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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6338

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLARD C. JORDAN

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of 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. 6338

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 19th day of January, 1966.

WILLARD C. JORDAN, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Roanoke
Richard T. Edwards, Judge

Upon the petition of Willard C. Jordan a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 27th day of May, 1965, in a prosecution by the *Commonwealth* against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

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page 1]

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In the Hustings Court of the City of Roanoke on April 1, 1965

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This day came the accused, by counsel, and moved the Court for reduction of the penalty of the bond executed by the *by the* accused in the penalty of *$10.000.00,* and the Court having heard the evidence that the accused is from out of the State of Virginia and on bond from the State of Florida, doth overrule said motion, and the accused, by counsel, excepted.

A Copy, Teste:

WALKER R. CARTER, JR., Clerk
By ROBERT F. FINNELL, Deputy Clerk

page 2]

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The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its APRIL TERM, in the Year 1965, upon their oaths do present:

That WILLARD C. JORDON, heretofore, to-wit: on the ——— day of March, 1965, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, unlawfully and felonously did break and enter a certain storehouse known as 3369 Shenandoah Avenue, N.W., located in the City and State aforesaid, belonging to Macke VCS Vending Corporation, with intent the goods and chattels of the said VCS Vending Corporation, in the said storehouse then and there

being, then and there unlawfully and feloniously to steal, take and carry away, and

divers articles of merchandise, of the value of	$1,206.95
divers monies of the true and lawful currency and coinage of the United States of America, amounting to the sum of, and of the value of	11,164.66
and of the total value of	$12,371.61

of the goods and chattels of the said VCS Vending Corporation, in the said storehouse, in the City and State aforesaid, then and there being found, then and there unlawfully and feloniouly did steal, take and carry away,

Against the peace and dignity of the Commonwealth of Virginia.

(Reverse side)

VERDICT

We the jury, find the defendant guilty of grand larceny and fix the punishment at (7) seven years in the state penitentiary.

JOSEPH D. BERNA
Foreman

INDICTMENT FOR
STATUTORY BURGLARY AND LARCENY
A Felony

A TRUE BILL

R. H. WILLS
Foreman Grand Jury

Received 4/5/65 and filed

ROBERT F. FINNELL
Deputy Clerk

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page 7]

* * * * *

This day came the Attorney for the Commonwealth and Willard C. Jordon who stands indicted of a felony, to-wit: Statutory burglary and larceny, was led to the bar in the custody of the jailor of this Court. Also came Murray A. Stoller, his attorney.

Thereupon the said Willard C. Jordon was arraigned and pleaded not guilty to the charge of statutory burglary and grand larceny alleged against him in the indictment and for his trial puts himself upon the country.

Thereupon came twenty (20) persons, citizens of the City of Roanake, Virginia, summoned by the Sergeant of the City of Roanoke, Virginia, pursuant to writs of *venire facias* issued as the law directs, and the Court having examined said persons and finding them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having each alternately struck from said list four (4) of the names thereon, the remaining twleve (12), to-wit: Beatrice C. Cardwell, Roy E. Elliott, John F. Jolly, Jack E. Wimmer, Harry W. St. Clair, Ross D. Campbell, John R. Callahan, Clifton H. Spencer, William O. Davis, Otto C. Caldwell, Joseph D. Berna, Thomas M. Adams, were sworn to well and truly try the prisoner at the bar, and having heard a portion of the Commonwealth's evidence the defendant, by counsel, moved the Court to *supress* the evidence of E. B. Hamblett, Police Officer on the grounds of illegal arrest and other grounds as stated in the record, which motion the Court takes under advisement. And having heard another portion of the Commonwealth's evidence, the defendant, by counsel,

page 7A] moved the Court to strike the evidence of witness, E. B. Hamblett on the grounds previously stated and other grounds as stated in the record, which motion the Court overruled, and the defendant, by counsel, excepted. After hearing all the evidence of the Commonwealth, the defendant, by counsel, moved the Court to strike the Commonwealth's evidence on the grounds the Commonwealth has failed to prove a *prinia facia* case and other grounds as stated in the record, which motion the Court overruled, and the de-

fendant, by counsel, excepted. The Attorney for the Commonwealth moved the Court to amend the indictment to insert the word Macke, which motion the Court sustained, and said indictment was accordingly so amended.

Thereupon the Court adjourned until Saturday, May 22, 1965 at nine o'clock a. m.

ENTER: 5/21/65
R. T. EDWARDS, Judge

page 8] I

The court instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Willard C. Jordan, broke and entered the storehouse described in the indictment belonging to Macke V.C.S. Vending Corporation with the intent to commit larceny, then you should find the defendant guilty as charged, and fix his punishment by confinement in the penitentiary for a period of not less than one nor more than twenty years; or, in the discretion of the jury, by confinement in jail not exceeding twelve months or a fine nor exceeding One Thousand Dollars, either or both.

Given
5-21-65
RTE

page 9] INSTRUCTION NO. II

The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that Macke V.C.S. Vending Company, was broken and entered and among the goods in question a Wittenburg Sandwich Machine Tool was taken from the said company and that the breaking and entering and larceny were all a part of the same transaction, that is, committed at the same time and by the same person, and that the property or a part of the property taken has been found in the exclusive possession of the defendant and the exclusive possession of the stolen goods shortly thereafter has been unexplained or falsely denied, this is sufficient to raise an inference that the defendant is guilty of the breaking and entering, and that if such inference, taking into consideration the

whole evidence, warrants a belief beyond a reasonable doubt that the defendant committed the offense charged, then it is the duty of the jury to to find him guilty.

Offered
Given
5-21-65
RTE

page 10] INSTRUCTION A

The Court instructs the Jury that the burden is upon the Commonwealth to prove by the evidence beyond a reasonable doubt every material and necessary element of the offense charged against the defendant, Willard C. Jordan. It is not sufficient that the Jury may believe his guilt probable, or more probable than his innocence. Suspicion or probability of guilt, however strong, will not authorize a conviction, but the evidence must prove his guilt beyond a reasonable doubt. The Jury shall not speculate or go outside the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence produced by the prosecution and the defense, if any, and unless you believe, upon a consideration of all the evidence before you, that guilt of the defendant has been proved beyond a reasonable doubt as to every material and necessary element of the offense charged against him, then you shall find the defendant not guilty.

Given
5-21-65
RTE

page 11] INSTRUCTION B

The Court instructs the Jury that the accused, Willard C. Jordan, is presumed to be innocent of the charge against him in the indictment, which presumption of innocence continues throughout the whole case and applies at every stage thereof, and is not overcome unless and until the Commonwealth has proven him guilty as charged in the indictment by evidence beyond a reasonable doubt; thereafter, if, after hear-

ing all the evidence the Jury have any reasonable doubt as to the guilt of the accused, it is your duty to acquit him.

Given
5-21-65
RTE

page 12] INSTRUCTION C-1

The Court instructs the jury that it is not sufficient that facts and circumstances proved be consistent with the guilt of the defendant, but they must be inconsistent with every reasonable hypothesis consistent with the innocence of the defendant.

Given
5-21-65
RTE

page 13] INSTRUCTION D

The Court instructs the Jury that when the case that has been made out by the prosecution against the defendant rests entirely or chiefly on circumstantial evidence, before the Jury may find the defendant guilty, basing its findings solely on such evidence, each fact that is essential to complete a chain of circumstances that will establish the defendant's guilt must be proved beyond a reasonable doubt.

Given
5-21-65
RTE

page 14] INSTRUCTION E

The Court instructs the Jury that the mere possession of stolen goods is, of itself, not even *prima facie* evidence of burglary, and unless the Jury believe from the evidence beyond a reasonable doubt that Willard C. Jordan broken and entered the building in this case and took the property

charged in the indictment with intent to convert it to his own use, they must find him not guilty.

Given
5-21-65
RTE

page 15] INSTRUCTION *F*

The Court instructs the Jury further that you are not permitted, on circumstantial evidence alone, or when the case of the prosecution rests substantially on circumstantial evidence, to find the defendant guilty of the offence charged against him unless the proved circumstances not only are consistent with the hypothesis that the defendant is guilty of the offense, but are irreconciliable with any other rational conclusion.

Offered by Defendant
Refused as given in other instructions
Excepts
5-21-65
RTE

page 16] INSTRUCTION NO. G

Failure of the defendant to testify creates no presumption against him; and in considering his innocence or guilt, his failure to testify is not a circumstance which the jury is entitled to consider.

Given
5-21-65
RTE

page 17]

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This day again came the Attorney for the Commonwealth and Willard C. Jordan, who stands indicted of a felony, to-wit: statutory burglary and larceny, was again led to the bar

in the custody of the jailor of this Court and came also Murray A. Stoller, attorney for the accused. There also appeared in Court the jury sworn in this case pursuant to their adjournment on May 21, 1965.

Thereupon the jury received the instructions of the Court and heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

"We the jury find the defendant guilty of Grand Larceny and fix the punishment at seven (7) years in the State Penitentiary.

Joseph D. Berna, Foreman."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that the *samd* was contrary to the law and the evidence, which motion the Court takes time to consider.

And the prisoner is remanded to jail.

ENTER: 5-22-65
R. T. EDWARDS, Judge

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page 18]

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This day again came the Attorney for the Commonwealth and Willard C. Jordan, who stands convicted of a felony, to-wit: grand larceny, was again led to the bar in the custody of the jailor of this court and came also Murray A. Stoller, attorney for the accused.

Thereupon the Court having maturely considered the motion of the defendant of May 22, 1965 to set aside the verdict of the jury rendered in this case on said date, and having heard the argument of counsel on said motion, overruled said motion, and the defendant, by counsel, excepted.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this court that the said Willard C. Jordon be

and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of seven (7) years, the period by the jury ascertained as aforesaid and that the Commonwealth of Virginia do recover against the said Willard C. Jordan its costs by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the prisoner be removed and safely conveyed according to law from the jail of this court to the said penitentiary, herein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit for the time spent in jail awaiting trial. The court certifies that at all times during the trial of this case the accused was personally present.

page 19] Thereupon the defendant, by counsel, moved the Court to set a suspending bond and fix a stay of execution of the above judgment for a period of sixty (60) days, which motion the Court takes time to consider.

And the prisoner is remanded to jail.

ENTER: 5-27-65
R. T. EDWARDS, Judge

page 20]

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IN THE HUSTINGS COURT OF THE CITY OF ROANOKE
ON JUNE 16, 1965

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This day came the defendant in the foregoing case and the court having questioned the defendant to ascertain if he was represented by counsel or if he was financially able to employ counsel for his defense, and the defendant stated under oath that he was financially unable to employ counsel for his defense, and by oral and written request, requested the court to appoint counsel for his defense. It is therefore ORDERED that Murray A. Stoller be appointed to prosecute an appeal to the Supreme Court of Appeals for the defendant, Willard C. Jordan.

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page 21] COMMONWEALTH OF VIRGINIA
REQUEST FOR COURT APPOINTED
COUNSEL

In the Hustings Court of the (City) of Roanoke, Va., Commonwealth of Virginia
v.
Willard C. Jordan

I, Willard C. Jordan, have been advised by Richard T. Edwards, Judge of the Hustings Court for the (City) of Roanoke, Va., of my rights to representation by counsel in an appeal of case #33675 to the Supreme Court I certify that I am without means to employ counsel of my own choosing and I hereby request this court to appoint counsel for me.

Given under my hand this 16th day of June, 1965.

Willard C. Jordon

Subscribed and sworn to before me in open court in the (City) of Roanoke, Va. this 16th day of June, 1965.

RICHARD T. EDWARDS
Judge of the Hustings Court
of the (City)
of Roanoke, Va.

MURRAY A. STOLLER
Court Appointed Counsel

page 22]

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IN THE HUSTINGS COURT OF THE CITY OF
ROANOKE ON JUNE 21, 1965

★ ★ ★ ★ ★

This day again came the Attorney for the Commonwealth of Virginia and Willie C. Jordan, by his attorney, and thereupon the Court having maturely considered this motion of the defendant of May 27, 1965 to set a suspending bond and stay

of execution, doth set said suspending bond in the penalty of $10,000.00 with approved security staying execution of the sentence rendered in this case for a period of 60 days from May 27, 1965 said bond to be executed within 5 days from this date.

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page 23]

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Received and Filed
June 24, 1965
Patsy Testerman, Deputy Clerk

NOTICE OF APPEAL
NO.

In accordance with Rules of Court, Rule 5:1, Section 4, the said defendant gives NOTICE OF APPEAL and files the same.

Respectfully,
WILLARD C. JORDAN
By Counsel

MURRAY A. STOLLER
709 Colonial Bank Building
Roanoke, Virginia

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page 24]

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AFFIDAVIT

I, Willard C. Jordan, hereby make affidavit that I intend to seek an appeal in the case in which I have been convicted, and that I am financially unable to pay the costs thereof or to bear the expense of a copy of the transcript of the evidence for an appeal, and I request the trial court to order the evi-

dence transcribed for such appeal. Witness my hand this 24th day of June, 1965.

WILLARD C. JORDAN (SEAL)

Willard C. Jordan, being first duly sworn, appeared before me and made oath that the above affidavit is true. In witness whereof I subscribe my name the day and year first above written.

MURRAY A. STOLLER,
Commissioner in Chancery of
the Hustings Court of the
City of Roanoke

Received & Filed
Filed 6-28-65
R. F. FINNELL, Deputy Clerk

page 25]

★ ★ ★ ★ ★

On motion of Murray A. Stoller, he being the attorney appointed by the Court in the above felony case wherein the defendant has been convicted, it appearing to the Court from the affidavit for the defendant and other evidence that the defendant intends to seek an appeal and is financially unable to pay suit costs or to bear the expense of a copy of the transcript of the evidence for an appeal, it is Ordered that the evidence in this case be transcribed for such appeal, under the provisions of Section 17-30.1 of the Code of Virginia.

The Court doth further find that the defendant has made oath that he is financially unable to pay his attorney's fees, costs and expenses incident to an appeal and it is, therefore, certified that he is financially unable to pay his attorneys' fees, costs and expenses incident to an appeal (Code Section 17-30.2.)

Enter June 25, 1965
RTE, Judge

page 26]

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Received Jul 23 1965 and filed
PATSY TESTERMAN, Deputy Clerk

ASSIGNMENTS OF ERROR BY APPELLANT
No. 33675

IN ACCORDANCE with Rules of Court, Rule 5:1, Section 4, the said defendant files his ASSIGNMENTS OF ERROR.

1. The arrest of the defendant in this case was an illegal arrest, made without a warrant, unlawful at the moment it was made, and could not be made lawful thereafter by anything that happened which might seem to make it lawful.

2. The Trial Court erred in refusing to suppress the evidence obtained by such unlawful arrest.

3. The arrest in this case was illegal because made without probable cause.

4. The search and seizure in this case was illegal because based on an illegal arrest.

5. The detention of the defendant in this case was illegal because based on charges for which there was no legal foundation: "vagrancy" and "hold for investigation."

6. The defendant in this case was unlawfully questioned because he was not advised of his right to counsel.

7. Witness Edwards was improperly qualified as an expert.

8. The Trial Court improperly failed to strike the evidence of the Commonwealth on the grounds that the Commonwealth had failed to make out a *prima facie* case. The Commonwealth's case depended mainly on the testimony of two "expert witnesses." One of them exonerated the defendant from complicity in having broken one of the two safes broken into, the other witness exonerated the defendant from complicity in having broken into the other safe. Further, the Commonwealth's evidence was inherently incredible; coinage of the amount claimed stolen weighs hundreds of pounds; none of it was found on or connected to the defendant.

page 27] Further, the case of the Commonwealth was based on an illegal arrest and illegal search and seizure and was therefore in violation of the Constitution of the United States and the decisions construing the same. Further, there was no evidence of any particular amount of

money having been taken away. Further, it was admitted by the principal police officer, Hamblett, that not only did sufficient time elapse for someone else other than the defendant to break and enter the premises in question but such actually seems to have occurred. He testified (contradicted by officer Bowling) that he checked the Macke property and found no break-in; an hour or more later, he re-checked and found a break-in.

9. The Trial Court erred in granting Instruction I, because there was no evidence from which the jury could find beyond a reasonable doubt that the defendant actually broke and entered the building.

10. The Court erred in granting Instruction II, because it singled out a particular portion of the evidence, was an improper finding instruction without both views of the evidence, and would have required the defendant to testify against himself.

11. The Court erred in failing to grant Instruction E, which was necessary to properly instruct the jury on the weight to be given to circumstantial evidence.

12. The Court erred in failing to set aside the verdict in this case which convicted the defendant of grand larceny, on which there had been no instruction or evidence. Further, the jury was not instructed on the elements of grand larceny. Further, the jury was not instructed on the lesser offense of petit larceny.

13. Defendant's rights were infringed when he was kept in jail under prohibitive bond.

14. The Trial Court erred in failing to set aside the verdict of the jury as contrary to the law and evidence.

page 28] Respectfully,

WILLARD C. JORDAN
By Counsel

MURRAY A. STOLLER
709 Colonial Bank Building
Roanoke, Virginia

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page 30]

* * * * *

TRANSCRIPT OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED before the Honorable Richard T. Edwards, Judge, in the Hustings Court of the City of Roanoke, Virginia, on the 21st, 22nd and 27th days of May, 1965 at the trial in the above-styled case.

Appearances: LEROY MORAN
Attorney for the Commonwealth

MURRAY A. STOLLER
Attorney for the Defendant

* * * * *

page 1] A jury of twelve persons was impaneled and duly sworn.

The Indictment was read to the defendant Willard C. Jordon, to which the defendant pleaded not guilty.

(Opening statements were made by:

Mr. Moran for the Commonwealth
Mr. Murray A. Stoller for the Defendant.)

The Court: All right call your first witness.
Mr. Moran: I call Everett Hamblett.

EVERETT HAMBLETT,

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

DIRECT EXAMINATION

By Mr. Moran:
Q. State your full name for the record please Mr. Hamblett.
A. Everett B. Hamblett.
Q. Where do you live Mr. Hamblett?

Everett Hamblett

A. 431 Bonhill Drive, N. W.

Q. Mr. Hamblett you are on the Police Force for the City of Roanoke?

A. Yes sir.

Q. How long have you been on it?

A. Seventeen years.

page 2] Q. Mr. Hamblett, on March 13th, 1965, sometime real early in the morning, were you with Police Officer Bowling patrolling the — would it be the Northwest Section of the City?

A. Yes sir.

Q. In a police automobile?

A. Yes sir.

Q. And now was it part of your duty to check places of business, look around, check doors and etc.?

A. Yes sir.

Q. Were you in the vicinity of Shenandoah Avenue? Did you work on Shenandoah Avenue in the vicinity of Macke Machine Company?

A. Yes sir.

Q. Will you tell the Court and Jury please, whether or not you along with Mr. Bowling pulled your automobile into the parking lot of the closed bowling alley next to the Macke Machine Company up on the hill there off of Shenandoah Avenue?

A. Yes sir.

Q. Just tell the Court and Jury then in your own words what you first observed there — observed and what you did.

A. Officer Bowling and myself was headed west on Shenandoah Avenue — routine check as usual — we got to the bottom of the hill of shenandoah Avenue and 32-

page 3] 33 hundred block of Shenandoah we turned right on a street that leads up to Luckland — Starland Bowling Lane which has been closed and under Government supervision —

Q. Excuse me. Is there a no trespassing sign on this building?

A. Yes sir it's posted.

Q. All right sir.

A. And as we generally do when we turn up into this

place up there we cut our lights off just as we turn off Shenandoah Avenue. You get to the top of the hill — just before you get to the building there is a driveway turns into this Starland Bowling Lane. At the corner of this driveway is a pay by the month light on a pole there which burns at dusk and dawn and cuts off at dawn. When we came under this light, just as we got under this light, Officer Bowling stated to me "there is a subject running." I immediately put the car in second gear and I say, "He's broke in some where up here." I put the car in second gear and followed subject across the driveway which is, oh I would say a hundred yards across this driveway to the parking area. At the edge of it I jammed the brakes on and put the car in gear and jumped out and started running this subject across the field toward an old abandoned go-cart track. Around this go-cart track is about a six foot fence. Just before the subject got to the fence I fired one shot and he ran against the fence and the fence knocked him back and he jumped back and broke the fence.

page 4] Q. Did you fire in the air?

A. That's right at that time I *hollowed* at him twice or three times before he got to the fence and when he broke the fence I ran around the fence, although where he broke the fence there was a gate standing open. I ran around the fence to the right to try to head him off and he got about mid way o fthe go-cart *tract* and stopped. At that time I *ask* him to come on over to where I was at and he walked a few steps and stopped and hesitated and looked back toward this bowling alley —

Q. Now Mr. Hamblett how was he dressed? I'm not interested so much in the color of his clothes but what he had on.

A. He was bare headed at the time and he had a pair of cover-alls on, a pair of gray looking coveralls which was a small tweed. In other words the thread where its weaved was .... coveralls. He had on a pair of white—a pair of red, these red maroonish cotton gloves which sell for .39¢ in most Hardware.

Q. Now what was the weather conditions that night?

A. Well it was mild weather. It wasn't extremely cold. The wind was blowing a little bit.

Q. All right just go ahead.

Everett Hamblett

A. He came on over to the fence and hesitated on the side of the fence at the time I didn't know whether he wanted to come over the fence or I was going to have to go page 5] over and get him. Then he jumped the fence and when he did I hastily patted him down to see if he had no weapons of any kind on him.

Mr. Stoller: (Interposing) At this point I have a motion to make in chambers.

The Court: What is the nature of the motion?

Mr. Moran: Let me ask him did you make a search of him at that time?

Mr. Hamblett: No sir, just hastily patted him down to see if he had a gun or anything on his person. We went on back to the police car.

The Court: Just a minute Mr. Hamblett. What is your Motion Mr. Stoller?

Mr. Stoller: My opinion will be directed on certain points of law which I respectfully ask to taken up in chambers of the Court.

The Court: Why I will be delighted to hear you Mr. Stoller but this man is on direct examination, what phase of his testimony —

Mr. Stoller: He has now stated that he saw a man in the night time in a parking lot and that he chased him and fired a shot at him, the man has stopped; he has taken the man into custody, he has given the man an external search. At this time there is evidence of having come to this point I would respectfully move the Court for a discus- page 6] sion in chambers on further evidence from this witness.

The Court: Your question is directed to the matter of arrest and search and seizure?

Mr. Stoller: I shall state my position in chambers if your Honor please.

The Court: All right.

IN CHAMBERS

Mr. Stoller: If your Honor Please I move at this time in the nature of a motion to suppress further evidence of Officer Everett Hamblett on the grounds that the arrest in this case

as developed by the evidence in direct examination by the witness to this point and I hope is timely objected to by the defendant has already manifested itself as an illegal arrest made without a warrant, unlawful at the moment it was made and under the express principle of law that an arrest unlawful at the moment is made can not be made lawful thereafter by anything that happens which might seem to make it lawful. The basis of my motion is that it has been developed by cases which, whether or not we are in agreement with them, are the law of the land that this Officer can make an arrest without a warrant only when he believes on reasonable grounds that the person to be arrested has committed a felony. While the acts which the Officer has testified to may appear to us to be somewhat suspicious in view of what after developed is perfectly apparent. I would hope and I move to exclude because it

page 7] seems to be apparent that the Officer as he was *than* constituted not knowing of any acts constituting any offense — an offense not having been committed in his presence this detention and arrest was and is an arrest without a warrant unjustified by the law and I submit to the Court please, that it was not only unjustified by the new law which was derived under the case of *Mapp* against *Ohio* 367 United States 643, holding that in State as well as Federal Courts where evidence is obtained by illegal search and seizure it is inadmissible but is also unlawful arrest under the well settled law of our own Commonwealth of Virginia and I so move.

Mr. Moran: If your Honor please, I am not aware of the fact at this point that evidence shows that there has been an arrest. The Officer saw this man running and ran over there to attempt to find out what was going on, and he had not at this point said he placed him under arrest. The man stopped after he fired into the air, he didn't fire at him, he fired in the air, the man stopped and came over there. He was at this point — had not been placed under arrest so, I think that the motion is certainly premature at this point.

The Court: Motion is premature as to the evidence which has been submitted here so far. Now Mr. Stoller has further made a motion to suppress further evidence dealing with

this man's arrest. It is pretty difficult to rule on that until the evidence is heard, but I might say that he
page 8] of course is entitled to and will make timely objections as the evidence goes on but from what the Commonwealth Attorney has related I am not going to suppress the evidence.

Mr. Stoller: If your Honor please we will respectfully except to the Court's ruling in this matter.

IN THE COURT ROOM

The Court: Commonwealth Attorney will proceed to examine the witness.

By Mr. Moran: (Continuing to examine the witness)

Q. Mr. Hamblett, did you have any discussion with the defendant at that time?

A. Yes sir. I asked him why he was running. He said we excited him and he was puffing right much at the time, and I said it seemed like he was blowing right much and he said, "Yes I think you are in much better shape than I am." And I also told him I didn't think we scared people that bad. At that time we walked back to the police car. Back at the police car Officer Bowling stated to this subject he was under arrest and we shaked him down.

Q. Why was he arrested Mr. Hamblett?

A. Well he was on Government property.

Mr. Stoller: (Interposing) If your Honor please, I object to Mr. Hamblett answering that question. He stated that Mr. Bowling made the arrest.

The Court: Do you know of your own knowl-
page 9] edge why the arrest was made Mr. Hamblett?

The Witness: Yes sir, the reason for arresting him.

The Court: Objection overruled.

Mr. Stoller: If your Honor please, I wish the record to show an exception to the Court's ruling.

The Court: Exception made. Go ahead.

Everett Hamblett

The Witness: (Continuing)

A. We wanted to know why a fellow was out at that time of night on business property, and at that time we felt that we had grounds to charge this man with vagrancy check out, and as I stated before when we went up there — I stated to Officer Bowling that this subject had broke into a place or something or he wouldn't be running.

Q. Mr. Hamblett —

Mr. Stoller: If your Honor please, I object to the statement just made by the witness on the grounds that this constitutes opinion evidence in my opinion improper at this time and I move the Court to suppress it.

The Court: Gentlemen of the Jury you will disregard the last statement. The question only goes to the probable cause of the Officer making the arrest but you will disregard that last statement dealing with the guilt or innocence of the defendant on this charge.

Mr. Moran: (Continues examination)

Q. Mr. Hamblett did you ask the defendant any questions about where he was going or where he was from

page 10] or anything of that nature and if so tell the Court and Jury.

A. Yes sir, I asked this subject what his name was, where he was from, where he had been, and why he was in Roanoke. He stated that he had went to West Virginia a couple or three days before with a friend of his and was on his way back to Florida. I asked him how he got into Roanoke and he said he hitchhiked into Roanoke. I asked him how he got to Roanoke and he said a man and his wife had picked him up and let him out up the road about two miles. He couldn't tell me which way or where. He couldn't tell me the name of the people who brought him to Roanoke. I asked him where he was staying in Roanoke and he said I am staying at a Motor Court and I said where and he said up the road a couple of miles and the only Motor Court in that vicinity is Casa Loma Motor Court, which is outside the City Limits on the road to Salem. We placed him in the car and made a routine check of business places on Shenandoah Avenue West on to the City limits. I asked him if he had an

automobile and he said he had a 1955 Buick automobile. I asked him what kind of plates was on it and he said Florida plates. I asked him where the car as at and he said it was at this Motor Court. That give us reason to go to this Motor Court on Shenandoah Avenue. So we went up and checked this place and checked the used car lots and there was no Buick up there with Florida tags on it. I asked him what Motor Court he was staying at he said —

Q. Now approximately how far is this Motor
page 11] Court, the Casa Loma, from the building?

A. It is approximately two miles.

Q. Did he give you any reason why he was two miles from his motel?

A. No he didn't. I asked him why he was off the highway the distance he was and he said that it was necessary he had to go up there for physical purposes. Stated he was cold and was trying to find a place to sleep and I asked him where he lived and he said he lived in Florida. I asked him how long he had been in Roanoke and he said he had just got into Roanoke. He gave us his full name as Willard Clifton Jordon, white male, 28 and lived in Florida and he had identification papers on him to show that that was his name.

Q. All right now after he was placed under arrest was a search made of him?

A. Yes sir.

Q. What, if anything, did you find on him?

A. We searched him before we put him in the police car and found a similar tool — similar screw driver. As a matter of fact it was a screw driver that was in his right hip pocket and in his right jacket pocket he had one of these hoods that you see news boys wearing that covers over the face with just the face part of it cut out, and at the time of arrest he had on a pair of maroon or maroon cotton gloves. We brought the subject into the docket office, put him on the docket and questioned him further. At that
page 12] time he didn't have the gloves on. We did not remove the gloves from Jordon. I went back and checked the police car and he had stuffed this pair of gloves under the right front seat of the police car.

Everett Hamblett

Mr. Moran: Your Honor, may I interrupt the examination of this Officer to have one of the detectives to come in and get certain pieces of evidence out of here. They are all sealed up and then I will have him go back.

The Court: All right.

Mr. Moran: (Continues examination)

Q. Mr. Hamblett I will show you here two gloves and ask if you can identify them?

A. Yes sir.

Q. And why do you say you can identify them?

A. They have my initials on them.

Q. E. B. H.?

Mr. Stoller: (Interposing) Your Honor for the purpose of protecting the record in this matter I would like at this point to state the defendant's objection to any further testimony developed by Officer Everett Hamblett for the reasons stated to the Court without making the record too bulky with repeated exceptions.

The Court: All right.

Mr. Moran: (Continues examination)

Q. Mr. Hamblett you have identified these gloves. Now where did you first see them?

page 13] A. Where I first saw them?

Q. Where were they.

A. These gloves were on Clifton Jordon's hands.

Q. When you first saw them out in the field?

A. Yes sir.

Mr. Moran: I would like to mark these your Honor Commonwealth's Exhibit 1.

Received, marked and filed as Commonwealth's Exhibit No. 1.

Mr. Moran: (Continues examination)

Q. Mr. Hamblett I also have here what looks like a mask of some sort and ask if you can identify that?

A. Yes sir.

Q. Does that have your initial on it?

Everett Hamblett

A. Yes sir.
Q. Where did you see that Mr. Hamblett?
A. In the right jacket pocket of Jordon.
Q. Was any of this protruding?
A. Yes sir.

Mr. Moran: Your Honor, I would like to introduce this as Exhibit No. 2.
The Court: Mark it as Exhibit No. 2.

Received, marked and filed as Commonwealth's Exhibit No. 2.

By Mr. Moran: (Continues Examination)
Q. Now Mr. Hamblett, after you went to the Casa Loma Motel and drove around and did not find this
page 14] automobile the defendant said was there, what did you do?
A. Well we immediately come back down Shenandoah Avenue and checked the places on the back. In fact we checked every place from the City limits plumb back to Twenty-fourth Street. At the Vending Machine place we pulled up beside of it on the driveway side which — they have a fence, about an eight foot fence around this place it is difficult to check. Almost all the windows are on the back. They have these big doors and most of the time they have these trucks backed up —

The Court: Speak a little louder Mr. Hamblett.

The Witness: (Continuing)
A. Most of the time they have these big trucks backed up to the loading platform at these back doors.
Q. You are talking now about the Macke building aren't you?
A. Particularly right now yes sir. I pulled the car up there and got out. Officer Bowling stayed in the car with the subject. I checked all of the windows all the way around the south side, north west side, also checked the windows on the east side of Roanoke Linen. All windows was intact on both buildings at that time. The window that was gained

entrance was on the back. It was up over a cooler or air conditioning system which is on the back of the place and between the roof and the building was this metal runs across and on the west side of this building next to the loading platform is a —

page 15] Mr. Stoller: (Interposing) If your Honor please, sir I object to this line of evidence. It is apparent from what the Officer says that he is referring to things that he afterwards learned of by hearsay evidence, but if I understand Mr. Everett Hamblett correctly he is stating that he went around and found none of the windows were broken.

The Court: Let's ask him that. You are now relating what took place later? What you found later?

The Witness: That's right. In other words when I checked —

The Court: You didn't see —

Mr. Stoller: That's all right if your Honor please, I move all of that be stricken.

The Court: All right any reference to what may have been found later unless Mr. Hamblett saw it would be inadmissible.

The Witness: (Continuing)

A. We circled and checked windows and doors on every business place back to Twenty-fourth Street, then we brought the subject in and charged him with vagrancy and hold him for investigation.

Q. Now did you later return to the building that night?

A. Yes sir.

Q. And what did you learn when you returned to the Macke building?

page 16] A. We returned. We felt sure that this place had been broken into. We returned back the same route we went when we arrested Jordon, went in behind the bowling alley which is a driveway all the way around between it and the lot belonging to the Vending Machine Company—

Mr. Stoller: (Interposing) If your Honor please I object

to this return trip of the Officer as far as this defendant is concerned. It becomes objectionable and I move it be stricken on the grounds the defendant was not there, it is not connected with the arrest of the defendant.

The Court: You mean the testimony as to this Officer's return to the building?

Mr. Stoller: Yes sir.

The Court: Overruled.

Mr. Stoller: If the Court please I wish for the record to show our objection to the Court's ruling.

The Court Proceed.

The Witness: (Continuing)

A. We went back the same route we had taken when we arrested Mr. Jordon — circled in behind this building and stopped at the southwest corner of this building. I got out and walked over to the fence and walked down the fence to the corner where the gate goes into the drive. At this point there was tracks leading off the pavement in the page 17] dirt along this fence and evidence of where someone had climbed the fence and in doing so coming back over the fence had jumped and one knee had hit the ground in this dirt. I got back in the police car and drove north around between the building and this lot searching along the fence and in doing so I noticed an empty money bag laying inside the fence. At that time I stated to my fellow officer —

Mr. Stoller: (Interposing) I object to what he is going to tell us about his statement.

The Court: Mr. Hamblett you cannot testify as to what you said.

The Witness: (Continuing)

A. At that time I stopped the car and got out and reached through the fence and got the empty money bag and there was some change laying near the fence which was upon a — about a couple of feet up from the main driveway of this bowling alley. I looked down at my feet in the grass and there was a money bag containing approximately $40.00

or $50.00 in silver in it, and silver strowed from the fence plumb to the asphalt pavement. We picked the money up which was approximately $40. or $50. dollars in change.

Q. Now Mr. Hamblett this fence you are describing, as the Jury hasn't been over there, is it the fence that runs between Starland Bowling Alley and Macke Machine Co.

page 18] A. Yes sir. In other words it belongs to Macke Vending Machine.

The Court: Let me get one thing straight before you go any further. What connection is there if any between V. C. S. Vending Corporation and Macke?

Mr. Moran: The same thing.

The Witness: (Continuing)

A. The same concern.

Q. Now approximately how far from the window that was forced open was this money found laying near the fence?

A. Approximately fifty yards.

Q. All right now after you discovered the money what did you do?

A. Well as soon as I saw the bag on the pavement we radioed the police department and tried to contact the owner of this company.

Q. And were you there when the owner arrived?

A. Yes sir.

Q. Tell the Court and Jury then what you observed after the owner arrived?

A. The owner arrived and at that time he went around and unlocked the front door and we went in. You go into a reception portion of the building then through a door into the office.

page 19] Mr. Stoller: (Interposing) Your Honor I think if the owner is a witness he certainly is the best evidence of this and I object to this.

The Court: It is merely a description of the building. If the owner can describe it better it is up to the Commonwealth

Attorney to put him on but it isn't objectional for that reason. Go ahead.

The Witness: (Continuing)

A. When you go in the front of the building you have a reception room, just a small place, *than* you go through a door into the main office building. At the time you walk into the main office building you turn into a door at the right which is a counting machine room. In other words, they had one money counting machine on a table there and a big wall safe. The wall safe was approximately five and a half foot tall and approximately thirty to forty inches wide with two doors which close in this manner on the inside of this safe you have another set of doors which is a thin set of doors which close and lock and you shut these two big wall safe doors and fix the front doors and pull them to. Those doors were laying on the floor completely demolished, some silver thrown around in the room adjoining it on the floor and a big silver can was there.

The Court: A silver can.

The Witness: (Continuing)

page 20] A. Aluminum can — carrying can and box of tools, which I understand belonged to the Company and papers out of the safe was strowed on the floor under the debris. We came out of there and I asked the gentleman if he had another safe.

Mr. Stoller: (Interposing) I object to what he asked.

The Court: Objection sustained. Don't testify to what somebody else told you Mr. Hamblett.

Mr. Moran: (Continuing examination)

Q. Just tell, Mr. Hamblett, what you observed.

A. We came back out of this office and went directly across the office that we had come into out of the reception room and went straight across that office and turned right and went in a door and another safe approximately the same size, although it wasn't in the wall, was laying flat on its back with

Everett Hamblett

the doors in the same manner.

Q. Was this a smaller safe than the other one?

A. A little smaller not too much smaller.

Q. Was this also a large safe?

A. Yes, sir.

Q. All right now were there any other drawers or anything broken into that you could observe?

A. One other drawer that we observed — was one drawer — one of the mechanic's — one of the mechanic's used. He kept his tools he used in working on the machines. The lock had been prized off the drawer there.

page 21] Q. Now did you notice any walls or doors or windows or anything out and if so explain *that* you saw?

A. Yes, sir. After we found the safe we went out into a hallway a storage hallway that leads to the back platform and noticed a soft drink machine, which wasn't in operation, had been pushed away from the wall which is directly beside the door that comes in on the opposite side of the one we had immediately went into this first safe office. Just behind that it had a hole knocked in the back approximately twenty to twenty-five inches, in other words four or five cinder blocks had been knocked out. This door on this wall was a steel door which is locked with a key and the hole was knocked on the right of it in behind this machine. This machine had been pushed away from it. They went from there down to the two more doors which are steel doors which goes into the main storage room where they keep the cigarettes and so forth stored. They was locked with a key, and we went in there and noticed a big hole knocked in the cinder block wall — approximately four or five cinder blocks knocked out of that which went into the boiler room and looked around to our right and the back of the first wall that had been — that we located was a plywood storage room. This was more or less a filing room. They had shoved one piece of plywood from this wall in and went through this to knock a hole and come out into the main office building. They went from that to the

page 22] north side of the building and we found a window approximately twenty by twenty, a slide type window, the part at the top stays stationary, a small hole

knocked in that and a shelf similar to a drawer inside and foot prints on cases to indicate somebody had come through this window. On the outside to this window is a steel ladder stationary built on the side of the building to get upon this partition, which I believe has something to do with the air conditioning on the back or a cooler.

Q. Is this window very easy to see if you just walk around the building looking?

A. It is impossible for us to see it from where we have to check it.

Q. Mr. Hamblett, I did neglect to show something else here can you identify this tool?

A. Yes, sir.

Q. And where did that come from?

A. It come from the subject's right rear pocket.

Q. I would like to have it marked Exhibit No. 3.

The Court: Exhibit No. 3.

Received, filed and marked Commonwealth's Exhibit No. 3.

Mr. Moran: Take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. Mr. Hamblett did you put the gloves on on this man?

page 23] A. No sir.

Q. Do you know whether these gloves are his?

A. Beg pardon.

Q. Do you know whether these gloves are his?

A. No sir.

Q. Are you absolutely certain that these are the gloves you said you took from the defendant?

A. Yes sir.

Q. How are you certain?

A. They have my initials on them.

Q. Sir.

A. They have my intials on them.

Everett Hamblett

Q. Where is your initials? When did you put your initials on them?

A. At the time of arrest.

Q. Where did you put your initials on them?

A. In the detective bureau.

Q. Have you seen the gloves since the thirteenth of March?

A. No sir.

Q. This is rather a common type of gloves aren't they?

A. Yes sir.

Q. Well ———————— Now this article here likewise have you had possession of that article since the

page 24] 13th of March?

A. No sir.

Q. Have you ever identified it in any way by any mark?

A. Yes.

Q. You have?

A. My initial.

Q. Now when was the last time, before today, you saw this mask?

A. The thirteenth.

Q. This is a common type of ski mask or wind mask. Isn't it a manufactured article sold by anybody that sells dry goods?

A. I suppose so.

Q. Likewise with reference to the tool which the jurors are handling now. Have you had possession of that since the thirteenth of March?

A. Only the day it was tried down stairs?

Q. You mean the preliminary hearing down stairs?

A. Yes sir.

Q. Did you mark that tool?

A. Yes sir.

Q. Did it have any marks on it before you marked it?

A. Not as I know of.

Q. Well Mr. Hamblett, will you tell us — to begin at the beginning you and officer Bowling were on duty on the night of the 13th of March?

page 25] A. Yes sir.

Q. And you were making a routine check of business establishments in the northwest section of our City?

Everett Hamblett

A. Yes sir.

Q. And you drove up a driveway leading off from Shenandoah Avenue, Northwest?

A. Yes sir.

Q. Who was driving the police car?

A. I was.

Q. Now you have told us on direct examination that you switched the lights off or someone did, did you cut the lights off?

A. Yes sir.

Q. Is this the customary procedure?

A. Well we do it a lot of times on working midnight. Yes sir.

Q. Well what would be the reason for this?

A. Well checking these places for break-ins and anyone fooling around naturally if they see your lights coming up they are going to hide from you.

Q. Do you ever sometimes stop your vehicle turn the engine off and just goof off?

A. Beg your pardon.

Q. Do you ever sometimes stop your vehicle turn the engine off and just goof off?

Mr. Moran: (Interposing) I object to the question.

page 26] The Court: Mr. Stoller that is perfectly outrageous. The Jury will disregard not only the question but the intent of asking it.

Mr. Stoller: Do you sustain the objection then?

The Court: Yes sir.

Mr. Stoller: (Coninuing examination)

Q. Would it be uncommon to stop the vehicle there?

A. No sir.

Q. All right. Did you know whether there had been any report of any break ins that morning?

A. Beg your pardon.

Q. Did you know or had there been any break ins that morning?

A. That morning?

Everett Hamblett

Q. Yes sir.

A. Well I can't state whether there was any break ins that morning or not. I know that we had been having plenty of them.

Q. We have plenty of break ins in this City in the night-time don't we?

A. Yes sir.

Q. It's one of the most common parts of law breaking isn't it?

A. Yes sir.

page 27] Q. Very difficult to detect and to pin down on someone isn't it?

A. Sometimes, yes sir.

Q. Actually the recovery record in this in the detective and police department is very low isn't it?

Mr. Moran: (Interposing) I object to the question.

The Court: Objection sustained.

Mr. Stoller: (Continuing examination)

Q. Now I take it that your answer was that you knew of no break in that night?

A. I can't recall, no sir.

Q. Well then so when you saw this man as he crested the hill you simply saw a man in a parking lot?

A. I saw a man running in a parking lot.

Q. Saw a man running in a parking lot that's right, and you then — Did I understand you stopped your vehicle?

A. I pushed the vehicle in second gear and proceeded to follow this subject as far as I could go on the pavement.

Q. I see.

A. I put the car in gear pushed the emergency brake on and jumped out and proceeded to follow — to pursue him on foot.

Q. All right. Now you were at all times in radio contact?

A. After I left the car I wasn't in radio contact, no sir.

page 28] Q. You had been, until you left the car, in radio contact?

A. Yes sir.

Everett Hamblett

Q. There had been no break in reported to you?

A. As I stated before I don't recall.

Q. All right. You remember everything else very well about the 13th of March, 1965 don't you?

A. Repeat the question.

Q. Do you not remember anything else perfectly well about the events on the morning of March the 13th, 1965?

A. Yes sir.

Q. You don't remember that any break in had been reported?

A. No, sir.

Q. As a matter of fact is it true that no break in had been reported?

A. I can't state whether it was or not.

Q. All right. And you proceeded to fire a shot.

A. That's right.

Q. Now you testified that you fired in the air?

A. That's right.

Q. At which point did you fire the shot?

A. After I had hollered at him twice.

Q. Did he stop after you fired the shot?

A. No.

page 29] Q. When did he stop?

A. He didn't stop until he got nearly across the field.

Q. Do you know whether or not he had heard your shot?

A. I can't state that he did, but he should have.

Q. Now exactly where did you catch Mr. Jordon?

A. Well in feet and yards I can state only approximately Mr. Stoller. He was approximately — from where we had first saw him approximately a block.

Q. Now you have mentioned a no trespassing sign on the Starland Bowling Alley. Where is the no trespassing sign?

A. One on the front door of the one he ran by. I think there is also one on the south side on a door.

Q. Now that's affixed to the door of the building?

A. That's right.

Q. And that means does it not that no one is to trespass in that building?

A. It means that no one is *suppose* to trespass on this

property that's the way it reads, Government property $25.00 reward.

Q. Do you have a copy of what it reads?

A. No sir.

Q. Is it closed up in any way?

A. Yes sir.

Q. Well, the parking lot?

A. The parking lot, no sir.

page 30] Q. All right sir. Now you stated that you got this man, who later identified himself to you as Jordon, and put him in custody immediately out there in the field, is that correct?

A. No sir.

Q. You didn't?

A. No sir.

Q. What did you do?

A. I walked him back to the car.

Q. Well what do you call that?

A. I don't call it being in custody.

Q. After having him walk back from the field with you, before you did this you proceeded to give him a, you stated, a quick frisk?

A. That's right.

Q. We understand you then put your hands on the outside of his clothing to see if he had any weapons, which, of course if he proved to be a criminal, would endanger you?

A. That's right.

Q. All right. Now you took him back to the car and you yourself, I take it, never said to him "You are under arrest?"

A. I did not.

Q. You do remember quite plainly that you yourself never said to him that he was under arrest, is that correct?

page 31] A. I am most sure I didn't.

Q. And back there at the car you testified that in his presence and in your hearing Officer Bowling said to him "You are under arrest?"

A. That's right.

Q. All right. Now when did you search this man?

A. We further searched him at the car.

Everett Hamblett

Q. Now did he object to your searching him?

A. No sir.

Q. And you proceeded to ask him questions did you not?

A. Yes sir.

Q. At the car and he gave you his name, his address and told you what he was doing there, did he not?

A. Yes sir, he give us his name and his address at the time but we didn't know whether it was his name and address or not.

Q. Well, he had papers on him to show that was his name and address didn't he?

A. Well, we took his word for it. We didn't take the papers off of him until we got to the police department.

Q. And he told you that he was staying in a motel in the Roanoke area?

A. Yes sir.

page 32] Q. And that he had a 1955 *Riveria* Buick automobile?

A. He said a 1955 Buick.

Q. Well didn't it actually develop that he — Did you learn that he was staying in a motel in this City?

A. Yes sir.

Q. Did it develop afterwards that he did have a 1955 Buick automobile?

A. No sir.

Q. What model Buick automobile did he have?

A. I understand it was a '56 or '65.

Q. It was a Buick automobile?

A. That's what I understand. I don't know.

Q. Well did I just imagine that I heard you say that he said he had a *Riveria* or did you so state?

A. I stated he had stated that he had a '55 Buick with Florida tags on it.

Q. Your testimony will show, if this is recorded, if you used the word *Riveria*. Do you remember using the word *Riveria*?

A. No sir.

Q. All right. Now you and Mr. Bowling then proceeded, as I recall your evidence, to go toward the Casa Loma which is outside of the City limits on the Veteran's Road which is

what Shenandoah Avenue becomes west of the City limits.

page 33] A. Yes sir.

Q. You found Jordon not registered there?

A. Well we didn't check to see if he was registered. The only thing we done was check to see if he had an automobile up there like he stated.

Q. At the same time in coming back you checked all the establishments along Shenandoah Avenue?

A. Yes sir.

Q. And you specifically stopped at the Macke VCS Vending Machine Company, stopped your police car?

A. Yes sir.

Q. And you yourself personally got out and inspected this building for entrance — evidence of entrance?

A. Yes sir.

Q. You made as thorough an inspection of that building as you are capable of making didn't you?

A. Mr. Stoller, I checked the building as far as possible to check it, yes sir.

Q. Well that is what I said and you found no evidence at that time that that building had been entered, is that correct?

A. That's right sir.

Q. Well what time was this that you came up with this negative report but found no evidence so far as

page 34] you could see that the Macke or VCS building had been broken into?

A. Well we placed Mr. Jordon on the docket at 4:41 A.M. It would take us approximately ten minutes to drive back, so it was approximately five o'clock or five fifteen, because we called the man up there that owned the place and he came up approximately a half hour after he was placed under detention.

Q. So far as you know then it was thirty minutes later that you obtained entrance to the building yourself with the owner?

A. That's right. Approximately thirty minutes.

Q. Well could it have been any longer?

A. Well I said approximately thirty minutes.

Q. Well naturally you have to estimate these things. Could

it have been as much as an hour do you think?

A. Possibly.

Q. Was it day break?

A. It was close to day break, yes sir.

Q. Were you able to see without artificial light?

A. No sir.

Q. When you were admitted to the building you found extensive damage to the building?

A. Yes sir.

Q. You found two safes which had been, you said, torn apart?

page 35] A. Yes sir.

Q. You found evidence of a large quantity of coins which had been apparently taken?

A. Yes sir.

Q. Well isn't it a matter of common knowledge that metal money, silver coinage, copper, nickel, is bulky? It's heavy isn't this true?

A. Yes sir.

Q. Now the indictment in this case alleges the theft of thousands of dollars in coinage, this would weigh many hundreds of pounds wouldn't it?

A. Yes sir.

Q. And to tear apart these safes would require tools of great weight and size wouldn't it?

A. Not necessarily.

Q. Did you find any of the money on Mr. Willard C. Jordon?

A. He had a couple of dollars on him I think.

Q. Did you take this gentleman back up there with you when you went back up to the place?

A. No sir.

Q. When you detained Mr. Jordon and Mr. Bowling arrested him, did you know or did Mr. Bowling know that someone had in fact broken into the Macke VCS Vending Service Company?

page 36] A. No sir.

Q. Or any other place around there?

A. No sir.

Everett Hamblett

Q. When you arrested this man did you arrest him with a warrant?

A. Yes sir. On my charges, no sir.

Q. What charges did you make?

A. We charged him with vagrancy and held him for investigation.

Q. When did you make those charges?

A. He was told that when he was placed under arrest.

Q. In the car?

A. Yes sir.

Q. Did you know at that time if there was anything to investigate?

A. No sir.

Q. This man was fully clothed was he not?

A. Yes sir.

Q. He had on him identification to show his whereabouts did he not?

A. That we found out later when we got to the docket office, yes sir.

Q. He gave you his name, his occupation and destination of his whereabouts so far as he knew did he not?

page 37] A. Yes sir.

Q. He had money in his pocket, did he not?

A. He had a small amount, yes sir.

Q. Small amount of a couple of dollars. Is that begging or being a vagrant in an ordinary sense of the word?

A. Well, I would think so.

Q. Just suppose you had seen this man in the market area of our City in the nighttime would you have stopped him?

A. Probably.

Q. You would and on what basis?

A. When you work the midnight shift you check most everybody that's out after midnight.

Q. Then I take it it is your habit or custom to question everyone you meet who is not ordinarily known to you in the nighttime, when you are working what you call the midnight shift is that right?

A. Yes sir.

Q. You do?

A. Yes sir.

Q. Is that your procedure?
A. Yes sir.
Q. And it was in furtherance of this procedure that you stopped this man and detained him and searched him, is that correct?
A. Yes sir.

page 38] Mr. Stoller: I have no further questions of this witness at this time.

REDIRECT EXAMINATION

By Mr. Moran:
Q. Mr. Hamblett, getting back to the window when you made your first cursory trip around Luckland you said you didn't see anything. Did you look at this window?
A. You cannot see that window from the fence?
Q. So you did not look at this window when you were there?
A. There is no way to see this window.
Q. Now in answer to Mr. Stoller's question you said you did not know for a fact that a crime, a felony, had been committed. Did you have reason to believe that a felony had been committed?

Mr. Stoller: I object to this your Honor this is a legal question which we will take up at the proper time.
The Court: I am going to overrule the objection, I think he is entitled to ask him.
Mr. Stoller: I would respectfully like for the record to show an exception at this precise point.
The Court: All right, exception made.

Mr. Moran: (Continues examination)
Q. Did you have reason to believe that a felony
page 39] had been committed?
A. Yes sir, I felt sure.
Q. Did you think that this man had committed a felony?
A. Yes sir.
Q. Was that the reason he was arrested?
A. Yes sir.
Q. One of the reasons. All right sir. That's all I have.

Everett Hamblett

The Court: Let me ask you one question Mr. Hamblett. Macke occupies a tract of land consisting of two or three acres does it not?

A. I don't know how much land it is your Honor. I suppose it is approximately two or three acres.

The Court: It's about a hundred and fifty or two hundred feet from Shenandoah Avenue, the building?

A. Yes sir.

The Court: You say there is a driveway all the way around it?

A. No sir. There is a driveway comes from Shenandoah Avenue on the east side of the building and goes into the parking — they have a big parking lot behind it.

The Court: A big parking lot?

A. Also a garage where the *mechanic's* work on trucks back of the main office.

The Court: Now to the east of Macke is what?

A. Starland Bowling alley.

page 40] The Court: Now is that the one you say is surrounded by a fence?

A. No the fence is around Macke.

The Court: The fence is around Macke?

A. It runs between the Starland Bowling alley — there is a driveway goes — a paved driveway that goes all way around the Starland Bowling alley which you can drive between the Starland Bowling alley and the fence.

The Court: Now this fence what sort of fence is it?

A. It's about an eight foot chain fence with about four or five strands of overhanging barb wire on it.

The Court: What they used to call a cyclone fence is that it?

A. Yes sir.

The Court: Now when you pulled up you pulled up into the driveway of the Bowling Alley didn't you?

A. Yes sir.

The Court: Did you drive around the bowling alley?

A. No sir.

The Court: Now, when you walked over to the fence was there a hole in the fence of any kind?

A. Now are you talking about when the subject was picked

up or when we went back?

The Court: When you went back. When you went back to check the fence.

page 41] A. We drove around behind the bowling alley. At that time there was no hole in that fence, no sir.

The Court: Is there an opening in that fence anywhere?

A. No sir.

The Court: Where did you find the money?

A. The money — the money — One bag, empty bag, was laying on the inside of the fence on the Macke side with a small amount of change. The fence sets up about a two or three feet from the regular pavement to the bowling alley. In other words, it's a bank and at the bottom of the fence down on the ground on the same side as the bowling alley was a bag containing approximately $40.00 or $50.00 in silver and I understand they had taken it out of the machines that day, and also some silver was strowed from the fence to the black top asphalt driveway to this bowling alley which is approximately about four feet.

The Court: Well could you get under the fence?

A. Well, with help I suppose so.

The Court: All right, I just wanted to get clear on the geography.

Mr. Stoller: If the Court please I would like to resume my cross examination.

The Court: Go ahead Mr. Stoller I didn't mean to interrupt.

RE-CROSS EXAMINATION

By Mr. Stoller:

page 42] Q. I take it then Mr. Hamblett that the first time you checked this fence you found that the fence had not been tampered with, is that correct?

A. You mean earlier in the night?

Q. Yes sir.

A. Yes sir.

Q. So while you had Mr. Jordan in custody and you took him down town then some one tampered with that fence, is that correct?

A. I don't believe I stated that anybody tampered with the fence.

Everett Hamblett

Q. I believe you stated that the fence had been tampered with, did you not?

A. I did not.

Q. Well the record will show what you said but that's my recollection of it. Now while you had Mr. Jordon down town it is possible that someone could have broke into the Macke building, isn't it?

A. It is possible yes.

Q. All right.

RE-DIRECT EXAMINATION

By Mr. Moran:

Q. Well if I may just ask one more question in reference to this fence. Now it is a high fence, cyclone, with

page 43] strands of barb wire on the top of it?

A. Yes sir.

Q. Now at the bottom of the fence is there room enough to push small amounts of money underneath it? It is sitting up off the ground or is it right down on the ground?

A. It's setting right down against the ground.

Mr. Moran: All right sir, that's all.

The Court: Thank you Mr. Hamblett.

Mr. Moran: Do you want him to sit out here Mr. Stoller?

Mr. Stoller: I have no objection to his sitting out here as a spectator as long as he doesn't — I don't say this to offend anybody — as long as he doesn't coach any other witness, and I certainly in my question to Mr. Hamblett did not mean to insult Mr. Hamblett about the possibility of officers sometime stopping their police cars for personal reasons.

The Court: All right.

Mr. Stoller: He knows that.

Mr. Moran: Just for the record your Honor I just want to know where Mr. Stoller wants him. We will put him anywhere he wants us to. We will lock him up.

Mr. Stoller: Your Honor Please, this reference by Mr. Moran is not necessary, it's uncalled for.

Mr. Moran: Later on if there's any question about it where

does the defense Attorney want him to be. You
page 44] wanted us to separate —

Mr. Stoller: Well Mr. Moran, you have experience and are able in conducting your own case —

The Court: Mr. Hamblett do you want to go out there and sit in the front of the Court room and make yourself at home?

The Witness: Yes sir.

The Witness stands aside.

The Court: All right, let's go.

Mr. Moran: Mr. Nicely.

Mr. Stoller: Your Honor at this time before we proceed with the next witness I wish to have a conference in chambers with the Commonwealth Attorney and the Court and ask for a recess *atthis* time.

The Court: All right five minute recess. Come into the chambers.

IN CHAMBERS

The Court: All right Mr. Stoller what have you got to say?

Mr. Stoller: If your Honor please at this juncture the witness, Police Officer Everett Hamblett, has testified in ——— and in chief and has been subjected to cross examination. We now know at this point exactly what it is that the witness particularly testified to by way of direct personal subjective testimony at this time therefore I renew the motions I made
earlier in the trial when the witness had proceeded
page 45] just a little bit into his testimony, on the grounds
I stated at that time that it appears now from all the evidence of this witness by his explicit statement first that he did not make the arrest from a warrant and second, that he did not believe on reasonable grounds, I stress the word on reasonable grounds, that the person to be arrested had committed a felony, third, no misdemeanor had been committed in his presence and no breach of the peace was involved, fourth, he expressly stated that he did not then know of an act constituting an offense and that therefore what might later appear to justify suspicion or belief that

an offense had in fact been committed should not then justify at the earlier time of his arrest without a warrant and I renew my motions for the reasons stated and as I stated at this time for the four reasons now stated.

The Court: All right, motion overruled.

Mr. Stoller: May we have the record show that we excepted to this your Honor?

The Court: You may show that an exception was taken.

IN THE COURT ROOM

The Court: All right. We had better get going or we will never finish.

Mr. Moran: Judge we won't finish today I am afraid.

The Court: We will do it Saturday.

page 46] Mr. Moran: All right sir.

The Court: Take the stand Captain.

M. O. COCHRAN,

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

DIRECT EXAMINATION

By Mr. Moran:

Q. You are Captain M. O. Cochran with the Roanoke City Police?

A. That is correct sir.

Q. Mr. Cochran were you called out or were you working the night of this break in?

A. No sir, I didn't come in until Saturday morning sir.

Q. Well I beg your pardon, early that morning did you come into work?

A. I came to work around eight o'clock Saturday morning.

Q. All right sir, then at that time had the defendant Willard C. Jordon been charged with a violation of law? *was* that the custom?

A. Yes sir.

Q. Did you talk to him?

A. Yes sir, 9:30 a.m. on the morning of March the 13th.

Q. And where did you talk to him?

page 47] A. I talked to him in the Detective Bureau of the Roanoke Police Department.

Q. Was anyone present when you talked to him?

A. No sir I believe I talked with him by myself, sir.

Q. Now before you did talk to him what if anything did you say to him in reference to whether or not he had to talk?

A. Well I advised him of his rights. Told him that I was Murray O. Cochran, Captain of Police at the Roanoke Police Department — That I wanted him to talk with me regarding the Macke Vending Company break in; that he didn't have to talk with me unless he wanted to and that anything he told me could be used against him in the Court, and at this time —

Mr. Stoller: (Interposing) If your Honor please I would like in order to qualify any statements believed —

The Court: All right.

Mr. Stoller: *in* this contrast to dissipate some question which ordinarily would be reserved for cross examination if the Commonwealth Attorney will consent.

The Court: All right you may proceed to examine him on the question of the statement, any statement he made.

Questioned By Mr. Stoller:

Q. Regarding any statements made I only have one question Captain Cochran. Did you advise him of his right to counsel? To the right of legal counsel?

page 48] A. I don't believe I advised him of his right to counsel, no sir. I advised him that he didn't have to talk with me at all and anything that he told me could be used in Court against him, either for or against him and he told me that he was aware of this and actually didn't do a whole lot of talking with me. Anyway Mr. Stoller, I don't think — he didn't make a whole lot of statements to me. As far as that's concerned he told me that —

Mr. Stoller: You never did advise him of his rights to legal counsel?

A. I didn't tell him that — I am not sure that I did — I will put it that way. Anyway I couldn't remember for sure whether

M. O. Cochran

I advised him he had a right to call an attorney or not.

Q. It is not part of your ordinary operating procedure so that you don't ordinarily actually advise folks of this right do you? Do you always advise them that they have a right not to answer?

A. Well I have to talk to him.

The Court: Well let's confine our questions to what he did at this particular time. Let's don't go into any other cases. What did you do this time?

Mr. Stoller: (Continuing examination)

Q. So far as you know then, you did not advise him of his rights to counsel?

page 49] A. I could not remember specifically doing so, no sir.

Q. Now while you were —

A. I did not.

Mr. Stoller: While you have already stated then that he didn't tell you very much of anything for the protection of my client and the record in this case I move that any answers he may have given you based of course on the grounds that you did not advise this defendant of his right to counsel and I ask the ruling of the Court on this point.

The Court: Overruled. Proceed with the questioning.

Mr. Stoller: I ask the record show the overruling at this point.

The Court: Exception noted.

DIRECT EXAMINATION CONTINUED

By Mr. Moran:

Q. All right Captain Cochran, did you ask him any questions in relation to where he was from, where he lived and so forth?

A. He started off by telling me that he was not going to admit any participation in any burglary and that as a matter of purpose that if he had participated he would not implicate anyone else then the rest of the questions were pretty much—

he said he was married had two children ages five years and seven months, that he had left Florida two days
page 50] prior to this and he refused to tell me from manner of trouble he left. Then I went on to some other things that I don't believe would be proper here and I tried to determine where he lived and he told me that he was from Florida. Let's see, La Belle, Florida and that his address was General Delivery, La Belle, Florida; that he worked with his father in law, a Mr. E. C. Owens in the Glenmicra Garage. I immediately called — I returned him to jail, and then I called the La Belle Police Department.

Mr. Stoller: (Interposing) I object to what you did at this point.

The Court: Objection sustained.

Mr. Moran: (Continuing examination)

Q. You did call La Belle, Florida?

A. That's correct.

Q. Now did you ask him — There has been introduced into evidence Exhibit No. 3, which is a tool. Did you ask him any questions relative to that?

A. I did, sir.

Q. And what if anything did he say?

A. I ask him how he happened to have this on his person when arrested, and he told me that he picked it up near where he was arrested just prior to being arrested by the Officers.

Q. All right sir. Take the witness.

page 51] CROSS EXAMINATION

By Mr. Stoller:

Q. Captain Cochran, may I see the statement from which you have been reading?

A. It's no statement as far as I'm concerned. It simply is a notation of the time and so forth that I — I have no objection unless the Commonwealth does.

Mr. Moran: (Interposing) I have no objection.

Carlos R. Nicely

The Witness: (Continuing)

A. This is simply to remind me of times and who I talked with in Florida, and this and that and the other, which of course is not admissible as evidence anyway. I believe it is admissible that I finally determined that he was not from La Belle that he was from Jacksonville, Florida. We did determine that he was from Jacksonville, Florida from the third phone call.

Mr. Stoller: If your Honor please I have to stick with my brother here that that is not admissible.

The Court: Yes *disregardthe* last statement made based on hearsay.

Mr. Stoller: Will the Court instruct the jury what Mr. Cochran said about living or not living in La Belle is to be expressly disregarded?

The Court: The Jury is instructed to *diregard* any statement that he didn't live in La Belle or did live in
page 52] La Belle or Jacksonville, is to be wholly disregarded by the Jury.

Mr. Stoller: I have no further questions of Captain Cochran.

Mr. Moran: Your Honor would that include the remark that the defendant made to Captain?

The Court: The statement that the defendant made will be simply an admission of the party of anything that might have taken place relative to what he said.

Mr. Moran: I would like for the record to show then your Honor that Counsel for the defendant requested permission to look at the notes from which Captain Cochran was reading and that he did read the notes.

The Court: All right the record will so show.

Mr. Moran: Thank you.

The Witness: Your Honor may I be excused?

The Court: Yes sir. Do either one of you have any objection.

Mr. Moran: Carlos R. Nicely.

CARLOS R. NICELY,

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

Carlos R. Nicely

DIRECT EXAMINATION

By Mr. Moran:

Q. State your name please.

A. Carlos R. Nicely.

page 53] Q. Mr. Nicely where do you work?

A. Macke VCS.

Q. Wait just a minute. Take the gum out of your mouth so that right where you are those two microphones can pick up your words but speak so that I can hear you then everybody can hear you.

A. Carlos R. Nicely.

The Court: Go ahead Mr. Moran.

Mr. Moran: (Continues examination)

Q. Mr. Nicely, is the Macke Vending Machine, the Macke VCS Vending Corporation I believe is the proper name, is that located within the City limits?

A. Yes sir.

Q. And you are employed there?

A. Yes sir.

Q. And what do you do?

A. Mechanic.

Q. Just briefly what does this consist of what are your duties?

A. Any maintenance work on the machines that break down.

Q. Mr. Nicely here is a tool which has been introduced into evidence as Commonwealth's Exhibit No. 3. Can you tell the Court and Jury what kind of tool this is?

page 54] A. This is a Wittenburg Sandwich Machine wrench.

The Court: You will have to speak up. A what? Wittenburg?

The Witness: (Continuing)

A. Wittenburg. Yes sir.

The Court: Sandwich Machine.

The Witness: Yes sir.

The Court: All right.

Carlos R. Nicely

The Witness: (Continues answering)

A. It's used to adjust springs on the shelf to rotate them.

Q. Have you ever seen this tool before?

A. Yes sir. I had this tool in my locker locked up.

Q. Now where is your locker located?

A. It's in the west end of the building.

Q. Do you know when the place was broken into?

A. The place was broke in on Friday night. I work in Covington on Friday and I locked my bench up on Thursday evening before I left.

Q. And was that in the bench?

A. Yes—I did—and a screw driver was the only two tools that was in it.

Q. And you were out of town on Friday?

A. Sir.

Q. And you were out of town on Friday?

A. Yes sir.

page 55] The Court: Friday what night of March. What Friday is this?

Mr. Stoller: Friday March the 12th Your Honor.

Mr. Moran: (Continues examination)

Q. Now did you later on Saturday, or later, did you check your drawer where this had been placed? In other words after the break in, did you check your drawer?

A. I was called early that morning that the place had been broke in, and they found a black handle screw driver and they had it at the police department and for me to come down and this is what it was.

Q. Was your drawer —

A. The lock was broke off yes sir — standing open.

Mr. Moran: All right take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. Mr. Nicely you stated that you had a work bench. Where in the building is that located Mr. Nicely?

A. At the west end of the building.

Carlos R. Nicely

Q. Is this in the same building that they have the cigarettes stored?

A. No sir.

Q. And you saw this Whittenburg tool on Saturday the 13th of March, it was shown to you by the police is that correct?

A. Yes sir.

page 56] Q. Previous to this it had been in your work bench?

A. Yes sir.

Q. Do you use it every day?

A. No sir, I don't.

Q. Do you carry it with you all the time?

A. I carry it with me, only when I go to Covington I don't need it up there.

Q. When do you go to Covington?

A. Monday's and Friday's every week.

Q. Did you take it with you on Monday preceding March the 13th?

A. No sir.

Q. That would be Monday March the eight. Did you take it with you on Friday preceding the Friday before March the 13th? That would be Friday March the fifth.

A. I don't carry it to Covington with me.

Q. You don't take it to Covington at all?

A. No sir.

Q. Did you take it with you on March the 11th?

A. It is used in the shop. I never take it out of the shop.

Q. Can you remember actually whether or not you used it on March the 11th?

page 57] A. No sir, I can't tell you exactly the last time I used it but I do know I kept it in my bench locked up.

Q. Any idea when you might have last used it?

A. No, I couldn't give you the exact date when I last used it.

Q. Could it have been missing for a few days without your noticing it?

A. No sir, I don't think so.

Q. Now you definitely did see it—you say you last saw it

Carlos R. Nicely

on March the 11th which would be the Thursday preceding the Saturday that there was a break in at Macke. Is that right?

A. Yes sir.

Q. And it was in your work bench and this work bench was locked?

A. Right.

Q. If it was in the work bench —

A. I'm sure it was in the work bench. A screw driver, this wrench and $3.00 in a box.

Q. You are telling us that if anyone of these three had been missing that you would have noticed it?

A. This and the screw driver. Yes I would have and the money the — the only three was left.

Q. Was the money missing when you—

A. No sir, it was not.

Q. Didn't it strike you a little unusual that the money was not missing?

page 58] A. Well the money was still in the box like I left it. But everything — the door was open like this and the money was sitting inside on the left side.

Q. Are you trying to tell us that the money was difficult to see?

A. It could have been, yes sir.

Q. Well, while you might suspicion or think you might have a pretty good idea, you don't know who took your Wittenburg tool out of there do you?

A. Who took it?

Q. That's right.

A. I figured it was took when it was broke in because nobody didn't break the lock up there I don't believe.

Q. You don't know whether you lost it or it was mislaid sometime before Thursday?

A. No sir, I don't think I lost it.

Q. But you don't really remember do you?

A. I remember it was in that box when I locked it, yes sir. I check the box when I lock it to see if I'm leaving any tools I might need in Covington.

Q. Now I don't mean to contradict you but I thought I understood you to answer the first time that you weren't sure

that it was there Thursday.

A. I said this — my screw driver was in it when I locked it, yes sir.

page 59] Q. All right now. It was sometime Thursday that you last saw the Wittenburg tool?

A. Thursday afternoon at five o'clock when I left.

Q. Now of course some time passed from five o'clock Thursday to five o'clock Saturday morning.

A. Yes sir.

Q. Thirty-six hours. Thank you Mr. Nicely.

The Court: If you don't need him he may go.

Mr. Stoller: I only have one more question Mr. Nicely. This Wittenburg tool now has on it an H. Did you put the H on it?

A. No, I didn't.

Q. It now has on it certain scratches down on the metal collar next to the wood, did you put those there?

A. No sir, I did not.

Q. Was it in any way identifiable to you from any other Whittenburg tool except from this rust?

A. This rust right here on the end see where it is battered. We use that for setting slug rejectors. You set it up and it goes down in the hollow part there where it's battered to keep from messing up the slug rejectors.

Q. This is a common tool used for this type of vending machine?

A. Yes sir.

Mr. Stoller: Thank you.

The Court: You may go Mr. Nicely.

page 60] The Witness: Thank you.

The Witness stands aside.

The Court: Next witness.

Mr. Moran: Officer Bowling.

W. L. BOWLING,

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

W. L. Bowling

DIRECT EXAMINATION

By Mr. Moran:

Q. You are Officer W. L. Bowling?

A. Yes sir.

Q. Mr. Bowling, how long have you been on the police force?

A. Twenty-three years.

Q. Were you with Mr. Hamblett when the defendant was apprehended?

A. I was.

Q. And where was he apprehended?

A. He was apprehended on the property of the United States Government which is the Starland Bowling Alley.

Q. And for what purpose did you and Mr. Hamblett go on to that property?

A. We went up on that property to check cars that had been parking on there.

page 61] Q. Now just tell the Court and Jury when you first saw the defendant?

A. We were going west on Shenandoah Avenue and we made a right hand turn up the hill into this property up there. There is a driveway that goes up in it. Just as we got on top of the knoll — there is a street light there, and we pulled the car in there. We had no lights on the police car. This subject went running West down beside the building and I said to Officer Hamblett, I said "look at that boy running." and he said "Yeah let's catch him he has broke into some building around here somewhere." We ran him down — we ran the car down the field as far as we could get it and Officer Hamblett jumped out and run the subject over in the field and apprehended him over there and brought him back to the police car where I was at.

Q. At that time was he under arrest when he brought him back to the car or did he —

A. I don't know whether Officer Hamblett told him he was under arrest, but when he was brought back to the car and when I put my hands on him to search him I told him he was under arrest, and I searched him and found this screw driver on him.

W. L. Bowling

Q. And what did you arrest him for Mr. Bowling?

A. I arrested him at that time for vagrancy.

page 62] Q. Had he committed any other offenses that you knew of?

A. Not at that present time, no sir.

Q. All right sir, take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. Mr. Bowling you said you all when up there to look for parked cars?

A. That's correct.

Q. Is the parking lot itself posted?

A. Yes sir, the Government posted a sign on it.

Q. Where is the government sign?

A. It's on the building — no trespassing Government property.

Q. It's on the front to the south side of the building or the north side isn't it?

A. If I'm not mistaken, I think it's on every door on the building.

Q. But there is no sign in the parking lot itself?

A. No sir.

Q. Now where did you actually see Willard C. Jordon? Where was he the first time you saw him?

page 63] A. When I *First* saw him he was at the southeast corner of the building. I saw him run down beside of the building.

Q. The building you speak of is the Starland Bowling Alley, it's a closed duck pin alley isn't it?

A. Yes that's correct, yes sir.

Q. Did you ever get out of your car?

A. Yes sir, I got out of the car. I was standing outside when Officer Hamblett brought him back.

Q. Did you or Officer Hamblett ever check to see whether or not the Starland had been broken into?

A. Yes sir, we checked it with him in the car with us.

Q. Had it been broken into?

A. No sir.

W. L. Bowling

Q. Did you arrest him with a warrant?

A. No sir.

Q. Did you actually know that any offense had been committed in that vicinity when you placed him under arrest?

A. When I seen him run I figured he had committed a felony of some sort there.

Q. Do you base this on his running?

A. Yes sir. When you see a man run when a police car pulls up he's bound to have committed some kind of felony.

Q. That's a matter of opinion. Did you or anyone shoot at this man?

page 64] A. Officer Hamblett shot one time, I don't know if he shot at the man or how. I didn't actually know he shot. I didn't even hear the gun go off.

Q. You didn't hear a gun go off?

A. No sir I didn't.

Q. Are you sure he shot?

A. I'm not sure. He said he did, that's all I know.

Q. Now when you checked the man did he have on him identification showing who he was?

A. Not at that time. He didn't show it to us at that time, no sir.

Q. Didn't he have with him identification showing that his name was Willard C. Jordon?

A. He did, yes sir.

Q. And he was from the State of Florida?

A. That's correct.

Q. And that he was a 28 year old white male?

A. Yes sir.

Q. Didn't he have a couple of dollars in cash?

A. I think he had two dollars and some change, or three dollars and some change, I wouldn't say exactly which it was.

Q. Well he wasn't out there begging was he?

A. I wouldn't know.

page 65] Q. Did you see anybody else around there?

A. No one else around there at that time of night.

Q. Did you know that any crime whatever had been committed there at the time that you placed him under arrest?

W. L. Bowling

A. No sir, I didn't know there had been a crime committed there. I figured there was some reason he was running from me.

Q. And your car being a standard police car was in direct radio contact with the police dispatcher at all times?

A. That's correct.

Q. You stay in operation and no report had been made to you?

A. No sir.

Q. Now after you arrested the man what did you do?

A. After I arrested him — I put him under arrest and put him in the back of the car and handcuffed him and we checked places and looked the buildings over up there. What he had been into — we didn't actually check the actual building that was entered — we didn't go round in behind it.

Q. Well wasn't there a careful search made of all the windows of the Macke Vending Machine Company?

A. Well later on there was, yes sir.

Q. Didn't Mr. Hamblett get out of the car and go look at all the windows to see and didn't he find them intact?

A. That was after the man was put under arrest and brought to headquarters.

page 66] Q. I know, but didn't he, before you all went down town after, well let's put it this way — did you all — what did the man tell you about where he was living?

A. I asked him where he was staying and he told me he had just come from West Virginia. I asked him how he got from West Virginia and he first said he hitchhiked with a man and woman, that they let him out about two miles up the road, and I went on a few minutes longer and I asked him how he got to West Virginia and he said he hitchhiked in a car, and I asked him where his car was and he told me it was at some Tourist Court up the road and the only Tourist Court up that road happens to be the Casa Loma and we drove up to the Casa Loma looking for his car and I asked him what kind of car it was and he told me it was a '55 Buick with Florida license on it. We found no car up there — a Buick with no Florida license on it.

Q. Then what did you do?

form for the route man and one form is kept in the counting room. I was able to take seven or eight of these cash collection tickets in numerical sequence and add them up and this would identify the amount that was definitely counted, not mentioning the amount of money that had not yet been counted.

Q. How much was definitely counted?

A. In excess of around thirty five hundred dollars

page 70] Q. And how did you base the eight thousand dollar differential?

A. A portion of this — we used an inventory settlement system in which the men are checked out with a certain amount of merchandise and we proved that out against what they had took in and immediately after the robbery the routemen took complete inventory. And in addition to that there is a certain amount of change — a fund that the men carry on them and this would in effect be the same amount all the time, about fourteen hundred dollars.

Q. You used a computation based on average inventory?

A. No not an average inventory, an actual inventory. It would be the actual amount that is checked out to the man and is signed for by him.

Q. Similar to the way you compute a fire loss when a building burns down isn't it. You try to determine what the contents were worth?

A. It would probably be the method we would use.

Q. And have you all made an insurance claim for this?

A. We made an insurance claim and we have already received our money from the insurance company.

Q. In the exact amount that you —

A. No not in the exact amount.

Q. Now you thought 85 per cent of this was in coinage?

page 71] A. Just a rough estimate.

Q. How long have you been in the Vending Machine Business?

A. Four years.

Q. This was based on your own experience?

A. My experience in this capacity as comptroller.

Phillip J. Aaron

Q. It could have been more could it not? The percentage could have been higher than 85 per cent?

A. It could be higher or could be lower.

Q. What would it be besides coins?

A. Well there is a certain amount of paper. For instance we have dollar changers out in the stations. The dollars are put into the changer and then the person who puts the money in receives coins back. These people wrap and bring the dollar bills in and they are exchanged for the money.

Q. What is the nature of this money *caunter* you tell us is missing?

A. I beg your pardon?

Q. You told us that a money counter C O U N T E R —

A. C A U N T E R. It's a brand coin counter with a double meter. It counts and sorts money coinage and breaks it down into denominations and it has two meters, one when you — where you can see it and one single meter which counts the money individually. So we have a method of double checking our count.

page 72] Q. How bulky is this piece of machinery?

A. Something about like that.

Q. The witness is indicating that it is in excess of a foot square if I can see your hands correctly.

A. That's right.

Q. Do you know how much it weighs?

A. No I don't.

Q. Did you ever try to lift it?

A. Yes I have.

Q. Is it more than you can safely carry?

A. Well it depends on the distance I have to carry it.

Q. Would you say the weight would be at least a hundred pounds?

A. No.

Q. Would you say it would weigh at least fifty pounds?

A. It wouldn't weigh more than fifty pounds.

Q. It's similar to counters kept in banking institutions which are used for speedy counting of coins isn't it?

A. Well I'm not familiar with the use of it in banks, we've never given —— until just recently. They may use it in banks or other models.

Phillip J. Aaron

Q. You take the unsorted money and put it in and this machine knows and sorts the money into denomina-
page 73] tions?

A. That's right.

Q. You know the weight of in excess of $9,000.00 in coins?

A. No I do not.

Q. You use these coins all of the time do you not?

A. We do. I don't handle the money myself. I really never moved a bag of money.

Q. As comptroller do you actually go into that part of it?

A. Only so far as security procedures.

Q. You can tell us by a kind of guess. It isn't that heavy is it?

A. Taken together it would be.

Q. It would be quite a few hundred pounds in weight would it not?

A. I'm sorry I can't estimate the amount of weight.

Q. It would also be quite bulky would it not?

A. Well individual bags probably run about, at the most, about this long. It would be about eight inches wide and maybe the depth of about six or seven inches.

Q. I take it in your checking system individual bags are checked in and the collector requires — the salesman his receipts are recorded and you don't then — what do you do with the contents of the bag? Put it in the safe for deposit?

A. Well you see the bag, the bagging men are directed to pour the bags in one machine until a certain
page 74.] amount of coinage is received in the machine then we cut it off and we put a seal on it and it is placed in a separate section for later deposit.

Q. What I am trying to get at is do you have personal knowledge of how much the actual amount of money, which you have computed has been taken, actual bulk in size and weight.

Mr. Moran: (Interposing) Your Honor I believe the question has already been *ask* and the witness has answered in the negative.

The Court: He is incapable of telling him, sure.

Phillip J. Aaron

Mr. Stoller: Sir.

The Court: He doesn't know. He testified he didn't know.

The Witness: (Continuing)

A. You see the problem a lot of times the Friday night deposits of the money is a lot heavier and the Friday night deposit is generally more than we do during the week. Of course, a lot of times the money would be in the safe on a number of different shelves.

Q. Who knows that the Friday night deposits are heavy?

A. Beg pardon?

Q. Who knows that Friday night deposits are heavy?

A. My assistant knows, operations manager, the cashier, armed service men that pick it up, director of operations and the President would know.

page 75] Q. In fact it is fairly commonly known among personnel at Macke that your Friday Collections are very heavy, is that not true?

A. Yes.

Q. When are your receipts collected by the firm that carries the money to the bank?

A. The collections are usually about one or two o'clock in the afternoon.

Q. Do you know of your own knowledge for a fact whether or not a collection was made on March 12th?

A. Yes I do because we never miss. In fact we have never been missed. We have a collection every single day without exception.

Q. And so then this amount that you think had been lost and which you submitted a claim for and your insurance paid it was estimated?

Mr. Moran: (Interposing) I object. Insurance has nothing to do with it.

The Court: Now gentlemen insurance has nothing to do with it. It was this man's money. What happened later is not our business.

Mr. Stoller: (continues examination)

Q. This amount lost, of which I omit any reference of the

objectionable type, was accumulated after two o'clock on Friday, March 2nd is that correct?

page 76] A. Yes sir.

Q. Did you actually count this money personally?

A. No.

Q. So then I think it fair to say you have no personal knowledge of the amount of the money. Is that correct?

A. No sir, I didn't count that money myself first hand but I have receipts of the wrappings verified by a cashier that was doing this counting.

Q. Stand aside, I have no further questions.

Mr. Moran: Thank you Mr. Aaron.

The Court: Thank you Mr. Aaron. You may go. I would like to ask Mr. Aaron one question. You didn't bring it out. Are you going to bring out about the bags later? Did anybody identify the bags found on the fence?

Mr. Moran: Judge, one reason I haven't gotten into it it's all packaged. I thought I would get to it in due course.

The Court: All right.

Mr. Moran: You will stay around won't you Mr. Aaron?

The Witness: Yes sir. Where do you want me to sit.

The Court: You may stay in here please, sir.

Mr. Moran: Lieutenant Huells.

ROBERT H. HUELLS,

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

page 77] DIRECT EXAMINATION

By Mr. Moran:

Q. State your name to the Court and the jury please.

A. Lieutenant Robert H. Huells.

Q. Lieutenant Huells, how long have you been on the police force?

A. Seventeen years.

Q. Mr. Huells when the defendant, Jordon, here was brought in on March the 13th were you on duty?

A. I was.

Robert H. Huells

Q. Did you remove from his person any clothing?
A. I did.
Q. Do you have notes or notations or do you remember?
A. I have a list of the stuff that we took off of him in the bag.
Q. I have here a pair of trousers and I ask if you can look at them and identify them?
A. Yes sir.
Q. Do they have your initials and date on them?
A. Yes sir.
Q. Was these trousers removed from this man?
A. Yes sir.
Q. I would like this marked Commonwealth's Exhibit No. 4.

Received, marked and filed as Commonwealth's Exhibit No. 4.

page 78] Q. Lieutenant Huells, I have here what is purported to be a pair of coveralls. Can you look at those and see if there is any marks on it and identify them?
A. Yes sir, these are the coveralls I took off of him.

Mr. Moran: *Q.* Mark this Exhibit No. 5.

Received, marked and filed as Commonwealth's Exhibit No. 5.

Q. Lieutenant Huells, I have here what looks like a shirt and is a shirt and ask if you can identify that?
A. This is the shirt we took off of him. My initials are right here.

Mr. Moran: Mark this Exhibit No. 6.
The Court: Exhibit No. 6.

Received, marked and filed as Commonwealth's Exhibit No. 6.

Q. This is an undershirt Lieutenant Huells can you identify that?

A. This is the undershirt we took off of him.

Mr. Moran: All right mark this Exhibit No. 7.

Received, marked and filed as Commonwealth's Exhibit No. 7.

Q. This is a jacket can you identify that?
A. This is the jacket we took off of him.

Mr. Moran: Mark this Exhibit No. 8.

Received, marked and filed as Commonwealth's Exhibit No. 8.

Q. Can you identify these shoes?
page 79] A. These are the shoes we took off of him.

Mr. Moran: Mark this Exhibit No. 9.

Received, marked and filed as Commonwealth's Exhibit No. 9.

Q. Can you identify this pair of socks?
A. These are the socks we took off of him.

Mr. Moran: Mark this Exhibit No. 10.

Received, marked and filed as Commonwealth's Exhibit No. 10.

Q. You don't remember the shorts?
A. No sir. Them shorts was insulated long underwear.
Q. Well see if you can identify them. See if they have your mark on them.
A. Down along the edge it is. He had a insulated shirt with a Sears label in it.
Q. Does it have your mark in it?
A. Yes sir, these are the same shorts.
Q. All right sir. Mark these Exhibit No. 11.

Received, marked and filed as Commonwealth's Exhibit No. 11.

A. I just said shorts and I thought they were insulated shorts.

Q. In other words Mr. Huells, you removed all of the clothes from the defendant at the detective bureau and do you recall who you turned them over to?

page 80] A. We removed his clothing marked it, placed it in a bag, sealed it and turned it over to Lieutenant Thomas as soon as he came on duty.

Mr. Moran: Take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Mr. Stoller: Is the Court going to recess at this time?

The Court: We will recess just as soon as we finish with this witness.

Mr. Moran: I didn't call out each one specifically but I am asking that each one be introduced in evidence and marked as they are being by the Clerk.

The Court: The Court will so mark them as he has been marking them for the last fifteen minutes.

Mr. Stoller: (Examination Continues)

Q. We would like to know what mark you are using, Lieutenant Huells.

A. I put my initials on them, the initials RHH.

Q. What did you use for this purpose?

A. I used a magic marker.

The Court: Mr. Stoller, how long are you going to take on cross examination?

Mr. Stoller: Well I don't know.

The Court: We could recess if you want to.

page 81] Mr. Stoller: I believe it would be better to recess.

The Court: All right Ladies and Gentlemen of the Jury

when we recess you are not to discuss this case with anyone. We will recess from now until two o'clock. Now those persons not in the chambers I don't know how long this case is going to take but if it would appear that we can finish around six we will finish, if it appears at five o'clock that it is going to take another couple of hours we will adjourn tonight and reconvene tomorrow morning at nine. Hope it will not inconvenience you all but it looks like that is the way we will have to do it. Recess for lunch, return at two o'clock.

AFTERNOON SESSION

The Court: All right Mr. Huells take the stand again.
Mr. Stoller: I have no questions of Mr. Huells.
The Court: Mr. Huells thank you very much. Stand aside.

The Witness stands aside.

Mr. Moran: Lieutenant H. A. Thomas.

H. A. THOMAS,
a witness called on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moran:
page 82] Q. Lieutenant H. A. Thomas.
A. Yes sir.
Q. Lieutenant Thomas did you have charge of the investigation of this break in at the Macke VCS Vending Corporation?
A. I did sir.
Q. What time did you come on duty that morning?
A. I was called at home at 6:30 on March 13th, 1965.
Q. And when you were called at home that was in reference to what?
A. A break in and safe job at Macke Vending Machine Company at 3369 Shenandoah Avenue, N.W.
Q. All right, did you come to the police department first or did you go to the scene?

H. A. Thomas

A. No sir, I went directly to the scene.

Q. Now approximately what time did you arrive there?

A. Six thirty.

Q. Lieutenant Thomas, did you go inside of the building?

A. Yes sir.

Q. Suppose you just tell the Court and Jury in your own words what you observed as far as any physical damages to the building were concerned?

A. I went inside the building and first thing you could see was two safes that had been bursted open, so
page 83] then I went around to the back to find the location of the entry at the rear of the building. There is a large out sized refrigerator with an old ladder beside it. We traced it up the side of this old ladder and found a real small window about eighteen inches square had been knocked out and that was the point of entry into the building.

Q. All right sir, when you — going into the window then what — well just describe any damages to the building inside.

A. After the entry to the building was gained they went through a wall, a cinder block wall, a hole approximately this large (indicating) into a furnace room, then there was another room over to the right of that that they had a stock room and it was covered with plywood. The plywood was pushed aside and another cinder block was *was* gone into that came into the hall that had a milk machine in it. The milk machine was pushed aside then they were into the hallway that led into the coin counting and sorting room.

Q. All right sir. Now did you observe the fence? There has been some testimony about a fence around the Company and in particular the portion of it that separates the Starland — Starland bowling Alley from the *Mackey* Company?

A. Yes sir.

Q. Can you describe to the Court and Jury the type of fence this is?

page 84] A. This is a fence aproximately eight or nine feet tall, a high fence, with barb wire on top of it and it sits upon a little bank about three feet high. The Starland has a driveway round back of it and this is next

door, sits on a bank and this bank is held in place by railroad ties placed along it and the fence sits right on top of that, right at the edge of it.

Q. Now with reference to the — let me — kill that question. Was there any money found around the edge of this fence?

A. Yes sir, there was two money bags found there and also some change was found at this — right at the fence, part of it on each side of the fence.

Q. So in reference to the money bags. Were they turned back to the Company?

A. They had been turned back to the Company when I arrived on the scene.

Q. All right, sir. Now with reference to the bottom of the fence. Just explain to the Court and Jury a little bit about the physical make-up of the fence.

A. This fence sits on it and it had been pushed and the wire had been stretched a little bit with pressure being put on it and right at this fence there were two two wheel dollies and three metal cans, silver cans, about this tall (indicating) and this big around (indicating) and this tall (indicating). The fence was real loose at this particular point and I picked up one of those cans and I could shove it in that

page 85] fence and it left an opening about like this (indicating) where you could slide down that bank.

Q. All right sir. Now the dollies that you described where did they come from?

A. They came from the inside of the building. They use them to haul freight around in the building.

Q. Just describe roughly what they look like.

A. There is two wheels on both the back and front, and it comes up where you pack freight on it to roll it from one location to another inside the building.

Q. There were two of them?

A. Yes sir.

Q. Was there any evidence of any automobile having been in that vicinity?

A. Yes sir, there was. Either a break had washed down off the bank or the driveway hadn't been filled all the way over to the bank. A car had been backed in at an angle right to this location and the tracks were still in the dirt but it

was not enough to get an impression but you could see the car track in the dirt.

Q. All right, now did you charge the defendant then that morning with the offense of statutory burglary?

A. Yes sir, I did.

Q. And did you later procure from the Macke Vending Machine Corporation certain specimens from the safes, you along with, I believe, Mr. Stanley?

page 86] A. Yes sir.

Q. What did you — what specimens did you get?

A. We had a supply of large —

Mr. Stoller: (Interposing) *You* Honor please, I think that this would not be the best evidence.

Mr. Moran: But he was with Mr. Stanley, they did it together was my understanding. I'm going to put Mr. Stanley on.

The Court: Do you have the specimens here in Court?

Mr. Moran: Yes sir.

The Court: All right.

Mr. Moran: (Continues examination)

Q. Mr. Thomas, suppose you reach over yonder I'm not sure which one is which. Lieutenant Thomas I have here —

Mr. Stoller: If your Honor please, I would like to state at this point that if unless Lieutenant Thomas personally obtained these alleged specimens I will object to the introduction of any testimony about them.

Mr. Moran: I understand he did. Would you like to ask him that question?

The Court: The evidence will bring it out. Let's proceed and see what the testimony is. If it's hearsay I will *I will* exclude it.

Mr. Moran: (Continues examination)

Q. Lieutenant Thomas these little boxes here are Items A B C D & E. Now can you identify these?

A. Yes sir.

page 87] Q. Go ahead and explain to the Court and Jury what they are.

A. I had a supply of large manila envelopes in the car. I went out to the car and got them and come back and I held them open while Stanley put these specimens in these envelopes and I had a stapling machine and I sealed them up. When I came to headquarters I kept all this stuff separated and I took it out and I would direct Cowan to write this on the box and I took the evidence out of the brown envelope and I put it in there and then sealed it up and washed my hands before I would touch the evidence in the next envelope.

Q. All right now for instance Item A, can you refer to the writing on it which you directed Lieutenant — Detective Stanley to write and tell the Court and Jury now what is in that?

A. This is a cinder block.

Q. Now what are you identifying?

A. This is Item C.

Q. Item C.

The Court: Item C.

The Witness: (Continues)

A. Part of it is torn off.

Q. Can you tell from what is written on there, from your recollection, what is in that particular box?

A. It is cinder block and concrete that was taken off of the floor and placed in an envelope and then later put page 88] in this sealed container.

Q. And was that sent to the F. B. I.?

A. Yes sir, it was in this container.

Mr. Stoller: (Interposing) It is at this point that I wish to make my objection. I don't understand that you personally did this, did you sir?

The Witness: I held the paper container while Stanley picked it up and put it in it. Then I put it in this and handed it sealed to Cowan.

The Court: That is Item C.?

Mr. Moran: Item C your Honor, perhaps I had better introduce these as I go along. Sergeant will you help me. Item C that will be — what is the next —

The Court: It would be No. 14.

H. A. Thomas

Item C Received, filed and marked as Commonwealth's Exhibit No. 14.

The Witness: This is cinder block and —
The Court: Referring to which item?
Mr. Moran: Item No. 2
The Witness: and my initials H. A. T. 3-13-65.
The Court: I thought they were A B C D & E. They are not are they?
Mr. Moran: Beg pardon?
The Court: I thought they were A B C D & E that's No. 2.
page 89] Mr. Moran: Well, this is the one I got out Judge but there is some more we run into —
The Court: All right No 2 is Exhibit No. 15, Go ahead.

The Witness: (Continuing)
A. This item two is samples of safe dust from the safe job at Macke Vending Machine located in the office on the west side of the building. Stanley and I secured this evidence and we had it marked laying on the tag and also our initials on the top of the container when I put it in there and sealed it up.
Mr. Moran: I would like to introduce that as Exhibit No. 15.

Received, filed and marked as Commonwealth's Exhibit No. 15.

The Witness: (Continuing)
A. Item No. 1 is safe dust samples taken from the safe located in the office building of Macke Vending Machine Company on Shenandoah Avenue. The safe No is 72089. Detective Stanley and I secured this and sealed it.

The Court: Exhibit No. 16.

Received, filed and marked as Commonwealth's Exhibit No. 16.

Mr. Moran: (Continues examination)
Q. Item No. 3.

H. A. Thomas

A. Item No. 3 is the same Macke Vending Machine Shenandoah Avenue sample of cinder blocks taken from the point of entry through a wall inside of the building. page 90] Stanley and myself secured this on the scene and later put it in this and sealed it.

Received, filed and marked as Commonwealth's Exhibit No. 17.

Q. Now that is what you actually participated in yourself?

A. That's right, sir.

Q. Now you testified that this was sealed and handed to Detective Cowan?

A. That is correct. And he in turn placed it in a box ready to be shipped.

Mr. Moran: Take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. Lieutenant Thomas ——————

A. Yes sir. These clothes were turned over to me by Lieutenant Huells.

The Court: Just have a seat Mr. Thomas it makes it difficult to record when you all move around too much.

Mr. Stoller: (Continues examination)

Q. What did you do with them?

A. The clothes were turned over to me by Lieutenant Huells and I directed Detective Cowan to wrap them separately and place them in a box that we had to be page 91] shipped to Washington, to the laboratory.

Q. You handled the clothes? All of them?

A. All of them was turned over to me and I turned them over to Cowan to be wrapped and put in a box and part of the time I seen him wrap them and part of them I was busy on this safe on the job and I did not see all of them. I turned them all over to him to be wrapped.

Q. Were these things sent to Washington in the same box

that the other evidence was sent?

A. They were all wrapped separately, placed in a box and sent in the same container to the laboratory.

Q. Did you personally mail them?

A. Cowan placed them in a box and mailed them.

Q. Now was all the evidence which is in these little, I guess you would say cream container type of paper box, I take it from your answer, was taken in your presence. Everyone of those the samples were taken in your presence is that correct?

A. Detective Stanley and I got the samples at the Company. The two of us got the samples — all of them. We were together, working together picking up the samples.

Q. And you had the bag and he did the pouring?

A. I held the bag and he put them in it.

Q. And you got those in the manila envelopes you tell us?

page 92] A. They are not a bag they are a large manila envelope about the size of this that can be sealed up. They were put in that and the top of it crimped over and then later on after we had transferred to headquarters we put them in these sealed containers.

Q. Is there any possibility that there is some mixture accidentally or otherwise?

A. Absolutely not. I paid particular attention to that and kept it from being mixed and when I would touch one I would go wash my hands before I put the other one in.

Q. Now is there any possibility that the clothing contaminated these samples?

A. Absolutely not. I kept them separated. They could not in any way.

Q. Well what sort of safe guards did you use?

A. We sealed all of this up before we started sealing the clothing. The clothes were in a large paper bag, before we started sealing them up.

Q. I notice you are referring to a case report to testify.

A. Yes sir, this is my case report. What I was referring to is right here — my investigation.

Mr. Moran: Your Honor I object to the Counsel for the defendant reading the whole report now. He can refer to

what Lieutenant is reading to refresh his memory
page 93] but that's a great long report. I don't suppose
there's anything in there that will do him any
good, but still I don't think *its* proper just to turn the police file over to him and let him look at the whole thing I think there ought to be some limitation on it.

The Court: Well I don't object to that so much as I do the delay. These things could have been gotten by *Subpoena Duces Tecum* before the trial, or examined by Court order, if he wanted to. I don't know why the delay.

Mr. Stoller: They were never offered to us your Honor.

The Court: All you had to do was ask for them.

Mr. Stoller: Your Honor, please that is not the usual reception one receives from the office of the Commonwealth Attorney.

The Court: Well that's the reception you get in the Court's office. Just come in and ask for it.

Mr. Stoller: Well I never have gotten one yet that I asked for, and under those circumstances I think that —

The Court: Well go ahead let's do it as quickly as we can.

Mr. Stoller continues questioning:

Q. You have so far testified only to what you exactly know of your own knowledge?

A. I didn't understand the question.

Q. My question was you so far have testified only to what you exactly know of your own knowledge?

A. That is correct.

page 94] Q. I have no further questions.

The Court: All right stand aside Mr. Thomas.

The Witness stands aside.

Mr. Moran: Mr. Stanley.

C. A. STANLEY,

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

DIRECT EXAMINATION

By Mr. Moran:

Q. Detective C. A. Stanley?

C. A. Stanley

A. Yes sir.

Q. Detective Stanley did you participate with Lieutenant Thomas and others in the investigation of the break in at Macke Vending Machine Company?

A. Yes sir.

Q. Did you take any pictures of the scene?

A. Yes sir.

Q. Do you want to see these?

Mr. Stoller: Yes I do.

Mr. Moran: Continues questioning.

Q. While he is looking at them. When did you take these pictures?

A. On the morning of March the 13th at approximately 6:00 o'clock A. M.

page 95] Q. Mr. Stanley, did you observe or take a look at the fence between Macke Machine Vending Company and the old closed Starlane Bowling Alley?

A. Yes sir.

Q. With reference to the bottom of the fence, just explain to the Court and the Jury the condition of the fence.

A. Well at the point where there was a two wheel cart and a couple of barrels — empty barrels setting there, this is a chain link fence, and at this one particular point the fence was loose where you could easily raise the fence up and shove anything under it between the fence and the bank itself, which was held up with cross ties. They were cross ties with about three foot space in between the fence and that wall made of cross ties.

Mr. Moran: Any objection to those photos Mr. Stoller?

Mr. Stoller: No if they correctly represent the premises I have no objection.

Mr. Moran: continues questioning.

Q. This will be exhibit Number 18. Mr. Stanley explain to the Court and Jury just what this photograph is. Just hold it up so they can see while you explain.

A. This is the safe that was on the floor in the office on

Q. Did you personally see all of this at each and every moment?

A. No sir.

page 99] Q. What part did you miss?

A. Well I could have missed small items that are not in every detail such as the typing part of it or things like that, but as far as the actual transfer of the evidence, yes sir, I did see it.

Q. And after you had assembled the units what if anything was done with it as far as you personally know?

A. Once it was transferred to Detective Cowan to be itemized on paper by description and so forth he taken it from there.

Q. You turned it over to Mr. Cowan?

A. Yes sir.

Q. You had no personal knowledge then of its whereabouts after that point?

A. No sir.

Q. Do each of those pictures represent an accurate portrayal of what you saw when you took the pictures?

A. Yes sir.

Q. Did you personally take the pictures?

A. Yes sir.

Q. Your Honor I have no further questions.

Mr. Moran: Thank you Mr. Stanley.

The Witness stands aside.

Mr. Moran: Mr. Cowan.

G. W. COWAN,

a witness called on behalf of the Commonwealth,

page 100] after being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moran:

Q. You are Detective G. W. Cowan?

A. Yes sir.

Q. Detective Cowan, did you participate in the processing

of some of this evidence that was sent to the Federal Bureau of Investigation?

A. Yes sir.

Q. On the desk here are Items A. B. C. & D. can you identify those, and if so give us a little criteria.

A. A. B. D. & E.

Q. A. B. D. & E.

A. Yes sir, Item A. —

Q. Now first for identification Mr. Finnell what is Item A?

Mr. Finnell: Item A. would be Number twelve.

A. Item A. on the letter that I sent along with this evidence is specimens of large two door safes located as the report indicated in the middle office of the Macke Vending Company.

Q. Now what did you get from the safe to place in these containers?

A. Paint specimens.

Q. Now how do you get paint specimens?

page 101] A. You use a screw driver and a knife to scrape it from the safe and put it in a envelope. It was brought back to detective bureau and shipped it out shortly thereafter.

Q. Did you do all of this by yourself?

A. Yes sir.

Q. Did you keep that separate from any clothing or anything?

A. The clothing I had shipped on an earlier date.

Q. This was shipped subsequently?

A. Yes sir.

Q. Go ahead. All right sir Item B.

Mr. Finnell: Item thirteen.

A. Item B. is also paint specimens from a second safe.

The Court: B?

A. Item B. paint specimens from the second safe which was burglarized in the Macke Vending Company. These paint

specimens were obtained in the same manner. They were scraped from the safe placed in an envelope and brought to the Detective Bureau and mailed the same day as the others.

Q. All right sir, Item D.

Mr. Finnell: Twenty three.

Q. Item D. twenty three.

The Court: Twenty three or twenty four?
Mr. Finnell: It would be twenty three.
The Court: Twenty three.

page 102] Mr. Moran: continues questioning

Q. Go ahead.

A. Item D. is paint specimens. A specimen taken from the window pane at the initial point of entry of the Macke Vending Company. This was scraped from the window facings by using a screw driver. These paint chips were placed in an envelope, brought to the detective bureau and packed and also shipped to the Federal Bureau of Investigation Laboratory.

Q. All right Item E. which would be Exhibit Number twenty four.

A. Item E. is paint specimens that were taken from the handle of a pair of rivet pliers that were used to pry open a work bench inside the Macke Vending Company. These paint specimens were scraped from the handle of the pliers and placed into an envelope and brought to the Detective Bureau and shipped in the same manner.

Q. Now did you actually, at the direction of Lieutenant Thomas, package these other items?

A. Yes sir.

Q. Now for instance, I just pick up Item D. This little cup, now in what way was this sealed?

A. That is the same container that it was sent in. It was sealed with a wide piece of transparent tape — scotch tape.

page 103] Q. Now in what was the clothing wrapped?

A. The clothing was wrapped — each item

was wrapped separately in a brown piece of paper wrapped up several thicknesses in some cases, and then sealed with scotch tape and marked and labeled and placed in a large card board box.

Q. Now did any of this the clothing and any of the other material come in contact in any way whatsoever?

A. It would be impossible for the paint specimens to have come into contact with any of the clothing because the clothing was shipped away from there prior — before the paint specimens were brought into the department.

Q. All right take the witness.

The Court: Ladies and gentlemen we will take a five minute recess.

CROSS EXAMINATION

By Mr. Stoller:

Q. Mr. Cowan, you have testified that you personally took a number of paint specimens from two safes at the Vending Machine window and a pair of pliers you testified that you used, if I remember correctly a screwdriver, is that correct?

A. Yes sir, and a knife.

Q. And a knife. Did you use the same screwdriver and the same knife for each one of these objects?

A. Well yes one or the other. The paint is a little hard to get off sometimes and the screwdriver wouldn't do a very good job and I'd take a knife and scrape it.

page 104] Q. Now after you took each specimen did you do anything to the knife?

A. No sir.

Q. After you took each specimen did you do anything to the screwdriver?

A. No sir.

Q. Stand aside.

The Court: Thank you Mr. Cowan stand aside.

Mr. Moran: Call Mr. Flach.

RICHARD W. FLACH,

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

DIRECT EXAMINATION

By Mr. Moran:

Q. State your name please.

A. Richard W. Flach.

Q. I believe that is FLACH?

A. Yes.

Q. Where do you live, Mr. Flach?

A. I live at 3027 Aspen Lane in Falls Church, Virginia.

Q. And what is your occupation?

A. I am a special agent of the Federal Bureau of Investigation and I am presently assigned to the Laboratory at Washington, D. C.

page 105] Q. And how long have you been a member of the F. B. I.?

A. I have been a special Agent since 1942, and I have been assigned to the laboratory since 1943 as a geologist, mineralogist and botanist to examine anything of a mineral botanical nature that is submitted.

Q. And what is your educational back ground Mr. Flach?

A. I received a Bachelor of Science Degree from Northwestern University majoring in Geology and Botany and I had two and a half years of graduate work at Northwestern in those same subjects.

Q. Now do you have any other experience in this field, other than with the Bureau?

A. Yes. I was a geologist and botanist with Firestone Plantations Company in Liberia, West Africa for two years. I was a consulting independent Petroleum Geologist in the oil fields of Southern Illinois for almost five years. I entered the Federal Bureau of Investigation in 1942 as I said and was assigned to the Laboratory in 1943, and I have been in the Laboratory since 1943 making examination reading various articles and keeping up on the latest developments in my field.

Q. Where is this Laboratory located?

A. *Its* in the Justice Building Washington D. C.

Q. Now, as part of your — just explain very briefly what part of your duties are — I guess you have already covered them to some extent.

page 106] A. Well I am essentially a geologist, mineralogist and *botantist* and therefore anything that is submitted to the Laborary from law enforcement agencies all over the country in connection with evidence, if it is of that nature, comes into my room for examination. And I handle anything that would be of a mineral nature which would include soils, various types of ores, rocks, minerals themselves, sand and so forth. Materials which include all types of mineral matter, various glass particles, safe insulations, anything then of a mineral nature and then also of a *botantical* nature — plants, bits of organic material, plant debris, in connection with soils and so forth.

Q. Your Honor I want to qualify Mr. Flach as an expert witness.

The Court: All right any questions Mr. Stoller?

Mr. Stoller: questions witness

Q. Have you taken any academic work since that, you described?

A. Not since I entered the Federal Bureau of Investigation, other than reading of various scientific publications and attending various scientific meetings with other scientists.

Q. What was the date of your last academic work?

A. Well I graduated from Northwestern University in 1933 and took two and a half years of graduate work — would be about 1936.

page 107] Q. There is a common saying among school children at least, that most of what they learned hadn't even been known ten years ago. There has been a great deal of development in your work?

A. Yes in fact one — constantly we learn in the laboratory that each submission is more or less a new challenge to be worked and over the years you do acquire experience in the examination of these materials as well as new instruments, new procedures and new equipment to handle them.

Q. What precisely does Geology have to do with paint on a safe?

Richard W. Flach

A. Well I don't examine paints. That is done in another unit of the laboratory.

Q. What does Geology have to do with insulation used in safes?

A. Well insulation in safes — the safe insulation mixes are prepared by the safe Companies and they are consisted usually of mineral matter. Each Company having their own mixes use different ingredients and these ingredients are mixtures of limes, various cements and various — depending upon the Company — various materials such as vermiculite, diatomacious earth, sand, in fact almost any mineral matter that you can think of has probably been used at one time or another as a safe insulation.

Q. What tenure do you have in Chemistry?

page 108] A. Just the High School and College Chemistry.

Q. Are these safe insulation materials organic or non organic compounds?

A. Well as I say they are mixtures, safe insulation — you would have to almost specify what safe insulation you are talking about because they put so many different things in the safes. They are both organic and inorganic, mostly inorganic.

Q. What does Botany have to do with safe insulations?

A. Botany doesn't have much to do with safe insulations because those are mainly mineral in nature. The *botantical* work I do is usually in connection with soils and materials that are associated — *botantical* materials that are associated.

Q. Botany if I remember consists of the — of a portion of biology isn't it?

A. No Botany is a branch all of its own.

Q. That's the good living organisms?

A. Well no, Botany is —

Q. Plant life?

A. Yes, plant life. Botany is the over all picture. It can be broken down into numerous branches just as Geology is the over all term for mineralogy, psyology the various branches of Geology the general term of the Botany covering all of the studies of plants. The study of cells, identification

of plants all the various phases all come under one
page 109] term.

Q. What is your job classification with the Federal Bureau of Investigation?

A. Special Agent.

Q. That can cover anything from a certified public accountant, lawyer to a number of other occupations?

A. True.

Q. You are neither a lawyer or certified public accountant?

A. No sir.

Q. I have no further questions.

The Court: All right Mr. Flach qualifies as an expert in his peculiar field, dealing with, in this case, safe dust I believe.

DIRECT EXAMINATION

By Mr. Moran:

Q. Mr. Flach, did you receive from the Roanoke City Police Department specimens from the Macke break-in, Macke V. C. S. Vending Corporation break-in?

A. Yes, I received a box of evidence from the Roanoke Police Department on March the 15th.

Q. Now when this evidence is received into the Bureau what sort of standard, if any, do you have for its being packaged. I mean how does it have to be packaged?

A. Well the packaging is up to the person that sends it in. We suggest, and in all of the schools we have people that we
instruct upon the handling of evidence, we sug-
page 110] gest that each article be wrapped separately so
that — and that any loose materials be placed in containers that won't leak so there's no chance of contamination. But the actual packaging is up to the contributor.

Q. Well let me ask you this. If you received a box of material and there was a mixture and some of it was loose would you actually — would you check it out or would you send it back?

A. Well there again it depends entirely upon the case. I have had cases where soils were being examined in which the soil was leaking from the known specimen sent in but

in that case I could not examine, lets say a garment, for soil of any loose nature but there *maybe* dried mud adhering to that garment which could be compared without the fear of contamination. Ordinarily if it is mixed in any manner so as to exclude any examination we would pack it up and send it back.

Q. Now was this evidence, these items, were they packaged to suit the standard of the F. B. I.?

A. Yes, each article that I received in this particular case was individually wrapped and packaged. There was no chance of contamination when I opened the package.

Q. Now Mr. Flach, would you explain to the Court and Jury and I want to ask — I will ask you as few questions as I can — just what you did? How you segregated — well not segregated but the procedure that you followed

page 111] to examine these items, whether any of it was turned over to another person for further examination and then any conclusions that you might have drawn regarding your examination of the evidence?

A. When the package was received into the Laboratory the first procedure is to check it against a letter which is usually sent to the Laboratory separately, to see if all of the articles mentioned are there. And in this case they were. We then find out what kind of examinations are desired. In this particular case they were submitted to the Laboratory two specimens of safe insulations a specimen of mixture of pieces of cinder block and mortar and a specimen of glass as the known specimens taken from the scene of the crime. The other articles consisted of articles of clothing and the request was to examine the clothing to see if there could be found on the clothing anything which would match the known materials submitted. So my first examination was to examine the known materials and find out what I was looking for, and in examining the two safe insulations I found that one was an old type, natural cement safe insulation, coming from older types of safes and strange mixed with this were pieces of sand and lime cement. There were particles of gypsum, which is plaster of paris, pieces of wood mixed with the natural cement specimens. This suggested to me that this safe at one time may have been repaired because the original safe

insulations are solid all through the safe they don't have a mixture of other materials with them like that.

Q. The first one you are talking about is what page 112] you call an old type cement insulation?

A. Yes the natural cement safe insulation is characteristic of most of the safes before 1936. Since about 1936 many of the companies changed over to a vermiculite type of insulation and these are mixes that they mix themselves and place between the steel walls of the safe for insulating purposes. All safe insulations are merely fire resistance materials. They have nothing to do with the making the safe any stronger — *its* merely a question of protecting records in case of fire and these materials do have in them things that under heat will give off steam inside of the safe and lower the kindling point so that the records don't char. The old natural cements were very good they did give off steam but they were very heavy and the newer insulations are much lighter and much more effective in the case of fire. The second insulation I examined was one of the newer types of insulation. It was what we call a vermiculite type of insulation and this is used in modern safes by two or three leading safe companies. The examination then was of the cinder block and mortar. The cinder block was composed of cinders of various colors and textures in a gray cement. The mortar was a tan lime gypsum mortar with sand grains in it with several minerals — consisting of several minerals. I examined the glass particles and at that time made no further examination of them until I could see if there was glass particles to be compared with them. The page 113] next procedure was to clean the clothing individually. This is done over a clean paper and the one article of clothing is then scraped and cleaned with a spatula and manipulations to remove all of the loose debris that might be in that clothing. This is then collected from that paper and placed into a small pill box in order to facilitate the examination by the microscope. When each of these articles of clothing were cleaned in that manner, with the exception of the shoes, which are first examined under the microscope to see if there are any particles that might be adhering to the shoes themselves before any cleaning, in the

absence of anything visible under the microscope, the shoes are then scraped and cleaned inside and out and that debris collected and placed in a pill box. After all of the articles were cleaned I took the pill boxes and examined them under a microscope to determine what the materials were that I had removed from the clothing and I found that in several of the articles of clothing, the coveralls, the coat, a pair of trousers and a pair of shoes that were submitted there were particles of vermiculite type safe insulations and these particles were similar in their physical characteristics and in their composition to the vermiculite type safe insulation that had been submitted and that these particles that were in the debris from the articles came from the safe represented by the specimen I had or from another safe containing exactly that same kind of insulation having the same phys-
page 114] ical characteristics and composition, and insulations do vary. I also found in the debris from the coveralls, the coat, the trousers and the shoes particles of gypsum or sometimes known as plaster of paris. Now these particles of gypsum were white and had the same appearance and composition as the fragments of gypsum that was mixed with the natural cement safe insulation. These gypsum particles could have come from the source of the gypsum in the specimen that I had or it could come from other source of gypsum such as plaster board or whitewall plastering in small particles. You can't tell the difference. I also found in the debris from the shoes, socks, the trousers and the coat, particles of cinder block and mortar. Now these cinder block particles had the same colored cinders in them. In other words, the same characteristics as in the known specimen that I had, had the same type of cement and the mortar particles were the same color and had the same type of sand in the mortar and it was the same composition as the samples of mortar that I had received, and after comparing those I could see that the particles of cinder block and mortar could have come from a wall represented by the specimen that I had.

Q. May I interrupt you at that point? Now is there any variation in the type of — in the manufacture of cement blocks?

A. Yes there is quite a bit. In this particular case the

cinders were of about five or six different colors
page 115] and under the microscope their purple, red, brown,
gray and black have different textures and in this particular case they were what I call a bubbly texture. Others are more of a firm textured cinder but the cinder blocks do vary considerably according to the source of the material used in their construction.

A. And your conclusion then what was it that these specimens came from these — the specimen on the clothes were the same as the one presented to you either came from the same source or one identical?

A. That is correct. It either came from the wall represented by the specimen I had or the only other place it could come from would be another cinder block and mortar source composed of exactly the same materials having the same physical characteristics and compositions.

Q. What are the possibilities or probabilities of such a situation as this, that is, where you would find two sets of cement blocks and mortar where the composition would be exactly the same?

A. Well it varies considerably. I don't know how much it would occur — it could occur, but all I had was the one specimen. I have seen other cinders in cinder blocks much like it but in this particular case from having all these materials from one of the safe insulations and the cinder block and the mortar and the gypsum all occurring on the
same set of garments to acquire all of those ma-
page 116] terials from other separate sources to me would
be remote.

Q. All right, sir, go ahead.

A. Well, after completing my examination of the mineral matter in these specimens I turned over the pill boxes, containing the debris and the known specimens of safe insulations to Special Agent Fred Edwards who made the examination for paint. At the conclusion of his examination he returned the pill boxes and all of the specimens that he had received, plus some others he received later, to me and I returned them to the — packed them and returned them to the police department here at Roanoke.

Q. Now Mr. Flach did you find on any of the garments

any vermiculite from the new type safe that you spoke of?

A. Yes and I said that I actually — it isn't vermiculite by itself. It is what we call vermiculite type insulation in that that's the main ingredient. There are other materials mixed with it. May I check my notes to see the exact components?

The Court: Certainly.

The Witness: (continuing)

A. Yes, as I said, it was on the coveralls, the trousers, jacket and shoes. There were particles in that debris of vermiculite safe insulation and that it was the same in its physical characteristics and composition as the specimen of vermiculite safe insulation that I had received from the police department.

page 117] Q. And Mr. Flach, did you draw any over-all conclusions as to the results of your examination of these items?

A. Well the conclusions that I drew as a result was that the safe insulation particles were the vermiculite type since I did not find any of the natural cement particles only the vermiculite type. Now the vermiculite type particles either came from the safe represented by the specimen I had or from another safe containing the same insulation. With respect to physical characteristics and composition I further concluded that the particles of cinder block could have come from the same source of cinder block that I had a specimen of but the mortar particles with that could have come from that mortar or only from another source of cinder block and mortar of those same characteristics and composition and that the gypsum particles could have come from the source of gypsum I had where another source of similar type gypsum. I found no natural cement safe insulation and I found no glass particles to compare with the specimen of glass that I had.

Mr. Moran: Take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. May I see your notes that you have Mr. Flach? What

is the vermiculite type?

page 118] A. Vermiculite is the name given to a form of mica which has the ability when *its* heated of expanding like an accordion or popping like pop corn. The word vermiculite comes from a Latin word meaning worm-like and it is a particular type of mica. Usually it is a dark brown to black colored mica which is a by-type mica when you heat it the little layers, bits of mica, expand and pop and this gives it very light weight and an excellent insulating property.

Q. What is the distribution geographically of vermiculite?

A. Having mineral?

Q. Yes sir.

A. Well it's found in several places around the country but never in the expanded form. The expanded form is a man made process.

Q. How many safe manufacturers are there that you know of?

A. I don't know the exact number. We have a card file but our file is in the Bureau with all the safe companies, and there have been several hundred companies that have existed from way back in the early 18 hundreds on up until the present time. Some have gone out of business. At the present time there are not too many companies, probably no more than thirty to thirty-five companies — I believe would cover most of the present safe companies.

page 119] Q. But there have been several hundred who have manufactured safes during the time you kept records and have made a study of safes?

A. Some of the old safe manufacturers wasn't in business too long because they — the safes didn't protect the records from burning or anything and the company just went out of business. Other companies merged with other companies. Companies changed, as an example, Herring-Hall-Marvin, one of the modern safe companies used to be the Herring Company, the Marvin Company and the Hall Company and the original Marvin Company was in New *york,* but the Hall *safe company* was in *Cincinnatti* and over a period of time these companies merged to form the present Herring-Hall Marvin and we have insulation from each of the old safe

companies individually — the old natural cement. Each one of them had their own insulation but today the Herring-Hall-Marvin only uses the one type cement and insulation.

Q. During the course of the years throughout this country can you give us an estimate within thousands of the different types of safe insulations which have been used?

A. I don't know the exact number. Our present file which includes most of the old safe insulations — Most of the old safe insulations were all natural cement. There were some that were different, but the file of safe insulations that vary in types and kind will probably be in the neighborhood of about pretty close to about ninety, between ninety and a hundred specimens.

page 120] Q. Then the history of safes, if I understand you correctly, would have been no more than a hundred types of —

A. I don't know how many have been in existence. It has never come to my attention in the past twenty-two years, but of all that have come to our attention approximately about ninety per cent of the safes before 1936 did use natural cement as safe insulation. Now they varied some but they were all essentially a natural cement not a porous cement type.

Q. Now does not each — well let's put it this way. Isn't the manufacture of safe insulation a continuing type of business activity? It goes on all the time?

A. Well each Company is constantly making batches of insulation to put into their safes.

Q. Now are there not variances between the batches or are there variances?

A. Well not too much variation within a single company. The ingredients they use are very carefully controlled. In these mixes there might be variances over periods of times — well I am trying to think what the variances might be, but taking them at the vermiculite type of insulation, for example, all the tests that we have run on them indicated that it stays very much the same in all its composition. We do get certain little differences between various insulations but in small particles some of these differences can't be detected. Now

they are essentially the same from manufacturer to manufacturer.

Q. I'm a little bit confused about ascertaining between the so call natural insulation material and the vermiculite.

page 121] A. Well there is no question at all they are entirely different material. Natural cement which, like I say, was used mostly prior to 1936, is made from *artilatious* limestone. By *artilacious* I mean a shaley limestone that has the ability, when it has been heated in a kiln and then crushed to a fine powder and mixed with water of forming a cement—hardening into a cement. Now all limestone won't do that. It has to be a shaley limestone of a particular type and these limestones vary from different parts of the country so that the end product of the fired and ground cement after it was mixed and set — the end products vary between the natural cements and you can easily see that one has what we call a colored inclusions of shale in the cement of different sizes. Some are almost microscopic in size and others are very *course*. You can see them with the naked eye so that these natural cements do vary within themselves. The same thing is true after they switched to other insulations. Each company has their own mixes and own ingredients and combination of materials that they use.

Q. If I understand you correctly there are two broad classifications then of safe insulations, one classification natural and the other vermicular type?

A. No I did not say that. I said that I had submitted to me a specimen of insulation from one safe which was a natural cement, but that mixed with that was these other extraneous materials that you don't normally

page 122] find in a safe, such as ordinary concrete particles and gypsum particles and wood particles, I mentioned that as one type that I received. The other type that I received was from another safe and that was the vermiculite type of insulation. Now there are numerous other types of insulation, the asbestos type, the diatamatious earth type. There are numerous other types of insulations.

Q. Did I understand that you basically had a negative assignment as far as the natural type was concerned?

Richard W. Flach

A. There wasn't anything that I found in the clothing that I could even associate with this one *specimenthat* I had received with the gypsum particles. There was gypsum particles in with this first insulation but I found no particles of natural cement but I did find particles of the vermiculite type which matched the vermiculite insulation I received.

Q. Now was there anything unusual about the cinder block specimens you have there?

A. Nothing unusual. It is a cinder block containing certain types of cinders having certain characteristics and the same type of cinder block particles that I found to be from the clothing had those same characteristics as the cinder blocks that I received in that they were the same color cinders and the physical characteristics and the same composition.

Q. Well now, isn't cinder block debris a fairly common part of the entire environment of all of us?

A. Yes there are lots of cinder blocks, but even

page 123] cinder blocks will vary in their composition depending upon the source of the cinders.

Q. But surely there must have been literally millions or billions of blocks of this type?

A. I don't know how many cinder blocks of this particular type were made.

Q. Common experience teaches us that the number is very large, doesn't it?

A. It depends entirely upon the source of the cinders. If you have a small operator who buys his cinders from a slide pile at the steel mill and only produces a few blocks a few hundreds of blocks or thousands of blocks there wouldn't be as many, whereas, a big operator who would purchase his by the car load from another source maybe black cinders and from the plant that has been burning coal it could turn out thousands and thousands of blocks so I have no way of knowing how many of each of the various types of cinder blocks there are. They are common.

Q. Mortar — isn't sand in mortar one of the most common of all materials in it?

A. Well yes, mortars can vary. There are all colors of mortars ranging anywhere from white clear on down to black. They are all colors of the rainbow. This happens to be a tan

colored mortar. In mixing the mortars you can
page 124] have lime mortars. You can have gypsum mortar.
You can have lime gypsum mortar. You can have Portland cement mortars. This happens to be a lime gypsum mortar, a mixture of lime and gypsum in addition to that this mortar had sand in it, as most mortars do, and the sand was composed of certain minerals according to whatever their source is and the *sands* sources vary from *the* where the mortar is collected. Some of them come out of river banks others come out of sand pits but the assemblage of minerals that was present in the original source of sand would vary from place to place so that the finished product of the mortar bearing sand from some source would have certain minerals present that may not be in mortar from another source at all.

Q. Now you got all these articles of clothing I take it?

A. Yes my initials are here on the articles of clothing. If you wish me to I can examine all the rest but this pair of shoes is the pair of shoes with my initials inside.

Q. He'll have a well marked wardrobe. Now I show you an article of clothing commonly called a sort of coverall or overall. Is that what you call it?

A. Yes.

Q. Will you examine this to see if you studied that in your laboratory?

A. Yes there is a Q I with my initials on the cuff.
page 125] Q. What is the common nature of coverall?
A. What is the use of it?

Q. Yes.

A. It is used to protect other clothing from getting materials on it and also grease and dirt. Mechanics use it and there are a number of uses for it.

Q. Well if one wore coveralls while they would not be hermetically sealed the purpose of it is to keep from soiling the other clothing isn't it?

A. Essentially so yes.

Q. Well then is it common to find debris on overall and similar types?

A. Yes it is.

Q. Now will you examine the pants and the socks I hand

you and see whether you in fact received them in your laboratory?

A. Yes, this is my initials and Q 3 number on the trousers. This sock is Q 6 with my initials. This one is Q 7 with my initials.

Q. It is common to find debris on socks if one was wearing a high top shoe?

A. Yes it is. In fact it's more common. It's common to find more debris inside the shoe than it is outside the shoe in the way of loose materials which would include the

page 126] socks.

Q. Is it common to find a coat worn inside the coveralls with identifying debris on it?

A. Well you can wear anything you want to inside the coveralls but I couldn't begin to name the various combinations of clothing that has been sent to the laboratory that have been worn together. I have had occasion where I have had as high as five pairs of pants on one person, two and three jackets on one person so you can't tell just what a person will wear.

Q. Did you examine these gloves for particles?

A. Yes I did.

Q. Did you find these negative or positive on those?

A. I found no glass, no safe insulation mortar or particles of gypsum on those gloves.

Q. Was there any on the mask? Did you examine this?

A. Yes I did.

Q. Was this negative or positive?

A. No this the cap had — let me look again. The cap had particles of cinder block and mortar in the debris that I was able to get out of that cap were similar to the cinder block and mortar that had been sent into me from that source.

Q. Well what is so unusual about this cinder block and mortar you are talking about?

A. Nothing unusual, but in making the com-

page 127] parison all we can go on is a certain material has a certain characteristic and when we find other particles that have these same set of characteristics then we can say those particles came from that source. Now if they were different I could say they would not have. But

these materials do differ. The cinder blocks as I say, differ from one manufacturer to another, from one source of cinder to another. When they are alike you can say they come from there or if they are different they could not.

Q. I take it that you did check the suspect out all right on the so called natural insulation? He was clean as far as that was concerned, is that right?

A. Well not I didn't consider — I wouldn't say that I would word it that way. I would say that I found no natural cement.

Q. Well what would you say?

A. Well I would say I found no natural cement which compares with the natural cement but in the natural cement specimen that I received there was other materials which was gypsum and I did find gypsum which could have come from there.

Q. Well isn't it true that gypsum is one of the most common items in all the earth?

A. Well I would say it is a very common material, yes.

Q. Very common in the Commonwealth of Virginia isn't it?

page 128] A. Yes it is.

Q. Now wouldn't it have been possible for the subject or suspect, if you want to call him that, to have gotten the vermiculite by exposure to other vermiculite safes?

A. As I say it either came from this safe or another safe containing exactly that same kind of insulation, having the same physical characteristics and composition and they do vary between manufacturers.

Q. Well just as a wild guess how many safes have a similar type of vermiculite composition? Wouldn't there be thousands?

A. Yes it could be.

Q. Essentially then what you are telling us is that you infer from these things through his clothing that a man has been around one type of safe that was covered by a vermiculite paint?

A. No he apparently had gotten on to his clothing particles of vermiculite safe insulation, not a paint. This material is found only between the two walls of the safe it is not exposed

anywhere on the outside. So you couldn't get it by rubbing against it but he had gotten on his clothing particles of vermiculite safe insulation. In addition he had particles of gypsum and in addition to that he had particles of cinder block and mortar which matched the specimens that I had received.

page 129] Q. And he could have gotten the vermiculite by being around vermiculite insulated safes anywhere else that they had the same type and this is a general — generally a common type of vermiculite insulation isn't that correct?

A. Well he would have had to be around another safe that in which the vermiculite had been exposed by opening up the steel plates of the safe, or work in a safe manufacturing company would be about the only place you would find that type of materials.

Q. Well one can do this of course. One can work in a safe factory or one can be around a material containing a safe vermiculite insulation material and open them and I would say even open them unlawfully over and over and over again and acquire —

A. Yes.

Q. The clothing saturated with this material?

A. As I said they either could have come from this safe or another safe containing exactly that same kind of insulation.

Q. And you have no idea except that there is a vast number of safes which do contain this insulation?

A. All I can say this is a vermiculite safe insulation from a safe.

Q. Well now you have come to us as an expert and have contiguous voluminous files which contain the

page 130] work of all or most of the domestic safe companies. Isn't it fair to say that there are thousands of many sizes of safes with this type of insulation?

A. Yes it is possible for the various manufacturers to put out numerous safes having the same materials.

Q. Isn't it possible that there very likely is?

A. Yes. I don't know the exact number you are asking me if I knew, and I don't know how many safes have been made.

Richard W. Flach

There are numerous safes that do have this same type of insulation in them.

Q. Millions?

A. I doubt if there would be that many. I don't know the exact number.

Q. Well certainly common experience would teach us at least a hundred thousand.

Mr. Moran: (Interposing) Your Honor I object to the question the man says he doesn't know and I don't think that he wants to speculate to whether or not—

The Court: The question is argumentative.

Mr. Stoller: (Continues examination)

Q. Now you have no personal knowledge of the way these specimens were procured or obtained do you?

A. No sir.

Q. What about security in your own office. Is it possible that there can be mixture or contamination in

page 131] your own office?

A. Well it's hardly likely we have numerous safeguards on evidence and we have been handling this evidence for years and years and have never had any trouble as far as contamination or mishandling of evidence of any kind. All evidence that is received when it isn't being worked on is kept in locked cabinets under control of the examiner who is responsible for the examination. He has control of the evidence from the time it reaches the laboratory until the time it leaves the laboratory and he is responsible for that.

Mr. Stoller: All right Mr. Flach, thank you very much.

Mr. Moran: Thank you sir.

The Court: Thank you very much Mr. Flach you *maybe* excused.

Mr. Moran: You can just sit out here if you want to Mr. Flach.

Mr. Moran: Mr. Edwards.

FREDERICK L. EDWARDS,
a witness called on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moran:

Q. State your full name please to the Court and Jury.

A. Frederick middle initial L. last name Ed-
page 132] wards.

Q. Mr. Edwards, where do you live?

A. 7231 Brideick Road, Springfield, Virginia.

Q. And what is your occupation?

A. I am a Special Agent with the Federal Bureau of Investigation.

Q. When were you first assigned to the Bureau?

A. In November 1947.

Q. What is your educational background?

A. I have a Bachelor of Science degree from Dickinson College, Carlisle, Pennsylvania. I have done about a year and a half of work in graduate work in physics and chemistry at the University of *Pittsburg,* Pittsburgh, Pennsylvania, and I have a Bachelor of Law degree from Cleveland Marshall Law School, Cleveland, Ohio.

Q. And how long have you been assigned to the F.B.I. Laboratory in Washington, D. C.?

A. Approximately four years.

Q. And what are your principal duties there in the lab?

A. I am assigned to the spectrographic unit, the physics and chemistry section, F.B.I. Laboratory and in this particular unit we examine and *analize* paints, plastics, inks, dyes, metals, bomb residues, and other organic compounds.

Q. And how long have you been on this particular type of work?

page 133] A. Approximately four years.

Q. Since you have been in the lab approximately four years — I ask that Mr. Edwards be qualified as an expert.

The Court: Have you testified as an expert before in this field?

Frederick L. Edwards

The Witness: Both in State and Federal Courts.
The Court: Any questions Mr. Stoller?

Mr. Stoller: (Questions witness)

Q. What branch of science does spectrographic examination fall within?

A. Falls within — I would put it in physics.

Q. How many courses in physics have you had?

A. I have three in undergraduate school and had two in graduate school at the University of Pittsburgh, Pennsylvania.

Q. And when was your last academic work taken Mr. Edwards?

A. With regard to science or with regard to my law?

Q. Well they don't teach you much about physics in law school I don't believe do they? Or about science?

A. Well your question was when was my last academic work performed?

Q. Yes it was.

A. And I consider law an academic field.

page 134] Q. That is quite a presumption. Well you are qualifying here as a physics expert I believe?

A. Yes.

Q. Confining ourselves to physics tell us when your last academic work was taken?

A. 1946.

Q. This was eighteen or nineteen years ago?

A. Yes.

Q. Isn't it true that there has been a fantastic amount of revelations and discovery in physics since that time?

A. Not in the field of — spectrography.

Q. No considerable work done in — spectrography?

A. Not in basic ——— spectrography.

Q. What is this work that you do? I take it you do this work do you?

A. I do it in the laboratory.

Q. Well do you do it on an elementary scale or is it regular time?

A. Well, ——— spectrography and I mentioned spectrography is only one segment of the work we do there. We

work in x-ray, *factometery,* we do work in the infra red *factometery* and the physical effects of *factometery* and we also do work in gasiformaligrams.

Q. Sir.

The Court: I hope you don't ask for identifica-
page 135] tion of each one of those subjects.

The Witness: If you ask me if there has been a lot of work done in these other fields I would agree with you, yes there has been.

Mr. Stoller: (Continues examination)

Q. Well now in this particular study which relates to this case, what field did you stay within?

A. I stayed within the ——— spectrography.

Q. And your last academic work was in 1946 and you tell us that there hasn't been a considerable development in knowledge since that time.

A. Not in the basic spectrography.

Q. In the theory or the practice of it?

A. Theory.

Q. Has there been much development in the practice of it? This type the kind of machinery you use.

A. Well when you get into basic research you will find that professors in colleges and universities will undoubtedly perform experiments along certain lines which they are pursuing at the time. We have generally been in the paint and analysis of paints and metals and our procedures have been established over a long time and they have been found to be true and we have found no reason to change them. Our work is mainly in the forensic studies of them and we do not do, or we do not have time to do research in the other fields
which we might be interested in, and our techni-
page 136] ques in the forensic field have held over the years
there has been men assigned to our particular unit who have been doing this work for twenty years.

Q. And you have been doing it for about four?

A. Four. That is correct.

Q. But you have been with the Bureau since 1947?

A. Yes.

Frederick L. Edwards

Q. And what did you do for the first fourteen years with the F. B. I.?

A. I was assigned to field work as a Special Agent assigned to Los Angeles and later to Seattle and then later to Cleveland, Ohio and in 1956 I was assigned to headquarters and worked for approximately five years as a supervisor in internal security work.

Q. And then they suddenly discovered they had a paint man on their hands?

A. This was due to the personnel policies of, if there was an opening to review the personnel files and determine who is best qualified to fill that vacancy.

Q. What is your present job classification filed with the Federal Bureau of Investigation?

A. Special Agent.

Q. Is this based on your legal practice?

A. It is based on my appointment as a Special Agent in November 1947.

page 137] Q. Then you have taken no new academic work since — I don't believe I caught the date of your last academic work.

A. 1946.

Q. Did you take this while you were going to law school?

A. No.

Q. When did you receive your law degree?

A. A law degree while I was a special agent with the F. B. I.

Q. You studied law while you were in Cleveland?

A. No I went to night law school.

Q. When was that Mr. Edwards?

A. From 1950 to 1954.

Q. Prior to the time that you went into the paint laboratory when was the last time before that, that you did any work with paints in a scientific basis?

A. Probably when I painted my house.

Q. Do you have other duties besides working in the paint laboratory?

A. This is not a paint laboratory this is a laboratory examining —

The Court: Spectographic Unit.

A. Of course paint *maybe* a component and we are not dealing with exclusively paint we also examine plastic. As I said before we examine metals, make analysis of
page 138] metals, with a comparison examination of metal we make examinations as to residue of bomb explosions make analysis and comparison examinations of ink, dye.

Q. During your academic work did you ever do anything remotely like what *your* doing now?

A. Yes I had a course in spectography in the University of *Pittsburg*.

Q. How long ago was this?

A. 1946.

Q. That was a type qualitative analysis?

A. Qualitative and quantitative metropoly quality and quantity.

Q. I'm not going to concede this man is an expert.

The Court: I will decide that he is.

Q. All right I will except to the court's ruling.

The Court: All right you may except.

DIRECT EXAMINATION

By Mr. Moran:

Q. Mr. Edwards did you work in conjunction with Mr. Flach in the investigation of or rather in — yes in the investigation of the evidence which was sent to your lab from the Roanoke City Police Department in the *Macke V. C. S. Corporation* case?

A. I did.

Q. And what particular phase or facet of this investigation did you do — participate in?

page 139] A. Mr. Flach delivered some evidence to me in the F. B. I. Laboratory which he said contained some debris from some clothing and he said it contained some paint and that he had made arrangements to secure paint samples from Roanoke, Virginia.

Q. All right *sit*. Now did you subsequently make comparison of the specimen received from Roanoke and the specimen

that was turned over to you at that time by Mr. Flach?

A. I did.

Q. Just tell the Court and Jury if you will please what your investigation or what your laboratory examination disclosed and what conclusions you have if any as a result of this examination?

A. Mr. Flach delivered to me pill boxes which contained debris from the clothing and as I said before he informed me that they had some paint particles in them and that he had made arrangements to secure additional — that he had made arrangements to secure paint samples from the Roanoke Police Department and I received these paint samples from the Roanoke Police Department on March 22, 1965 and opened them in the Laboratory and made a microscopic examination of all the paint samples that were submitted. Now the paint samples — one of the paint samples was described as paint sample from the two door safe and the microscopic examination of these particular chips disclosed that they consisted of essentially of twenty layers of paint.

page 140] The Court: Twenty layers?

A. Twenty layers of paint a Microscopic examination of the debris from the coveralls and from the trousers which were submitted disclosed the presence of thirteen layers of paint chips and these thirteen layers of paint chips matched the last thirteen layers of the twenty layered paint chips which were identified as having been taken from the safe having two doors.

Q. Mr. Edwards if you would start with paint layer Number one you would go through — one through twenty?

A. And that's the number one I numbered them one through twenty coming from the safe, the two door safe.

Q. And the specimen you received from the coveralls and trousers would commence with thirteen?

A. With Number eight.

Q. Number eight, excuse me, that's right.

A. And go through twenty.

Q. The last thirteen?

A. The last thirteen layers, yes.

Q. Now were the last thirteen layers did they — how did

they compare?

A. They matched up in sequence in other words they were exactly the same layers as on the twenty layer paint chips in other words if you had aluminum layer here you also had an aluminum layer on the other one and so forth in exactly the same sequence.

page 141] Q. Did you draw any conclusions as to the result of that particular examination?

A. Not at that particular time because I examined for the spectrographic comparison examination of them.

Q. Explain to the Court and the Jury just a little bit of what that sort of examination is.

A. Spectrographic a spectrogram is an instrument which will record on a photographic film the light which is given off by burning material in an arc. In other words, if you take a sample of paint and you are going to have metalic elements in there like silicon and mangesium and calcium and perhaps zinc titanium and copper and aluminum and barium and you close your sample in a small carbon electrode and burn that in an electrical arc and as that material is transformed from a solid to a gas it will give off a particular light which when that light is captured on a photographic film will cause a series of lines to be deposited on this film after which the photographic plate is developed just like you would an ordinary photographic film you will see these lines on there and place them on another instrument and each of those lines correspond to the particular metalic element that is present in the sample that you burn. In other words you have a fingerprint of the material that you burn in this spectrogram recorded on the photographic film or plate in the form of various lines if you have lead in the sample it will have a characteristic lead line on the film on the plate.

page 142] Q. And you did do spectrographic tests?

A. Yes I burned a sample of the known paint from the safe and that was recorded on the photographic plate in a series of lines, then I would rack up the plates that were taken on the next series of lines and I burned the samples from the clothes and that was recorded on the photographic plate in a series of lines and when I developed it I

read them and I found that they matched in metalic elements in the paint.

Q. In metalic elements and the paint?

A. In the paint.

Q. I mean in the paint and what conclusions then did you draw?

A. I concluded that the thirteen layers of paint chips from the coveralls and the trousers, that the possibility that the thirteen layered paint chips that were found in the debris from the trousers and the coveralls having come from another source other than the paint on the safe, was considered to be remote.

Q. All right sir, just go ahead Mr. Edwards.

A. Then there was also some debris from the shoes and as I recall these were only two layered paint chips, had a mottled light tan and a mottled dark tan top layer and a medium gray bottom layer these were two layered chips and these happened to represent the first two layers of the paint chips from the safe and here again I did a spectrographic anaylsis of them and I found that the paints matched page 143] with regard to metalic elements and my conclusions was the same as with the other paint samples I analyzed and examined.

Q. All right sir, now all of this is from what is described as the two door safe?

A. The two door safe.

Q. With the twenty layers of paint?

A. Twenty layers.

Q. Well now, did you receive specimens from the other safe?

A. Yes I did, and I examined those and I did not find any paint in the clothing that matched the paint from those other safes.

Q. Take the witness.

CROSS EXAMINATION

By Mr. Stoller:

Q. So then we may assume Mr. Edwards that so far as preparing the clothing which was described to you as having

come from a certain individual and the one door safe shows you drew a negative report? Negative inference?

A. Yes. I didn't find any paint in the debris from the clothing that matched the other paint sample that was sent to me.

Q. Well in effect you have absolved this clothing of any connection with that particular safe, haven't you?

The Court: I can't hear *your*.

Mr. Moran: I object.

page 144] Mr. Stoller Continues:

Q. In effect you have absolved this clothing of any connection with that particular safe?

A. Not the two door safe?

Q. No, but the one door safe?

A. Yeah.

Q. All right, that is what I asked. Now what is your objection Mr. Moran?

Mr. Moran: The manner in which you ask the question as if he absolved the defendant from any connection with the safe that was what I *though* you were talking about. I withdraw the objection.

The Court: Please get on gentlemen let's quit monkeying around.

Mr. Stoller: Now isn't it true Mr. Edwards that the accurary of your deductions depends upon the accuracy of the sample submitted to you?

A. Yes.

Q. These are the premises upon which you proceed?

A. Yes.

Q. And if a tool used in obtaining specimens was not laboratorially immaculate there could have been contamination before they came to you couldn't they?

A. There is a possibility — I don't quite understand your question. Now are you talking about the contamination of the tools that was used to take the paint samples contaminating the paint?

page 145] Q. No. What I am talking about is—

A. Or was you talking about the contamination

of the evidence per se?

Q. The evidence per se.

A. I haven't the paint samples that were submitted subsequently to the time I received the first submission and the possibility of the paint contaminating the clothing is extremely remote.

Q. Surely.

A. They were submitted separately. We had to ask for the paint samples at a subsequent time. They were not in the same package with the clothing.

Q. You got — the debris was reported to you as having been obtained in a certain way — the clothing debris.

A. The debris came in the laboratory by Mr. Flach. Mr. Flach scraped the clothing and this is in a separate unit and then he made a microscopic examination of that debris and then found the paint chips.

Q. Uh huh.

A. And since he doesn't do paint examinations he brought it over to me and told me that there was paint in there and that he had made a request to have paint samples submitted for a comparison examination and these were submitted subsequently by the Roanoke Virginia Police Department.

Q. Uh huh. They didn't come in the first group of samples?

page 146] A. No they did not.

Q. You all had to send back for them?

A. Yes.

Q. In order to try to match them?

A. Well I don't mean to try to match them. I mean this was a lead which we thought the police department was entitled to. They send evidence in to us for examination and we are up there to help and when we see that other investigating is possible we will call and tell them what we find.

Q. You tell them what to look for?

A. Well we tell them we have paint, we don't have any paint from the safe.

Q. And in this particular case they were told what to look for weren't they?

A. I presume to go back and get some paint from the paint samples — I mean from the safe. I didn't talk to them.

Q. Uh huh.

A. All I can tell is hearsay.

Q. You have your notes of your laboratory examination with you?

A. Yes I have.

Q. May I see them. May we take a recess your Honor while I look at these?

The Court: Five minutes recess Mr. Stoller.

page 147] Q. I have studied your notes Mr. Edwards. Apparently they show that the shoes had what you describe as a top two layers of — two layers of paint and the overalls or coveralls however you describe that outer garment and the trousers had thirteen layers of the twenty layer specimen. Now it is unusual, if I interpret your testimony and report correctly, you have no substantial evidence that the clothing had anything to do with the one door safe?

A. I didn't find any paint in the clothing that was like the paint from the—I guess you call it the one door safe, yes.

Q. Is it unusual for the safes to have as many as twenty layers of paint?

A. I would say that being that it had twenty layers of paint it was unusual it was the most number of layers I have seen from a safe since I have been in the laboratory.

Q. For what purpose are safes painted?

A. Beg pardon?

Q. For what purpose are safes painted?

A. I don't think I am qualified to answer that.

Q. You don't know do you? Isn't it true that you identified or purport to have identified the paints by colors some descriptive colors, is this the accepted way of doing this?

page 148] A. Yes. When you are making a spectographic examination or when you are making any type of comparisons examination you compare light things so you have to make an examination of paint chips to find out what layer structures of the chip is before you attempt to compare analytically with some other unknown paint. In others words, you have to compare apples and apples and

oranges and oranges you don't compare apples against oranges.

Q. What is the Chemical composition of paint generally?

A. Well you generally have a pigment invariably and organic compound you have a vehicle which gives the — which is a substance of — organic substance which decide the pigment and also it crystallizes to form a binder around the pigment when it dried you have an expender which is a material which is cheaper than pigment that is added to the paint to make it cover a larger area you may have and generally do have dryers, inorganic dryers, which speed up the drying quality of the paint or you may have a dryer that will impede it. You may want a paint to dry a little bit slower so you will add another dryer which will impede the drying quality of the paint and generally also add some other mineral spirits and other organic properties to the paint in order to make it go on easier. If you happen to pick up a paint can and look on the side you will find that they will provide the contents of the paint and the pigment of the vehicle and under the pigment is the varied percent of weight of the pigment and also list the various components of the vehicle.

page 149]

Q. Now upon what does the color or tint of the paint depend?

A. What color?

Q. Yes.

A. What is the color? It depends on the pigment. In a light paint that would be a white pigment if you want a red paint you would generally take a white pigment and add organic dye to it or you may add one or two organic dyes to give you the red.

Q. Now these organic dyes, are they more generally used than the metals the chemical metals?

A. Well I can't answer that because that would be — I would have to say more colored paints are used than the other, the white paints.

Q. Did you also attempt a chemical analysis by chemical *constitutents* of these paints?

A. That would have been impossible because in order to do that you have to scrape each individual layer off, and then

you would have to be sure you didn't have contamination from the other layers so any chemical analysis of this would be almost impossible.

Q. Do you have the pictures that you took?

A. I didn't take any pictures.

Q. I thought you referred to a film.

page 150] A. Oh the photographic plate yes.

Q. And what is this study that you based your interpretations.

A. On the plate itself this is a fingerprint now of the paint samples that I have run. In putting the instrument this way and as the paint is burning it will make those lines on the photographic plates. When this is developed we put it on an instrument called a densitometer and we read these lines and those lines represent the elements that are present in the samples. In my notes are set forth all of the elements that were found, silicon, maganese, magnesium, lead, iron, aluminum, copper, silver, zinc, titanium, calcium, *tronium,* barium and *strausm* and like amounts were found both in the paint from the debris and the coveralls and the trousers and also the paint samples from the safe, the thirteen layers.

Q. Is there anything unusual about those chemicals or chemical elements being in the paint?

A. Most unusual thing about it is that take the thirteen layers of paint and burn them separately and you get those lines appearing in the same intensity. Generally you would think there might be one layer in there that was different with regard to composition and if it was it would show up on the film, but in this case it did not which was the unusual feature about it and this is why I said that the possibility that this came from another source other than

page 151] the safe is remote.

Q. *Strausm* is an element *to* isn't it.

A. Correct.

Q. And unfortunately since the atomic bomb the world is full of it isn't it?

A. Well if it were full of it we probably wouldn't be here today. It's found in small quantities as *strausm* which is a *misetrope* of the *strasum* which occurs in nature but if it

were found you probably would be suffering extensive damage.

Q. Then your research has check out the small one door safe?

A. The two door safe.

Q. Well you left out a word there and I left out another one. You purport to have incriminated this gentleman on the two door safe but you have excluded him from the one door safe. That's right isn't it.

A. Well, I wanted to — I want it to be clear. I'm not implicating him the evidence implicates him.

Q. Well we understand. I admire your diffidence but that is correct isn't it?

A. Well as I testified with regard to the examination of the evidence it speaks for itself.

Q. Now this evidence will speak for itself in a scientific way that he had nothing to do with the one door safe.

page 152] A. No it doesn't. It shows the absence of it. It doesn't prove anything.

Q. And suppose the evidence of your associate Mr. Flach usurped this matter, Mr. Edwards?

A. Only in a professional manner. In regard to my work he brings me the evidence and I do the work and I take the evidence back to him and I give him the results of my examination.

Q. Well that is all he expected you to do isn't it, to discuss it in a professional way and you discussed with him the paradox that the evidence is negative as far as the one door safe — so far as paint was concerned and the evidence is negative so far as safe insulation material was for the two door safe?

A. I just give him my results and go back and work another case.

Mr. Stoller: All right stand aside.

The Court: Is that all?

Mr. Moran: Thank you Mr. Edwards.

The Court: You may be excused, thank you very much.

Mr. Moran: State rests.

Mr. Stoller: If your Honor please I have certain motions to make in chambers.

The Court: All right sir, we go to chambers.

Mr. Moran: Your Honor before we go in there are several people here particularly from Macke Company
page 153] that would like to go home if Mr. Stoller is not going to need them. We will not as far as I know. May they leave?

Mr. Stoller: I would like to be able to give that assurance Your Honor but I just can't.

Mr. Moran: That's all right I just thought if nobody wanted them.

The Court: All right keep them here then. Let's go to the chambers and hear the motion.

IN CHAMBERS

The Court: All right the motion.

Mr. Stoller: If your Honor please at this time on behalf of the defendant we respectfully move the Court to strike the evidence of the Commonwealth on the grounds that the Commonwealth or prosecution has not established a *prima facie* case of the offense charged in the indictment, which is statutory burglary with intent to commit larceny or other felony. It would appear that the prosecution is, under 18.1-89 of the Code, taking the elements of that offense. We have no evidence whatever of the type and strength required by the Commonwealth's decision, that is a decision of the Supreme Court of Appeals, to support the elements of intent to commit larceny or another felony. We move that the evidence be stricken for this purpose or for this reason. Reason number Two, even if probity be attached to the evidence of the Commonwealth the evidence of the prosecution de-
page 154] pends, in the main, on the proof of Messrs. Flach and Edwards of the Federal Bureau of Investigation. Mr. Flach by reciting the tests that he made in the matter and interpreting them, testified that the evidence excludes the subject of the defendant from association with safe Number One, the so called two door safe. Mr. Edwards testifies that the evidence excludes the defendant from association with the second safe, the so called one door safe. The third reason we ask the Court to strike the evidence of the Commonwealth is that in this type of case as in an unsubstantiated

case of rape or seduction the evidence of the Commonwealth is inherently incredible — incredible that money and a money changer or counter of the weight and bulk testified to here and the matter beyond this of common experience could have been taken away larcenously by this defendant and there is no connection of this defendant with such a taking therefore we submit it becomes inherently incredible in the way that the stories of some maidens sometimes became inherently incredible. The fourth reason we assign for asking the court to strike the evidence is that case of the Commonwealth, prosecution, such as it is, is based and sets four square upon force and illegal arrest, second an illegal search and seizure and therefore is in violation of the decisions of the Supreme Court of the United States and of the constitution thereof. And the fifth grounds to support the motion to strike the evidence of the Commonwealth or prosecution is that it does not page 155] establish, as a matter of law beyond a reasonable doubt, the connection of this defendant to the alleged breaking and entering and the alleged larceny. In support of this the following is assigned: There has been no evidence by a qualified person of any particular amount of money having been taken away. The comptroller, Mr. Aaron, appears to be or have been an executive and didn't get in to such *mindane* things as counting money he had no specific personal knowledge of the amount of money taken. I recall no other evidence which in any way was directed toward this factor. The sixth reason we assign for the motion to strike the evidence of the Commonwealth or prosecution is that it's based on the evidence of Officer Hamblett. Officer Hamblett testified that as much as an hour, and certainly more time could have elapsed between the time he made a sincere attempt to survey the property of the Macke Company that he made a complete check of the building found no evidence of house breaking or store breaking. He went away and came back an hour later and found definite and ascertainable evidence of store breaking, in fact, evidence apparently of safe cracking. It is a rule of criminal law that where an act may be caused by one set of circumstances which may incriminate the defendant and may also be caused by another set of circumstances which would exculpate the defendant. It would be error to fail to give the defendant the presumption of

innocence and the benefit of the doubt to find him guilty. It therefore follows that since it is open and obvious page 156] that at least that hour that the officer with the defendant in their custody left the premises of the Macke Company someone else could have broken in and commited larceny therein and we cannot convict the defendant for this. As a matter of fact this again exculpates the defendant. For these reasons we respectfully move the Court at this time to strike the evidence of the Commonwealth. The Commonwealth has certainly produced a lot of exhibits and a good many witnesses which taken together, exhibits and witnesses, they do not tie in this defendant within the narrow view which the law requires for the alleged crime of store breaking with intent to commit larceny. And I so move the Court.

The Court: Motion overruled. I will assign my reasons at the proper time as necessary. All right now do you want to proceed?

IN THE COURT ROOM

The Court: Have both sides rested?

Mr. Stoller: We have rested.

The Court: Both sides have rested.

Mr. Moran: Your Honor, I have one question, since we have these two agents from Washington and if possible of course I would like for them to go back.

The Court: All right if both sides have rested the witnesses are excused. Ladies and gentlemen of the jury it appears now that we are going to have to come back tomorrow morning at nine o'clock. Tonight counsel for both sides will with the Court prepare the instructions. We will have the instructions ready to be read at nine o'clock, at which page 157] time there will be argument on both sides, that shouldn't take more than an hour, so we ought to be out pretty soon, depending on how long you deliberate after the case has been presented to you. Should be out sometime before noon tomorrow, so put that on your schedule. The Court is adjourned then until tomorrow morning at nine o'clock. During the time and evening and I want to admonish you ladies and gentlemen of the jury not to discuss this with anybody or if it appears in today's newspaper do not

read about it or if it occurs over television and radio don't pay any attention to it but keep your mind clear of any discussion of this case whatsoever and come back tomorrow at nine o'clock.

IN CHAMBER

INSTRUCTIONS

INSTRUCTION NO. I Offered by the Commonwealth and given as rewritten, objected to by the Defendant.

Exceptions: The defendant respectfully excepts to the granting of instruction number one on the grounds that there is no evidence in which the jury can find beyond a reasonable doubt that the defendant, Willard C. Jordan, actually broke and entered the building — the storehouse described in the indictment and the Commonwealth has taken out any charge of larceny therefore I feel that the — we submit on behalf of the defendant that the granting of the instruction is erroneous.

INSTRUCTION NO. II Offered by the Commonwealth

The Court: All right gentlemen since he has offered this instruction we've got it. The words Macke V.C.S. Vending Corporation, do you want to amend the warrant and indictment? Is that the proper name for it?

page 158] Mr. Moran: *It* there is any question raised of identification of the building, it has certainly been described there.

The Court: Is there any discrepency?

Mr. Stoller: It used to be known as the property of Virginia Cigarette Service and he merged into Macke, I thought he said something about Macke.

The Court: What?

Mr. Stoller: I'm satisfied it's Macke.

The Court: All right let's amend it. M A C K E.

Mr. Stoller: Of course I object to —

The Court: Just correcting the name, if you want to take exception to it you can.

Mr. Stoller: Put it in the record that as to my client I will except to that.

The Court: Amend the warrant and indictment by adding the word Macke to the V. C. S. Corporation.

INSTRUCTION NO. II Offered by the Commonwealth and given as amended, objected to by the defendant.

Exceptions: The defendant respectfully excepts to the granting of the instruction number II and assigns the following objections: First, that it singles out a particular portion of the evidence which we consider erroneous and objectional; Secondly, that it constitutes a finding instruction and does not include both views of the case, that is both theories and therefore it is considered erroneous, there are many, many decisions in the Supreme Court of Appeals of Virginia; Third, that it requires the defendant to take the stand to explain or deny possession of stolen goods and that this is in *contridiction* to the recent extension of the Bill of Rights of the Supreme Court of the United States in that; first, the defendant does not have to testify; secondly, no comment may be made thereupon; third, the defendant is not required to testify and to explain or deny participation in the alleged crime. These last three doctrines have lately been handed down by the Supreme Court of the United States page 159] and the instruction in our view violates all of them and many more.

INSTRUCTION A Offered by the defendant and given as amended.

INSTRUCTION B Offered by the defendant and given.

INSTRUCTION C-I Offered by the defendant and given.

INSTRUCTION D Offered by the defendant and given.

INSTRUCTION E. Offered by the defendant and given as rewritten.

Exceptions: Defendant respectfully excepts to the Courts refusal to grant instruction E as submitted and refused by the Court, on the grounds that this instruction is an unnecessary correlary of instruction D which has been granted by the Court and states the law with respect to the ——— effect of the circumstantial evidence and to exclude this and submits only a partial view of the type of circumstantial evidence to the jury.

The Court: The Court in refusing instruction says that it is covered completely by instruction D and C-I of the defendant.

INSTRUCTION G Offered by the defendant and given.

The Court reconvened on the 22nd day of May, 1965 at nine o'clock a.m.

THE COURT INSTRUCTED THE JURY and ARGUMENT WAS HAD.

The Court: All right ladies and gentlemen of the Jury, you will go to your room. On the back of the indictment you will write the verdict. I will give you some samples of the verdicts you can write. That has to be written on the back of the indictment which is the white paper that Mr. Finnell has. Go to your room and reach a verdict.

The Court: Members of the Jury have you agreed upon your verdict?

page 160] The Jury: We have, your Honor.

Deputy Clerk: We, the jury, find the defendant guilty of grand larceny and fix the punishment at seven years in the State Penitentiary. Joseph Berna, Foreman.

Members of the Jury is this your verdict?

The Jury: It is.

The Court: Mr. Stoller, does the defendant have anything to say?

Mr. Stoller: Your Honor, if the Court please, I would like to docket a motion to set the verdict aside as contrary to the law in evidence and ask the Court to set a date for the hearing.

The Court: All right. I will docket a motion to set the verdict aside and set it for Thursday, May 27th.

Mr. Stoller: At what time.

The Court: At ten o'clock.

Mr. Stoller: Thank you sir.

The Court: At which time we will pass on the motion. Gentlemen of the Jury I appreciate very much your service. Court adjourned.

COURT RECONVENED THIS 27TH DAY OF MAY, 1965 FOR HEARING ON MOTION TO SET ASIDE VERDICT

The Court: Willard C. Jordon by counsel on motion to set aside the verdict which was granted on last Saturday morning. All right Mr. Stoller.

Mr. Stoller: If your Honor please, may I examine the written form of the verdict in this matter. If the Court please, the form of the verdict as signed by the jury in this case, is — We the jury find the defendant guilty of Grand Larceny and fix his punishment at seven years in the peni-
page 161] tentiary. We have moved the Court this morning to set aside this verdict on the grounds that this verdict is contrary to the law and the evidence in this case and to grant a new trial for this reason. In his statement to the Court the Commonwealth itself realizing that no evidence had been presented to support the charge of Grand Larceny, withdrew the instruction and the Court concurred in this, this instruction being I the Roman Numeral I, and took out of it the language if I remember correctly, "and commited larceny therein" the effect of this was to submit this case to the Court — to the jury on the charge of Statutory Burglary. The Jury for reasons which I don't think necessary I should try to understand, because I certainly can't explain them, has delivered a verdict of guilty of Grand Larceny. There is no evidence in this case first to support this. Secondly, there were no instructions given to the jury on Grand Larceny and the Commonwealth certainly did not ask for one. It was not expedient or necessary or proper for the defense to ask for one, since it had been agreed by *consensus* of the Court and prosecution and defense, that there was no evidence of Grand Larceny on the part of this particular defendant.

The Court: Now I don't remember anything about that. I don't mean to say that it didn't happen, but I don't remember that, it wasn't mentioned.

Mr. Stoller: If your Honor please, if you will look at instruction Number I, Roman Numeral Number I.

The Court: I have it right in front of me.

page 162] Mr. Stoller: You will notice the type is the type on the Court secretary's I B M typewriter, *selectomatic* typewriter and that your secretary Mrs. Krull rewrote this instruction at the Court's direction after the Commonwealth took out the words after the word larceny in the present sixth line "and commited larceny therein."

Mr. Moran: Your Honor if I may interrupt at this point I think it is obvious why I requested that that be deleted and that was because if the jury believed that he broke and en-

tered the premises with the intent to commit larceny then he was guilty of Statutory *Burglar*.

The Court: That is right.

Mr. Moran: You did not have to prove both as long as he went in with the intent and that is the reason I asked that that be deleted.

The Court: Now that is correct. As I recall, and I don't have the instruction here because it was already withdrawn and this instruction was typed up but it said if you believe beyond a reasonable doubt that the defendant broke and entered the premises with the intent to commit Grand Larceny, and did commit the larceny therein, I deleted that because it is not a necessary prerequisite to the charge of burglary, but under indictment he can be found guilty of either breaking and entering or Grand Larceny. I don't think it make much difference whether the Court instructs it or not.

Mr. Stoller: If your Honor please, the Jury is
page 163] composed of laymen and cannot be expected to know what the ingredients of a legal defense of Grand Larceny consists of and they are totally uninstructed on this. There is no instruction to be found anywhere in the instructions of the Court especially on the charge of Grand Larceny setting out of what Grant Larceny consists, what is necessary for the Commonwealth to establish it and it is certainly plain that the jury verdict was not responsive to the evidence. Now the Commonwealth requested explanation of this instruction Number I, if the Court please, is certainly at variance with the indictment in this matter. The indictment charges both Statutory Burglary and Grand Larceny and there are cases holding, in ths history of the Commonwealth, to be found in the annotations to this section that it is possible under such an indictment as used in this case to have a finding either of Statutory Burglary or Grand Larceny. But it certainly is necessary in such a case that the defense present evidence to support the finding of Grand Larceny.

The Court: That's right.

Mr. Stoller: And secondly that the jury be properly instructed on this crime. If the Commonwealth is going to take two bites at the cherry is should follow the law.

Mr. Moran: Now if I may interrupt again. Of course the indictment was read and the Clerk, as I recall, and it's probable in the record, charged the jury at the beginning of the

trial that they could find him guilty of statutory
page 164] burglary or grand larceny, well either of the two
and that is — I think I can find — I know I can find the law that says the jury can find him guilty of either one.

The Court: I think the whole thing turns on whether there was evidence to support a verdict of grand larceny. That is the whole thing right there.

Mr. Stoller: If the Court please, there is evidence — a great deal of trouble was gone to to establish that this defendant when searched had on his person a tool called a Wittenburg sandwich machine tool. The value of this tool was never established. The jury was never instructed on the lesser punishment of petit larceny which would be possible under these circumstances.

The Court: One was never offered.

Mr. Stoller: One was never offered because it was perfectly inconceivable that the jury were to come in with any such finding as it did. It was certainly apparent that they would either find the defendant guilty of statutory burglary or acquit him. Now just what their thinking was I am at a loss to explain and I cannot explain it nor do I think that it is incumbent upon me to understand what it is that motivated them, although I suppose that they wanted to be merciful. All right, of course I am not responsibile for the fact that they went outside the evidence to fix a lesser punshment in so doing. Now the only way that there could conceivably be evidence of grand larceny would be to etablish all reliable evidence from
the witness stand beyond a reasonable doubt that
page 165] this defendant acted in consort with others and
that those others took, steal, carried away to convert to their use, the subject of the grand larceny. Why it wasn't even conceivably established beyond a reasonable doubt by any qualified person that any particular amount of currency was taken. Mr. Aaron, a corporation officer, executive, I believe he was a comptroller, exhibited such a remoteness in the handling of money that he was unable to tell us. As I recall he was the only person involved who attempted to establish the amount of currency taken. I submit that there is no reliable evidence that there was any grand larceny on these premises. Now there is evidence to support the jury's verdict for statutory burglary. Evidence that a breaking and

entering by physical circumstances exhibited to the jury through photography. I illustrate the case from the Commonwealth's point of view and as I read the statute on the motion to set aside the verdict because it is contrary to law and evidence. And to go further, in establishing statutory burglary the Commonwealth put on evidence of a scientific nature which I suppose, if you maintain this premise, is sufficient to connect the defendant's physical presence within the premise so that you will have a breaking and entering and the defendant being one of those who broke and entered, or being the person who broke and entered. But nothing of the type was attempted by the Commonwealth and nothing is in the record to support the finding of grand larceny on the part of this defendant except surmise and the jury has been instructed and as I understand it as the law of this Commonwealth and it is the law of this Commonwealth that they may not sur-
page 166] mise that he was connected with any grand larceny committed on the premises in question. Now the jury having found him guilty of grand larceny the necessary effect is to acquit him on the charge of statutory burglary. So they are left with the question of grand larceny. If there, or was there, in the two days of the trial evidence competently brought forward by the Commonwealth to establish that this defendant entered himself or in concert with others took, stole or carried away and converted to his own use property of the corporation in question. I submit that there was no such evidence and therefore he is entitled to a new trial on the charge of Grand Larceny. Further I submit that the jury was not properly instructed on the question of Grand Larceny. They were not instructed as to the components or the elements of such a crime and they were not instructed as to the punishment for such a crime and they were not instructed on the punishment for the lesser crime of Petit Larceny which was a correlary of the prosecutions for Grand Larceny and as a result — and there is no evidence established, no evidence of value established, either as to the grand taking or as to the value of the tool. And there is no evidence to support the grand taking and to connect the defendant with the grand taking and no evidence as to the value of the tool. For these reasons I move the Court to set aside the verdict of the Jury in this case and to grant the defendant a new trial on a charge limited to Grand Larceny.

page 167] The Court: In the first place as to the evidence supporting the taking of an amount exceeding Fifty Dollars. Now this defendant was found near the premises next door to the premises running with this tool in his pocket, which the testimony was, came from inside the building. The building had been broken into and representative, Aaron I believe, testified that eleven thousand dollars had been taken in cash and a thousand dollar coin counter. Now you questioned this man as to whether or not he knew all this of his own knowledge and he testified from business records what his views were. Now that goes to his creditability, but doesn't go to the fact that he did not testify eleven thousand dollars hadn't been taken in cash and one thousand dollars in coins. Now right outside this business place on the fence between the place that was broken into Macke V. C. Vending Company, and the bowling alley property, was found approximately fifty dollars in cash in a bag which came from this place and this was the point from which this defendant was running at the time he was arrested and to say that no evidence to support a charge of Grand Larceny would be really absurd. There is no question that the jury had ample evidence to find this man guilty of Grand Larceny. Now as to the charge. Nobody presented an instruction on Grand Larceny. Nobody objected not to offering an instruction on Grand Larceny but the Jury was charged when they were sworn in that they could find him guilty of Statutory Burglary, Grand Larceny or Petit Larceny.

page 168] There was no objection to the instructions when given, and the Jury remembering their charge went out and did not find him guilty of Statutory Burglary but found him guilty of Grand Larceny which supported by the evidence. The Court will overrule the motion to set aside the verdict on those grounds.

Mr. Stoller: If your Honor please to protect the record we would respectfully ask the Court to let it be stipulated that the Court in submitting the Jury the case gave to the Jury three possible forms of verdict. I feel certain that the stenographic record supports this. The Court handed to the jury as they left the room to begin their deliberation these forms of verdicts written as I recall on a yellow pad.

The Court: That is right.

Mr. Stoller: One we the Jury find the defendant guilty of

Statutory Burglary and fix his punishment at; second we the Jury find the defendant guilty of Grand Larceny and fix his punishment at; thirdly we the Jury find the defendant not guilty. I repeat that I most respectfully except to the Court's ruling and ask the Court to do two things at this time if the Court will, first I would like to move the Court to suspend the judgment in this case and I note an appeal and ask the Court to fix a proper amount of bond that this defendant can properly raise and deposit with the Court so that he may be at liberty pending the process of this matter.

The Court: All right. I think we have to sentence him first. All right, Mr. Jordan, will you stand up. Willard Jordan in accordance with the verdict of the Jury who on page 169] May the 22nd found you guilty of Grand Larceny and fixed your punishment at seven years in the penitentiary this Court does fix your punishment and sentence you to Virginia State Penitentiary for a term of seven years. All right have a seat. Now Mr. Stoller.

Mr. Stoller: At this time your Honor we respectfully move the Court first to suspend the sentence, of the judgment in this case and secondly to set an amount of bond to be deposited by the defendant either by his self or by his surety pending his appeal. We at this time note an appeal to the verdict of the Court, being the verdict of the Jury confirmed by the Court.

The Court: All right, Mr. Moran.

Mr. Moran: That is in answer to a motion for a bond, Judge?

The Court: Motion for a bond.

Mr. Moran: Your Honor since the Jury has found the defendant guilty I think it would be proper for the Court to go in somewhat into the back ground of this man. It was my understanding that when he was apprehended here he was already on bond in Florida. I may be in error there but I think that certainly the Court ought to take into consideration the fact that he is not a native of his area and is from a considerable distance the evidence shows and this along with others and that he would be a greater risk certainly than some person who was convicted who was a native of this Roanoke Area. I think the likelihood of this man page 170] skipping bond would be high. I think *its* likely if he gets a chance he's gone and I think the Court ought to take that into consideration and place a sufficiently

high bond so that if he does run the State would be compensated for any trouble it would go to in apprehending him.

Mr. Stoller: If your Honor please we did not particularly object when the Commonwealth argued that the defendant was a Floridian during this trial. I think the Commonwealth is getting mighty close to the point where even a white man can't get justice if he comes from a thousand miles from the Court. Now your Honor the only thing that is involved here is a question of what is a sufficient bond to compensate the Commonwealth should it be put to any cause to reclaim this defendant should he fail to appear if he is unsuccessful in his efforts to have this matter reviewed by the Supreme Court of Appeals of our State. Not to hold him in ransom, he is not Richard the Lionhearted being held in Austria and if your Honor pleases I hope we don't have this sort of ransom in this country. As I understand this law the only purpose of a suspending bond is to compensate, to reasonably compensate the Commonwealth for any expenses it might be put to.

The Court: That is not my theory of a bond, a bond is to assure the return of the man to be tried in cases of appeal and is so required.

Mr. Moran: I believe it is in the discretion of the Court at this point after he has been found guilty by a
page 171] Jury. I believe the Court can deny a bond, I believe it is in *its* discretion if I am not in error on that.

The Court: Well at the moment I see no reason for changing the bond from ten thousand dollars.

Mr. Stoller: If the court pleases you have reduced it to five thousand.

The Court: Beg pardon.

Mr. Stoller: You have reduced it to five thousand dollars.

The Court: Well I am not going to reduce it below ten thousand dollars at the moment. I will have to think about that bond business. I will advise you a little later on the bond.

Mr. Stoller: All right sir, will the Court put in the record that the execution of the punishment is suspended and give the — for the proper length of time necessary to enable the defendant, by his counsel to —

The Court: All right we will grant you a stay of sixty days.

Mr. Stoller: All right sir, thank you.

The Court: All right, thank you very much gentlemen.

page 172] CERTIFICATE

I, Lena Testerman, Court Reporter, designated and appointed to report this case, do hereby certify that I was duly sworn, that the proceedings herein were taken by Electronic Machine and accurately transcribed to the best of my ability, and that this transcription is a true and accurate account of all the evidence taken, motions and the Court's action thereto, and incidents of the trial in the case of *Commonwealth of Virginia* vs. *Willard C. Jordan,* tried in the Hustings Court of the City of Roanoke, Virginia on the 21st and 22nd days of May, 1965 and continued to May 27, 1965.

Given under my hand this 19th day of July, 1965.

LENA TESTERMAN (SEAL)
Court Reporter

page 173] CERTIFICATE

I, Richard T. Edwards, Judge of the Hustings Court of the City of Roanoke, Virginia, do hereby certify that the foregoing is a true and correct stenographic copy and report of the evidence and other incidents of the trial therein, all questions raised and all rulings thereon and exceptions noted in the case of *Commonwealth of Virginia* vs. *Willard C. Jordon,* in said Court on the 21st, 22nd and 27th days of May, 1965, and it appears in writing that Leroy Moran, Attorney for the Commonwealth, had reasonable notice when this report of testimony and other incidents of the trial would be presented for certification, and which was presented to me on the 23 day of July, 1965, within sixty days after final order and signed by me within seventy days.

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

Given under my hand this the 23 day of July, 1965.

RICHARD T. EDWARDS
Judge of the Hustings Court of the
City of Roanoke, Virginia

page 174] CERTIFICATE

I, Walker R. Carter, Jr., Clerk of the Hustings Court of the City of Roanoke, Virginia, do hereby certify that the foregoing stenographic copy or report of the testimony and other incidents of the trial in the case of *Commonwealth of Virginia* vs. *Willard C. Jordon* was filed with me as Clerk of said Court on the 23rd day of July, 1965.

WALKER R. CARTER, JR.
Clerk of the Hustings Court of the
City of Roanoke, Virginia

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A Copy—Teste:

H. G. TURNER, Clerk.

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