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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6295

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHNNY PAUL TAYLOR

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF
NORFOLK, PART TWO

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. 6295

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 24th day of November, 1965.

JOHNNY PAUL TAYLOR, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Corporation Court of the City of Norfolk, Part Two
L. B. Tabb, Judge

Upon the petition of Johnny Paul Taylor a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk, Part Two, on the 6th day of August, 1965, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment No. 2, third count); but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

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page 4]

COMMONWEALTH OF VIGINIA)
CITY OF NORFOLK) To-wit

In the Corporation Court of the City of Norfolk, Part Two

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its FEBRUARY term, 1965, upon their oaths, present that JOHNNY PAUL TAYLOR to-wit on the 6th day of January in the year 1965, in the said City of Norfolk in the night time of said day, feloniously and burglariously did break and enter the dwelling house of one Delores Marie Jackson, there situate, with intent then and there in said dwelling house feloniously and burglariously to commit larceny, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said JONNY PAUL TAYLOR, to-wit, on the 6th day of January, 1965, in the said City of Norfolk, in the night time of said day, feloniously and burglariously did break and enter the dwelling house of one Delores Marie Jackson, there situate, with intent then and there in said dwelling house feloniously and burglariously to commit rape, against the peace and dignity of the Commonwealth of Virginia.

THIRD COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said JOHNNY PAUL TAYLOR, to-wit, on the 6th day of January, 1965, in the said City of Norfolk, in the night time of said day, feloniously and burglariously did break and enter the dwelling house of one Delores Marie Jackson, there situate, with intent then and there in said dwelling house feloniously and burglariously to commit a felony, against the peace and dignity of the Commonwealth of Virginia.

(Reverse side)

Indictment for BURGLARY
A true bill
W. J. RALSTON, Foreman.

* * * * *

page 20]

IN THE CORPORATION COURT OF THE CITY OF NORFOLK, PART TWO, ON THE 6TH DAY OF AUGUST, 1965.

* * * * *

Johnny Paul Taylor, who stands convicted of Burglary as charged in the third count of Indictment numbered Two, was this day again led to the bar in the custody of the Jailer of this Court, and came as well the Attorney for the Commonwealth, and the Attorney for the defendant, heretofore appointed for him by the Court, and the Probation Officer of this Court who filed in open court his pre-sentence report as prescribed by the statute for such cases made and provided, pursuant to order of this Court heretofore entered herein on the 17th day of March, 1965, which said report is ordered filed as a part of the record in this case; and thereupon said report was read to the defendant in open court by the Probation Officer of this Court, and the defendant in person, and by counsel, advised the Court that he did not wish to cross-examine the said Probation Officer as to any matter contained therein, and did not wish to present any additional facts bearing upon the matter, and did not wish to make any additional argument, but the attorney for the defendant did address certain remarks to the Court in mitigation of the punishment herein; and the Court, having considered said report and all evidence and argument herein, doth fix the punishment of the said defendant in this case as confinement in the Penitentiary for the term of Five Years. Whereupon it being demanded of him if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is therefore considered by the Court that the said Johnny Paul Taylor be confined in the Penitentiary of this Commonwealth for the term of Five Years, subject to a credit of 207 days spent in jail awaiting trial, and *the* he pay the costs of his prosecution, including $100.00 attorney fee, which said amount is hereby allowed John A. Gurkin, Jr., his appointed attorney, pursuant to the statute in such cases

page 21]

made and provided. A court reporter recorded the evidence and incidents of this trial.

And the prisoner was remanded to jail.

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page 26]

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

NOW COMES the Defendant, Johnny Paul Taylor, and hereby gives notice of his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from his conviction of burglary with the intent to commit a felony, judgment on which was entered on August 6, 1965. The Defendant, Johnny Paul Taylor, makes the following assignment of errors:

ASSIGNMENT OF ERRORS

1. That the Court erred in failing to sustain the Defendant's motion to strike the Commonwealth's evidence at the conclusion thereof.

2. That the Court erred in not setting aside the judgment as contrary to the law and the evidence and in not granting a new trial.

JOHNNY PAUL TAYLOR

By: JOHN A. GURKIN, JR.
Of Counsel

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page 2]

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RECORD

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled cause in said Court on March 17, 1965, before the Honorable Linwood B. Tabb, Judge of said Court.

APPEARANCES: JOSEPH H. CAMPBELL, Esquire
Assistant Commonwealth's Attorney

JOHN A. GURKIN, JR., Esquire
Counsel for the Defendant

Reporter sworn.

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page 4]

The Court: All right, gentlemen. Is the Commonwealth ready?

Mr. Campbell: No, Your Honor. The Complainant was here on Grand Jury day, and she was recognized to be here this morning, but she is not.

The Sergeant called her and found out she was on her way here this morning. In other words, we have checked this morning and found out that she was on her way to Court, but she is not here yet.

The Court: All right, gentlemen. I'll wait, and issue a rule for contempt for being late, as we have another hearing after this case.

I'm going to recess for five minutes, until ready.

(At 10:15 Court reconvened, and the following occurred.)

The Court: Mr. Campbell, are you ready to proceed now?

Mr. Campbell: Yes, Your Honor.

Mr. Gurkin: May I have a moment, Your Honor?

The Court: Yes, sir.

page 5] (Mr. Gurkin conferred with Defendant.)

Mr. Gurkin: The Defendant is ready, Your Honor.

The Defendant was duly sworn and was questioned by The Court as follows:

The Court: You are *Jonny* Paul Taylor?

A. Yes, sir.

Q. Mr. Taylor, the Court has been advised that you were without sufficient funds to hire your own lawyer, and upon request the Court appointed Mr. John A. Gurkin, Jr. to repre-

sent you in these proceedings on February 1, 1965, is that correct?

A. Yes, sir.

Q. This paper indicates to the Court that on two indictments, one charging Burglary and Attempt to Commit Rape, and Violation of Title 18.1-214 of the 1950 Code of Virginia as amended, taking indecent liberties with a child, that you wish to enter a plea of not guilty to both indictments, and bears the signature '*Jonny* Paul Taylor.' Is that your wish, and is that your signature?

page 6] A. Yes, sir.

Mr. Campbell: Just a minute, Your Honor, I notice on the card I have, it's 18.1-214 and on the back of the indictment it has the same thing, but that's not the correct Code section. However, in the body of the indictment it has 18.1-215.

The Court: You say 18.1-215 is in the body of the indictment? Is that correct?

Mr. Campbell: That is correct, but on the face of it, the Code section is incorrect.

The Court: Do you wish to amend that, and do you move to amend that?

Mr. Campbell: I wish to move to amend the face of the indictment to show '5' instead of '4,' from 214 to 215.

The Court: The allegation in the body of the indictment does not conform?

Mr. Campbell: That is correct. It should be 18.1-215 instead of 18.1-214.

The Court: And the language, as stated on the front of the indictment is the correct language, according to that section of the 1950 Code, taking indecent liberties with a child?

page 7]

Mr. Campbell: That is correct, Your Honor.

The Court: Then, it's a typographical error, and you wish to amend it to read Section 18.1-215.

Mr. Campbell: Yes, Your Honor.

Mr. Gurkin: We were aware of that fact, Your Honor, and have discussed it with the Commonwealth's Attorney, that it should be 18.1-215.

We, of course, were prepared to object to the introduction of any evidence in behalf of the incorrect Code, for which this man was not charged, and I would have strenuously opposed it.

The Court: I gather from that then, Mr. Gurkin, that you

were aware of this, and that the language in the body of the indictment, taking indecent liberties with a child is the correct charge for 18.1-215?

Mr. Gurkin: Yes, Your Honor.

page 8] The Court: And also in the body of the indictment, did you find any fault with the body of the indictment?

Mr. Gurkin: No sir, that's correct according to the language of the Statute, and the way it reads.

Of course, he did not commit 18.1-214, and it's a technical point, but of course I wanted to state so, at this time.

The Court: All right. I'm going to allow the typographical error to be corrected from 18.1-214 to 18.1-215.

If there is any doubt that your client does not understand the allegation as contained in the body of the indictment, in Violation of the Code of 1950 as amended, Section 18.1-215, taking indecent liberties with a child, I will grant you a continuance in this matter.

Mr. Gurkin: We do not take that position, Your Honor.

The Court: Then, are you ready for trial?

Mr. Gurkin: I would just want to note my exception to filling in '5' instead of '4.'

page 9] The Court: I'm going to amend this then, to 18.1-215 instead of 18.1-214, to which you except, Mr. Gurkin.

Now Mr. Taylor, you stand charged on two indictments, one charging Burglary and Attempt to Commit Rape, and Violation of Title 18.1-215 of the 1950 Code of Virginia as amended, taking indecent liberties with a child.

This paper further indicates that you desire to enter a plea of not guilty to both indictments, and bears the signature '*Jonny* Paul Taylor.' Is that your wish, and is that your signature?

A. Yes, sir.

Q. This paper further indicates that you wish to waive trial by jury?

A. Yes, sir.

Q. Mr. Taylor, have you talked with your attorney, Mr. Gurkin, about the question of witnesses in your case, and about the evidence?

A. Yes, sir.

Q. And are you ready for trial, and do you desire to enter

a plea of not guilty to both indictments?

A. Yes, sir.

page 10] Q. Mr. Taylor, do you understand that you have a right to have a trial by jury on each of said indictments if you so desire?

A. Yes, sir.

Q. You understand that you also have a right to plead not guilty to both indictments, and with the consent of the Commonwealth and the Court, have a trial by the Judge, do you understand that?

A. Yes, sir.

Q. Mr. Taylor, do you have any questions insofar as these rights that I have tried to explain to you, and your waiver of a jury trial?

A. No, sir.

Q. Are you satisfied with the services of your attorney, Mr. Gurkin?

A. Yes, sir.

Q. One other question. Do you wish both indictments to be heard at the same time, here today?

A. Yes, sir.

The Court: Is that agreeable to the Commonwealth?

page 11] Mr. Campbell: That's agreeable, and acceptable to the Commonwealth.

The Court: It being agreeable to the Commonwealth to have both indictments heard at the same time before the Judge rather than a jury, that is acceptable to the Court.

(Defendant was arraigned on two indictments, pleading not guilty to both.)

(All witnesses were duly sworn.)

Mr. Gurkin: I ask for the exclusion of the witnesses, Your Honor.

The Court: All persons here today to testify as witnesses in this case, are instructed not to discuss your testimony either before giving it or after giving it, with anyone other than the attorneys in this case, Mr. Campbell for the Commonwealth and Mr. Gurkin for the Defense.

All witnesses will please retire to the witness rooms, and await your call.

Dr. A. R. Forbes

The Court: Do you have any opening statement, Mr. Campbell?

Mr. Campbell: The Commonwealth waives opening statement, Your Honor.

page 12] Mr. Gurkin: We waive opening statement, Your Honor.

The Court: Call your first witness, Mr. Campbell.

Mr. Gurkin: I have a further motion at this time, Your Honor, if I may.

Since the Defendant, *Jonny* Paul Taylor is charged with an alleged attempt of rape upon a child of seventeen months, I believe it to be to the best interest of all the people concerned, if all other people left the Courtroom. I realize it's a little irregular, but —

The Court: I understand.

Mr. Campbell: I have no objection, Your Honor.

The Court: Sergeant, a motion has been made by defense counsel, without objection, to clear the Courtroom of all other people other than members of the bar of justice.

Now, both sides having waived opening statement, we will proceed.

Mr. Campbell: I call on Dr. Forbes.

page 13] DR. A. R. FORBES,

witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Campbell:

Q. State your name, please?

A. A. R. Forbes.

Q. What is your profession?

A. Doctor of medicine.

Q. Where do you practice, doctor?

A. Norfolk General Hospital. I'm Chief Resident.

Q. Dr. Forbes, on January 6th of this year or 7th, did you have occasion to examine an infant child known as Delores Jackson?

A. Yes, sir.

Q. About how old was the child?

Dr. A. R. Forbes

A. Seventeen months.

Q. Who accompanied the child?

A. A nurse was with the child.

Q. Do you know whether the mother or father was there or not, doctor?

A. I talked with them in the emergency room of Norfolk General Hospital.

Q. Approximately what time?

A. I'd say approximately 12:30 A.M. on Jan-
page 14] uary 7th of 1965.

Q. All right. What were your findings, as to the child?

A. The general examination revealed a well nourished colored female child.

The infant did not show any exterior evidence of bruises or abrasions over her body, but there was evidence of recent bleeding in the vaginal canal. The labium majus, or large lips were swollen, but there was no bleeding on the labium minus, or the small lips. The entire surface was irritated, and the anus was bright red for approximately three millimeters inside the area of the erogenous zone of the fourchette at the perineum.

The Court: Inside the lips, to the vagina?

A. Yes, sir.

Q. Doctor, how far is that?

A. Almost right at the area containing the junction between the outside skin and the moist interior surface.

By Mr. Campbell:

Q. Go on, doctor.

A. The hymen ring was felt to be intact at the area of the opening of the vagina, to the extent that it would
page 15] not admit the *outter* contour tip of a 'Q-Tip,' in examination.

Two dry smears were taken from the infant's vagina and were put on two swabs, and given to the police officers.

A rectal examination revealed no evidence of trauma.

Q. What treatment was given to the child?

A. None.

Q. Why was that?

A. I did not see any need to give any treatment. She wasn't

bleeding profusely, and it was something that would stop of its own accord.

CROSS EXAMINATION

Examined By Mr. Gurkin:

Q. First of all doctor, I don't understand, of course, all the medical terms, but do I understand that there was a slight abrasion or scratch in the vagina on the interior surface of the skin, is that what you're saying?

A. There was a small scratch or abrasion on the inside of the vaginal canal, yes.

Q. And you say there was absolutely no blood coming from the vagina of the infant?

A. No sir, there was no bleeding.

Q. And there was no indication, from your ex-
page 16] amination, as to what could have caused this?

A. I — no, sir.

Q. Then you mean an infant of this size could have scratched themselves, could have unintentionally been scratching or something like that, and have caused the same thing?

A. Possibly, yes.

Q. I see. That could have happened.

Now, do you know, of your own knowledge, whether or not the swabs that were taken or the smears, I don't recall which, do you know what the results were?

A. No, sir. The reports are never sent to us. They were taken by the police to the Crime Lab, and we never have any reports from them.

Q. And, you say there was no rupture of the hymen in this child?

A. No, sir.

Mr. Gurkin: That is all I have.

The Court: Whatever may have caused this injury, it would have been necessary for the foreign object matter to have penetrated beyond the entrance of the female vagina, would it not?

A. Yes, sir.

The Court: All right. Mr. Campbell, are you
page 17] through with this witness?

Mr. Campbell: Yes, Your Honor.

The Court: All right, then. You are excused sir, and you may leave.

Mr. Campbell: Your Honor, I call Mrs. Jackson.

DELORES MARIE JACKSON,

witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Campbell:

Q. State your name, please?

A. Delores Marie Jackson.

Q. Is that 'Mrs.' Jackson?

A. Yes.

Q. Where do you live?

A. 1419 West 38th Street.

Q. How long have you lived there?

A. Well, I moved down there on the 7th of January.

Q. Of this year?

A. Yes, sir.

page 18] Q. Where were you living, on January 6th?

A. 1419 West 38th Street.

Q. Is that in the City of Norfolk, Virginia?

A. Yes, sir.

Q. Who did you live there with, on January 6th?

A. With my children, my two children.

Q. Then, you have two children?

A. Yes, sir.

Q. Are you married?

A. Yes, I am.

Q. Where is your husband?

A. He's outside.

Q. Was he living there, on January 6th?

A. He's in the Navy, he was at sea.

Q. He was on sea duty, at that time?

A. Yes, he was.

Q. And just your two children were living there with you, on January 6th?

A. Yes, they were with me.

Q. Is that upstairs, or downstairs?

A. Downstairs.

Delores Marie Jackson

Q. And, is that an apartment?

A. Yes, it is.

Q. On January 6th, late in the evening, did anything unusual happen at your apartment?

page 19] A. Yes, it did.

Q. Tell us, in your own language, what happened.

A. Well, about 11:00 o'clock that night *Jonny* Paul Taylor knocked on my door, and I said: "Who is it?," and he said: "Household Equipment."

Q. He said what?

A. "Household Equipment."

Q. All right. Go on.

A. He said: "I want to fix your T.V.," and I said: "At 11:00 o'clock at night?," and he said: "Open the door," and I said: "I'm not going to open the door," and he said: "Open the door, or I'm going to break it down," and I said: "You do, and I'll cut you with a knife," and I went into the kitchen and got a knife, and he started knocking on the window, and then he went back to the door.

Q. Which door it that?

A. I — the front.

Q. How many doors are there, to get into your apartment?

A. The front door, and there's another apartment in the back, but I don't have anyone living in the back apartment, and to get there, there's a door, but there's nobody living in there.

Q. Go on. Then what happened, Mrs. Jackson?

page 20] A. So he kept — he left the door and went to the window and started pulling on it, and then he left the window and he said: "You'd better open the door," and I said: "I'm not going to open the door," and so then I got scared because he was pounding on the window so hard.

So, I went back to the door and ran across the street to call my neighbors, and we got back over in just about ten or fifteen minutes, and when we got back over a car was in front of the house, and I don't know if *Jonny* Paul Taylor hit the girl, but she was crying. When I left, she was on the bed, and I heard him say "Shut up," and my neighbor said: "Is that your husband?," and I said: "That's *Jonny* Paul Taylor,"

and I said: "He went to the window," and he went, and when he got back I told Edward, I said: "He's in the house."

Q. 'Edward,' who is that?

A. He was, Edward was my neighbor, the one I called that lives across the street.

Q. All right. Just tell us what you all said, and what was done.

A. So then, my neighbor told me, he said: "Go, and call the police," and so man I ran and called the policeman, and got back about five minutes later, and *Jonny* Paul Taylor was coming from the side door.

Q. Where?

A. The side door, of my apartment.

page 21] Q. To your apartment? So then, there is a side door. Was anything said to him?

A. I don't know what he said to him, but the policeman came, and when the policeman got there my little girl was crying and when I got inside, my little girl had her pj's on, the top on and the bottoms were off and she was crying, and I thought this was funny because her diaper and pj's were put on before I left, but all she had on was the tops and nothing on her legs.

She was crying, and I looked up between her legs and she was bleeding and started crying, and the policeman said: "What's wrong with the girl?," and I said: "She's bleeding, look at her," and he said: "We'll have to bring her to a doctor, to see what's wrong with her," and they took her to Norfolk General Hospital and they wouldn't let me come to the Emergency Room, and I stayed outside crying.

Q. All right. Now, where had your little girl been, do you know, and your other children?

A. I only have two.

Q. Are they both girls?

A. I have a little boy, six months old.

Q. How old is your little girl?

A. A year. Delores Marie Jackson, she was one this Thanksgiving.

Q. What time did you put the children to bed?

page 22] A. Well, they usually have a nap every day, and about 8:00 o'clock that night she had some candy and I played with her and she got a drink of water,

Delores Marie Jackson

and then it was around 10:00 o'clock when I was going to put her to bed, and shortly after I got into the house, or quite a while, about 11:00 o'clock when I got back to the bedroom, and then I heard somebody knock on the door.

Q. Now, can you remember what clothes you put on her?

A. I put a diaper on her.

Q. Anything else?

A. Her diaper panties, and I put her pj suit on with the pants.

Q. And, you put her to bed?

A. I put her to bed. She usually slept with me, when Russ was not at home.

Q. Where was the baby?

A. In bed.

Q. In the same bed?

A. No, in the same room, but not in the same bed.

Q. Is that a single bed?

A. Yes.

Q. Then, is the younger six-month old child able to walk?

A. No, sir.

page 23] Q. And, he was in a separate bed?

A. Yes.

Q. Was he still there, when you left the house?

A. They were still in bed, when I left the house.

Q. Were they asleep, or awake?

A. My little girl was not sleeping, but she was lying on the bed, and the baby, he was sleeping.

Q. Now, when you came back, after you had gone to get your neighbor, what was the condition of her clothes?

A. She was fully dressed when I left the house, and when I came back her j's, that is the top was still on but the bottomes were off and her diaper was off.

Q. Do her diapers button on?

A. They're pinned.

Q. They're pinned on?

A. Pinned on, yes.

Q. Are they pinned on each side?

A. Yes.

Q. Where were the pins, when you came back?

A. I didn't see the pins.

Q. Where was the diaper, when you came back?

Delores Marie Jackson

A. I looked for her diaper, and I saw it — I started to look for it and couldn't find her diaper, but it was in the blanket.

Q. On the bed?

page 24] A. Yes.

Q. Did you find the pins, later?

A. No, I didn't find no pins.

Q. Now, how did you leave the apartment?

A. Well, we have a front door and he was at the front door.

Q. I thought you said there was a door at the back of the apartment.

A. There's another apartment back there.

Q. Was the front door locked?

A. I locked it.

Q. The front door was locked. Now, when you went and came back, that is after you had gone over to your neighbors, was the front door locked?

A. It was still locked, and I had a key in my pocketbook.

Q. How about the side door?

A. It was not locked, it was just pulled to.

Q. When you left, by the way, did you close it when you left?

A. I closed it before I left.

Q. Then, he could have come through it after you left?

A. Right.

Q. Now the back door, is that where you saw

page 25] him when you left? Could you lock that door?

A. I did not lock that door.

Q. Was it closed or open, when you left?

A. It was closed, when I left.

Q. Is there any other way he could have gotten into your apartment, outside of the window and those two doors?

A. There's just the two doors, one door to the front living room, and to the other apartment.

Q. Any windows?

A. The window was locked.

The Court: When you returned to the apartment, what was the condition of the door you left by?

A. The door I left by was open, when I got back.

Q. What was the condition of the apartment?

A. The bathroom had a light on. After I came back, the light was on in the bathroom.

Delores Marie Jackson

By Mr. Campbell:

Q. How do you turn that light on?

A. You pull a string, and the light comes on.

Q. You pull a string?

A. Yes.

page 26] Q. Is the string on the side of the wall, or in the center of the room?

A. On the side of the wall.

Q. How high is the string, from the floor?

A. As tall as I am, 5′ 3″.

Q. Can any of your children reach the string?

A. No, they can't. They're just too small.

Q. And, you returned to the house after you notified the neighbor?

A. I returned to the house, yes.

Q. But, you didn't go in?

A. No, sir.

Q. Who did you see come out of the house, after the neighbor and the police got there?

A. Out of the side door, he came out.

Q. Who was that?

A. *Jonny* Paul Taylor.

Q. Did you see anyone else come out?

A. I saw no one else.

Q. Did you go into the house, after that?

A. Yes, I went into the house after that.

Q. And when you went into the house, who was in the house?

A. Nobody, except the children.

Q. Where at that time, was your boy and girl?

page 26a] A. She was sitting on the bed, and he was still sleeping.

Q. Now, did you know this man before?

A. Yes.

Q. When did you see him before?

A. He came to the house, to service my TV set.

Q. When did you see him come to the house before?

A. He came to my house about two or three weeks before New Year's to fix my TV, and he asked me if I would like to buy, or would I like to get one.

Q. Had he been to the house before to service your TV or to

fix your TV, very often?

A. He'd been there to service my TV, and he asked me if I wanted to buy one, and I said: "I can't buy nothing" and he said he could get me a TV, and then just on New Year's Eve he brought a TV to my house, and then he came back for the TV and that's when I thought it funny that he came back for the TV.

Q. Then, on New Year's *Eve* Day did he come back and pick up the TV?

A. Yes, he did.

Q. Did you see him any, between that time and January 6th?

A. No, not until January 6th.

Q. And the first time you saw him was when?

page 27] A. Two or three weeks before New Year's Eve.

Q. And, did you ever see him before that time, up until New Year's Eve when he brought the TV?

A. No, sir.

Q. All right. Now the neighbor that you went to see, where was he?

A. Across the street.

Q. What was his name?

A. Elizabeth Robertson, that's his wife's name.

Q. What did she do?

A. She, his wife came to the door and I told her someone had broken in, and she got her husband up and he put some clothes on and came over, and we went into my apartment.

The Court: How long were you gone?

A. About ten or fifteen minutes.

Q. Was it light, or dark?

A. It was dark.

Q. And Delores, your daughter, was seventeen months old then?

A. Yes.

By Mr. Campbell:

Q. This might seem like a ridiculous question, but was the Defendant married to her?

A. No, sir.

Q. The law requires me to ask that question.

page 28] A. All right.

Q. Did you have to take her back to the doctor, other than taking her to the hospital?

A. Yes, sir.

Q. When was that?

A. I took her back to a specialist, because she was all swollen, and she was bleeding.

Q. Where was that?

A. You know, on her hinny, what you call it, her seat.

Q. You mean her vagina?

A. Yes.

Q. I see.

A. And, I took her to the dispensary one time.

Q. When you took her to the doctor, what did he say?

A. I don't know what he said.

Q. Did you take her more than one time?

A. I only took her just the one time, because she cried too much and she was all swollen. So, I called after that, to find out what I should do.

Q. What did he tell you?

A. He said 'nothing.'

Q. Now, when you and your neighbor got back over to the house, where was the Defendant?

page 29] A. He was in my apartment.

Q. How do you know that?

A. Because, I heard him telling my little girl to 'shut up.'

Q. Where were you, when he came out?

A. I was on the front side of the apartment, and I was standing at the side door, on the side.

Q. Did you see him, when he came out?

A. Yes, I did.

Mr. Campbell: Your witness.

CROSS EXAMINATION

Examined By Mr. Gurkin:

Q. Mrs. Jackson, first of all, you stated that when the Defendant came to your house on January 6th, he was knocking on the front door and then he went to the window, and you

told him he could not come in. Now, do you *mean me* that he was selling TV's at 11:00 o'clock at night?

A. Yes, sir.

Q. Didn't you then testify that the man had been there two or three weeks previously?

A. Yes.

Q. And, to sell you a TV?

A. Yes.

Q. And, didn't you testify that he was there on

page 30] numerous evenings?

A. Yes.

Q. Was it for the same reason, to sell you a TV?

A. Yes.

Q. And, this was just in the evening?

A. Well —

Q. Was it in the daytime, or in the evening?

A. It was in the evening.

Q. All right. What time did the Defendant deliver the TV on New Year's Eve?

A. It was 6:00 or 7:00 o'clock.

Q. Are you sure it wasn't nearer 12:00 or 12:30?

A. It was not.

Q. I want to be very sure about that, and I warn you that I intend to contradict you. Now, what was the time?

A. It was 6:00 or 7:00 o'clock.

Q. It wasn't around midnight, or the wee hours of the morning?

A. No, sir.

Q. It wasn't after that time?

A. No, sir.

Q. I see. Now, you said the Defendant came to your house with another man. Was he there, when he delivered the TV?

A. The first time that he came to deliver the

page 31] TV, I didn't see nobody else.

Q. What time was that?

A. About 6:00 or 7:00 o'clock.

Q. You said that was the time, the first time.

A. The first time he came to deliver the TV, he asked me if I wanted to buy one.

Q. I understood that's when he came the second time.

Delores Marie Jackson

A. The second time he came, it was in the evening.

Q. What time was that?

A. I — 6:00 or 7:00 o'clock.

Q. The first time he came to the house, was it 12:00 o'clock at night?

A. It was close to 12:00 o'clock, but I don't know.

Q. Was that 12:00 o'clock, in the evening?

A. Well, afternoon.

Q. In the afternoon?

A. He came and wanted to know if I wanted to buy a TV.

Q. All right. You just said, in answer to my question: "When he came to deliver the TV at your house, was there another man with him?", and you said: "No, I didn't see no other man with him when he delivered the TV." Now, page 32] you just testified there was another man, that another man did come with him when he delivered the TV.

A. No, I did not.

Q. Just a minute. You say no man was with the Defendant when he came to deliver the TV around 12:00 or 12:45 New Year's Eve night?

A. No, sir. I didn't see nobody with him, and it was 6:00 or 7:00 o'clock when he delivered the TV on New Year's night.

Q. He never was there, at midnight?

A. No, sir.

The Court: Was the TV a table model?

A. It was a portable TV.

By Mr. Gurkin:

Q. You say he came back New Year's day, and took the TV back?

A. Yes.

Q. I believe that was because your husband had to sign a contract, isn't that correct?

A. He came to get the TV, because he brought the wrong one.

Q. You mean he brought the wrong one?

A. He was supposed to bring me another one.

Q. When he came to deliver the TV, there was no one with

Delores Marie Jackson

him, when he finally delivered it that is?

page 33] A. I didn't see nobody.

Q. No one left him there, and drove on off?

A. I didn't see nobody else.

Q. Did this Defendant stay at your house?

A. No, sir.

Q. He didn't?

A. No, sir.

Q. Didn't he ever stay there any length of time, with you?

A. No, sir.

Q. He never made any passes at you, Mrs. Jackson?

A. He certainly did not.

Q. He didn't. Every time he came with a TV, what did he do? Didn't he hang around there?

A. He didn't hang around me. I told him to 'get out of my house.'

Q. How old are you?

A. Twenty.

Q. Twenty?

A. Yes.

Q. Let me see if I understand the physical set-up of your house, again. You say it's a two-family apartment, and is that upstairs?

A. Back and front.

Q. All right. Now, when you come on the side

page 34] and walk up to the front door of your apartment, do you go up on a porch?

A. Yes.

Q. Now, when you get up on the porch there's a front door with a window to the right of it?

A. Yes.

Q. And that window, is a window to your apartment?

A. Yes.

Q. When you go through the front door, what do you go into?

A. A hall.

Q. But that's not to your apartment, is it?

A. Yes, it is.

Q. Doesn't it go through another girl's apartment?

A. It goes through my apartment.

Q. When you come there to the front door, from the front

porch, you say you come into a hallway?

A. Yes, and there's people that live upstairs.

Q. Then there's people living upstairs?

A. Yes.

Q. Then, the people that live upstairs, do they go up steps right there, to get to their upstairs apartment?

page 35] A. There are no steps. We have another door, leading to their apartment, and they use that door.

The Court: In other words, you go through the hall to get to your apartment, and the other people also use it to get to their apartment, is that correct?

A. Yes, sir.

Q. You come into that hall from the front, and you walk down that hall and there's another door to your apartment on the right?

A. No, sir.

Q. Well then, how do you get to your apartment?

A. Through the front door, and it's on the left, not the right.

Q. Then on the right-hand side is the wall to the hall?

A. Yes.

The Court: I see.

By Mr. Gurkin:

Q. Now, in back of your apartment on the lefthand side, as you walk towards the rear of the apartment, is the back side door you referred to?

page 36] A. No, sir. My apartment is like this. You enter from my door, you walk into a bedroom and then you have the back door I'm talking about.

Q. How do you get out the back door?

A. From the other couple's apartment.

Q. When you leave your apartment, how do you get out of your apartment into the other apartment?

A. There's a bathroom door, and they have another door. to the bathroom.

Q. Mrs. Jackson, don't you keep that door locked up, where you go through the bathroom into the apartment and then

out the back door on the other side?

A. Yes.

Q. That door on the outside, that's the back door you referred to, and is that flush with the outside wall of the house or is it recessed back into it?

A. It stays open, the door on the outside.

Q. You cannot get back into the house through that door?

A. No, sir.

Q. In other words, when you open that door you take one step and when your foot hits the ground, you're out that way?

A. No, sir.

Q. Well, would you please explain it to me.

page 37] A. When you walk out of the bathroom and bedroom, you would have to go into a side door to get out to the outside.

Q. That's the door you're referring to as the side door?

A. Yes.

The Court: In other words, the door you went out from your apartment, that door was to the bathroom?

A. Yes, sir.

By Mr. Gurkin:

Q. The door you walk out through the bathroom, that went into a vacant apartment?

A. Yes.

Q. Then you walk from the vacant apartment to a door that went into that apartment, and that lets you come outside?

A. Yes.

Q. The point I'm trying to make, is that the door you come out of on the side alleyway, that does not open into your apartment does it?

A. No, sir.

Q. The door you said the Defendant was at, is that right?

A. Yes.

page 38] Q. And, that is not the door to your apartment, but to the other apartment, is that right?

A. Yes, and you open my door to get in my apartment.

Q. What about the other door, then?

A. You see, you have two bedrooms and a bathroom, and

I have to open my door then, and go open his door, and that's left open.

Q. What are the conditions of that bathroom door that you use to go into from your side, and what are the conditions of the door where you go out of the bathroom to the other apartment.

A. We have to share the bathroom.

Q. I see. But, what are the conditions of that door when you leave your apartment?

A. Well, one door is closed, and there's my door and the other door.

Q. The bathroom door is closed to what, the outside or the other apartment?

A. It's closed to the other door, also.

Q. Didn't you just say that one of the doors is left open?

A. The door isn't left open, but it's unlocked.

Q. Are you telling me now, that you went from your apartment into your bathroom, and you always keep your bathroom door shut?

page 39] A. I always do, yes.

Q. You go into the bathroom and shut the door, after you enter into your apartment, and then you walk across the bathroom and there's another door to the bathroom that leads into the vacant apartment?

A. Yes.

Q. Then you walk through the vacant apartment to an outside door, back door, from the vacant apartment?

A. Yes.

Q. And then you close that door?

A. Yes.

Q. And you were in a mighty big hurry to get out of there, when you thought there was a man coming in the front door.

A. There's no other way to get out.

Q. Then you were in a mighty big hurry to get out of there?

A. I was in a hurry.

Q. And yet, you stopped to close three doors?

A. I didn't close three doors.

Q. You were in a big hurry, and you stopped to close two doors?

A. I had to close the door.

Q. Why didn't you leave it open?

Delores Marie Jackson

A. It was cold.

page 40] Q. You left the children in the house, and yet you stopped to close two or three doors?

A. I had to close them in.

Q. Where was your housekey, by the way?

A. In my pocket.

Q. Now when you left in a mighty big hurry, how were you dressed?

A. I had on a skirt and blouse.

Q. A skirt and blouse?

A. Yes.

Q. And you say your housekey was in your pocket?

A. Yes.

Q. Do you normally carry your housekey in your pocket, Mrs. Jackson?

A. I keep the key with me, because one time I went out and left my key and I locked the door and I couldn't get back in, so my husband told me to keep my key with me.

Q. Don't you carry it in your purse or anything like that, like everybody else?

A. When I go out I carry it in my purse, or else I had it pinned on my blouse.

Q. I see. What time was this?

A. About 11:00 o'clock, I had just given the baby a bath.

Q. And you were fully dressed?

page 41] A. Yes, I was.

Q. Now after — the diaper I'm talking about now, do you know of your own knowledge, if the diaper was found?

A. Yes, it was found.

Q. But, you say the pins were never found?

A. No, I don't know if the pins were found to the diaper or not, because I was not feeling good.

Q. You testified that you did not ever find the pins.

A. You asked me if I found the pins, and I said that I didn't find the pins. I said I found the diaper, and I was looking for the pins.

Q. How do you know that a pin didn't stick into your baby?

A. I could feel if the pins were sticking in her, when I got the diaper on the baby.

Q. Are you telling me now that it would not be possible

Delores Marie Jackson

for a pin to stick your baby?

A. It couldn't stick through her diaper and her rubber pants.

Q. You said the pins were not there when you got back, but that you found the diaper under a blanket, is that correct?

A. I know it's mighty funny that the pins didn't show up with the diaper, but there wasn't one pin on the

page 42] bed.

Q. Was the baby sitting in the tub from 10:00 o'clock until 11:00 o'clock?

A. She was just sitting there.

Q. And there was no water in there, then?

A. She was just sitting there, soaking.

Q. Now let me see, was anyone living upstairs?

A. Nobody lives upstairs. Oh upstairs, yes.

Q. Now, you say that you left the apartment and ran across the street to your neighbor's house, and that took approximately ten or fifteen minutes?

A. Right.

Q. It took ten or fifteen minutes for him to get ready, to get dressed and come back?

A. Yes.

Q. And then the police were called, and you came back to your apartment then?

A. Right.

Q. And you didn't see the Defendant in there, but you heard him, is that right?

A. I — yes. I heard him in there talking, and he told my little girl to 'shut up.'

Q. And you say you were standing down the alleyway at the side entrance to the apartment, is that right?

A. Yes.

Q. I see. Do you know, of your own knowledge, whether anybody came down from the upstairs

page 43] apartment?

A. No, sir. Nobody came down from upstairs.

Q. How do you know nobody came down. Is her husband home?

A. No. And, nobody came down.

Q. Did you go up to see her?

A. She'd come down to open her door, if anybody knocked

on her door, and she'd open it and say: "My husband is not at home."

Q. Is there a sign on the door?

A. Yes.

Q. You don't know — in other words, isn't it a fact that you don't know whether or not somebody was visiting her, or she actually came downstairs, do you?

A. Well, I didn't see nobody.

Q. You just say that you didn't see anybody, but somebody could have been upstairs and come downstairs without your seeing them. In other words, there could have been somebody visiting the girl, but you didn't see anybody.

A. No, sir. Nobody came from upstairs, downstairs.

Q. All right. Now, the night this TV was delivered, how were you dressed?

A. I had on my pj's.

Q. Let me ask you again. The night the TV was
page 44] delivered, what did you have on?

A. I just stated, that I had on my pj's.

Q. When I asked you before: "When the TV was delivered, how were you dressed?", you answered: "I had on a dress." Now, do you mean a nightdress?

A. No, I do not. I had on a dress, and I had on my nightclothes under my dress.

Q. Under your dress?

A. Yes.

Q. You had your nightclothes on under your dress, you're sure now?

A. Yes, I'm sure.

Q. I warn you, I intend to contradict you on that. As a matter of fact, when the Defendant took the TV back on New Year's day, what time on New Year's day did he come back for it?

A. I think it was around 10:00 or 12:00 o'clock.

Q. At night, in the evening?

A. He came that afternoon.

Q. I see. Didn't you expect him to come back later, and get your husband to sign a contract?

A. No, sir. He didn't expect him to sign the contract, because he knew my husband was out at sea.

Delores Marie Jackson

Q. He realized that your husband was coming back, didn't he?

page 45] A. He was coming back March 13th.

Q. All right. And this was the 6th or 7th of January, and you're sure the Defendant was not coming back to get your husband to sign the contract?

A. He couldn't get my husband to sign the contract. When he asked about signing the contract, I told him that my husband was out at sea.

Q. Now then, you told me you couldn't get the TV, to keep it, without your husband's signature, isn't that what you testified to?

A. I did not.

Q. Didn't you tell me that you couldn't get the TV without your husband's signature to the contract?

A. I didn't.

Q. Didn't you testify to that, just a little while ago?

A. I said another man told me that.

Q. Who was this other man?

A. From the company.

Q. Who was he, what was his name?

A. He was by himself, when he came to the house.

Q. How many times did he come to the house?

A. He came there once.

Q. I see. And, you say you lived there by yourself with your two children?

page 46] A. Yes, that's right.

Q. Now, did you testify that the Defendant's car was out front, parked?

A. The first time he came there in the evening, this Defendant was in a car parked in front of my house, a white car.

Q. Right in front of your house. I see. How far would that car be, from your front door?

A. Well, I guess you come right out of the house and you walk to the car, across or to you.

Q. You mean as far as from you to me, some fifteen or twenty feet?

A. No, not that far. From here to that desk.

Q. About eight feet?

A. Yes.

Q. I see. All right. Now, you told us a while ago that these

two babies were in different beds?

A. Yes.

Q. You're sure about that, now?

A. Yes.

Q. I warn you, that I intend to contradict you on that point. You came back into the house, and those two babies were on the same bed?

A. I — yes, sir.

page 47] Q. They were on the same bed?

A. Yes.

Q. You didn't testify a while ago that they were on different beds?

A. They were on the same bed.

Q. You mean they were both on the same bed?

A. The baby was in his bed, and the little girl was on her bed, and when I came back they were still in different beds.

Q. Then, they were in different beds?

A. Yes, sir.

Q. And, they were not in the same bed?

A. No, sir.

Q. I see. Does your baby occasionally become inflamed from diapers, wet diapers?

A. No.

Q. You mean to tell me that your baby never had diaper rash or swelling or redness from secretion, like other babies?

A. I — no.

Q. You mean you've never seen that baby's little opening there swollen or reddened in any way?

A. No, sir.

Q. Never anything like that?

A. Why, no sir.

page 48] Q. I see. Now, you said that the Defendant came to your house two or three weeks before January 6th?

A. Yes.

Q. And didn't he actually also come there on the day of December 27th, in the afternoon?

A. Whenever he came to my house, he came at 6:00 or 7:00 o'clock.

Q. You didn't answer my question. I asked you a while ago and you testified that the Defendant had been to your house

two or three weeks before. Now I'm asking you whether or not it's a fact that he also was there in the afternoon of December 27th?

A. He came around — it's hard to keep track of people coming to my house, and I get nervous.

Q. I know that, and everybody realizes that being questioned makes you nervous. But, he did come to your house two or three weeks before, didn't he?

A. I really don't remember.

Q. It was around Christmas time, and you know when that is, don't you?

A. Yes, but I don't know whether that was the day or not.

Q. Do you know if it was a couple days, after Christmas?

A. I don't know if he came a *coupld* days after

page 49] Christmas.

Mr. Gurkin: All right. That's all.

Mr. Campbell: Step down.

I call Edward Robinson.

EDWARD ROBINSON,

witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Campbell:

Q. State your name, please?

A. Edward Robinson.

Q. What is your occupation?

A. Marine Corps.

Q. What is your rate?

A. P.F.C.

Q. How long have you been in the Marines?

A. Approximately two months, something like that.

Q. How old are you?

A. Nineteen.

Q. Where do you live?

A. 1418 East 38th Street.

Q. How long have you been living there?

page 50] A. Since January 6th.

Q. Of this year?

Edward Robinson

A. Yes, sir.

Q. Where is that, in relation to 1419 West 38th Street?

A. Across the street.

Q. Do you know Mrs. Delores Marie Jackson?

A. Yes.

Q. Now, you live at 1418 West 38th Street. Who do you live there with?

A. My wife.

Q. And, you were there on January 6th?

A. Yes.

Q. On January 6th, late in the evening, did you see Mrs. Jackson?

A. Yes.

Q. Where?

A. Well, I first saw her in my living room.

Q. Approximately what time did you see her?

A. Well, I couldn't very well approximate the time. It had been dark for a good while, and I had been sleeping.

Q. It was well after dark, and you had been sleeping?

A. Yes, sir.

page 51] Q. If you don't know exactly what time it was, could you approximate it for us?

A. I would say it was close to 11:00 o'clock.

Q. Approximately 11:00 o'clock, at night?

A. Yes, at night.

Q. After you saw her in your apartment, what did you do?

A. What did I do? I had been sleeping, and I had to get up and get dressed, and go across the street.

Q. When you went across the street, where did you go?

A. Directly to her door.

Q. All right. Then, tell the Court what happened.

A. I heard someone, but I didn't hear anybody inside, so I went around the house because I figured some person was around the side of the house.

After I went around there. I came back out along the side door, I didn't see anyone and so I came around to the front, and when I got back she was talking to my wife and she said he was in the house.

So at this point, I advised Mrs. Jackson to go to the corner and call the police, in case we couldn't catch whoever was inside the house and bring him out.

Edward Robinson

page 52] So we waited, and before the police came — he was inside — and approximately two or three minutes before the police got there, he came out.

Q. Who?

A. Sir? Paul Taylor, I believe.

Q. The Defendant?

A. Yes, sir.

Q. Did he come from — how did he get out of the house?

A. Well, he came out of the side door around to the left side of the house, and he seemed in quite a big hurry and I reached for him and grabbed him so he couldn't escape.

Q. Did he say anything to you, or did you say anything to him?

A. Well actually, I said something to him, but I don't remember what is was. There was some pressure at that time of night, and actually the things I said are probably too dry, but in any event I asked him what he was doing.

Q. Did he make any reply to you, when you asked him what he was doing?

A. No, but he said something about trying to sell a TV but I didn't pay too much attention to what he was saying because he smelled and looked as if he was just intoxicated.

Q. Did he put up any fight?

A. No, sir.

page 53] Q. While you were outside of the house, did you hear anything that went on inside the house?

A. Well, I could hear something and I thought it sounded like a kid.

Q. Do you know what it was?

A. No, I couldn't make it out. All I could hear was someone mumble something, and a baby crying.

Q. So then, you heard somebody inside the house, but you couldn't make out what they said?

A. No, sir.

Mr. Campbell: Your witness.

CROSS EXAMINATION

Examined By Mr. Gurkin:

Q. Mr. Robinson, when you testified at the preliminary

hearing, you said that you went across the street to Mrs. Jackson's front door and that you did not hear anything and walked back around the side and started back up, and then she called: "He's in the house," isn't that correct?

A. Yes, sir.

Q. That's true?

A. Yes, sir.

Q. Well now, you just testified that you heard him, indicating the Defendant, in the house, is that true?

A. Yes, sir.

page 54] Q. Well what is true, you either heard him at the front like you first testified, when you went to the front door of Mrs. Jackson's apartment or you didn't hear anything.

A. I heard something when I went to the front door.

Q. You did? Where?

A. I heard crying around when I was going around to the side, and I could hear him saying something, but I don't know what he was saying.

Q. And as far as the building is concerned, is there a side door?

A. On the far side there is, approximately fifteen feet, that is from —

Q. From where you are now? Was it fifteen feet from where you are now, when you heard him?

A. Yes, sir.

Q. You were approximately fifteen feet from him, at this side door?

A. At the side door of — between the door on the front, halfway between the side and the front of the building.

Q. Now, you say you heard him. Have you ever known this man before?

A. No, I never did.

Q. And you never did see the Defendant.

A. No, but I can say it was a man's voice.

page 55] Q. You don't know whether it was this Defendant or not, do you?

A. I'm pretty sure that it was the Defendant.

Q. How do you know, if you've never known the man before?

A. Well, I —

Edward Robinson

Q. Do you know there were other people, another family on the second floor?

A. There's no male in that family, and her husband was out to sea.

Q. Well now, you seem to know right much about the fact that there was no male there, and her husband being at sea, but there could have been other male visitors, couldn't there?

A. I don't see how.

Q. Now let's be candid about this, you mean there was no other male there, and her husband was at sea?

A. Yes.

Q. And, are you saying that it's not probable that a salesman was up there, selling a TV?

A. There could have been, but not at 11:30 at night.

Q. Might it not be possible for him to drop by, or service it?

A. Well, I don't think that has much to do with it.

Q. Just answer my question, please. Could there page 56] have been anybody else up there?

A. Well, knowing the person as I know the person, and just the sort of life they have, not her, no sir.

Q. Don't they have other friends that visit?

A. Yes, they have visitors.

Q. Then they have other friends, that might just come by to see how they were doing, or just to pay a visit?

A. Oh yes, there could be.

Q. All right, sir. Now you testified, did you not, in the lower Court, that you did not see a man come out of the side door?

A. I never testified that I did not see a man come out of the side door.

Q. What did you testify to? You testified, I believe, when I asked you: "Did you actually see a man coming out of the door?", you said: "I saw him coming out of a door, and I think it was a side door."

Is there a side door recessed back, into the building?

A. How do you mean, 'recessed?'

Q. Well, let me demonstrate it this way. This is the outside wall, and this is the inside and these books are the door. This is the door that's on one wall, and this is a kind of vestibule, and there is the side door we are referring to over

Edward Robinson

here by the wall.

page 57] A. You mean that, there?

Q. In other words, the door opening is on the step in the vestibule, and then it goes down.

A. Well, that's part of the house.

Q. That's what we're talking about, on the side of the house.

A. The side door?

Q. Yes, the side door. If he was trying to get out, you couldn't actually see him come out of that door, could you?

A. Yes, sir.

Q. How can you see him in a recessed door, when you just testified that you were halfway between the door and the front of the house?

A. Pretty easy.

Q. How.

A. Well, I could just see him at the door.

Q. But you just testified that the door was recessed from the outside wall of the house.

A. I'm sorry, I misunderstood you.

Q. This right here, is flush across, except for the molding.

A. Yes, sir.

Q. All right. Now, you said that you had to get dressed before you went over there, is that right?

page 58] A. Yes. Maybe I should have said it was more in the nature of maybe pulling on a sweater, slipping into a pair of trousers and stepping into a pair of shoes.

Q. How long was it, after Mrs. Jackson and you went back, before the police came?

A. I can't give an exact time, but I'd say around no more than ten minutes, or seven or eight minutes.

Mr. Gurkin: That's all I have.

Mr. Campbell: Step down.

(By agreement of counsel, the witness was excused.)

Mr. Campbell: The Commonwealth rests, Your Honor.

Mr. Gurkin: May it please the Court, at this time the Defense moves to strike the indictment first of all, as to Burglary.

As we all well know, Burglary is the breaking and entering the house of another in the nighttime, with the intent to commit larceny.

In this evidence, we do not have the break-
page 59] ing and entering of any door of the dwelling house, by the Commonwealth's witness, Mrs. Jackson.

The Court: Let me ask one question, of law, and see if we agree.

If I have a door and it is closed but not locked, and you open that door or use pressure to swing it back, and walk through it, is that then sufficient breaking?

Mr. Gurkin: I believe if there was sufficient force, Your Honor.

The Court: Then, there's no question that we agree on that.

Mr. Gurkin: I will say, that from the lady's testimony, the evidence is that she came out of her main part of the apartment, closing the door, and went into a bathroom and crossed the bathroom, opening that door to get through, and closes the other door that goes all the way through to another person's vacant apartment, and finally she goes out that door.

page 60] There were three doors that she stopped to close, and yet she's scared to death about leaving the children inside the apartment, or she said she was scared, but she talked so fast that I don't believe the half of what she says are the facts and circumstances to this story.

She claims the Defendant went in, but that was not in evidence here today. There's no indication of breaking of a serious nature, in my mind, as she said she just closed that outside door, and he did not enter into her house through that vacant dwelling.

And other thing, there's no evidence here of anything being taken. There's no evidence of any intent on the part of the Defendant to commit Larceny, not one shred of evidence of any intent on the part of the Defendant.

And what did the witness, Mrs. Jackson say to this Court? She said: "He was going to bring me a TV."

page 61] The evidence was that this man did not have any money on him when the police picked him up, but the lady said he did have money on him at that time,

that he had $9.00 and some cents on him.

For those reasons, Your Honor, I don't believe that the Commonwealth has proven their case in Indictment No. 2 on the charge of Burglary, as (1) they do not have sufficient evidence of breaking and entering a dwelling house, and (2) they do not have intent to commit Burglary.

Now as to Indictment No. 1, the Attempted Rape and the subsequent Violation of Section 18.1-215, I don't believe here that we have any more than the fact that the infant maybe did have a scratch just below the mealus, between her skin and the mouth of her private parts and where the moisture starts, but not a big scratch or any great tear, and in fact the doctor himself testified that he noted there was not much blood and that the hymen was in place.

page 62] Now the smears that were taken, there was no evidence brought here today about them, nor was there any evidence to show whether the Defendant's underwear was checked for blood, and no smears were taken of semen and there were no results of the swabs given.

Then again, the testimony indicated that the doctor could not get a Q-Tip in a relative position, and I'd like to make note of the fact that the cotton on the end of a Q-Tip — which is usually used for an infant's nose — that the opening in the infant's vagina was actually too small even to insert a Q-Tip.

I suggest that under the circumstances, there is not sufficient evidence as to Attempted Rape, and for these reasons I submit that all the evidence by the Commonwealth should be stricken.

Mr. Campbell: Your Honor, I admit that as to the Attempted Rape, it is wholly circumstantial, but I submit there have been circumstances that have been shown that somebody did this to the child, but whether he did it with a

page 63] finger or his penis, I don't know at this point. But Your Honor, if it was his penis, then that takes care of Attempted Rape, does it not?

The Court: Yes, and if it — but you go ahead.

Mr. Campbell: I just want to point out that the Commonwealth's intention is not that he had an intent to commit Larceny, but that he attempted to commit the felony of Rape, and that he did.

The Court: If we don't know whether it was his penis or his finger, how do we know that it was his hand that he placed against the vagina of the infant?

Mr. Campbell: We don't, Your Honor. But on the other hand, 18.1-215 in paragraph two, I believe, does not describe the hand, it says only, 'fondle,' it does not specifically say with the hand. So in my mind, I think we have covered it, and a sharp pointed instrument could make penetration and a felony.

page 64] Mr. Gurkin: Your Honor, it must have been the intent of the legislature to put that in, about the hand, when it said 'with intention to fondle the other sex,' and if they had intended it to be by some other method or way, they would have put it in a separate section.

Now strictly speaking, if you don't fondle someone, or stroke in some way —

The Court: Of course, that's not before me.

Mr. Gurkin: May I say one more word, Your Honor. I believe the Court can certainly follow the meaning of the word 'fondle' and what the legislature means, whether it means 'fondling with intention,' or 'fondling with one's hand.'

The Court: Could be.

Mr. Gurkin: Not only that, Your Honor, but if I may go one step further, the fact that was brought out in evidence was that there was a tenant living upstairs, but there was no evidence that someone did not come down the stairs during

page 65] the fifteen-minute period from the time the lady left the apartment, crossed the street to get her friend, the Marine, and come back, and as I believe, as was told by the Marine witness, Robinson, I believe he said seven or ten minutes it was, before the police arrived.

That offers a good span of time there, and no one offered any evidence in behalf of the Commonwealth, that someone did not come down from upstairs, and there was no evidence that someone did not leave by the front door, because the woman and man went around to the side of the building where they waited until the police arrived.

I believe, Your Honor, that the Commonwealth has not *born* the burden of proof to disprove the innocence of the Defendant.

The Court: We'll have a short recess, while I go over this.

(At 11:45 A.M., after recess, Court reconvened and the following occurred.)

The Court: Gentlemen, I have carefully and effectively gone over this evidence.

page 66] Mr. Gurkin, I'm going to sustain your motion to strike the Commonwealth's evidence as to Indictment No. 1.

As to your motion to Indictment No. 2, on which we agreed, the act of Larceny as contained in the first count, I'm going to sustain your motion to strike the first count of Indictment No. 2, and I'm also going to sustain your motion as to the second count of Indictment No. 2.

At this point in the evidence, it is shown that the child was put to bed without any injury whatsoever, that the Defendant came, and according to the evidence of the mother of the child, demanded entrance with vigor, and entrance was refused.

Then the mother departed from the apartment, closing all doors behind her, and in ten to fifteen minutes time, after seeking help, she returned and heard the voice of this Defendant telling her child to 'shut up' or 'keep quiet,' or words to that effect.

page 67] There is also evidence that the Defendant came from the apartment and he was seen also by the witness Edward Robinson, and the Defendant was then apprehended by Edward Robinson as he was leaving in a hasty manner.

I find that upon entry of the apartment, there was no one else in the apartment other than the two children which the mother had left, and no one else came out of that apartment other than the Defendant, and no one else was in there but the two children.

Circumstantially, I think the evidence at this point, has shown that the Defendant did break and enter and go into the apartment.

There is also evidence that the child received an injury to her female parts which she did not have prior to the time the Defendant entered the apartment; that the injury was bleeding and the child had to be carried to the hospital for an emergency examination, and thereafter the mother again had to carry the child to the Naval Dispensary for further treatment.

page 68] Therefore, I overrule your motion as to the third count of Indictment No. 2.

Mr. Gurkin: May it please the Court, possibly I'm confused, but do I understand that Indictment No. 1, the Attempt to Commit Rape and the Violation of 18.1-215, that —

The Court: I sustain your motion as to all the counts contained in Indictment No. 1, the first count of that Indictment being Attempted Rape, the second count being the alleged Violation of 18.1-215 of the 1950 Code of Virginia, and I have further sustained your motion as to the first count of Indictment No. 2, which alleges Burglary with attempt to commit Larceny, and I further sustain your motion as to the second count of Indictment No. 2, which alleges Statutory Burglary with the Attempt to commit Rape.

I have overruled your motion as to the third count of Indictment No. 2, which alleges Burglary with intent to commit a felony.

Mr. Gurkin: Please note my exception, Your Honor.

page 69] The Court: All right, sir.

Mr. Gurkin: If Your Honor please, may I have a conference with my client?

The Court: Yes, of course.

(Mr. Gurkin held a conference with the Defendant, after which the following occurred.)

Mr. Gurkin: Your Honor, the Defense calls on Mrs. Vest.

MRS. JACK T. VEST,

witness, appearing on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Gurkin:

Q. Would you state your name, please?

A. Mrs. Jack T. Vest.

Q. Mrs. Vest, where do you live?

A. 6314-B Linwood Avenue.

Q. Is that located in the City of Norfolk, Virginia?

Mrs. Jack T. Vest

A. Yes, it is.

Q. Mrs. Vest, have you ever seen the Defend-
page 70] ant *Jonny* Paul Taylor?

A. Yes, I have.

Q. On what occasion did you see him?

A. Well, he was by my house, I don't know when it was, I guess it was over a month ago, and he was with another man, selling stereos.

Q. Didn't he in fact, sell you a stereo?

A. A stereo, yes.

Q. What time was it, that he was at your house, approximately?

A. Well, it was in the afternoon, and I told him I was not interested, but he said they'd be back later, and they came back.

Mr. Campbell: I object to that. He can't go into other elements at all, Your Honor.

The Court: Mr. Gurkin, a large amount of the testimony so far, has been removed or stricken from this already.

Mr. Gurkin: Your Honor, at the time of the request or subpoena for this witness, it was felt that we'd like to point out what the profession of the Defendant was, and what his habits were for selling TV's and stereos in the
page 71] evening hours, when the normal person would be home from work.

We felt that as the lower Court bound this over to the Grand Jury, we felt that it was nothing unusual for a man selling TV's and stereos to be selling them to someone as late as 10:00 or 11:00 or 12:00 o'clock at night.

That's our only purpose in using this witness, Your Honor.

Mr. Campbell: In view of that then, I'll withdraw my objection.

By Mr. Gurkin:

Q. Did he or did he not, sell you a stereo?

A. He brought a *steroe,* but I told him that I didn't know whether I wanted it or not.

Q. What time was it, when he tried to sell it to you, Mrs. Vest?

A. It was around 11:30 or early afternoon, when he said

he's go and get a TV or stereo, and bring it back at night, and he did, he brought a *steror* to my house at 7:30, I believe.

Q. What time would you say it was, when he left your home then?

A. It was around 9:30 when he left there, I guess.

page 72] Q. And, what time did he get there that evening, did you say?

A. I guess about 7:30, and then he left again to get the stereo, and he came back in an hour or so.

Q. So then he stayed, probably two hours, in your home?

A. Yes, about that.

Q. Who else was with him, do you know?

A. I don't know the last name of the fellow that was with him, but he called him 'Jay,' that's all I know.

Mr. Gurkin: All right. That's all I have, Your Honor, of this witness.

Mr. Campbell: I have no questions.

The Court: If you gentlemen are through with Mrs. Vest, she may be excused.

Mr. Gurkin: Your Honor, I call Mr. Ross.

JAMES MADISON ROSS,

witness, appearing on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Gurkin:

Q. Would you state your name, please sir?

page 73] A. James Madison Ross.

Q. Where do you live?

A. Portsmouth.

Q. Where is that?

A. Portsmouth, Virginia.

Q. Do you know the Defendant, *Jonny* Paul Taylor?

A. Yes, I do.

Q. Now on the evening of New Year's Eve, were you with Mr. Taylor?

A. I was, yes sir.

James Madison Ross

Q. Approximately what time was that?

A. I met him down on Hampton Boulevard, around midnight or so.

Q. Did you have occasion to go with him, to any other place, that evening?

A. I met him, and I had a girl with me, in front of the Toddle House, we met him there.

We took my girl friend home, and we had to make a stop, and she took her maid to her home, and *Jonny* was with me.

Q. Then, what did you do?

A. We drove to 38th Street in front of some house, I don't recall the number, but he said that a lady wanted a TV set, and he wanted to see if she wanted it or not, and so he got out of the car and went up to the door.

page 74] Q. Did you see the lady?

A. I saw her, but I couldn't see well enough to recognize her or hear her.

Q. Is there a porch on the front of that building?

A. There's a porch right there, but he was in the door.

Q. Was there a window on the right side, facing the building from where you were sitting?

A. Yes, a little bit across the porch.

Q. I see. What did the woman appear to have on, from what you saw?

A. There was a light behind her, and she seemed to have a housecoat on.

Q. Did she appear to be dressed for the night?

A. I could not say, but she had a housecoat on.

Q. What time was that?

A. I don't recall exactly, it was around 1:00 o'clock or so.

Q. Do you mean 1:00 A.M.?

A. In the morning, yes.

Q. Did the Defendant here *delivered* a TV to her?

A. Yes, he did.

Q. Did you leave him there?

A. Yes, I did.

page 75] Q. Did he have any other car?

A. No, sir.

Q. In other words, he came with you, is that it?

A. Yes. I picked him up in front of the Toddle House on Hampton Boulevard. He asked me where I was going, and he

asked me for a ride home. I told him that I was going to take my girl's maid home, and so we took her home and on the way back he said he wanted to see if a lady wanted to buy a TV, and he saw a light on in the house, and he said to me: "Let's stop, and see if she wants to buy the TV set."

Q. In other words, you left him there at that address, and he didn't have any means of transportation, or car, that you know of?

A. No. Whether or not he was going to spend the night there, I have no idea.

Mr. Gurkin: That's all.

CROSS EXAMINATION

Examined By Mr. Campbell:

Q. You say you don't know where that was?

A. I don't recall whether it was on 38th or 37th Street, but it was off Hampton Boulevard, about the 1400 or 1500 block.

Q. Do you know who the woman was?

A. No, sir.

page 76] Q. Was she colored, or white?

A. She was colored.

Q. How do you remember that she was colored?

A. Well, there was a light behind her, and I thought she looked like she was colored. They're just taking over, all through there.

Q. And you say it was around 1:00 o'clock, in the morning?

A. Yes, sir.

Q. Where did the TV come from?

A. It came from the shop, on 35th Street.

Q. Do you know how he got it?

A. We stopped there, to get it.

Q. Was that before, or after you all saw the light on?

A. After we stopped by there. I dropped the maid off and came back by the street, and *Jonny* said for me to wait in the car, and so I waited, and after three, four or five minutes he came back and said: "Go by the shop, I want to get a TV and deliver it."

So, we went by the shop and he got the TV and put it on the seat, and I brought him back and stopped the car. He went up to the door and waited for the door to open, and then they

were standing there, and then he turned around on the porch and yelled to me: "Go ahead," and so I left and
page 77] went on home.

Q. Do you work with him?

A. No, I don't.

Q. You're just a friend of his?

A. Yes, sir.

Q. And, you just happened to run into him that night?

A. I — just like I said, I was at the Toddle House with my girl, having breakfast, and he was in there, and so he asked me to give him a ride home and I said I would.

Q. And, that was New Year's Eve?

A. Actually, it was after midnight I believe. They had finished celebrating New Year's Eve.

Q. And you don't know whether this woman was white or colored?

A. No sir, I do not.

Mr. Campbell: That's all I have.

The Court: You may be excused, and you may leave if you wish.

Mr. Gurkin: May it please the Court. I have advised the Defendant that he has a right to take the stand, but that he does not have to take the stand. I have also advised him that if he does not choose to take the stand, that there
page 78] will be no presumption against him in this cause, and I also advised him that if he took the stand he would subject himself to cross examination by the Commonwealth.

Your Honor, the Defendant advises me that he desires to take the stand.

JONNY PAUL TAYLOR

Defendant, appearing on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Gurkin:

Q. State your name, please?

A. *Jonny* Paul Taylor.

Jonny Paul Taylor

Q. Where do you live?
A. 1435 Lafayette Boulevard.
Q. And that's in the City of Norfolk, Virginia?
A. Yes.
Q. Are you married?
A. Yes, sir.
Q. Do you have any children?
A. My boy is eighteen months old.
Q. I see. Is that the only child you have?
page 79] A. The only one I have now, yes sir.
Q. Now Mr. Taylor, you have heard the testimony here today, and first of all, when was the first time that you went to the residence of Mrs. Jackson, the Complainant in this case?
A. December 27, 1964.
Q. How do you know it was December 27, 1964?
A. Because I answered a sales date request.
Q. Were was that?
A. At the office, 634 West 35th Street.
Q. All right. Now, what time was it when you went to visit her?
A. It was 12:45 P.M. on the first day of January of 1965.
Q. You mean, during the early hours of the morning?
A. On New Year's Eve, yes sir.
Q. All right. Now I want you to take your time and speak clearly, and describe to the Court exactly what happened on that evening. Tell us who was with you, what you did and everything.
A. Well, as a rule, I work as an 'outside' man, making appointments. You get calls, requesting sales dates, and then I call them back. Well, on the 27th of January I was told to go see Mrs. Jackson, and I sold her a TV, and
page 80] I got a contract to be signed by her and her husband. Well, she signed the contract but there was also a place for her husband to sign his name on it, and I tried to explain it to her, that it was not any good with just her signature on it, but I was not able to get through to her, that both signatures were necessary. So, I told her that I would have to come back to see her, and have her husband sign the contract.
Well, I had a used TV that was repossessed, with a tag on

it, and I said I could deliver that to her, and rather than to jeopardize a customer, I delivered the set, and that's the set that Mr. Ross testified to before, that was left there at 12:45. So, at 4:00 o'clock the next morning I left there, and I went on home.

I came back the next day at 2:30 in the afternoon, New Year's Day, and I asked her when her husband was coming home, and she said the first of the month, in March. I told Mrs. Jackson that I'd have to take the set back, because if my bossman found out that her husband had not signed the contract, it wouldn't go so good, and so I repossessed the set and brought the set back to the shop.

On January 6th, when I went to Mrs. Jackson's house, we drove up in front of her house and parked the car. There were lights on in the house, so I got out of the car and walked to the door and knocked on the door. No one answered right away, and so I went and looked in the window.

page 81] The Court: What time was that?
A. I reckon it was about 1:15, at night.

By Mr. Gurkin:
Q. You mean A.M.?
A. Yes, sir.
Q. All right. Go on.
A. When I went there that Wednesday and saw the lights were on in Mrs. Jackson's house, I went back to the door and knocked again. Previously to this night, I had gone there to service her set, and she came to the door, and she had curtains on half the door and with that, some was hidden on the top glass by the curtain being over it, and she'd push the curtains aside and told me when to come back, and that the doors would be open and to come in.

That night when I went there she came to the door, and this was on the 6th of January when I went back to see her, to have her husband sign the contract, and she came to the door in the same manner, the same manner as always, pushing the curtains back, and her apartment door was wide open, and I went into the apartment and Mrs. Jackson was ahead of me and proceeded into the kitchen, and she stated that no one was there.

Jonny Paul Taylor

Q. Which door was it, that you went in?

A. The front door.

Q. All right. Go on, Mr. Taylor.

page 82] A. Well, the front door was opened by Mrs. Jackson like I said, and I walked on in behind her. The back door was open and she walked on out the back door, and about ten feet ahead of me was when the police happened to be there, and they apprehended me, they picked me up.

Q. Did you see this Marine friend of Mrs. Jackson, that came over?

A. He was standing on the street, yes. He stopped me and asked me what I was doing, and I told him that I came to her home on a business matter about a TV set I sold her, Mrs. Jackson and I had quite a bit of financial difficulty, and I was not just in too good shape financially.

Q. Did you have any money that night, January the 6th?

A. I had some cash money on me, yes.

Q. How much?

A. About $28.00 or $30.00.

Q. You say you went in the front door, but first you looked in the window, and then did you again knock on the door?

A. I went to the door, and —

Q. What door are you referring to, now?

A. The door on the porch, the front porch, and the door to the apartment is a double entrance door, more or less of a double entrance door that goes into a hallway

page 83] to her apartment door, on the left of the hallway.

Q. In other words, the stairs, after you enter into the front door, the stairs lead on upstairs to an apartment upstairs?

A. Yes, and the door on the left there is the door to Mrs. Jackson's apartment.

Q. Would you say it is more or less of a common hallway?

A. Yes.

Q. Now when you say the door where she pulled the curtain back, do I understand that door is the —

A. — that's to the *outter* part of the house, on the porch.

Q. And, that's the first door you went through?

A. Yes, sir.

Q. And then after you went into that door, and you said

Jonny Paul Taylor

that was not locked or anything, you felt it was all right to come in?

A. Yes, sir.

Q. Then when you got into the hallway, you got to her apartment. Now did I understand you to say, that the door to the back was open?

A. Yes, sir.

Q. Then you went in, but she had left?

A. Yes.

page 84] Q. And, was the door to her apartment locked?

A. No, sir.

Q. Did you see any babies?

A. There were two babies on a bed, in the corner.

Q. Were the babies in separate beds?

A. No, they both were on the same bed. They both were screaming and yelling and *howlering*. I did not go over to the babies, but they just kept screaming, and one of them didn't have a diaper on.

Q. Did you touch the babies, either one?

A. No, sir.

Q. Did you even go to feel the baby?

A. No, sir.

Q. In other words, as I understand it today, that you didn't burglarize this apartment, is that right?

A. No sir, I didn't.

Q. And you deny that you took indecent liberties in the apartment, with respect to the children, in any way?

A. Yes, sir.

Q. Now, did you say the doors to the bathroom were open or closed, or did you say?

A. I don't recall.

Q. I understood you to say the side door at the back of the house, as you came out of that door, that that door was closed.

page 85] A. Yes, the door out of the kitchen, right on out to the back door.

Q. Is that on one side?

A. Right.

Q. Did you go through another apartment then, to get to that door?

A. I'm not familiar with the apartment, to the back.

Jonny Paul Taylor

Q. You're only familiar with the front entrance?
A. Yes.
Q. Let me ask you this. You said you got there about what time, when you actually delivered the TV?
A. About 12:45.
Q. What time on January 7th, did you go to get it back?
A. About 2:30 in the afternoon.
Q. What I'm trying to get at, Mr. Taylor, is how long did you stay at her apartment, how long did you stay with the woman after your friend left?
A. Approximately, I'd estimate four hours.
Q. What did you do, during all that time?
A. I went to bed with her.
Q. You mean just to sleep?
A. I had sex relations with her.

page 86] Q. I see. And then when you went back on the night of January 6th, you say you were trying to get the contract signed?

A. Yes, that's true.
Q. And you assumed Mrs. Jackson's husband would be home?
A. She said he would be home around the first of the month.
Q. I see.
A. If I could get his signature on the contract, my commission would be, in money, as if I worked fourteen or sixteen hours a day.
Q. You mean then, that you repossessed the TV on the same day you made delivery?
A. Yes.
Q. Why did you let her have the TV in the first place, if you knew her husband had to sign the contract?
A. She could sign his name. It's been done previous to this, on quite a few occasions when I sold TV's to customers.

The Court: They were written with the husband's knowledge.
A. Actually, it's the same as if she got a letter from her husband, giving her permission to buy a TV or stereo.

By Mr. Gurkin:

page 87] Q. Were you selling her a stereo, too?

Jonny Paul Taylor

A. Actually, at that time, I didn't want to sell her a stereo.
Q. Why?
A. I didn't want to overload her, and I didn't want her husband to think I was selling her something she didn't need.
Q. I see.
A. I agreed to sell her a stereo, providing her husband signed the contract.
Q. All right. Now, how was Mrs. Jackson dressed when you delivered the TV?
A. She had on a housecoat.
Q. Did she have on anything underneath the housecoat?
A. No, sir.
Q. You mean she didn't have anything on, except the housecoat?
A. Yes, sir.
Q. All right. Do you have anything else that you want to tell the Court?
A. No, sir.

CROSS EXAMINATION

Examination By Mr. Campbell:

page 88] Q. How much did you pay her, for going to bed with you?
A. I didn't pay her anything.
Q. Did you give her the TV set in payment?
A. I didn't give her anything.
Q. Did you proposition her, or did she proposition you?
A. I guess maybe there was a little propositioning by both of us.
Q. And, you say she didn't have any clothes on underneath the housecoat?
A. No, and the front of it was open.
Q. All the way?
A. Yes.
Q. When you were standing at the front door, was it that way?
A. Yes.
Q. Had you ever been there, before?
A. Yes, sir.
Q. Did you proposition her, that time?

A. No, sir.
Q. When was that?
A. December 27th.
Q. Did you try to sell her a stereo, then?
A. No, sir.
page 89] Q. On that occasion — did you try to make love to her or go to bed, on December 27th?
A. We probably had conversation about it, and I asked her when her husband would be coming home.
Q. Did she understand this conversation?
A. Yes, sir. I mean, no sir.
Q. She didn't understand the conversation about going to bed or making love?
A. No, sir.
Q. And, when did this take place?
A. December 27th.
Q. When you went back on New Year's Eve, she just had a housecoat on when you came in?
A. Yes.
Q. And, you say she had nothing on underneath it?
A. No, sir.
Q. What was you're purpose in going there, to go to bed with her, or to sell her a TV?
A. I believe to sell her the TV.
Q. And, to go to bed with her?
A. Probably, yes sir.
Q. Is that what you had in mind, when you left your friend?
A. When I left my friend, I had the TV.
Q. Where did you put the TV?
page 90] A. In the living room.
Q. After you put the TV in the living room, what did you do?
A. I told her how to operate it, because sometimes she might have trouble with it, and when I turned around she was sitting on the bed, and I walked over to the bed and had sex relations with her.
I got up about 4:30 in the morning, and walked to 38th Street at a pay station and called a friend to take me home.
Q. What happened, when your friend came by?
A. I got him to take me to my home, on his way to work at the shipyard.

Jonny Paul Taylor

Q. Have you ever been convicted of Larceny?
A. No, sir.
Q. Have you ever been convicted of Petit Larceny?
A. Yes, sir.
Q. And you say you were never convicted of Grand Larceny?
A. I was picked up for Grand Larceny, but I was not convicted of it.
Q. Do you know the difference between a misdemeanor and felony?
A. Yes, sir.

Q. On January 6th, you went back for what reason?

page 91] A. On January 6th my main reason was to have her husband sign the contract.

Q. But, you didn't know whether he was home or not, did you?
A. No, sir. She told me he wouldn't be back until sometime around the first of the month, first of January.
Q. And you were there around the first of that month?
A. Yes, sir.
Q. And he was not at home?
A. No, sir.
Q. And, you just walked in the door and you had never seen that man, her husband?
A. No, sir. I didn't just walk in the door, sir.
Q. You just said the door was open, and you walked in.
A. Sir, I didn't say that.
Q. What did you say?
A. I said we stopped the car in front of the house and the lights were on, and I walked up to the front door.
Q. All right, go on. What happened after that?
A. She opened the door, but first she pushed the little curtains aside on the hallway door and saw me, and she opened the door and this allowed me to enter the same

page 92] door, and the door to her apartment was open.

Q. Go on.

A. The door to the hallway was open, and I went in and looked in the hallway door to her apartment. It was open, but I didn't see her.
Q. You saw her at the door, when she pulled the curtains

back, didn't you?

A. Yes, sir.

Q. How were you dressed?

A. I was dressed in regular street clothes.

Q. Now, did she pull the curtain back and then run? Is that what you mean to say?

A. No, sir.

Q. Well, what did she do?

A. She pulled the curtains back and I walked in the door, and the door to her apartment was open and I proceeded into the living room, but Mrs. Jackson was gone.

Q. When did she leave?

A. After she pulled the curtains back.

Q. And the door was unlocked?

A. Yes, sir.

Q. Did you stand there for about five minutes before the door was first opened?

A. No.

Q. You opened the door, and she was gone?

page 93] A. Yes.

Q. And you entered?

A. Yes, sir.

Q. You don't know anything about the back door.

A. No, sir.

Q. You didn't know anything about the back door, until you went out it?

A. I didn't go out it. I proceeded into the kitchen door from the living room, to see if she was in the kitchen or dinette, and then I proceeded around to the back door right off the kitchen to the rear apartment and down to a driveway and I was stopped there by the police as the witness here indicated.

Q. Why didn't you go back out the front door?

A. I was standing at the back door, so I stepped out the back door.

Q. I thought you said you didn't know there was a back door.

A. I just walked out.

Q. Didn't you just testify that you didn't know anything about a back door to that house?

A. I testified that I was not familiar with the back door, yes.

Q. You then went out into the back, I presume?

Jonny Paul Taylor

A. Yes, sir.

page 94] Q. And around the house?

A. Not around the house.

Q. You went straight to Mr. Robinson?

A. I went straight to him, yes.

Q. Did you see him, at the side door?

A. Yes.

Q. Did you go through that apartment, to get out?

A. I didn't know what it was, I wasn't aware of it.

Q. Wasn't it dark in there?

A. There were lights on. Anyway, when I went through the living room and kitchen and went out, I didn't know there was an outside door. I went on out, but as far as I was concerned, it was all one apartment.

Q. Where were the children?

A. In the living room, in the bed.

Q. Is there a bedroom, in the front?

A. No, sir. The bed was in the living room.

Q. That's where they were, when you went into the living room?

A. Yes, the children were there.

Q. Then, there's a living room, kitchen and bathroom?

A. It's a living-bedroom combination.

Q. How many bedrooms?

page 95] A. One bedroom.

Q. Is there a couch there?

A. Yes.

Q. Was the baby on the bed?

A. I don't know, sir.

Q. Where were the children, when you went into the bedroom after their mother?

A. In bed.

Q. In the same bed as the bed you went to bed with her?

A. Yes.

Q. There were two children, a boy and a girl?

A. I don't know the infant's stature.

Q. Now a moment ago, did you say she signed her husband's name to the contract?

A. I don't know if I said she actually did or not, but yes, she did.

Jonny Paul Taylor

Q. And I assume you told your boss that she had signed her husband's name to it?

A. Yes, sir.

Q. So then she forged her husband's name, is that correct?

A. Yes, sir.

Q. And, you knew that?

A. Yes.

page 96] Q. And, you still delivered her the TV set?

A. Yes, sir.

Q. Why?

A. I had admonished her about the recourse basis that if she did not pay, and that she was taking it on her own risk.

Q. What company did you say you worked for?

A. The Household Home Equipment Company, on 35th Street.

Q. Do you work on commission, did you say that?

A. Yes, sir.

Q. And you just work for the commission you make?

A. Yes, that's all.

Q. And your commission may be going to bed with a woman, is that right?

A. Not necessarily.

Q. Even if you lost the commission, you will still go to bed with some woman?

A. No.

Q. You would, unless someone interferred. Do you work the Lakeland Apartment area?

A. I work all over the City of Norfolk and Portsmouth.

Q. But, you work more in the Lakeland Apartment area?

page 97] A. Not any more, no sir.

Q. You deny that?

A. Yes.

Q. You deny that you sold fifteen hundred units?

A. I sell to Azalea Gardens, also.

Q. What time did you see your boss, on New Year's Day?

A. New Year's Day, I didn't see him. I saw him the next morning.

Q. When you don't see him, do you 'phone?

A. Yes.

Jonny Paul Taylor

Q. When you didn't see him on New Year's Day, did you 'phone him then?

A. Yes, I 'phoned him from the corner.

Q. When?

A. I called into the store around 3:30 in the afternoon.

Q. Are you talking about the same day?

A. New Year's, at 3:30 in the afternoon.

Q. After you went back at 2:30, to pick up the TV set?

A. Yes.

Q. And, you hadn't talked to him before that day?

A. Right.

Q. You testified a while ago, that you had to go
page 98] pick up the TV set.

A. Yes, sir.

Q. How do you know your bossman didn't approve if you hadn't talked to him that day?

A. I talked to the secretary in the office, and there's a basket on the desk in the office that has information of whether the credit is approved or disapproved.

Q. So, you delivered the TV set at 1:00 o'clock in the morning, went to bed with the woman and then came back to the office and found out it was disapproved, is that right?

A. Yes, sir.

Q. What is your bossman's name?

A. Gerald Lowrey.

Q. Is he here, today?

A. No, sir.

Q. He's not?

A. No, sir.

Q. Didn't your attorney subpoena him?

A. No, sir. I didn't ask that he be supoenaed.

Q. Why not?

A. (pause) I don't know.

Q. You don't know?

A. (no answer)

Q. He was not subpoenaed, then?

A. No, sir.

page 99] Q. And you don't know why?

A. He may have testified that he had me taken out of that area of the City.

Q. And he may have testified that he never talked to you

about the TV set?

A. No sir, I'm not afraid of that.

Q. He couldn't testify to that, because you never did it, you never talked to him about that TV set, did you?

A. I wasn't afraid of that, because I sold a lady like that before.

Q. You didn't even talk to him on New Year's Day, or until after you had been to the lady's house and taken her the TV set.

A. I stated before, that I took it on myself to deliver Mrs. Jackson the TV set.

Q. Well, why did you do that?

A. I took it upon myself to deliver to people that didn't have one.

Q. And you went back to Mrs. Jackson's house at 1:00 o'clock in the morning?

A. Yes, sir.

Q. And you took the TV set back. Can you tell us why?

A. Yes, I'll tell you why.

Q. All right. Why?

page 100] A. Because I had her husband's signature on it.

Q. You had her husband's signature on the contract?

A. Yes, and it was written by her.

Q. Well you accepted it, didn't you?

A. Yes.

Q. But, you were afraid you would get caught?

A. Yes, sir.

Q. I thought you said you told your bossman about it.

A. My bossman didn't question me about it, and I didn't volunteer the information.

Q. He didn't ask about it, and you didn't tell him?

A. Certainly not.

Q. Getting back now to when you were in Mrs. Jackson's apartment on January 6th, why were the children crying all the time you were in there?

A. I don't know, sir.

Q. Could they be heard, out on the street?

A. I don't know that.

Q. Well, you must have heard them when you went up to the door, didn't you?

Jonny Paul Taylor

A. They weren't crying while I was at the door, not that I know of.

page 101] Q. Why did they start crying?

A. I guess because their mother left the house.

Q. When you walked in, were the both of them awake?

A. Yes, sir.

Q. And they were crying?

A. Yes.

Q. Were they crying, before you went into the apartment?

A. I don't know if they were crying before I went in, or not.

Q. The mother had left, before you went into the apartment?

A. The mother had left, while I was in the apartment, yes.

Q. How long had you been in the apartment?

A. I just stepped in about two feet, and went to the other door.

Q. How long did you take to do that?

A. Just a matter of a couple seconds.

Q. And, she had just vanished?

A. Yes, sir.

Q. And that's when the children started crying?

A. Yes.

Q. And they were still crying, when you went out?

page 102] A. As far as I know they were, yes sir.

Q. Where were you going, when you went out?

A. Well, I was going home, but I wasn't able to go home.

Q. And, you left the children in there all by themselves?

A. I didn't. Their mother ran off and left them by themselves, and that's why they were crying.

Mr. Campbell: That's all.

The Court: Did you have occasion to look at them?

A. Yes, sir.

Q. How were they dressed?

A. Just the small one, the little boy, was dressed in regular pj's or nightgown as far as I could see, and the larger one, that they said was a little girl, had on only the tops of her pj's.

Q. In other words, the little girl's private parts were naked?

A. Yes, sir.

The Court: All right. I have no further questions.
Mr. Gurkin: May I ask one more question.
The Court: Yes, of course.

page 103] REDIRECT EXAMINATION

Examined By Mr. Gurkin:
Q. Mr. Taylor, did the police take any samples from your fingernails?
A. Yes, sir.
Q. Did they take any smears of semen?
A. No, sir.
Q. Was there any blood on your underwear?
A. I don't know, Mr. Gurkin.
Q. Did they take your shorts and the scrapings from your fingernails?
A. Yes.
Q. You don't know, of your own knowledge, what the results were, do you?
A. No sir, I don't.
Q. And, do I understand that you did not touch either one of these babies?
A. No sir, I didn't.
Q. Did you enter that apartment, to commit the felony of Larceny?
A. No, sir.
Q. And you actually felt, when you entered into the front of the house and into a public hallway, that you were more or less invited in, is that what you mean?
A. Yes, sir.
page 104] Q. And that after you went into the hallway, the door to her apartment was actually standing open?
A. Yes, sir.

Mr. Gurkin: That's all.

The Court: Did you, at any time, threaten Mrs. Jackson to come in?
A. No, sir.
Q. You never had any trouble with Mrs. Jackson, before?

Jonny Paul Taylor

A. No, sir.

Q. Had you ever done anything to her?

A. No, sir.

Q. In other words, as far as you were concerned, there was no reason why you should not come in?

A. No, sir.

Q. Did she threaten to cut you with a knife?

A. No, sir.

Q. Was there ever any reason why she would cut you?

A. No, sir.

Q. Did she say anything to you, when you came in the door on January 6th?

A. I don't recall, sir.

page 105] Q. And, you had been there *before*?

A. The night of December 27th.

Q. And what time was that?

A. That was 12:30 A.M. I told Mrs. Jackson about the TV, and she said she would like to have it, and I said: "All right."

Q. When you went to the door, and when you do go to doors, don't you say the name of your firm?

A. Oh, yes sir. I said: "Mrs. Jackson, this is Household Equipment."

Q. Didn't she know it?

A. Yes, she knew it.

Q. Did you say anything else?

A. I said I was there, to deliver the TV set, if she wanted it, and she said she was interested now.

So, I said: "It will take me ten or fifteen minutes to get one, I have to go pick it up," and she said: "All right," and I said: "I'll be right back," and said: "Okay."

Q. And that was the night you delivered the TV set?

page 106] A. Yes, sir.

Q. And that was the 6th of January?

A. Yes, sir.

Q. What did she say, when you said you'd be right back?

A. I went down and came back, and I thought the door was going to be open so I could come on in and deliver the set. It was a pushover, and she knew all about it.

Q. When you went back there, did you see her at the door?

A. When I came back, I waited at the door a couple of

minutes and then I knocked on the door. I heard something, and so I walked over to the window and looked in and the lights were on throughout the house, and so I walked back to the door and knocked again.

Q. Could you look through the window, and see her?

A. Yes, I could see her with the lights on.

Q. Where was she, at that time?

A. She was in the living room, with the chil-
page 107] dren.

Q. You did notice the children. Then, what happened?

A. I came back and knocked on the door again, and she walked out of the apartment toward the front door, and pulled the curtain back from the door like I previously stated, and I assumed it was permissible to open the door.

So, I opened the door and went to her apartment, but she was not there, she was gone.

Q. In other words, you didn't say anything to her, and she didn't say anything to you?

A. Well, when I first came to the door she said: "Who is it?," and I said: "Household Equipment."

Q. And this was on the 6th of January?

A. Yes, sir.

Q. I see. Did she say anything to you, that you could go by?

A. I asked her if her husband was home, that I wanted to get his signature on the contract.

page 108] Q. Didn't she say anything?

A. Not after I told her what I wanted.

Q. All we're interested in, is what she said, if anything. We just want to get the truth.

A. She didn't say anything out of the way.

Q. Did she say anything, at all?

A. All she said was: "You old dog, how have you been?," and I said I was going to come in.

When I first came to the door, I told her it was Household Equipment, and I wanted to check with her on the contract to see if her husband had been home to sign it, or what.

Q. Did he have to sign the contract, as a matter of delivery?

A. Yes.

Q. Was the TV there, at that time?

A. No, sir.

Jonny Paul Taylor

Q. And then she didn't say anything, and you didn't either?
A. No, sir.

Q. And then she opened the front door, page 109] and you went into the hallway?

A. Well actually, she didn't say anything to me then, after she asked me 'who is it?,' and I told her 'Household Equipment.'

Q. Didn't she move the curtain on the glass door?

A. The top part is glass door, and when I said 'Household Equipment,' she moved the curtains back and looked squarely at me through the door, and the natural reflex I had, Your Honor, was to open the door and walk in, and when I did the apartment door was open.

Q. Then you didn't have to have any instructions at the *outter* door, you just had a reflex to go ahead and open the door?

A. Yes. And I found myself standing in the middle of the house with two small babies, and I went through and out of the house onto the street, and there were six or eight policemen on top of me.

Q. Now, the night you slept with this woman, page 111] didn't you have occasion to go to the bathroom?

A. I went to the bathroom when I left.

Q. Well, didn't you have to go through the kitchen?

A. The kitchen was all right, when I went to the bathroom.

Q. Well now, there's a living room-bedroom combination, isn't there?

A. Yes.

Q. And there's one bed in there?

A. Yes, sir.

Q. And a sofa?

A. Yes, sir.

Q. And then that goes through to where?

A. To the kitchen.

Q. Well, didn't you have to go through the kitchen, to get to the bathroom?

A. It's just that the bathroom is a partition between the living room and —

Q. Maybe I misunderstood about the rooms.

A. There's a living room-bedroom combination here, there's

a door to the kitchen and off the kitchen and down here is the bathroom.

page 112] Q. I must have misunderstood what you said. I think I know now. You're outside when you walk through the bathroom on out to the outside street, through the other person's apartment.

A. I'm not aware of that. I don't know anything about the other apartment. I'm not familiar with that.

Q. Wasn't there a vacant room, when you came into the place?

A. If there was sir, I was not aware of it.

Q. Then you could go right through there, to another room in the back there?

A. I — yes.

Q. Then you don't deny that?

A. I'm just not familiar with the back there. I know I walked straight through and out into an alley.

Q. Where were you headed?

A. Home, but I didn't get there. The police were getting out of the car.

Q. How far did they get out of the car?

A. To the walkway, the sidewalk by the building.

page 113] Q. On the sidewalk by the building?

A. In front, they were standing there when I came on out of the house

Q. Who is 'they?'

A. The police, and he was there too.

Q. Who is 'he?'

A. That man that testified, he was standing on the sidewalk.

Q. You mean Mr. Robinson?

A. Yes.

Q. And he was standing in front of the house, on the sidewalk?

A. Yes, sir.

Q. Now Mr. Robinson testified that you seemed to be in quite a hurry to get out of there, and he testified that at the preliminary hearing he said you were tackled by him.

Did you hear him testify to that this morning?

A. Yes, sir.

Q. You were leaving the apartment, then?
A. Yes, sir.

The Court: I have no further questions. No, just a minute, for Mr. Gurkin.

page 114] REDIRECT EXAMINATION

Examined By Mr. Gurkin:
Q. Did you see any blood on the child, the girl child, when you were in there?
A. No, sir.
Q. If there had been any blood, you could have seen it, couldn't you?
A. I doubt it sir, because I was not in there any length of time.
Q. If there might have been, it's possible that you didn't happen to see any blood?
A. All that I can say sir, is that I was looking for, and all that was in my mind was what happened to Mrs. Jackson. and where she could have gone.
Q. Mr. Taylor, as you go in the front door, the apartment to Mrs. Jackson's is on the left, and the wall is on the right?
A. Mrs. Jackson's apartment door is on the left, as you go in the front door, yes sir.
Q. And the wall is on the right?
A. Yes, sir.
Q. And there are two apartments, with a bathroom in between, is that right?
A. I don't know, sir.
Q. Well where — what door did you knock on, page 115] Mr. Taylor?
A. The front door.
Q. And when you knocked on the front door, you assumed it was unlocked and so you went on in, and you went to the apartment door of Mrs. Jackson, which was not locked, is that right?
A. I knocked on the front door that enters into a public hallway, with two or three different apartments.
Q. Then, you could expect two or three different people to come out and open the door?

Jonny Paul Taylor

A. That could have happened very easily, yes.
Q. That front door is always open, it is not locked?
A. Yes, sir.
Q. And yet, you say that's the door that you knocked on?
A. Yes, sir.
Q. I see. And, Mrs. Jackson came out and pulled the curtains open?
A. Yes, sir.
Q. Now, didn't you say a while ago, that you didn't know whether you had blood on your shorts?
A. I was supposed to have blood on my shorts.
Q. Don't you know whether you had blood on your shorts, or not?

page 116] A. I know I didn't.
Q. You didn't?
A. No, sir.
Q. Well, had you been drinking, were you drunk?
A. I had been drinking, yes sir.
Q. How much?
A. Just a few, that's all.

Mr. Gurkin: I have no further questions. Step down.

Mr. Gurkin: May it please the Court, we have another witness, David Reid, but the Defendant said he did not want me to call on him as it would only corroborate what the other witness said, Mr. James Madison Ross, and in view of the late hour.

The Court: All right.

Mr. Gurkin: We have no further evidence to offer, and we rest.

The Court: All right, sir.

Mr. Campbell: Your Honor —

page 117] Mr. Gurkin: I'd like to renew my motion at this time, for the record, for the reason previously stated, insufficient evidence. We rest, Your Honor.

The Court: I overrule your motion.

Mr. Campbell: I call on Mrs. Robinson to testify to what occurred at the apartment, and what she heard.

Mr. Gurkin: Your Honor, Mr. Campbell didn't say anything about rebuttal in chambers.

(An off-the-record discussion was held, after which the following occurred.)

MRS. EDWARD ROBINSON,
witness, called on Rebuttal by the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Campbell:

Q. State your name, please?

A. Mrs. Edward Robinson.

Q. Where do you live?

A. 1418 West 38th Street.

Q. You're the wife of Edward Robinson, who
page 118] testified previously today?

A. Yes, sir.

Q. Mrs. Robinson, on the night of January 6th, did you see Mrs. Jackson?

A. Yes, sir.

Q. What time was that?

A. It was between 10:30 and 11:00 o'clock that night, when I seen her. She knocked at our door.

Q. How long was she at your apartment?

A. I don't know, just long enough for him to get dressed and go over there to her apartment.

Q. Who is the person referred to as 'him?'

A. My husband.

Q. Did you go over, too?

A. Yes, sir.

Q. Did you hear anything?

A. I heard a man.

The Court: Is this rebuttal evidence, Mr. Campbell?

Mr. Campbell: Yes, Your Honor. I'm leading up to one point.

By Mr. Campbell:

Q. Did you hear anything from her apartment?

Mrs. Edward Robinson

A. I heard a baby crying, and I heard a man say something but I could not make out what it was, but he was
page 119] talking to the baby.

Mr. Campbell: That's all.
Mr. Gurkin: No questions.
Mr. Campbell: You may step down.
We rest, Your Honor.
The Court: All right, gentlemen. If both sides have rested, is there any argument?
Mr. Campbell: Nothing by the Commonwealth, no opening argument.
Mr. Gurkin: May I have a conference with my client, Your Honor.
The Court: Yes, sir.

(Mr. Gurkin held a discussion with the Defendant, and the following occurred.)

Mr. Gurkin: I have talked with the Defendant, Your Honor, and he is prepared to waive opening argument.
The Court: The purpose in doing that, is to cut the Commonwealth off?
Mr. Gurkin: That's right, Your Honor.
The Court: All right, sir.

page 120] The Court: All right, Mr. Taylor, you may stand.
The Court having sustained your attorney's motion as to Indictment No. 1, you are discharged from further prosecution of each of the counts therein contained.
The Court having sustained your attorney's motion as to *Indicement* No. 2 as to the first and second counts of that indictment, you are discharged from further prosecution on the first and second counts of Indictment No. 2
As to the third count of Indictment No. 2, you are found guilty of the third count of Indictment No. 2 of Burglary, as charged in the third count of Indictment No. 2
Any motions, gentlemen?

(No motions were made by counsel.)

The Court: I'm going to refer this matter for a Pre-Sentence Report.

page 121] On March 18, 1965 Mr. Gurkin appeared before the Court, representing the Defendant *Jonny* Paul Taylor and Mr. Campbell also appeared, representing the Commonwealth, and the following occurred:

Mr. Gurkin: May it please the Court, I have a motion regarding the *Commonwealth of Virginia* vs. *Jonny Paul Taylor,* which was heard in this Court yesterday.

We move to set aside the judgment of the Court as being contrary to the law and to the evidence, and for a new trial on the ground that the presumption of innocence goes with the Defendant throughout all of the trial, and we believe that the Commonwealth has not *born* the burden of proving that he was guilty of entering and burglarizing the dwelling house or that he committed a felony therein.

I'm well aware of the fact that the Court threw out the evidence in Indictment No. 1 on Attempted Rape and to the second count of Violation of Section 18.1-215.

We further realize that the Court threw out the evidence of the Commonwealth as to Indictment No. 2, Burglary, in the first count, which was Burglary with intent to commit Larceny and the second count Burglary with intent to commit Rape.

Now the Defendant was found guilty of Burg-
page 122] lary with intent to commit a felony, as charged in the third count of Indictment No. 2 and we submit that since the Defendant was exonerated of committing Larceny and intent to commit Rape, that they are all tied in, and we feel that on all three counts that the testimony has been passed on, and we don't believe that sufficient evidence has been shown that this Defendant had intention of committing any felony, more primarily Burglary with intent to commit Larceny or Rape.

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

Mr. Campbell: Your Honor, I disagree with Mr. Gurkin in that he was found not guilty of the first two counts. He could only be convicted of one count in that Burglary Indictment, and the Court decided he was guilty of one, of committing a felony, but I don't think that eliminates the intent to commit Rape.

It certainly does not eliminate Rape on the mother of this child, and I believe it certainly does not eliminate the attempt to commit the felony of assault.

And while we're talking about Rape, there was a lot of evidence from the stand that he received that the first time he came around and made advances to her, and that certainly goes to show what the intent was the second time or the last time he came there.

Your Honor, there was also the evidence that she said she was going to get a knife and that she was going page 123] to use the knife, but he still insisted on going into the house to see her.

Mr. Gurkin: May it please the Court, on those respects Your Honor, the only thing we can say is that there was further evidence offered by the Defendant that he spent the night with the woman and that they had intercourse over a four-hour period, and it certainly would not seem to me that the man would *neither* risk or attempt to commit Rape or have relations on that basis, with any woman.

The Court: The evidence that was presented in Court is very clear in my mind, from the witnesses and the accounts by the witnesses that testified yesterday, including the Defendant as well as each of the witnesses.

I'm going to overrule your motion, Mr. Gurkin.

The Defendant: May I please note an appeal on that, sir?

The Court: Mr. Gurkin, you will advise the Defendant about having to come before the Court on that.

There will not be a final trial judgment until the report has been provided, and then at that time we'll have final judgment.

page 124] On August 6, 1965 Mr. Gurkin appeared before the Court, representing the Defendant *Jonny* Paul Taylor and Mr. Ambler also appeared, representing the Commonwealth, and the following occurred:

The Court: This matter comes on a Pre-Sentence Report. The Commonwealth is represented by Harold E. Ambler, Assistant Commonwealth's Attorney and the Defendant is represented by John E. Gurkin, Jr., Attorney at Law.

Are you ready, Mr. Ambler?

Mr. Ambler: The Commonwealth is ready, Your Honor.

The Court: Mr. Gurkin, are you ready?

Mr. Gurkin: The Defendant is ready, Your Honor, and he tells me that he has had ample opportunity to read the report.

The Court: All right, sir.

W. T. HARRELL,

Probation Officer, appearing before the Court, having been first duly sworn, testified as follows:

page 125] DIRECT EXAMINATION

Examined By The Court:

Q. You are W. T. Harrell, a Probation Officer of this Court, are you not?

A. Yes sir, I am.

Q. Mr. Harrell, did you prepare the Pre-Sentence Report on *Jonny* Paul Taylor?

A. Yes sir, I did.

Q. Will you read that report, please?

(The Probation Officer read the Pre-Sentence Report on *Jonny* Paul Taylor in its entirety.) Hereto attached as part of this transcript, page 132. LBT.

The Court: Any questions by the Commonwealth?

Mr. Ambler: The Commonwealth has no questions, Your Honor.

The Court: Mr. Gurkin?

Mr. Gurkin: We have no questions, Your Honor, although I think I ought to make a correction on page six in the first line of the Summary. I believe it said the subject was thirty years old and was married — actually, he's thirty-one years old, Your Honor.

The Court: All right, sir. I'll mark the report page 126] 'thirty-one years old.'

Mr. Gurkin: We have no questions, Your Honor. The Defendant has read the report, and says it's correct.

The Court: Anything further by the Commonwealth?

Mr. Ambler: The Commonwealth has no additional evidence, at this time.

(Mr. Gurkin held a short conference with the Defendant, after which the following occurred.)

The Court: Any evidence by the Defense?

Mr. Gurkin: May it please the Court, the Defendant wishes to take the stand.

(Mr. Gurkin held another short conference with the Defendant, after which the following occurred.)

Mr. Gurkin: Your Honor, the Defendant understands that he has a right to take the stand, and that he does not have to take the stand.

Your Honor, the Defendant has indicated to me that he would like to take the stand.

The Court: Very well.

page 127] *JONNY* PAUL TAYLOR

Defendant, appearing on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Gurkin:

Q. Will you state your name?

A. *Jonny* Paul Taylor.

Q. Mr. Taylor, have I done everything and have I handled your case the way you wanted me to, up to this point?

A. Yes, sir.

Q. All right, sir. Now, you have indicated to me that you had something you wanted to say to the Court. So you speak up now, so we all can hear you, and put it in your own words.

A. The only thing I'd like to say is that if I've done anything to Mrs. Jackson, I'm sorry, I didn't mean to bring trouble to her.

And, I'd like to go home with my wife and children, if that's at all possible. Thank you, Judge.

That's all I have to say.

Q. If that's all you have to say now, then answer the questions the Commonwealth has.

Mr. Ambler: The Commonwealth has no questions.

Mr. Gurkin: Step down.

page 128] The Court: Anything further, gentlemen?

Mr. Ambler: The Commonwealth has no further evidence, Your Honor.

Mr. Gurkin: The Defense has no further evidence, Your Honor.

The Court: Any argument, gentlemen?

Mr. Ambler: Regarding this particular Defendant, Your Honor, he's been in this Court at least twice and the police authorities in Norfolk are familiar with him.

He's been on Federal probation, and while on that he had no respect for the probation that the Federal Court had seen fit to grant him.

He probably, I submit, would like to remain here with his wife, which he stated here today.

I also agree with the Probation Officer, that the late hour in which the Defendant went into the home of Mrs. Jackson when he allegedly talked to her about the contract, seems all out of reason. To appear with a married woman with two children and to talk about a contract, or so he alleges, that could have been done earlier in the evening, rather than at 11:30 at night.

Mrs. Jackson said very definitely that her front door was locked, and yet he claims he went through the front and not through the back. He just opened the door and

page 129] walked freely in.

The Commonwealth feels this man has known too many brushes with the law, certainly, to have any idea of putting him on probation. He's been out on probation, and it's definitely not approved by the Commonwealth for any further stay.

What this man needs is confinement, strict confinement to do some good, and enable him to come out and live properly with his family.

That's all the Commonwealth has, Your Honor.

Mr. Gurkin: May it please the Court, of course this man would like to get back to his family, and Judge his young child is just a few months old now, and he has another child, and of course from his statement in Court he would like to get back and take care of them, and I believe at the present time the responsibility would do him some good.

Jonny Paul Taylor

As to the allegations, he was convicted of Burglary in the third count of the second indictment, and all we can ask for is the mercy of the Court, and we do ask for that, Your Honor.

The Court: I have a very vivid and clear recollection of the facts in this case, and a vivid recollection of the witnesses, the way they looked and of course the way page 130] they testified when we tried this case on its merits. This case gives me no trouble, at all.

All right, you may stand.

(The Defendant stood before the Court.)

The Court: *Jonny* Paul Taylor, the Court having found you guilty of Burglary as charged in the third count of Indictment No. 2, the Court advises you that the Court is going to fix your punishment at five years in the Virginia State Penitentiary.

Deputy Clerk: *Jonny* Paul Taylor, you stand convicted of Burglary as charged in the third count of Indictment No. 2, and the Court has fixed your punishment at five years in the Virginia State Penitentiary.

Is there anything you know or have to say why the Court should not here and now pronounce judgment against you?

The Defendant: No, sir.

The Court: I sentence you to five years in the Virginia State Penitentiary.

The Defendant: Please, may I see my wife page 131] and children?

The Court: That's up to the jail authorities. I have no control over that.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk

INDEX TO RECORD

	page
Writ of Error and Supersedeas Awarded	1
Record	2
Indictment	2
Judgment — August 6, 1965	3
Notice of Appeal and Assignments of Error	4
Proceedings	4, 36, 69, 72
Witnesses:	
Dr. A. R. Forbes	9
Delores Marie Jackson	12
Edward Robinson	31
Mrs. Jack T. Vest	41
James Madison Ross	43
Jonny Paul Taylor	46, 73
Mrs. Edward Robinson	68
W. T. Harrell	72