Q. You never heard that before?

A. No, sir.

Q. In fact, Lieutenant Martin has never talked to you about the Alma Haase case, is that right?

A. Not to my knowledge.

Q. Is that what you are saying?

A. No sir, he didn't come out and call my name or anything.

Q. And you remember signing a statement with the Alma Haase matter in it?

James C. Hammer.

A. I couldn't tell you what I signed because I didn't read the statement.

Q. You didn't read it. Tell me, if you have ever seen that statement before of Alma Haase (indicating)?

A. That's my signature on it. As far as the statement saying I've read the statement or seen the statement, I have not.

Q. You have not seen this statement?

A. To read it. I said that's my signature on there but as far as reading it, I have not.

Q. Well, if you didn't read it, why didn't you?

A. I wasn't concerned with what was in it.

page 398 } Q. You weren't concerned. Have you ever seen this knife and sheath before, Mr. Hammer (indicating)?

A. I believe so.

Q. Is it your's?

A. No, sir.

Q. This isn't your's?

A. It is not.

Q. What kind of hunting knife do you have?

A. I have a hunting knife which is smaller than that. It was taken from my home.

Q. How much smaller?

A. Two inches shorter.

Q. Two inches shorter. In the blade or handle?

A. Over-all length.

Q. Over-all length two inches shorter than this?

A. Approximately.

Q. Where is Revere Street?

A. It's in Ferguson Park.

Q. Do you know anyone up there?

A. No, sir.

Q. Do you remember seeing Mrs. Alma Haase?

A. No, sir.

Q. Do you ever remember seeing the lady that testified yesterday?

page 399 } A. Only in the police station.

Q. Did you see her over there?

A. No.

Q. You didn't see her over there either?

A. Over where?

Mr. Kostel: I don't think he can hear you.

James C. Hammer.

By Mr. Murchison:

Q. Did you see Mrs. Alma Haase over at the police station?

A. Yes.

Q. Did she—did—was she in close proximity to you?

A. She was pretty close to me.

Q. Stand in front of you?

A. No, she was the first—the first time I saw her she was sitting down and I was walked past her.

Q. Did you see her later?

A. She came in later.

Q. Did she have anything to say to you?

A. No.

Q. Why were you in her house that night?

A. I wasn't in her house.

Q. You were not in her house?

A. No sir.

page 400 } Q. Had you ever seen her before that night?

A. No sir.

Q. Who did you—strike that. I want to ask you this. Why did you run, Mr. Hammer?

A. To keep out of trouble.

Q. Well, what kind of trouble did you think you were going to get into?

A. I ran to avoid a fight with the three occupants I thought were in the car.

Q. How did you know you were going to get into a fight if they were 150 feet *awy* and moving?

A. Well, they were turning around.

Q. Where did they turn?

A. The car was turning at the end of the island.

Q. Then you ran across in front of them to the Do-Nut station?

A. I ran behind the house at that particular time.

Q. That's in front of that island where they were turning right in front of it?

A. No, you—the first time I came in contact was at Do-Nut Dinette on the way down and we had words and they went on and the second time I thought it was them coming back but which it was not.

Q. What side of the street were you on then?

page 401 } A. I was on the left hand side of the street then, on the west hand side.

Q. You mean on the side where the Do-Nut Dinette is?

A. That's right, right in front of it at that particular time.

James C. Hammer.

Q. Is that when you were going back?
A. That is when I was going down when I had the trouble with them.
Q. Coming back what side of the street were you on?
A. I was on the left hand side, the same side.
Q. You were on the same side?
A. I was on the other side and I crossed over the Do-Nut Dinette and that's when the person in the car yelled "there he is" and that's when I ran.
Q. The person in the car yelled?
A. Yes, sir.
Q. There wasn't any other occupant but the driver?
A. I don't know; I heard one voice.
Q. The driver is closer to you. Is that all you saw was one person?
A. I didn't see one person. I heard one person.
Q. How do you know that person was directing
page 402 } his voice to you?
A. I assumed it was.
Q. For that you cut out and started going behind houses?
A. That's right.
Q. What stopped you from going into the Do-Nut Dinette? Was it open?
A. It was open but I was on the right passage.
Q. You were no less than ten or 15 feet from it?
A. That's right.
Q. What stopped you from avoiding the fight to go in there instead of going between houses where you didn't have any business?
A. Nothing.
Q. All right, you are at the Do-Nut Dinette. The island is about 150 feet away, isn't it?
A. The island from where I was standing is about 50 feet away.
Q. And you stood and waited to see this car turn around?
A. I saw the car turning.
Q. You're watching this car turn and it's also the same car right across from you on your right hand side and you
can't tell the Court anyone in the car?
page 403 } A. No.
Q. But yet you were intently observing the car because you were afraid someone was going to start a fight with you?
A. I didn't observe the car until I heard the car. That's when I observed the car.

James C. Hammer.

Q. Was the car across from you?
A. It was turning then.
Q. It was turning down at the island?
A. That's right.
Q. And the car, someone in that car?
A. Someone in that car hollered, "there he is" so I ran.
Q. Then your attention wasn't called to the car at all until it started turning back towards you?
A. My intention was according to the previous time when I had the trouble with the boys.
Q. I realize that. I'm speaking now after you had gone back.
A. The car—I noticed not the occupant. All I saw was the black Ford. I heard somebody holler, "there he is" so I ran.
Q. Had you ever had any trouble with the black Ford before?
A. No, just that same night.
page 404 } Q. Had any threats been made to you by the occupants of that car?
A. I wouldn't say threats, no.
Q. And your reason for running behind the houses, back behind other people's property was that you just didn't want to get into any trouble because of unknown people and unknown threats?
A. I didn't want to get into a fight.
Q. Had you ever been in any fights before?
A. I had been in fights before.
Q. With these people who stopped you?
A. No.
Q. Then you did run down between houses?
A. Yes, sir.
Q. And crossed the fence?
A. Yes, sir.
Q. That's where Sergeant Calhoun stopped you?
A. Yes, sir.
Q. And you were wearing a blue sweatshirt that night?
A. I was.
Q. What kind of shoes did you have on?
A. Tennis shoes.
Q. Tennis shoes. And let's see now, you had your hood on and tennis shoes and it was raining?
page 405 } A. I had a sweatshirt on.
Q. And nowhere from between the time you left the sidewalk was any place for safety except running be-

hind houses. You ran between three and four houses, didn't you?

A. I think it was two.

Q. Two. Was anybody chasing you back behind those houses?

A. No.

Q. Did you ever see the car stop?

A. No.

Q. You didn't even know what happened to that car that was turning around. You don't know who was in it, do you?

A. I do not.

Mr. Murchison: All right.

RE-DIRECT EXAMINATION.

By Mr. Kostel:

Q. Did Mrs. Haase identify you when you walked past her in the hall at police headquarters?

A. No, sir.

Q. How close was she to you?

A. Approximately—her face from my face would have been about three feet. Almost touched her.

Q. Did she look at you?

page 406 } A. Yes.

Q. Did you look at her?

A. No.

Q. Was there a line-up arranged for the purpose of having Mrs. Haase visually identify you at police headquarters?

A. Yes, sir.

Q. What did that line-up consist of?

A. Two other policemen and myself.

Q. How big were the other policemen?

A. Around six foot each.

Q. Where were you in the line-up?

A. In the middle.

Q. Were you dressed in the same clothes you were dressed in when you were arrested?

A. Yes, sir.

Q. How were the other two officers dressed who were in the line-up?

A. They had on their uniform for the exception of a sport coat and a hat and a handkerchief tied across their face.

Q. Was a photograph made of that line-up?

A. There was.

James C. Hammer.

Q. What kind of pants were you wearing?
A. Dark gray.
Q. What color were your tennis shoes?
page 407 } A. White.
Q. White?
A. White.
Q. Were they the type that come up over your ankle or were they low cut tennis shoes.
A. Low cut.

Mr. Kostel: That's all.
Court: You are five foot eight and a half, is that correct?

A. Yes, sir.

Court: Since you have been in jail, you gained 20 pounds, is that right?

A. Somewhere along there. When I went to Marion, I weighed 146 pounds the day I went in down there.

Court: I say you gained 20 pounds since you have been in custody?

A. Yes, sir.

Court: Did the lady pick you out of the line up?

A. Not to my knowledge, no sir.

Court: You know who she was?

A. No, sir.

Court: Nobody told you about the Ferguson Park incident?

A. No, sir.

page 408 } Court: You heard the police officers testify to that. He's mistaken?

A. Well, they told me—that I was being held as a suspect. That's all they told me.

James C. Hammer.

Court: Just as a suspect, period?

A. Yes, sir.

Court: Didn't tell you anything about what happened at Ferguson Park?

A. No, sir.

Court: The officer is wrong then when he testified to that?

A. If he testified to that, he's wrong. All I was told I was a suspect in the case.

Court: And Mrs. Haase is wrong when she testified that she said in your presence, that that was you?

A. She didn't say anything in my presence.

Court: In the line up. She did not?

A. No, sir.

Court: Now, Mr. Hammer, suppose you tell me why you signed 27 statements without reading a single one of them?

Mr. Kostel: If your Honor please, we object to that. Now I don't think the 27 statements have any place in
page 409 } this phase of the trial. That statement at 11:30, 11:20 on the 14th might have—might be a proper subject for questioning.

Court: All right, sir.

Mr. Kostel: I object to the 27.

Court: All right, sir, your objection is noted and your exception is noted. Will you tell me why you signed 27 statements without reading a single one of them?

A. Like I said, Chief Peach approached me and told me that if I signed the statements—that they wanted that they wouldn't prosecute my mother and father and my wife and my brother on possession of stolen property. That's the reason I did not read the statement. That's the reason I signed them for that sole reason.

Court: They could have been for murder, for anything. They could have taken your life, is that correct?

Officer Thomas Epling.

A. They might have.

Court: And you would have still testified and tell me the same thing that you would sign it without reading it?

A. Yes, sir.

page 410 }

* * * * *

OFFICER THOMAS EPLING,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:
Q. Will you state your full name for the record please?
A. Thomas Epling.

Mr. Bateman: Was Officer Epling sworn? I don't recall.
Court: He was sworn.
Mr. Bateman: Beg. your pardon, sir.

By Mr. Bateman:
Q. And you are employed in the Newport News Police Department?
A. Yes, sir.
Q. And so employed on the evening of May 12, 1964?
A. Yes sir.
page 411 } Q. On that evening, did you have occasion to become involved in the investigation of any charges that are now on file against James C. Hammer?
A. If it's the case on *tril* now, involving Alma Haase.
Q. Alma Haase.
A. That is correct, sir.
Q. And when was—your first connection with any such charge or complaint involving a person named Alma Haase?
A. Well, I was sent to 225 Revere Street in the City of Newport News on the fifth month, 12th day of '64. I took the report at approximately 8:45 p.m. from Alma Haase, white female approximately 23 years old.
Q. Your report was made to you at 8:45 p.m.?

Officer Thomas Epling.

A. Yes, that's when the report was—taken, approximately 8:45 p.m.

Q. Was the complaint made directly to you by Mrs. Haase?

A. That is correct, sir.

Q. Were you the first police officer at the scene?

A. Yes sir, the best of my knowledge. There wasn't anyone there when I got there. If there had been some-
page 412 } one there and had left before I got there, I don't know.

Q. To your knowledge you were the first who had any contact with Mrs. Haase?

A. To the best of my knowledge I was the first to arrive at the scene.

Q. What is the basis of your evidence that the time of complaint to you was 8:45 p.m.?

A. Well, I took the time down. This is City of Newport News, Division of Police, offense report I have in my hand here and this is a form that is filled out when we go to take a complaint from a person when something is to be reported to the department.

Q. Well, did you commence the execution of this form immediately upon seeing Mrs. Haase or did you find out something of the nature of what was involved and then begin making the report?

A. I talked to her first.

Q. You talked to her first and then commenced executing the complaint form?

A. That is correct, sir.

Q. So what would have been, as best you can determine, your first conversation with Mrs. Haase, the time of it? Would it have been 8:45 or would it have been some earlier time?

A. It was 8:32; approximately 8:32 and 8:45.
page 413 } Q. All right. And did Mrs. Haase furnish you with a description of anyone?

A. Yes sir, she did.

Q. Do you have a notation as to—well, did you relay that description to anyone?

A. Yes sir, I did.

Q. To whom?

A. To Lieutenant Hiser, Detective, Newport News Police Department.

Q. When and where did you do that?

A. At the scene.

Officer Thomas Epling.

Q. Was there—did you or to your knowledge did anyone else prior to the time you furnished the description to Lieutenant Hiser communicate a description with relation to this complaint to anyone in the radio dispatcher's office?

A. I don't remember, sir. Its been a long time.

Q. You don't remember whether you did or didn't?

A. No.

Q. Would you normally have completed the execution of the complaint form before you would have radioed into headquarters a description or anything else?

A. Its according to the seriousnes of the offense that is reported to me, sir.

Q. As I understand it, you don't know whether or not you may have radioed a description in prior to talk-
page 414 } ing to Lieutenant Hiser?

A. If I did, I don't remember, sir.

Q. Do you remember whether at any point you radioed any description?

A. I don't remember, sir.

* * * * *

page 415 }

* * * * *

By Mr. Bateman:

Q. What was the description which Mrs. Haase furnished to you?

A. White male, approximately 17 years old, approximately five foot seven and five-eight; weight, 160 pounds. Color of eyes, dark; fairly dark complexion with a blue hooded sweatshirt, blue jeans.

Q. Blue jeans?

A. That is correct, sir. That is the—the description which she gave to me.

Q. There was no reference to the color of the suspect's or the—this person's hair?

A. To the best of my knowledge, there was not, sir. If there was, I would have had it in my report.

Q. Was any reference to the type of shoes this suspect was wearing?

A. No, sir.

Q. Who summonsed you to—or where did you first see Mrs. Haase? Where was she at that time?

Officer Thomas Epling.

A. At—in the 200 block of Revere Street in the City of Newport News.

Q. Some place other than her residence?

A. I don't remember if it was in front of the
page 416 } house or inside of the house.

Q. And who summonsed you there?

A. To go to this address?

Q. Yes.

A. I was dispatched to this home on 225 Revere Street to take the complaint, by police radio.

Q. By police radio?

A. That is correct.

Q. Was anyone else present at that time from the Police Department?

A. In the car with me?

Q. No, was anyone present at the scene or in the area of 200 block of Revere Street when you got there?

A. There was another man and another woman.

Q. No one else from the Police Department?

A. That came over to the house. When I arrived there?

Q. Yes.

A. No, sir.

Q. Did anyone else from the police department come there other than Lieutenant Hiser?

A. Yes, sir.

Q. Who?

A. They came into the vicinity. Whether they went into the house or not, I don't know.

page 417 } Q. Pardon? I had trouble hearing.

A. There was another detective, Sergeant Calhoun, he came up—was near the house. Whether he went into the house or not, I don't remember and—also Officer John Hennant.

Q. Where were you when you first saw—received this communication to go and check out this complaint?

A. I was in the vicinity of Main Street and Warwick Boulevard. Exactly I couldn't tell you, sir.

Q. And when you arrived, there were no other police officers?

A. No, sir.

Q. Do you have any reason to believe that—that you were not the first police officer to talk to Mrs. Haase on this occasion?

Mr. Murchison: I object to that.

Officer Thomas Epling.

Court: I'll let him answer it.

A. Would you repeat your question?

By Mr. Bateman:

Q. Do you have any reason to believe that there was any other police officer who talked to Mrs. Haase earlier than you did on this occasion?

A. No, sir.

Q. No indication at all that other police officers had been there and left?

page 418 } A. If there was a police officer there before me, sir, I don't know.

Q. What did you do after Lieutenant Hiser came to the scene?

A. I turned the investigation over to him and advised him of what—the complainant had related to me in reference to what had took place.

Q. Did you remain or did you leave immediately after that?

A. It was a few minute before I left.

Q. Did he take a statement from Mrs. Haase?

A. He was in the process of taking a statement from her when I left.

Q. Did Mrs. Haase furnish Lieutenant Hiser with a description of a suspect?

A. What Lieutenant Hiser had in his report, sir, I don't know.

Q. I'm not asking you what was in the report. To your knowledge and in your hearing, did she furnish him with a description?

A. I don't remember, sir.

Q. You don't recall?

A. No, sir.

Q. Did you—let me refresh your recollection. Do you know whether or not you radioed any descrip-

page 419 } tion to headquarters?

A. I don't remember whether I did or not.

Q. Would I be correct if you did, it would be between 8:32, the time of your arrival and 8:45, the time you commenced taking the statement or the complaint for him?

A. Assuming—that I did radio a description.

Mr. Murchison: I object to that.

Court: Sustained.

Officer Thomas Epling.

By Mr. Bateman:

Q. Could you have furnished the radio dispatcher a description prior to 8:32 p.m. on May 12 of a suspect involved with a Mrs. Alma Haase?

A. I took this report at 8:45.

Q. And you first talked to Mrs. Haase at 8:32 did I understand you to say?

A. No sir. The—she reported to me that this happened at approximately 8:32.

Q. And if you will and perhaps repeating, what time was it when you first saw and talked with Mrs. Haase? Not when you commenced your complaint form but when you first saw and talked with her?

A. It would be between 8:32 and 8:45. As to the precise moment, I couldn't tell you.

Q. And you could not have furnished a description to the dispatcher's office or to anyone else until some

page 420 } time between 8:32 p.m. and 8:45 p.m. when you talked with Mrs. Haase, am I correct?

A. The only time that I am sure of on this report is 8:45. That is after I started talking to her and begin the report. Now the time that she gave me that this happened was approximately 8:32. If it had been a little bit before or a little bit after, I'm not positive on that time. That is something we had to go back over and merely guess at. If I did which I don't remember, it could have been before 8:32. A little bit before or a little bit after. I don't know precisely what time that this did occur. This is the time that she gave me and it was merely approximately on her part.

Q. You did not furnish anyone with a description of any person involved with Mrs. Alma Haase until after you had talked to her, did you?

A. I don't remember, sir.

Q. Could you have furnished a description to anyone until after you had talked to Mrs. Haase?

A. Only if I had received information from headquarters as to the nature of the offense and it was related to me. Then there would be no—no use for me turning around and relating it back to headquarters.

Q. Don't I understand that it was headquarters who sent you to check out this complaint and find out

page 421 } what was it all about?

A. That is correct.

Q. Headquarters didn't furnish you with a description then, did they?

Officer Thomas Epling.

A. I don't remember whether they did or not, sir. Some times when we get a complaint on a serious crime, certain information is related to us so we will know the nature of the offense so we can know how to approach the situation. If there's any danger to us or if there's any immediate danger to the person who we're going to take the complaint from.

Q. Wasn't it made clear to you that the reason you were being sent to Revere Street in the first place was to find out about a complaint?

Court: Mr. Bateman, if the dispatcher dispatched him there, he had to get a call from somebody.

Mr. Bateman: I realize that.

By Mr. Bateman:

Q. Wasn't that call to go there and find out about a complaint?

A. Like I told you, we use signals. They tell us to go and take a complaint in signals. Now just like I told you, some times they will give us something to go on, how serious it is and so forth.

Q. Was there anyone—you were riding in the
page 422 } police patrol car at the time this message came over?

A. That is correct.

Q. Was your unit specifically directed to go there?

A. The unit I was driving, they called my call number. I don't remember the unit number. They called my call number. I answered the radio and they dispatched me to—225 Revere Street to take a complaint on an offense there.

Q. Were you alone in this unit or was anyone with you?

A. I don't remember whether I was riding—I know that I was driving but whether there was a passenger in the car with me or not, I don't remember. Its been a long time.

Mr. Bateman: No further questions.

Mr. Murchison: I have no questions.

Court: Do you have any?

Mr. Murchison: No.

Court: All right, you may step down.

Mr. Kostel: Can we have a five minute recess?

Court: All right, sir.

(The Court then declared a recess after which
page 423 } the Court reconvened.)

Robert Johnson.

Court: All right, sir, next witness.
Mr. Kostel: Call Mr. Johnson, please.

ROBERT JOHNSON,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:
Q. State your name and occupation, please, sir?
A. Robert Johnson and I work in the shipyard, sheet metal.
Q. And how old are you, sir?
A. 47.
Q. Where do you reside?
A. 924 Thornbriar Court, Hampton.
Q. How long have you resided there?
A. About 14 months.
Q. Where did you reside prior to that?
page 424 } A. At Greenwood Farms at 24 Aspenwood Drive.
Q. Do you know the defendant, James Hammer?
A. Yes, sir.
Q. How long have you know him?
A. Right at 18 years.
Q. And how did you come to make his acquaintance?
A. I moved in the neighborhood where they had lived right across the street from them.
Q. What neighborhood was that, sir?
A. Down Buckroe on Slater Avenue in Buckroe.
Q. That was 18 years ago?
A. 18 years ago.
Q. How long did you live in the same neighborhood with them?
A. I lived there four years.
Q. Four years?
A. Yes.
Q. Did you know the defendant, James Hammer long enough to form an opinion as to his truth and veracity?

Mr. Murchison: If your Honor please, am I to understand this is a character witness that we're dealing with?
Court: That's what it sounds like.
page 425 } Mr. Kostel: It is.
Mr. Murchison: A character witness.

Robert Johnson.

By Mr. Kostel:

Q. Did you know the defendant, James Hammer long enough to form an opinion as to his truth and veracity in the community?

A. I would say so.

Q. What is your opinion as to that?

A. Well, my opinion of him—

Mr. Murchison: Now, if your Honor please, I object to that, the manner in which, unless we can tie it in better. I'm a little confused.

Court: It's not a question of what his opinion is.

By Mr. Kostel:

Q. Have you heard his reputation for truth and veracity discussed?

A. I've never heard it discussed in any wise, I wouldn't think.

Q. Do you know as to what his general reputation for truth and veracity—

Mr. Murchison: He hasn't heard it discussed, I don't see how he can answer that question. I object to it.

page 426 } Court: I don't either.

A. To the—

By Mr. Kostel:

Q. Don't answer that.

A. To my—

Q. Don't answer that.

A. The only way I can put it this way.

Mr. Murchison: I object.

A. No one has ever in my presence said anything to my knowledge that has ever—given me the idea that J. C. wasn't a good boy.

Court: All right, sir, the Court recognizes that's not responsive. It is not a proper answer but I'll let it stand.

By Mr. Kostel:

Q. Would you believe James C. Hammer under oath where his interests are involved?

Robert Johnson.

A. Yes.

Mr. Kostel: All right, sir. Cross examine.

CROSS EXAMINATION.

By Mr. Murchison:

page 427 } Q. When is the last time you talked to Mr. J. C. Hammer?

A. I suppose it was in June, right about June.

Q. Of this year?

A. Of this year.

Q. You mean visited down here in the jail?

A. He was at my home.

Q. He was in your home in June of this year?

A. Well, I'd say about—just prior to this incident, this—

Q. Do you know when this incident occurred?

A. About six months ago I would think.

Q. Let me direct you to this. When did you talk to him since May the 12th of 1964?

A. When have I talked with him?

Q. Before then. You certainly didn't talk with him in June at your home.

A. I have talked with J. C. off and on for the past 18 years. We have been very close, very close.

Q. Well, just tell me this. When did you talk to him prior to May 12, 1964?

A. Oh, maybe a few weeks before that.

Q. Maybe or did you? Could it have been a month before that?

page 428 } A. Well, maybe it was a month, right at a month. I know that—several times he visiting over in his father's house. I talked to him just about every time he comes over that way.

Q. When did you last have a discussion in the neighborhood about him prior to May 12?

A. Discussion in the neighborhood?

Q. Yes, and with whom?

A. Like I say, about—seems like about six months ago to me was the last time I remember discussing him and he was in my home at this particular time. He had been visiting his father and he just stopped by and we were just casually talking.

Q. You and the father were talking about the father's son, is that right?

Ova Hollifield.

A. No, I don't guess I have ever talked to him about his son.

Court: He was there.

By Mr. Murchison:
Q. You were there. The boy was there too?
A. The boy was in my home. The father wasn't there. I talked to his father every day.
Q. What neighbor, now, have you ever talked to about James Hammer?
A. What neighbor?
Q. Yes.
page 429 } A. I don't know as I have ever talked to any neighbor about him other than since this has happened here we have wondered how such a thing can happen.

Mr. Murchison: Yes, sir. That's all I have to ask.
Court: All right, sir. Thank you, sir. May we let him go?
Mr. Kostel: Yes, sir.
Court: You may leave, Mr. Johnson.
Mr. Kostel: Call Miss Ova Hollifield.

OVA HOLLIFIELD,
called as a witness by the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:
Q. State your name, please, Mam?
A. My name is Ova Hollifield.
Q. Where do you reside?
A. 12 East Maryland Drive in Hampton.
Q. How long have you resided there?
page 430 } A. Approximately five and a half years.
Q. Do you know the defendant, James C. Hammer?
A. Yes, I do.
Q. How long have you known him?
A. Approximately 15 years.
Q. And how did you come to know him?
A. I was teaching the junior boys' class at the Church of

Ova Hollifield.

God on 28th Street and J. C. came in and was one of my pupils.

Q. What kind of pupil was he?

A. He was an outstanding pupil because I had been teaching for years and *he's* ask me questions that I would have to go home and look up and see.

Q. What type of questions would he ask you?

A. Questions concerning the lessons that we'd have that may be I hadn't gone into details, you know.

Q. How long did you have him in your class?

Mr. Murchison: Just a minute. I object to that line of questioning. I don't know what that has to do with this case. What she was asked about in Sunday school class and I don't know when.

Mr. Kostel: If your Honor please, I'm trying to lay the ground for an opinion that she's going to give as to this man's truth and veracity and I think—the more
page 431 } groundwork I can lay, the better the opinion.

Mr. Murchison: Yes sir, he's putting on the roof before he gets the foundation.

Court: All right, sir. I don't think you need to know what kind of questions he asked in Sunday school.

By Mr. Kostel:

Q. How long did you have him at Sunday school?

A. I had J.C. about six years I'd say. Even after he went up, I went up with him as his teacher and I was his teacher about six years.

Q. How old was he when he went out of the class?

A. I imagine he was about 18, somewhere around there.

Q. Did you hear J. C. Hammer's reputation discussed in the neighborhood or in the community?

A. Yes, I've heard it discussed.

Q. And what was his general reputation in the neighborhood and in the church and in the community?

A. Every one seemed to like J. C. and as far as I know, was good.

Q. Did you ever hear his reputation as to
page 432 } truthfulness and veracity discussed?

A. Yes, because I've had a lot of parties at my house and he's—he's been there and—and you know how young people are and—and I couldn't say that J. C. was a liar. I'd have to say was truthful.

Q. Everybody you ever heard talk about him said he was truthful?

Ova Hollifield.

A. Yes, sir.
Q. Would you believe J. C. Hammer under oath even though his own interest were involved?
A. Yes, I would.

Mr. Kostel: Thank you, Mrs. Hollifield.

CROSS EXAMINATION.

By Mr. Murchison:
Q. Mrs. Hollifield, I believe now you said you last had anything to do with him when he was 18?
A. I couldn't say exactly. I believe J. C. was 11 or 12 when he first came to church and I was his teacher approximately six years and that would make him about 18, something like that.

Mr. Kostel: 17 to 18 years old.

A. 17 to 18, around that.
page 433 } Q. Do you know how old he is now?
A. I believe JC's 26 or 25 somewhere.
Q. Have you had anything to do with him in those—in those eight years?
A. Since I was his teacher?
Q. Yes, Mam.
A. He's been in my home and I've been in his home and I've met him on the street and I've seen him at church.
Q. When was the last time you saw him in your home prior to May the 12th of '64?
A. J.C. used to sing in the quartet with my son and he's been in my home. My son has been in college two years and I guess its been about three.
Q. About three years ago?
A. About three years ago.

Mr. Murchison: Thank you, Mam.
Mr. Kostel: That's all. Thank you, Mrs. Hollifield.
Mr. Bateman: Your Honor, before the defense rests its case in this matter, it's our understanding and our feeling that the docket system as used in the City of Newport News and particularly as it relates to this defendant and in this case is contrary to principles of due process of
page 434 } law and the safeguards guaranteed to the defendant under the constitution of Virginia, the stat-

utes of Virginia and the constitution of the United States and we would seek to move at this point that the charge against this defendant now pending be dismissed on the grounds that the adherence to the docket system in this instance is in violation of his constitutional and legal rights and therefore this proceeding should be dismissed.

Court: All right, sir, the Court overrules your motion and holds that the docket system is legal and constitutional.

Mr. Bateman: Your Honor—

Court: And you except.

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page 437 }

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SERGEANT S. T. WILLIAMS,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:

* * * * *

Q. Are you the Sergeant Williams who together with Lieutenant F. L. Martin of the Newport News Police Department questioned James Hammer about various crimes committed in the City of Newport News, Virginia?

A. Yes.

Q. I hand you what purports to be an arrest warrant and ask you, H. T. Williams, if you made oath be-
page 438 } fore the Judge of the Municipal Court of the City of Newport News, that one James Clifford Hammer did on the 12 day of May, 1964 in the City of Newport News unlawfully and feloniously attempt to rob one, Alma Haase, 225 Reeves Street, Newport News, Virginia by pointing a knife at her against the peace and dignity of the Commonwealth of Virginia?

A. No, I didn't.

Mr. Kostel: I offer this in evidence as Defendant's Exhibit Number 4.

Sergeant S. T. Williams.

(The document was received and marked Defendant's Exhibit No. 5.)

By Mr. Kostel:

Q. Sergeant Williams, I hand you what purports to be a warrant of arrest and ask you if you, H. T. Williams, made oath on the 22nd day of May, 1964 before the Judge of the Municipal Court for the City of Newport News, Virginia stating that James Clifford Hammer did on the 12th day of May, 1964, in the City of Newport News, Virginia, unlawfully and feloniously attempt to rape one, Alma Haase, 225 Reeves Street, Newport News, Virginia, by pointing a knife at her against the peace and dignity of the Commonwealth of Virginia?

A. No, I did not.

Mr. Kostel: I offer that as Defendant's Exhibit Number 6.

page 439 } Court: Let me ask this. Where are these coming from, these warrants?

Mr. Kostel: It came from the Clerk, your Honor.

Court: Have they ever been served on him?

Mr. Kostel: No sir.

Court: Are they any part of this record?

Mr. Kostel: They are—it's segregated with each indictment that flowed on the warrant.

Court: Do you know where they came from—my Clerk's office?

Mr. Kostel: They came from the Municipal Court to your Clerk's office, yes sir.

Court: All right.

Mr. Kostel: Actually they are part of the record without me asking this question but just to make sure.

Court: No, they're not part of the record either. I don't ever see a warrant. I try them on an indictment. Not on a warrant.

page 440 } By Mr. Kostel:

Q. I show you, sir, what purports to be a warrant of arrest issued by the Judge of the Municipal Court of the City of Newport News, Virginia, on May 22, 1964 stating that you, H. T. Williams made oath before the Judge of the Municipal Court of said City that James Clifford Hammer did on the 12th day of May, 1964 in the City of Newport News, unlawfully and feloniously walk into the home of

Sergeant S. T. Williams.

Alma Haase, 22 Reeves Street, Newport News, Virginia, against the peace and dignity of the Commonwealth of Virginia. Did you make such an oath before the Judge of the Municipal Court of the City of Newport News, Virginia, on that day or any day in connection with that warrant?

A. No sir, I did not.

Mr. Kostel: I offer that as Number Six, Defendant's Exhibit Six—Number Seven.

(The warrants were received and marked Defendant's Exhibits 6 and 7).

By Mr. Kostel:

Q. Are you familiar with how these warrants are executed?

A. No sir, I'm not.

Mr. Murchison: Are you through with these Exhibits now?

Mr. Kostel: Sir?

page 441 } Mr.Murchison: Are you through with those?

Mr. Kostel: Yes.

Mr. Murchison: I want to move that the Court—we object to the Exhibits five, six, and seven as not having properly laid a foundation by the defense attorney. The—the items that they gave me have a typewritten name but his signature does not show anywhere. He doesn't know where they come from and they're not a part of this record and haven't been properly introduced as an Exhibit. He's denied he made oaths. These are not in his writing. They're on a typewritten copy and I don't think they should be a part of the record on the basis of an Officer who said he didn't have anything to do with it.

Mr. Kostel: I don't think the man making the oath has to sign the warrant, if your Honor please. In other words, if I want to get an arrest warrant out, as I understand the law. I can make oath before the Justice of the Peace. He signs it I made oath before him. I don't have to sign it.

Court: Let me see the warrant.

page 442 } Mr. Kostel: Furthermore, the first two warrants went in without objection.

Mr. Murchison: You had the three and I—you said you had these three you showed us. We were waiting for you to get through putting them in and get through with your examination on it.

Court: All right, I'll let them stand. All right sir, do you have anything further?

Mr. Kostel: No sir.

Court: Do you, sir?

Mr. Murchison: No sir.

Court: All right, Sergeant Williams, was the preliminary hearing waived by James Hammer on the attempt to rob Alma Haase, do you know?

A. I don't know of my own knowledge. I was not in there.

Court: You were not at Municipal Court?

A. No, sir.

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page 443 }

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R. N. HODGES,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. State your full name, your occupation and your address, Mr. Hodges?

A. R. N. Hodges, 1012 Briarfield Road, Newport News, Virginia. I'm a real estate Broker.

Q. Are you acquainted with the Defendant, James C. Hammer?

A. Yes, sir.

Q. And how long have you been acquainted with him?

A. Approximately 14 years.

Q. And how did you come to know him?

A. Through his family.

Q. Have you worked with him or his family or
page 444 } how did you come to know his family?

A. Through church affiliation.

Q. And in the course of your acquaintanceship with the

R. N. Hodges.

Defendant, James C. Hammer, have you become acquainted with his reputation as to truth and veracity among; the neighborhood in which he lived?

A. Yes sir, I would think so.

Q. And what is that reputation?

A. Well, all I can say it would be good. I don't know anything detrimental to him.

Q. His reputation in the community in which he moved and the neighborhood that he lived was good, so far as truth and veracity is concerned?

A. Yes, sir.

Q. Would you believe James C. Hammer under oath in the matters wherein his own interests were involved?

A. Yes, sir.

Mr. Bateman: Answer Mr. Murchison's questions.

CROSS EXAMINATION.

By Mr. Murchison:

Q. When did you last see Mr. Hammer, James C., the Defendant. That is, Mr. Hodges, from the 12th day
page 445 } of May, 1964, when was the last time you saw him?

A. Well, I would say it was about a month prior to that.

Q. You saw him then in April?

A. Yes.

Q. Where?

A. He came by my house to have me *notary* a title on a car.

Q. And when did you last discuss James C. Hammer with neighbors as to his truth and veracity and general reputation?

A. When did I last discuss it?

Q. With neighbors, yes sir.

A. Well, I have never discussed it.

Q. You have never discussed it with any neighbors or anybody?

A. No, sir.

Mr. Murchison: Then I move that this witness' testimony be stricken.

Mr. Bateman: Your Honor, it's not a question whether

he had discussed it. It's a question of whether or not in discussions about the Defendant he had come to know what his reputation was.

Mr. Murchison: How can he know?

page 446 } Court: Mr. Hodges, your neighbor or somebody who knows James Hammer could think he was a big liar and you not know it if you hadn't discussed it, isn't that true?

A. I don't quite follow you, your Honor.

Court: Well, have you ever discussed James' reputation or truth and veracity with anybody?

A. No sir, I didn't say that I had.

Court: How do you know they don't think he's a big liar?

A. I was only giving my personal opinion.

Court: Your personal opinion?

A. Yes, sir.

* * * * *

page 447 } Mr. Bateman: Your Honor, we move at this time that the charges against—charge or charges against—the charge at this point be dismissed on the grounds that as a matter of law the evidence is insufficient to sustain.

Court: Overruled.

Mr. Bateman: And of course not waiving other objections made.

Mr. Kostel: Note our exception to the ruling.

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page 448 }

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Court: Gentlemen, the Court has listened very diligently and I hope patiently and of course there are several attacks

taken by the defense. First and foremost being that the statement was taken under coercion and duress and proceeded to put on quite a bit of evidence. The impression that the Court received from the testimony and from questioning by counsel is that the defense was relying on the fact that the Officers were working over time, that the Defendant was kept up for periods of time at night, during the day and that quite a few Police Officers were involved in the questioning.

I see nothing unusual about Police Officers working over time. They had a case that they felt evidently was connected with other crimes. There has been testimony here without objection about the fact that there had been other complaints made in this area, all of which from the evidence
page 449 } appeared that the Department wanted to break the case. I find nothing unusual about this or nothing detrimental to the Department. The fact that Lieutenant Martin might have worked some 50 hours he said, to me is to his credit, not to the detriment of the Defendant. We of course, I think maybe the Court allowed us to go right far afield and the reason for doing it was because of the other cases that have to be tried in that I did not hold you to the Alma Haase case and we got in some questions that went on considerably after the statement taken by Alma Haase but I do not find that he has had his Constitutional rights abused by the Police Department. It's true that he was up late at night but my reason in asking some of the Officer certain questions, this boy was just continually volunteering information. Lieutenant Martin said he solved cases for them they didn't even link him with.

Now I don't think that the Police have got to say, "now, Mr. Hammer, I want you to stop on this now. I want you to wait a little while. I'm going to put you back
page 450 } in your cell. We'll talk to you a little while later. You're telling us too many things." The fact they questioned him on a number of crimes, if you got a person that—that you think did a number of crimes, what are you supposed to do? Question him on one, put him to bed, bring him back and question him on another? I don't think so. I don't think his constitutional rights ought to be abused but—no one, no one has asked the Defendant. He has not testified that he was broken down. These have all been remarks by counsel that because he was tired and because Chief Peach told about his father, although he did on the question that I asked him, say that because of his—of his parents is the reason that he signed these statements without discussing them but up until the time I had asked him, he hadn't said that anything caused him to confess. It's all been from—

from counsel that these things caused him to confess. I find nothing unusual in the fact that a person doesn't
page 451 } confess right away to crimes. This is consistent and it isn't because you are rubber hosed or because you are beaten down that people later on confess. I don't know why either. Sometimes they hold out for much longer than Mr. Hammer did so I find that nothing—has occurred to force Mr. Hammer into making these statements and then we've had a whole lot to do about identification.

Now I'll tell you, everybody has said, Mrs.—well, not everybody. Mrs. Haase, she's the only one who has said she was present that these things occurred within a matter of minutes. I think she did pretty well on the description. He's five foot six. She told Mr. Epling five feet seven to five foot eight. She missed an inch. He said he weighed 144 then and she said 160. Well, they got people that stand on a midway and try to get your weight that can miss them further than that and you must remember, she's standing with a knife at her neck. She got the dark eyebrows, the dark complexion, the dark blue hood and then the question of course
page 452 } of the pants. Well, maybe she did get mixed up on whether they were light or dark and we've had a whole lot to do about 8:30 and 8:45 but when you have an attempted rape with a knife stuck at you and all that gone on, I don't know that these actual minutes are that important. He of course denies being anywhere in the area; never got down to Ferguson Park so I think from the description point of view that she did pretty good. Now true, you mentioned the white tennis shoes and the pants—and hair, hair. Sergeant Calhoun is the only man that I recall that mentioned the white tennis shoes and that he turned this other boy loose on Warwick Boulevard because he had blond hair or he did have blond hair. Now you recall, that the defense asked him whether or not they hadn't had other descriptions in reference to these other crimes that had occurred in the Hilton area and he said yes, he was going partly on that description.

So I find nothing inconsistent here that he turned this blond headed boy loose at that point. So if every-
page 453 } thing came in here on the dot by time and with this number of Police Officers involved and I'll admit that there were quite a few of Police Officers involved in this case but as I say, I find no real inconsistencies in time, in description and in this statement. Now James Hammer would be, in my opinion, the key witness on these statements and to me when he told me that he signed statements and Lieutenant Martin never asked him a question for half a day from nine o'clock until noon, I find it worthy of unbelief. Now

he took the Lubel and the Godwin and the Haase cases prior to 12:00 o'clock noon. He was shown in there places where there were crosses out and initials put in. True he gave an explanation for that. He said he just initialed them, didn't bother to read them but to me that—that's a little incredible. Here's a young man in answer to my question said he signed 27 statements without reading a single one of them, without knowing what any of them were about because, as

page 454 } he said, he had been told by Chief Peach that his parents could be brought in for possession of stolen goods and I might add which possibly they could have been. I don't know that that's a threat. I don't know that the testimony—I believe the testimony has been clear that this property was found at the father's house and it's in his possession.

He could have been charged with possession of stolen property if the Chief said that. Some of these things are uncontradicted and of course you produce certain witnesses here that say they could believe James under oath. I'm afraid I can't go along with that. Then we come down to the statement itself and it jives with what Alma Haase said happened. True, maybe Lieutenant Martin could have gotten this from reading other information, written this statement up. If Lieutenant Martin did that, I hope that some day soon that I find it out because he won't have a position on that Police Force. I'll personally see to that because he would be

page 455 } definitely unworthy to be a Detective and unworthy of being on the Police Force where I might add he's been for 18 years. Now there's been some—well, staying with the statement, this statement did coincide with what Alma Haase said happened and another funny thing is she was attacked. She reported it. The description went out and who did it fit but the Defendant. That's too much circumstance, gentlemen, too much. A blue hooded person. He had on a blue hood. She called to Lieutenant—to Officer Epling. She called them blue jeans I think was her description. A great deal has been made about age. That she said 17 and the boy is 26 I believe—25 at the time if I am not mistaken. I'd like to have a few people guess my age now and then. I don't find that inconsistent so all—all that has gone on here to me is far outweighed by the Commonwealth's evidence, by Mrs. Haase who never, never was shaken on the witness stand. She admitted that she wouldn't definitely identify anybody by voice but yet she picked him out twice by voice re-

page 456 gardless of whether she was sure or not. She picked him out twice, not once but twice and the fact she wouldn't stand on this stand and say no, I'm not going to say

that that's the man definitely on this voice, but she did it. She did it and there was nothing wrong with either one of those tests.

The visual lineup, I don't put much faith in that. I agree with the defense that if she had seen the pants and that sort of thing but Mrs. Haase really didn't get down to what she called the lineup, whether she understood what a lineup was or not, I don't know. She said she told somebody if they carried her in there and let her look at him as close as she was, she would pick him out and she did it and she testified on this stand that it was no doubt in her mind that this Defendant was the man, none, and gentlemen, I'm just as convinced as she is. There's no doubt whatsoever in my mind that James Hammer was in that house on May 12, 1964 and I'm finding him guilty of burglary with intent to commit rape and robbery and I'll ask for a probation report to be returned after grand jury and docket call on December the 8th.

page 457

Mr. Kostel: If your Honor please, we would move to set aside the *verdit* of the Court as being contrary to the law and the evidence.

Court: All right sir, the Court overrules your motion and notes your exception.

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page 458

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Mr. Kostel: Can we also stipulate the portion of the record dealing with the admissibility of confessions be the same for all cases?

Court: I have no objection to that.

Mr. Murchison: I have no objection to that either because it would be redundant to go over on all cases.

page 459

Court: I think if—if the Court of Appeals *revereses* the matter on that basis, they'll all probably fall.

(The case was then concluded).

* * * * *

page 460 } JUDGE'S CERTIFICATE.

I, Douglas M. Smith, Judge of the Corporation Court for the City of Newport News, Virginia, who presided over the foregoing case of *Commonwealth* vs *James C. Hammer,* tried in said Court at Newport News, Virginia, on November 30, 1964 and December 1, 1964 do certify that the foregoing is a true and correct report of all the evidence, together with the motions, objections and exception on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the trial of said case as therein set forth.

I do further certify that the attorney for the Commonwealth had reasonable notice, in writing, given by counsel for the Defendant of the time and place when the foregoing report of the testimony, objections, exceptions and other incidents of the trial would be tendered and presented to the undersigned for signature and authentication, and that the said report was presented to me on the 12 day of February, 1965, within sixty days after the entry of final judgment in said cause.

Given under my hand this 19 day of February, 1965.

DOUGLAS M. SMITH
Judge of the Corporation Court
for the City of Newport News,
Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and Supersedeas Awarded	1
Record	2
Defendant's Exhibit No. 7	2
Waiver of Preliminary Hearing	3
Indictment	4
Order—June 8, 1964	5
Order—November 30, 1964	5
Order—December 1, 1964	6
Judgment—December 14, 1965	8
Notice of Appeal and Assignments of Error	9
Notice of Tendering of Transcript to Judge	11
Proceedings	12, 144, 176, 199, 205, 213, 240, 246, 250
Witnesses:	
Alma Haase	13
Larry E. Gibson	38
Mrs. Doris Gibson	47
Sergeant J. C. Calhoun	53
Lieutenant Frank L. Martin	89
Lieutenant Eugene H. Hiser	90, 214
Lieutenant D. C. Shanz, Jr.	100
Lieutenant H. D. Martin	123
Lieutenant Herbert Mapes	134
Lieutenant F. L. Martin	145, 200, 207
Clifford Hammer	164
Charles William Hammer	174
James C. Hammer	177, 215
Officer Thomas Epling	228
Robert Johnson	235
Ova Hollifield	238
Sergeant S. T. Williams	241
R. N. Hodges	244
Opinion	246
Judge's Certificate	251