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Record No. 6828

In the Supreme Court of Appeals of Virginia at Richmond

EDWARD DUFFY PHILLIPS

v.

COMMONWEALTH OF VIRGINIA

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

RULE 5:12—BRIEFS

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

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6828

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 28th day of November, 1967.

EDWARD DUFFY PHILLIPS, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

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

Upon the petition of Edward Duffy Phillips a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk, Part Two, on the 12th day of October, 1967, *nunc pro tunc,* March 23, 1967, 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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* * * * *

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its February term, 1967; upon their oaths, present that Edward Duffy Phillips, alias Edward Phillips, alias to-wit on the 5th day of November in the year 1966, in the said City of Norfolk, Virginia, wilfully and feloniously did set fire to, burn, cause to be burned, aid, counsel and procure the burning of a certain automobile, a 1966 Mercury Sedan, Serial Number 6W68M508787, bearing State of Virginia license plates numbered 105-884 for the year 1966, the property of Edward D. Phillips, which said automobile at the time of said burning was insured against loss and damage by fire, with intent to injure the insurer,

* * * * *

page 9 } INSTRUCTION NO. C-1

* * * * *

The Court instructs the jury that if any person wilfully set fire to or burn or caused to be burned or aid, counsel, or procure the burning of any automobile, which, at the time, is insured against loss or damage by fire, with intent to injure the insurer, he shall be confined in the penitentiary not less than one nor more than ten years.

Granted: X March 8, 1967. L. B. TABB

page 10 } INSTRUCTION NO. C-2

* * * * *

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury, and the law is that, where a number of witnesses testify directly opposite to each other, the jury is not bound to regard the weight of evidence as equally balanced. The jury have the right to consider the appearance of the witnesses on the stand, their

manner of testifying and their apparent candor and fairness, their apparent intelligence (or lack of intelligence), their means of information, their relationship to any of the parties, if same is proved, their interest, if any, in the result of the case, their temper, feeling or bias, if any has been shown, and from these and all the other surrounding circumstances appearing on the trial, determine which witnesses are more worthy of credit, and to give credit accordingly.

page 11 } INSTRUCTION NO. D-1

The Court instructs the jury that the finding of the indictment by the Grand Jury against the defendant in this case is no evidence against him and must not be permitted to influence the jury in any manner in arriving at a verdict.

Granted: March 8, 1967. L. B. TABB

page 12 } INSTRUCTION NO. D-3

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. 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 of the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence introduced by the Commonwealth and the defense 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.

Granted: March 8, 1967. L. B. TABB

INSTRUCTION NO. D-4

The Court instructs the Jury that in all your deliberations you must bear in mind that the defendant is presumed to be innocent of any offense charged against him in this case, and this presumption goes with him through every stage of the trial, and the burden is on the Prosecution to overcome this presumption of innocence and prove and establish his

guilt beyond a reasonable doubt; no mere preponderance of evidence or any weight or preponderance of evidence, however strong, will suffice as in a civil case, nor is it enough that you may believe the defendant is probably guilty; no degree of probability, however strong, will warrant or authorize you to convict.

Granted: March 8, 1967. L. B. TABB

page 13 } INSTRUCTION NO. D-5

The Court instructs the Jury that the burden is on the Commonwealth to prove beyond all reasonable doubt that the defendant, Edward Phillips, is guilty of the offense with which he is charged.

In this regard the Court further instructs the Jury that the Commonwealth must prove each and every element of that crime, beyond all reasonable doubt. Therefore, it is essential that the Commonwealth prove:

1. That Edward Phillips aided, counselled or procurred the burning of the automobile.
2. That at the time Edward Phillips did such, that said automobile was insured against loss or damage by fire.
3. That at such time it was done by Edward Phillips with intent to injure the insurer.

If, after hearing the evidence, there is any reasonable doubt in your minds as to any one or more of those essential elements of the offense, then the Commonwealth has failed to carry the burden upon it and it is your duty to find the defendant, Edward Phillips, not guilty.

Granted: March 8, 1967. L. B. TABB

page 14 } INSTRUCTION NO. D-9

The Court instructs the Jury that under the testimony given by Frank Kelly and Ronald Purchase in this case they were accomplices in the commission of the offense charged in the indictment against Edward Phillips, and while the Jury may found its verdict upon the uncorroborated testimony of an accomplice, it is the duty of the Jury to receive such testimony with great care and caution.

Granted: March 8, 1967. L. B. TABB

page 15 } INSTRUCTION NO. D-10

If you believe from the evidence that any witness has

knowingly testified falsely as to any material fact in this case, you have a right to discredit all of the testimony of such witness or to give to such testimony such weight and credit as in your opinion it is entitled.

Granted: March 8, 1967. L. B. TABB

page 16 } INSTRUCTION NO. D-2

The Court instructs the Jury that in all your deliberations you must bear in mind that the defendant is presumed to be innocent of any offense charged against him in this case, and this presumption goes with him through every stage of the trial, and the burden is on the Prosecution to overcome this presumption of innocence and prove and establish his guilt beyond a reasonable doubt; no mere preponderance of evidence or any weight or preponderance of evidence, however strong, will suffice as in a civil case, nor is it enough that you may believe the defendant is probably guilty; no degree of probability however strong, will warrant or authorize you to convict him.

Unless your belief in his guilt, based upon the evidence, rises above the highest degree of probability, then you are not convinced of his guilt beyond a reasonable doubt, and you should find him not guilty; and if, after full and careful consideration and deliberation, any one of you has a reasonable doubt as to his guilt, you cannot find him guilty, although the other jurors believe in his guilt beyond a reasonable doubt.

Refused X March 8, 1967. L. B. TABB

page 17 } INSTRUCTION NO. D-6

The Court instructs the Jury that as regards the essential elements of the offense that the Commonwealth must prove beyond all reasonable doubt the intent to injure the insurer must exist at the time of the aiding, counselling or procuring of the burning of the automobile; an intent to obtain insurance benefits that arises after any such burning is not sufficient. Unless the Commonwealth proves beyond all reasonable doubt that any such intent to injure the insurer existed at the same time and concurrently with the act of aiding, counselling or procuring the burning, the Commonwealth has failed to carry the burden of proof upon it.

Refused X March 8, 1967. L. B. TABB

page 18 } INSTRUCTION NO. D-7

The Court instructs the Jury that the offense with which Edward Phillips is charged requires proof of a specific intent to injure the insurer. If after hearing all the evidence the Commonwealth failed to prove this specific intent to you, or if there is any reasonable doubt in your minds of the existence of such specific intent, then you cannot convict the defendant, Edward Phillips, and it is your duty to find him not guilty.

In this regard, you are further instructed that even though you may believe from the evidence beyond a reasonable doubt that Edward Phillips did any of the acts with which he is charged and even though you may believe that the doing of any such acts was unlawful, nevertheless before you can convict him of the crime with which he is charged you must further believe beyond a reasonable doubt that he actually intended to commit willful burning of his automobile with intent to injure the insurer.

Refused X March 8, 1967. L. B. TABB

page 19 } INSTRUCTION NO. D-8

The Court instructs the Jury that under the testimony given by Frank Kelly and Ronald Purchase in this case they were accomplices in the commission of the offense charged in the indictment against Edward Phillips, and while the Jury may found its verdict upon the uncorroborated testimony of an accomplice, it is the duty of the Jury to receive such testimony with great care and caution, and the Court warns the Jury of the danger of convicting Edward Phillips upon the uncorroborated testimony of an accomplice.

Refused X March 8, 1967. L. B. TABB

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Pursuant to the provisions of the Rules of the Supreme Court of Appeals of Virginia, the defendant, Edward Duffy Phillips, hereby files notice of his intention to appeal from a

conviction by this Court on March 8, 1967, of a violation of Section 18.1-85 of the 1950 Code of Virginia, as amended. The errors assigned are as follows:

1. The Court erred in overruling defendant's motion to strike the testimony of the witness, Kelley, for the grounds advanced at the time this motion was made.

2. The Court erred in refusing to sustain the motion of the defendant to strike the Commonwealth's evidence at the conclusion of the Commonwealth's evidence and at the conclusion of all of the evidence on the grounds that the Commonwealth had not proved each and every essential element of the statutory offense with which the defendant was charged, and had not proved the defendant's guilt beyond a reasonable doubt.

3. The Court erred in refusing to sustain defendant's motion to set aside the verdict of the jury on the ground that said verdict was contrary to the law and evidence and without sufficient evidence to support it.

4. The Court erred in granting the Commonwealth's instruction to the jury numbered C-1, on the ground that the Commonwealth had not proved that the defendant burned or *procurred* the burning of the automobile which *at* page 22 } *the time* of the loss was *insured against damage by fire.*

5. The Court erred in refusing to grant defendant's instructions to the jury numbered D-2, D-6, D-7 and D-8 on the grounds that they were proper, applicable statements of the law.

EDWARD DUFFY PHILLIPS

By RICHARD J. TAVSS
Of Counsel

STANLEY E. SACKS
RICHARD J. TAVSS
SACKS, SACKS & KENDALL, p.d.
915 Virginia National Bank Building
Norfolk, Virginia

* * * * *

Filed 5-5-67.

W. L. PRIEUR, JR., Clerk

BY W. T. RYAN, D.C.

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In the Corporation Court of the City of Norfolk, Part Two, on Thursday, the 12th. day of October, 1967.

* * * * *

This day came the said defendant and came as well the Attorney for the defendant and the Attorney for the Commonwealth and the matter of a motion made by the defendant on the 8th. day of March, 1967 to set aside the verdict of the jury and grant him a new trial on the grounds that said verdict is contrary to the law and the evidence, and the matter having been fully heard, the Court having allowed the defendant until this date, the Court doth overrule the motion, the defendant, by counsel, duly excepted. Whereupon it being demanded of him, if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is therefore considered by the Court that the said defendant be confined in the Penitentiary of this Commonwealth for the term of One (1) Year, subject to a credit of no days spent in jail awaiting trial, and that he pay the costs of his prosecution. Thereupon the said defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion, having been fully heard is sustained, and the execution of the foregoing sentence is hereby postponed for a period of 60 days, or until the Supreme Court of Appeals of Virginia shall deny said writ of error if prior thereto. A court reporter recorded the evidence and incidents of this proceeding.

And the prisoner was allowed to depart pursuant to the terms of his recognizance.

This order should have been entered on the 23rd. day of March, 1967, it is here entered *nunc pro tunc.*

* * * * *

page 8 }

* * * * *

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name for the record, please sir?

A. Officer James E. Lewis.

Q. You are a photographer, with the Norfolk Police Department?

A. Yes, sir.

Q. And you are assigned where, sir?

A. Central Files.

(Mr. Whitehurst shows photographs to Mr. Sacks
page 9 } and the Defendant.)

Mr. Whitehurst: May it please the Court, I'd like to present three pictures as C-1, C-2 and C-3, for the purpose of identification.

The Court: So marked, for identification.

By Mr. Whitehurst:

Q. Officer Lewis, I show you the pictures marked C-1, C-2 and C-3 for the purpose of identification, and ask if you can identify them?

A. (witness looks at photographs) Yes, I can.

Q. When and where, were they taken?

A. These were taken on the morning of the 5th of November, 1966.

Q. All right, sir—where, were they taken?

A. This was in the 200 block, of Naval Base Road.

Q. All right, sir—what was the object, the pictures were taken of?

A. A 1966 Mercury.

Q. And do those pictures indicate or show the scene, as it existed when you took them?

A. Yes, sir.

Mr. Whitehurst: Answer cross examination, if you will sir.

Mr. Tavss: No questions, Your Honor.

page 10 } Mr. Whitehurst: Step down, sir.

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

Mr. Whitehurst: May it please the Court, I offer these three pictures into evidence as C-1, C-2 and C-3.

Mr. Sacks: No objection, Your Honor.

The Court: Received into evidence, as Commonwealth's Exhibits C-1, C-2 and C-3.

Mr. Whitehurst: Mr. Redfield.

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name, please sir?

A. Herbert C. Redfield.

Q. What is your occupation, sir?

A. Fire Investigator, Norfolk City Fire Department.

Q. With reference to your official capacity, did you have occasion to go to the Wards Corner area in the

page 11 } vicinity of Naval Base Road on November 5, 1966?

A. Yes, sir.

Q. What time, did you go there?

A. Approximately, 12:15.

Q. And that location, would be exactly what?

A. That was east on Stockton Road, off Naval Base Road.

Q. And is that location, within the City limits of Norfolk, Virginia-

A. Yes, sir.

The Court: Was that 12:15 A.M., or P.M.?

A. A.M., Your Honor.

Q. That would have been shortly after midnight on the 5th of November, is that what you mean?

A. Yes, sir.

By Mr. Whitehurst:

Q. Tell us what you did and saw there, upon your arrival?

A. The firemen were in the process of extinguishing a fire in a 1966 Mercury, and after the fire had been extinguished,

Herbert C. Redfield

we attempted to see if the fire initiated from the interior or motor compartment.

When we attempted to lift the hood, it fell off; so at that time, we made a thorough examination of the car page 12 } to determine what happened—we found that the motor was not present, or the transmission; and in examining the hood, we found it had been cut off the braces with some type of torch.

Q. All right, sir—with reference to the fire; what did you see, with reference to it?

A. The interior of the vehicle had been wholly consumed, and in examining it, it appeared a very hot-type fire—first, it had melted down the interior section and then the panel section.

Q. All right, sir—was the serial number of the automobile gotten from the vehicle, sir?

A. Yes, sir—it was taken off the door, on the driver's side.

Q. What was that, sir?

A. That was 6W68M508787.

Q. What was the license number of the vehicle, sir—did you get that?

A. Yes, sir—that was 105 884.

The Court: What was that, again?

A. 105 884, Your Honor.

By Mr. Whitehurst:

Q. (Mr. Whitehurst shows photograph to the witness) I show you a picture, marked C-1—would you describe to the jury, what that shows sir?

page 13 } A. This is a front view of the Mercury, as I saw it on the night of the fire.

Q. And what does that show, with relation to the bumper on that particular type car?

A. The license is in the bumper, in that particular type car—it's right in this area here (indicating) that appears dark, so to speak.

Q. What else, do you recall of the scene?

A. Well, there was no motor present or transmission; the hood had been cut, so that it fell off from the braces that would normally hold it.

Q. Was the hood there, when you got there?

A. Yes, sir—it was there; when we went to raise it up, that's when it fell off.

Herbert C. Redfield

Q. (Mr. Whitehurst shows photograph to the witness) I show you this picture, marked C-2—would you tell the jury what it shows?

A. This was taken of the front section of the vehicle, showing where the fire had been in the interior.

Q. (Mr. Whitehurst shows photograph to the witness) I show you this picture, marked C-3—what, does that show?

A. This is a picture of the interior of the motor compartment, and shows the lack of a motor and the lack of transmission.

page 14 } Q. All right, sir—now Mr. Redfield, with reference to the fire; is there anything further you could say about it, or not?

A. No, sir.

Q. How long, were you there at the scene?

A. Approximately, 15 minutes.

The Court: Approximately, 15 minutes?

A. Yes, Your Honor.

By Mr. Whitehurst:

Q. And this particular area, is off what street?

A. East of Stockton Road, on Naval Base Road.

Mr. Whitehurst: All right, sir—answer counsel for the Defense.

Mr. Tavss: No questions, Your Honor.

Mr. Whitehurst: Step down, sir.

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

Mr. Whitehurst: Mr. Kelly.

Deputy City Sergeant: If Your Honor please, this witness has not been sworn.

(The witness was duly sworn, by the Court.)

The Court: Take the witness stand, please.

Frank Grayson Kelly, III

page 15 } FRANK GRAYSON KELLY, III, witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name, please sir?

A. Frank Grayson Kelly, III.

Q. Would you raise your voice please sir, so we all may be able to hear you—would you mind stating your name again, sir?

A. Frank Grayson Kelly, III.

Q. All right, sir—how old, are you?

A. Twenty-five.

Q. Back in November of last year, where did you work?

A. Norfolk Shipbuilding and Drydock Corporation.

Q. The Defendant here, Edward Duffy Phillips—do you know him, sir?

A. Yes.

Q. Where, did you come to know him?

A. At work.

Q. Did he work there also, at the Norfolk Shipbuilding and Drydock Corporation?

A. Yes.

Q. A man named Ronald Purchase, sir—did you
page 16 } know him, also?

A. Yes.

Q. How, did you come to know him?

A. He—his ship was in the Shipyard at that time, having some work done on it.

Q. Let me ask you this question, sir: did or did you not have a discussion with the Defendant, concerning his 1966 Mercury?

A. Yes, I did.

Q. You did—all right, sir; start at the beginning, and relate to the jury what that was, what the first conversation or discussion you had concerning it?

A. He asked me, 'if I'd like to make some money'.

Q. 'He'—who, is 'he'?

A. Mr. Phillips.

Q. How long had you known Mr. Phillips, at that time?

A. Maybe, a month.

Q. All right, sir—and this took place, where?

Frank Grayson Kelly, III

A. This was when we were working upstairs, in the Machine Shop.

Q. Did you two, work in the same particular shop?

A. Yes, sir.

Q. Where did this other man, Ronald Purchase, that you spoke of—where, did he work?

page 17 } A. He was off his ship, and he was assigned to the shop to oversee the work being done on part of his ship.

Q. All right—go ahead from the beginning, if you would?

A. Mr. Phillips already asked me 'if I'd like to make some money', and I said 'yes'; then he told me 'he had a car he was not satisfied with and wanted to get rid of', and I told him, I believe at that time, that 'I thought I probably could do it'.

Later on that same morning, I was talking to Purchase—he had worked on my car, and I owed him some money for doing some work on my car, and I told him—

Mr. Sacks: Objection, Your Honor, to any conversation held between these two and out of the Defendant's presence.

The Court: All right—don't tell us what you and Ronald Purchase discussed; but, you did speak to Mr. Purchase?

A. Yes, sir—concerning the particular—

The Court: Don't tell us what the conversation was, between you.

A. All right—Purchase asked me 'if I wanted to make some money', and I told Purchase 'I thought I could probably do it'—I mean, Phillips.

page 18 } The Court: You're referring now, to the conversation you had with Mr. Phillips?

A. Yes, sir.

The Court: All right—next question.

By Mr. Whitehurst:

Q. Let me ask you this, sir: was there a discussion, on how to do it?

A. Yes, sir.

Q. What, was that?

A. Well, that's what I was just going to tell you sir—how Purchase and me were going to—

Q. I meant, between you and Mr. Phillips?

A. Oh.

Q. Only relate the conversation, between you and Mr. Phillips?

Frank Grayson Kelly, III

A. Well, I told him what I had in mind to do, to get rid of it—and he said, 'he wanted the car burned'.

Q. What was your idea, to get rid of the car?

Mr. Sacks: I object to what his idea was, Your Honor.

Mr. Whitehurst: This was the discussion between the witness and Mr. Phillips, Your Honor.

page 19 } Witness: Phillips wanted the car burned and I didn't really go for it at first, but he said 'for reasons of his own, he wanted to make sure the car was a total loss and the only way to make sure of that, was to burn it'.

By Mr. Whitehurst:

Q. What other statements were made by you and him, to each other?

A. He said (pause) he had done it once before, that without burning the car it might come close enough to not being a total loss, and that he had heard that if a car was burned, it automatically was a total loss'.

Q. Did he say precisely, what he had done before?

A. He didn't go into absolute detail of how he totaled the loss of the car, and he wasn't even sure what type car it was.

Q. All right—what other conversation did you have, with him?

A. Well finally, we came to an agreement, he wanted the car burned—and so he, later on, not that same day, he suggested the Wards Corner area where there had been fires of cars, and we both seemed to like that and thought it was a good idea, because they would probably—well, we thought it was a good idea and he had already mentioned it then first, so we agreed to burning the car.

page 20 } Mr. Sacks: He said 'they thought it was a good idea', and I object to what these men thought, Your Honor.

The Court: Sustained—don't tell what you thought, tell us what you said to each other; there's a difference, you see.

Witness: He said 'he had read of a lot of good burnings in the Wards Corner area, and that was a good place to burn the car because it wouldn't be suspected, it would be in the same nature of the other cars'.

Frank Grayson Kelly, III

By Mr. Whitehurst:

Q. Now when were these conversations, that you're talking about?

A. Approximately a week and a half, prior to November 5th.

Q. A week and a half, before November 5th of 1966?

A. Yes, sir.

Q. And where again, were they?

A. At the Newport—the Norfolk Shipbuilding and Drydock, rather.

Q. All right, sir—let me ask you this: how many conversations did you have with him, about this?

A. Approximately one, every day.

Q. Well how many would that be, how many
page 21 } days were involved?

A. Five, or six.

Q. What, was next discussed?

A. (pause) What would be taken, from the car.

Q. All right—what was discussed, in reference to that?

A. He said 'he didn't care what was done to the car, as long as it was a total loss; and if I wanted anything out of the car, to go ahead and take it'.

Q. What was the conversation, concerning—

Mr. Sacks: Your Honor—just a minute; I object to the Commonwealth's Attorney leading him with 'what was the conversation'.

The Court: Rephrase the question.

By Mr. Whitehurst:

Q. What was next discussed, what next conversation did you have, concerning the taking of different material from the car—and tell us, what the circumstances were?

A. I was having car trouble, and I needed a new engine.

Mr. Sacks: I object to going into history, Your Honor.

The Court: Answer the question — relate the conversation.

page 22 } Witness: I asked him 'how about the removal of his engine, from his car', and he said 'he didn't care what was taken from the car'; I told him 'I wanted the engine, and I'd like to get it', and he said 'he didn't care, as long as the car was burned'—so then I took the engine, when we took the car.

Frank Grayson Kelly, III

By Mr. Whitehurst:
Q. Was or was not, any money discussed?

Mr. Sacks: Now Your Honor, I have the same objection—I think he has a right to ask 'what was the discussion'.
The Court: I overrule that objection, Mr. Sacks.
Mr. Sacks: Exception.
The Court: What further conversation did you have with him, answer the question.
A. Concerning the money?

Q. What if anything, were you to get—let's get into it, right now.
A. I'll have to refer to Purchase, now—I went back that same day, and told him 'I would do it' and he handed me, he gave me five twenty-dollar bills, in the men's
page 23 } restroom.
Q. When you say 'he handed you five twenty-dollar bills' and 'he gave you'—who do you have reference to, when you say 'he'?
A. Phillips, Your Honor.
Q. All right.
A. And then, I went and gave Purchase $35.00 or $40.00—I'm not sure, exactly how much it was.

By Mr. Whitehurst:
Q. What conversation was had, then?
A. Just that he said 'he would give me the money any time I wanted, and he had it with him at that time'—Phillips did, I mean.
Q. When was this, about?
A. You mean the conversation we had, about the money?
A. With reference to the money, you just mentioned?
A. That was the first day he approached me on the subject, but I don't remember the date.
Q. What happened, next?
A. I gave Purchase some of the money, and involved him in it with me.
page 24 } Q. All right, sir—then what happened next, between you and Phillips?
A. It was approximately a day or two later, when he brought me the keys.
Q. Did you have any conversation, about the keys?
A. He told me 'he didn't think'—he said 'his wife had a set of keys, and she would not miss his keys'; I had his keys for approximately a week, before I went for the car.

Frank Grayson Kelly, III

Q. When, was the car taken?
A. It was taken, on Friday night?
Q. Do you know what date, that was?
A. November 5th, I believe.
Q. Let me ask you this, sir: how, did you take the car?
A. I had some friends drive me to approximately 25 yards of the house, where the street ends in a circle.
Q. Who was the friend, that drove you?
A. Purchase.
Q. What happened, then?
A. I got out of the car, walked over, got in his car and started the engine.
Q. All right, sir—now—

The Court: You got into whose car?
A. Phillips' car, Your Honor.
page 25 } Q. That would be, which vehicle?
A. Phillips' 1966 Mercury, Your Honor.

By Mr. Whitehurst:
Q. How did you know, where it was?
A. He told me 'he would park it, under the tree', which was not right in front of his house, it was a little off to the right of his house front—he said 'he would park it, there'.
Q. When, did he tell you 'he would park it there'?
A. (pause) This was the day that I—the day before, on Thursday.
Q. The Thursday, before that Friday?
A. The day, before I did it.
Q. How did you know, where he lived?
A. He had taken me, over there.
Q. When, was that?
A. Let me explain, that—I believe that was Wednesday evening after we got off work; I didn't have a ride home that afternoon, and he said 'he would take me home', and he took me by his house and showed me where he lived.
Q. What car was he driving, then?
A. The '66 Mercury.
Q. When, did you first see his '66 Mercury?
A. At that time—that's the first time, I'd ever
page 26 } seen it.
Q. When was that, again?
A. On Wednesday, before Friday or the 5th of November.
Q. All right, sir—now what took place, when you rode with the Defendant at that time?

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A. We drove over to his house, he showed me where he lived and the best way to go about getting to his house; then he took me back to where my car was in Norfolk, I drove mine out and left mine there.

Q. All right, sir—was there any further conversation, concerning the car, at that time?

A. Just that he pointed to the points that he was disappointed in, in the car?

Q. What, were they?

A. None of the doors, closed properly; one window, he couldn't even keep shut; there was a bump on the roof and the inside was buckled—he was quite displeased with his car, it had been in an accident before being put on the lot where he bought it.

Q. Where was that, sir?

A. Watts Motor Company.

Q. Where are they located, do you know?

A. I don't know, sir.

Q. Is that W-a-t-t-s Motor Company, sir?

page 27 } A. Yes, sir—I guess so.

Q. All right, sir—what happened next, with reference to the vehicle?

A. (pause) I went over, and got the car.

Q. Was anyone with you, at that time?

A. Yes, sir.

Q. Who?

A. Purchase.

Q. And what time, did you do this?

A. Approximately 8:30, sir.

Q. Was that, in the nighttime?

A. Yes, sir.

Q. All right—what happened, then?

A. I got the car, which was parked on the street and brought it back to Norfolk; we went down Hampton Boulevard until I got to Hampton Boulevard and Little Creek Road, where I stopped at the Be-Lo Supermarket and at this point, Purchase said 'he would like to drive the car'.

Q. At that point, Purchase said 'he would like to drive the car'?

A. At that point, Purchase said 'he would like to drive'—yes, sir.

Mr. Sacks: Objection, Your Honor.

The Court: Sustained—I'll strike that.

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By Mr. Whitehurst:

page 28 } Q. Proceed, sir.

Q. From then, I was not driving — Purchase drove to Shoney's, to eat; when we came out, then I continued driving on down to Lewis' Trailer Park where we removed the engine and transmission also, and—

Q. Where, was that?

A. Lewis' Trailer Park—I believe it was Lot No. Six.

Q. You're not sure of the Lot, but that's where it was?

A. It was Lot No. Six, yes sir.

Q. All right, sir—go on.

A. Well, Purchase—they had a ramp and a hoist there, which they allowed Purchase to use in hoisting the motor from the car.

Q. All right, sir—what time, did you get there?

A. Approximate, 10:00 o'clock.

Q. And, who was there?

A. I believe Ron DuBoise and his wife, and Purchase and myself—I don't think anyone else, was there.

Q. Did Mr. DuBoise know, what the situation was?

A. Not to my knowledge.

Q. What happened, there?

A. He removed the engine and transmission, and the drive shaft.

page 29 } Q. How long, did that take?

A. Approximately, an hour and a half.

Q. What did you do, with it?

A. Set it on blocks, and covered it; and the Mercury, we took that off the ramp and pulled it to Naval Base Road.

Q. Describe, how you did that?

A. We took my car, and we took the car from Lot No. Six and pulled it to Naval Base Road.

The Court: Who, is 'we'?

A. Purchase and myself, Your Honor—we pulled it, by chain.

By Mr. Whitehurst:

Q. Who, was driving what?

A. I was driving the Mercury, steering it; Purchase was driving my car, pulling it.

Q. And your car, was what kind?

A. A '61 Ford,

Frank Grayson Kelly, III

Q. All right, sir—what happened when you got around to Naval Base Road, from Lot No. Six?

A. We went around to Naval Base Road, and I had the gasoline in a can and I poured it on, so it would catch fire—I ignited the car by pouring gasoline on the car's interior, and after removing the radio, which I did, I struck a match to it and closed the door, and then we left.

page 30 } Q. Did the car ignite, sir?

A. It was on fire, yes sir.

Q. Now, where did the gasoline come from that you used?

A. From the gas tank, of the Mercury.

Q. When, did you get it?

A. This we got in a can, the same night we removed the engine.

Q. Exactly where, did you put the gasoline?

A. I sloshed it around the front seat, and the back seat.

Q. How did you start the fire, again?

A. I struck a match and threw it in, it caught immediately, I closed the door and we left.

Q. And, what was the condition of the car when you left?

A. (pause) The interior, was completely on fire.

Q. Where did you go, then?

A. I took Purchase back to the Trailer Park, and I don't remember where I went—probably, home.

Q. All right, sir—what was your next conversation, with the Defendant?

A. I didn't see him again until Tuesday morning, at which time I returned the set of keys to him and asked him 'was he satisfied', and he said 'he was pretty well satis-

page 31 } fied; a little disappointed, because he hoped to get a new car out of it, but he just got paid off on that one; still, he was satisfied'.

Q. Did you have any further conversations, with Mr. Phillips?

A. I don't believe so, sir.

Q. When, did you first see the police?

A. When I came in here, on New Year's Eve.

Q. How did that come about, your seeing the police?

A. I called someone and talked to him, and asked 'if they were looking for me' and he said 'they were not, there was someone else the police were looking for'.

Mr. Sacks: Your Honor, I object to that part of his answer 'the police were looking for someone else'.

The Court: Sustained—I'll strike from the record, what the police told him.

By Mr. Whitehurst:

Q. You asked the police 'if they were looking for you', and was that when you called the Detective Bureau here in Norfolk?

A. Yes, sir.

Q. All right, sir—go ahead, if you will.

A. Well, I asked 'if they were looking for me'

page 32 } and finally I got in touch with Detective Mears—

I was talking to Detective Mears, and I asked him—

The Court: Don't tell us what the conversation was, but when was that?

A. Approximately 2:00 o'clock.

Q. On what date?

A. It was New Year's Eve, that's all I can tell you—it was last New Year's Eve.

Q. Was that 2:00 o'clock P.M., or A.M.?

A. It was in the afternoon, Your Honor.

Q. That was 2:00 P.M., in the afternoon of last New Year's Eve?

A. Yes, sir.

By Mr. Whitehurst:

Q. What happened, to the engine of the Mercury?

A. It was put into my car, sir.

Q. When, was that done?

A. Approximately, a month after that.

Q. Approximately, a month later?

A. Yes, sir.

Q. Where did the engine remain, until that time a month later?

A. Lot No. Six, at Lewis' Trailer Park.

Q. What happened to the engine, that was in your '61 Ford?

page 33 } A. I gave that to Purchase, and he sold it.

Q. What else did you give to Purchase, concerning this case?

A. I gave him part of the money that I mentioned, that evening earlier—I gave him approximately $35.00 or $40.00,

Q. You say '$35.00 or $40.00'?

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A. Yes, sir.

Mr. Whitehurst: All right—answer any questions of the Court, or Mr. Sacks.

The Court: I have one question: you referred to a Shipyard, the Norfolk Shipbuilding and Drydock Corporation?

A. Yes, sir.

Q. Is that where you worked, at that time?

A. Yes, Your Honor.

Q. And, the Defendant also worked there?

A. Yes, Your Honor.

Q. One other thing: where did the conversation, the first conversation which you related, take place?

A. That was at the end of Liberty Street, in Berkley.

Q. And that's located within the City limits of
page 34 } Norfolk, Virginia?

A. Yes, Your Honor.

The Court: That's all, I have.

Mr. Whitehurst: All right—if you will sir, answer Defense counsel's questions.

CROSS EXAMINATION

Examined By Mr. Sacks:

Q. Mr. Kelly, where were you making your home?

A. Where, was I making my home?

Q. At the time this came up, where were you living?

A. Northampton Boulevard.

Q. At what address, Mr. Kelly?

A. I believe, 2513.

Q. How long did you live there, roughly?

A. Approximately, three months.

Q. And before that, were you living in the City of Norfolk?

A. Yes.

Q. How long, had you lived in the City of Norfolk?

A. Approximately, three years.

Q. So then you came to Norfolk, three years ago?

A. I lived with my family, before that.

page 35 } Q. You did—and where was that, sir?

A. In Hampton, Virginia—on Lamington Road.

Q. Lamington Road?

A. Yes.

Q. How long, did you live on Lamington Road?

A. Approximately, 18 years.

Q. Then you've lived in the Tidewater area, for the past 21 years of your life?

A. Yes, sir.

Q. Then you're familiar with the Wards Corner area, are you not?

A. Fairly, sir.

Q. All right—now how long had you known the Defendant when he came to you, and as you tell us, he asked you 'if you wanted to make some money'—how long, had you known him?

A. Approximately, a month.

Q. One month?

A. Yes.

Q. You had not been too friendly though, had you?

A. Yes.

Q. Hadn't you—as a matter of fact, hadn't you had a few words, or a couple arguments—

A. No, sir.

Q. —about the work?

page 36 } A. No, sir.

Q. You say, 'you had not'?

A. No, sir.

Q. You deny that?

A. I deny that.

Q. You had no difficulty with him, at all?

A. No, sir.

Q. You never had words with him, or argued with him over the work—you all got along fine, during that month?

A. Right.

Q. You mean to tell us that this man picked you out, knowing you for only 30 days prior, and asked you to do this thing—is that what you're saying, Mr. Kelly?

A. Yes.

Q. All right—and that's the first conversation you ever had with him about his automobile, or anything like that, was it not?

A. Yes, sir.

Q. All right—what day of the week was it, do you remember?

A. I don't remember.

Q. Well, you told us 'Tuesday', on some things.

A. Tuesday?

Q. I thought you said 'you talked to him, on a

page 37 } Tuesday'?

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A. I said 'I believed it was approximately, on a Thursday'.

Q. All right—it's in your statement; was that in the morning, or afternoon?

A. Morning.

Q. And am I correct, in assuming that Purchase, who was a Navy man and the other man, was not present at any of these conversations?

A. Yes—that is, he was.

Q. He was?

A. Yes, sir.

Q. During which conversation, was Purchase present?

A. The conversation of whether or not to burn the car, and where to burn it.

Q. Was this talk, between you and Purchase?

A. No—I'm talking about between Phillips, Purchase and myself.

Q. The first conversation you ever had with Phillips, Purchase was not there—was he?

A. No, sir.

Q. All right—now you told us a few moments ago that when you discussed how to do it, that was the first conversation?

page 38 } A. No, sir.

Q. What, was the first conversation?

A. When Phillips asked me 'if I wanted to make some money'.

Q. And you told him 'you didn't care exactly how it was done'—isn't that what you told him?

A. Yes.

Q. And he just happened to pick you out, somebody who didn't care how it was made—had you ever done anything like that, before?

A. Had I?—no, sir.

Q. And, you had not talked to Phillips in the past?

A. No.

Q. He just asked you, and when you saw him again you said 'you believed you would'?

A. Yes, sir.

Q. All right—what did he tell you in the conversation that was between you, the Defendant and Purchase?

A. In the first place, he picked me out—

Q. —as the one person, among his friends?

A. Yes.

Q. Had he talked to other people, earlier?

A. I don't know, of my own knowledge.

Q. What do you know of that, of your own knowl-
page 39 } edge?

A. I know that there was another person, that told me 'he talked to them that day'.

Q. But he didn't bother to tell you that, and what you say another person told you would be hearsay—you never heard him talk to anybody else, did you?

A. No, sir.

Q. All right—so as far as you know, of your own knowledge, he did pick you out and you don't know anything besides what somebody else told you?

A. Not to my own knowledge, no sir.

Q. All right—now he was the one that said something to you first, correct?

A. Yes, sir.

Q. And then you said 'you thought you would'?

A. Yes.

Q. All right—what was the next thing he said to you, and watch your words, because this is important; to the best of your ability, do you remember what he said next to you Mr. Kelly?

A. He said 'he had a car, he wanted to get rid of'.

Q. All right—go ahead, and tell us now.

A. And I went along with that, and I said 'let me think about it, a while'; he said 'okay, when and if I
page 40 } decide to do it, to let him know and he had the money with him then, if I wanted him to pay me at that time, or any time I wanted it, I could have it'.

Q. He'd pay you, in advance?

A. Yes, sir.

Q. All right—so then, there are some things you have not told us; in other words, you all didn't talk 'amount' then, did you, on the first occasion?

A. Yes, sir—he mentioned 'he had the money, and the amount he was willing to pay'.

Q. That's not what you just told me, Mr. Kelly; are you sure you don't want to rephrase your words, now—you didn't tell me that 'he told you any amount'—tell me, the words.

A. He asked me 'if I was willing to make some money' and he said 'what he was willing to pay'; I told him 'I didn't care, even if it was illegal', and he said '$100.00 was what he was willing, to pay'.

Q. You didn't say that a minute ago, Mr. Kelly; what I want to know, is which one is correct—that he didn't mention

amount the first time, in the first conversation; or did he make some mention of $100.00, or what he was willing to pay?

A. He did mention, that 'he had $100.00, he was willing to pay'.

page 41 } Q. All right—and he told you 'he would give it to you right then, if you wanted it'?

A. Yes, sir.

Q. All right—now go ahead please, and tell us the words as best you can remember them.

A. At that point, in approximately a half hour or an hour, I had a discussion with Purchase which led me to decide to accept; then when he came back, I told Phillips 'I would do it', and (pause) anyway, then I said 'if you have the money with you, I'd like to have it'.

Q. Where, was this?

A. In the restroom, upstairs.

The Court: Where?

A. The Norfolk Shipyard, Your Honor—and that's where he handed me five, twenty-dollar bills.

By Mr. Sacks:

Q. All right—then, what happened?

A. At that time, he went back to where he was working and I went back to where I was working, and then I gave part of that money to—

Q. Now just a minute, please—when you say 'you went back to where you were working', that was after you all left the restroom I suppose, and then you went to where Purchase was?

page 42 } A. Yes.

Q. What was Purchase doing there at the Shipyard, isn't he a Navy enlisted man?

A. Yes.

Q. Was he on duty, working there with you all?

A. Yes, sir.

Q. All right—when you went back, where was he?

A. He was where I was working, also.

Q. The Defendant, had gone on to his work?

A. I suppose he did, I didn't notice.

Q. So then a conversation struck up between you and Purchase, but that was not in the presence of Phillips at that time?

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A. Right.

Q. And, that's when you gave Purchase some money?

A. Yes.

Q. Now I'm not asking for the conversation, but I'm asking you this: when you first went back to Purchase to confront him the first time with this illegal scheme you said you had been offered and accepted, did you and he talk about what Purchase himself would get out of it?

A. At that time, no sir.

Q. All right—then you did not.

A. No.

page 43 } Q. All right, sir—now the second time, when you came from the restroom to Purchase and gave him some money—and I'm not asking for the words there, but I'm asking you if I'm correct, in that you gave him money at that time, for his part in it—did you give him money, then?

A. No, sir—he asked 'if he could help me'.

Q. Just a moment, now—didn't you just tell me 'you gave him some money'?

A. Yes, sir—but I was not obligated to give him any; it was my understanding that was my money, my money out of it.

Q. How much, did you give him?

A. Approximately $35.00 or $40.00.

Q. Approximately?

A. Yes, sir—actually, it was $35.00 and $5.00 more, or $40.00—so it was over $35.00, as he had—well, he was going to buy cigarettes for me.

Q. Now, I'm going to ask you this: when you testified here this morning, under oath, didn't you answer the Commonwealth's Attorney the first time you testified, and didn't you say 'you gave him $35.00'?

A. No, sir—'$35.00 or $40.00'.

Q. You deny, that the first time you said '$35.00' the first time?

A. I don't deny it, but I—

page 44 } Q. That's what I want to know; didn't you tell us, under your oath, that 'you gave him $35.00' the first time, and didn't you describe it as being '$40.00' the last time?

A. When I talked to the Commonwealth's Attorney this morning, I said '$35.00 or $40.00'.

Q. Didn't you say two different things here, one now and one this morning?

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A. I couldn't tell you my exact words, if you want to be technical—and anyway, I don't have that kind of money.

Q. All right—you've got to remember what you're saying here today, don't you?

A. Right, sir.

Q. But, you can't remember exactly how that happened?

A. Regarding some details, but not every word of it.

Q. You told the jury that 'this man paid you five twenty-dollar bills', didn't you?

A. Yes, sir.

Q. Now then you gave Purchase that money, did you have change or did you give him two twenty-dollar bills and get change for him, or how did you give him the $35.00 or $40.00.

A. I made the change, for one twenty-dollar bill.

page 45 } Q. You did?

A. Yes.

Q. Tell me about that, now; what did you change the twenty-dollar bill with, and where did you change it?

A. There's a man comes into the Shop, he works there, and he takes care of the laundry—he carries quite a roll of money on him, and I gave him one of the twenty-dollar bills to have changed.

Q. So you remember that, don't you?

A. Yes.

Q. But you had not said anything about him before now, had you?

A. No, sir—it didn't have any bearing on it, I didn't think.

Q. You didn't think so—do you know this man's name, that you changed one of the twenty-dollar bills with?

A. I think, it is DeMayo.

Q. Is he still working, out there?

A. As far as I know, yes sir.

Q. Tell me, when you got the change—you said 'you came from the restroom and gave the money to Purchase'; now, when did you get the twenty-dollar bill changed?

A. I immediately, upon receiving five twenty-dollar bills from Phillips, I then changed one of the twenty-dollar bills, and when I got the change, I went and took it up-

page 46 } stairs and gave it to Purchase.

Q. Who, saw you get the change?

A. No one, but myself.

Q. All right—so then you got change, and you could not help but remember how much you gave Purchase?

A. I changed one of the twenty-dollar bills, so I'd have something to give Purchase.

Q. So then, how much did you give Purchase?

A. It's my recollection, that I gave him $35.00; the other $5.00 that I gave him, was for cigarettes for me.

Q. So then it was $40.00, all together?

A. I believe, that's the way it was.

Q. So then before, you said '$35.00 or $40.00', but now you change that, and say that 'it was $40.00'?

A. It was $35.00, that I gave him; the other $5.00, he was going to spend on cigarettes for me.

Q. $35.00, for what?

A. Different work, on my car; tune-ups, parts for the car and so on—work he's done, on my car.

Q. All right—now then, did he get you anything; you said 'you gave him $5.00 extra'?

A. I gave him $5.00, and he was going to get me cigarettes.

Q. $5.00 for how many cigarettes, or how much; was it for one pack, a carton or what?

page 47 } A. Two cartons.

Q. Did he give you, any change?

A. No—I didn't ask for it; I don't expect that, when he gets me cigarettes.

Q. All right—now with reference to the second conversation with Purchase, did any discussion come up about the cigarette money, and is that when you paid Purchase for getting you the cigarettes?

A. No, sir—I waited, until lunchtime.

Q. Well then, what time of the day are you talking about, roughly?

A. Approximately 11:00, or 11:30—I didn't leave the Shop, for lunch.

Q. He brought back the cigarettes then, after lunch?

A. Yes, sir.

Q. All right—now what happened next, with reference to anything between you and the Defendant here?

A. Well, I have to go first, to the discussion I had with Purchase.

Q. Well the discussion you had with Purchase, is not the problem and that's not what I asked you.

A. Well the conversation that Purchase and I had, it was our discussion which led us both to have a discussion with the Defendant, then.

page 48 } Q. I'm just asking you, your next conversation with the Defendant—when, was that?

A. That, was in the Shop—I didn't see him that same day, it was the next day.

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Q. All right—who, was present?
A. Purchase.
Q. And, there was just the three of you?
A. Yes, sir.
Q. And you saw him in the Shop, where who works; where the Defendant works, where Purchase works or where did you see him?
A. Well, we all worked there at that time.
Q. All right—tell us, what the discussion was?
A. Yes, all right.
Q. And, this was in the Defendant's presence?
A. Yes, sir.
Q. All right—go ahead, and tell what was discussed?
A. Starting at the beginning, about how he wanted to get rid of the car, in what way he wanted to get rid of it; and 'if it was necessary', he said 'he wanted it burned'.
Q. 'If it was necessary, to burn it'?
A. At first, he said that 'under no condition, did he want it totally demolished', and we didn't know how to do that, anyway—so he insisted 'on us burning it'.

page 49 } Q. He did?
A. Yes.

The Court: Who, is this 'he'?
A. The Defendant, Your Honor.

By Mr. Sacks:
Q. And you say, the Defendant said that?
A. Yes.
Q. That's what you tell us, here today?
A. Yes, sir.
Q. Mr. Kelly, you had an opportunity to testify under your oath, at another proceeding about this before, had you not?
A. Yes.
Q. And you were asked a question, then 'to tell exactly what he wanted done and exactly what you did'—you remember that, don't you?
A. (pause) I can't recall, exactly.
Q. Didn't the question go, as I told you before Mr. Kelly, and under your oath, didn't you answer that question that was asked of you, 'to tell exactly what the Defendant wanted done with the car and exactly what you did'?
A. It could have been.

Q. All right—now as a matter of fact, didn't you testify in answer to that question, and not say anything at all about 'burning it'?

page 50 } A. No, sir.

Q. You deny that?

A. Yes.

Q. Well now, referring to January 26th of this year—do you remember that occasion?

A. (pause) No, sir.

Q. Don't you remember, over at the preliminary hearing in Municipal Court?

A. I don't recall being at that hearing, on that date—I was in Jail, and I didn't keep track of the date.

Q. All right—forget the date for a moment, even though you remember what happened in November.

A. Well, I remember preliminary hearing in Norfolk.

Q. All right, sir—do you remember testifying at that time, and Mr. Whitehurst asking you questions?

A. Yes.

Q. Then you do remember that, don't you?

A. Yes, sir.

Q. Now I ask you, sir—this is on page 16—were you not asked that question at that time, by Mr. Whitehurst, and didn't you give this answer under oath: 'Q Just go ahead and tell the Court exactly what he did, and what you did', and wasn't your answer, then 'A He asked me if I would be willing to total loss this car, in some manner; that he would

page 51 } leave the car whatever night I chose, in front of his house or a little beside his house—

A. Right.

Q. '—and he would not report the car, until the following morning; that would give the complete night to do what I wanted to do with the car; if there was anything in the car I wanted, I could have it; he also said he'd give me $100.00 for doing this, and then a little later on after that date, he gave me $100.00'—isn't that true, Mr. Kelly, and please think back?

A. I remember I made that statement, but I believe at the trial it was also brought out by someone, something during that, that 'he insisted on burning it'.

Q. Without repeating my question, Mr. Kelly, weren't you asked that question, and under your oath that day didn't you answer 'he asked me if I was willing to total loss the car, in some manner'?

A. Yes, sir.

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Q. Then by your answer sir, you mean you never told the Judge of that other Court, anything about 'burning', right?
A. Yes, sir—I believe, I did.
Q. You say 'you did', or 'you believe you did'?
A. I believe, I did.
Q. All right—you believe you did, but you're not
page 52 } sure?
A. No, sir—I'm not positive.
Q. Did somebody take it down, Mr. Kelly—that is, the testimony?
A. Not that I know of, sir.
Q. So if nobody was there to take down the testimony, you can't say anything—that is, you're not in a position to deny it, are you?
A. No.
Q. Then you don't remember whether you told the Judge anything about 'burning' or not, do you?
A. No.
Q. You can't say now, that you said it then, can you?
A. No, sir.
Q. All right, sir.
A. I didn't think it was important, but it happened that way.
Q. But you can't say now, that you said then that it happened that way, if it did happen that way, right?
A. Yes.
Q. All right, sir—now let me ask you this: you gave testimony before this Judge, you were charged yourself, were you not?
A. Yes, sir.
page 53 } Q. All right—and that was before this Judge, was it not?
A. Yes.
Q. Now since that trial, Mr. Kelly—or let me ask you this: when you gave your testimony, you had not been found 'guilty' of anything, had you?
A. No, sir.
Q. Now you're testifying differently today then, in at least one answer that was read to you, have you not?
A. Yes, sir.
Q. Now in between that trial and the time of your testimony here today, you pleaded 'guilty' to it, have you not?
A. I pleaded 'guilty', before that trial.
Q. Not before preliminary hearing, did you?
A. I confessed, to it.

Q. You were found 'guilty' by the Court, of the charge placed against you at that time?
A. Yes.
Q. And you're now in Jail, waiting your punishment?
A. Yes.
Q. And you don't know what your punishment is going to be, do you?
A. No, sir.
page 54 } Q. It depends on what the Commonwealth's Attorney recommends the Court to give you, is that it?
A. Yes, sir—I guess so.
Q. Let me ask you this, Mr. Kelly: is that why you went on and are testifying as you are today, because you are hoping to get light punishment for yourself?
A. No, sir.
Q. You deny that?
A. I deny it.
Q. Did you talk this over, with anybody?
A. I talked, to the detective.
Q. About your cooperating here today, and about what your testimony might get you?
A. Yes.
Q. And what were you told, by him?
A. That 'it might help'.
Q. You were told, that 'it might help'?
A. I was told that 'it might help', and for that reason I took a chance that it might help.
Q. Who, were you told that by?
A. I have been told that 'if I cooperated, it might help'.
Q. Just who, told you that?
A. I was told that 'it might not be so critical'.

The Court: Who, were you told that by?

page 55 } A. The detective told me, Your Honor.
Q. Who was that, who was the detective?
A. Detective Mears.

The Court: All right—go ahead, Mr. Sacks.

(Mr. Sacks held a conference with Mr. Tavss)

By Mr. Sacks:
Q. I'm going to ask you this, Mr. Kelly: at your trial,

you didn't say anything about all that burning on Mr. Phillips' part—didn't you say 'Phillips wanted somebody to take the car off his hands'?

A. Which trial?

Q. Well, any other trial—you didn't testify to any 'burning of the car', as far as the Defendant was concerned, did you?

A. At my trial?

Q. Yes—you didn't say anything about 'burning', did you?

A. I didn't take the stand, at my trial.

Q. Well isn't that what you have always said from the beginning, until now—while waiting for your punishment, isn't that what your story has been, that 'Mr. Phillips asked you to total loss the car in some manner', but he never told you 'to burn it'; he never told you to 'take gasoline and douse it', or to 'take the motor'—he never told you any of those things, did he?

page 56 } A. Yes, sir.

Q. That's your testimony today, that 'he did'?

A. Yes, sir.

Q. All right—now on that night when you, and according to you, when you and Purchase had that discussion about burning—

A. Yes, sir.

Q. I'm not done, Mr. Kelly: —in the second conversation up in the men's room on December 3rd, that incident or conversation included the three of you together, is that right?

A. Yes, sir.

Q. All right—now was there any further conversations, between you and the Defendant?

A. Yes—but I can't tell you what occurred those times, because they were slight conversations; all going on, about the same pattern.

Q. There were three or more conversations then, but those wouldn't be as important as the others were, they didn't have any thing substantial in them and they were of no importance to you?

A. No, sir.

Q. Now Mr. Kelly, this young man over here, he didn't mention 'the Wards Corner area' or 'burning'—weren't they your ideas, along with Purchase?

page 57 } A. No, sir—no, sir.

Q. Didn't you know something about a 'fire bug', in the Wards Corner area?

A. I didn't know to what extent, but I knew there had been burnings there.

Frank Grayson Kelly, III

Q. And you had been told, or were aware of the incidents of burning before this happened, were you not?

A. No, sir.

Q. Well, whose idea between you and Purchase, was it, to take the motor — after operating the car first, from Mr. Phillips' house, on out to a Trailer Park, then to take the motor out and then to take it to a secret place and douse gasoline on it—now, who thought all that up?

A. I think, it was between the three of us—it was a combination, of ideas.

Q. You think so?

A. Yes.

Q. You're not sure, of that—wasn't it your idea, Mr. Kelly?

A. It could have been my idea, I suppose.

Q. Well, you suppose it could have been your idea?

A. It was, between the three of us.

Q. Between the three of you, which one was it?

page 58 } A. It was my idea to take the engine out, because I wanted the engine.

Q. So that wasn't initiated by the Defendant, and he had nothing to do with that?

A. No—I initiated it, but he didn't care.

Q. He told you though, before you did it, how 'he didn't want it run over a cliff' or anything like that—maybe he didn't use those words, but didn't he tell you that?

A. Approximately, yes sir.

Q. Whose idea was it, as to where to get the gasoline and how to do it?

A. Well, that was a spur-of-the-moment idea.

Q. Well, whose idea was it?

A. Purchase's.

Q. Who got the gasoline, from the car's tank?

A. Purchase got the gas from the gas tank, and I put it in the car.

Q. But it's for certain, that the Defendant didn't have anything to do with the actual burning of the car?

A. Right.

Q. And to the best of your knowledge, he wasn't there when it happened?

A. Right.

Q. And wasn't part of the agreement you all made, that even though the car was missing at that time, that he wouldn't

page 59 } report the loss of the car from in front of his house until the next day or so, so you would have time to do the things you were going to do to it?

Frank Grayson Kelly, III

A. Right—it was to be in the street, where he showed me earlier; he was not to have known it, and his job was to keep his wife and family away from the windows and doors.

Q. You and Purchase were going to get this automobile, and then you were going to set fire to it; and you and he just cooly went to a restaurant, sat down and had a meal then, didn't you?

A. Yes.

Q. You didn't tell the Defendant at that time, that 'you had his car', did you?

A. No, sir.

Q. Did you and Purchase eat a big meal, then?

A. We had a pizza.

Q. Then you went out and calmly did what you told us, 'you set fire to the car, to Phillip's automobile'?

A. Yes.

Q. And, that was in November?

A. Yes.

Q. And did you later, tell of your complete involvement in it, until the end of December, over a month later that was, when you heard somebody was looking for you—and then, you called the police?

page 60 } A. Right.

Q. All right—now what day of the week was it, that you did this?

A. Friday night.

Q. All right—now, did you see Mr. Phillips over that week-end?

A. No, sir.

Q. Did you call him up on the 'phone, and tell him 'you had done it'?

A. He didn't have a 'phone.

Q. You didn't try, to go see him?

A. No, sir.

Q. All right—you saw him, on Tuesday?

A. Yes.

Q. And tell me again please, what Mr. Phillips told you on Tuesday?

A. I'll tell you, what I said before: I said that I gave the keys back to him at that time, and asked him 'if he was satisfied with the car', and he said 'it was not as good as he had expected, he expected to get a new car out of it but he had been paid off on the car, and he was satisfied'.

Q. You tell us, that he told you on Tuesday that 'he had been paid off at that time, on the car'?

A. That's what he told me, yes sir.
Q. All right, sir.

page 61 } (Mr. Sacks held a conference with Mr. Tavss.)

Mr. Sacks: I think that's all we have, Your Honor.
Mr. Whitehurst: I have just one more question, Your Honor.

RE-DIRECT EXAMINATION

Examined By Mr. Whitehurst:
Q. When did you first tell the authorities, about the burning of the car?
A. New Year's Eve.
Q. And, that was before preliminary hearing?
A. Yes, sir.
Q .And did you later, tell of your complete involvement in it?
A. Yes, sir.

Mr. Whitehurst: All right—step down.
Mr. Sacks: Just a minute, Mr. Kelly.

RE-CROSS EXAMINATION

Examined By Mr. Sacks:
Q. When you told of your complete involvement in it to the police officers, did you give a written statement?
A. I gave an oral statement, sir.
Q. Was it taken down in writing, and did you
page 62 } then sign it?
A. No, sir.
Q. You didn't sign it?
A. No.
Q. Did you say 'it was taken down, in writing'—is that what you said, Mr. Kelly?
A. Yes, sir.

Mr. Sacks: All right—that's all.
The Court: Step down, and go back into the witness room. Gentlemen, let's take a recess.

(Jury out, at 12:20 P.M.)

Mr. Sacks: If Your Honor please, I wonder, before the jury comes back, if I may be heard briefly?

The Court: Yes, sir.

Mr. Sacks: Your Honor, at this time in the proceedings, I'd like to make two motions:

In the first place, I feel it's proper to move the Court at this time, to strike or reject, or not admit the testimony of this last witness, Mr. Kelly, on the ground that he has stated from the stand in his testimony, that 'he was told
page 63 } before this proceeding today, that if he cooperated', and I think that's his exact words, Your Honor, 'that things would go lighter for him', or something of that sort.

Your Honor, I liken that to a confession; and Your Honor, the first thing the Commonwealth does, when they put a statement into evidence, is that the Commonwealth's Attorney wants to know 'was the statement taken without threat or promise of reward, or anything of that sort'.

Obviously, now it's in the jury's prudence as to whether or not it was voluntary, and if they find that it was not, then it's not worthy of belief.

Now this man testified for the Commonwealth here today, and he also denied on the witness stand here today, what he originally said at preliminary hearing, and I can't stand here and argue that it couldn't be true, because that is something we'll never know.

I think it's only fair and proper, to base it on a well-settled principal, and that is that he was promised some-
page 64 } thing for his testimony, and we'll never know whether the reason he saw fit to change his testimony from what it was originally, was because of a promise, and I move to strike his testimony, Your Honor.

Mr. Whitehurst: May it please the Court, that is the testimony of the witness; of course it is not all, and we must realize there were additional statements.

Stating an analogy, one to the other, it's interesting that there is no magic line in a sense, to look for, in a young witness who doesn't know what it is to tell the truth or else there will be punishment, and this is gone into thoroughly, well before they testify, and from that perhaps they would be helped to tell the truth, and that's what all witnesses should think.

There certainly is nothing in law or fact, to say that Mr. Kelly's testimony should not be considered by the jury, because of that statement.

The Court: Anything further?

Mr. Sacks: Not on that, Your Honor.

The Court: This witness testified that 'Detective
page 65 } Mears told him if he cooperated, it might help'—
that's what he said.

I think the decision is to be based on one question, and that is as to the voluntariness or involuntariness of the confession; I think that his statement, whereby he was willing to be questioned, and I'm guided by his testimony, provided the prohibition and is too strong an argument to strike his statement, which I will not do today, with a jury.

I therefore overrule your motion to strike his testimony, Mr. Sacks.

Mr. Sacks: Note my exception, Your Honor.

The Court: Yes, sir.

Mr. Sacks: Now my second motion at this point of the proceedings, would be with regard to the furtherance of my motion for the Production of Evidence that was made a day or two ago, or prior to the beginning of this trial, at which time I was not present; it's my understanding, however, that in response to the motion on behalf of the Defendant, for
'written statements and photographs' and things
page 66 } of that sort, and 'any other evidence in the custody,
control or care of the Commonwealth's Attorney's Office or in their possession, that might reasonably be considered admissible at the trial and which might also be considered useful for the defense,—

The Court: You're referring now, to the last paragraph of your motion?

Mr. Sacks: Yes, Your Honor—that would be in paragraph No. Four of my written motion, Your Honor.

The Court: I follow you.

Mr. Sacks: Also in paragraph No. Two of that motion, Your Honor, in which it was asked 'for any written statements or sound transcriptions', and 'any recorded statements that were received from the co-Defendants which likewise were in the possession, custody and control of the Commonwealth's Attorney's Office or Police or Fire Department of this City or other such authority, concerning the alleged offense'.

It's my understanding that there was nothing by way of
any sound transcription, but the evidence now is
page 67 } that this witness, Kelly, has stated that 'he was
told by a police officer', because the Commonwealth's Attorney asked him on redirect, 'when did you give the police your involvement in this', and he said 'it was actually in a recorded statement, but he did not sign it'; that was my understanding of it, as I wrote it down, that he said 'it was a written statement, but he didn't sign it'.

The Court: My impression was that the officer took notes down on what he said, at that time.

Mr. Sacks: My impression, Your Honor, was that 'he wrote down what he said', and under the authority and in support of the Constitutional right to a fair trial, on the question of fairness of trial as defined under Virginia and Constitutional law, as I understand it, that written statement should have been produced.

Mr. Whitehurst: May it please the Court, the situation has not changed, and the motion that was made and argued, was for 'any written statement of the Defendant', and that

page 68 } was done, but what counsel is asking for at this time, is not backed by the evidence, in that this witness did not write it down and it was not written down; I don't mean by that, that the officer didn't take notes, but there was no statement, no written statement by this witness—and what the detective wrote down, I don't know Your Honor, but I assume he wrote or made certain notes, but there's nothing in the law, Constitutional or otherwise, that says that the detectives have to turn in their books of notes.

The Court: There was no written statement made to the police by this witness, is that right?

Mr. Whitehurst: No, sir—the detective may have made certain notes, but there was no written statement that was made, there was no statement made that was later reduced to writing and signed.

The Court: Nor, was there any sound transcription?

Mr. Whitehurst: There was none, Your Honor.

The Court: There being none, Mr. Sacks, I can't Order for it to be produced.

page 69 } Mr. Whitehurst: There was none written, Your Honor—the officer has his notebook, in which he took notes of the conversation.

The Court: Then as I understand it, there was no transcript or written statement based on the statements which Mr. Kelly made to the police officer, am I right?

Mr. Whitehurst: No, sir—the detective only has certain notes, in his book.

The Court: There was no written statement, that was later signed by Mr. Kelly nor was there any sound transcription, am I right?

Mr. Whitehurst: There was none, Your Honor.

The Court: All right, sir.

Mr. Sacks, there being none, I can't Order it to be produced—none, was written.

That officer has his notebook, in which he took notes of the

conversation, and if that officer is offered as a witness and refers to his notebook, you may, and you have a perfect right, to examine anything he has written down concerning that conversation or anything else referring to this case.

page 70 } Mr. Sacks: Then as I understand it, I can't examine those notes at this point in the trial, and we're at the mercy of whether the officer testifies and uses his notebook—we would have to make our request then, in front of the jury?

The Court: There's no way you can examine the officer's notebook, unless he refers to it—if he is called as a witness and does so, then just ask for a recess and I'll recess, and you may examine the officer's notebook in the absence of the jury.

Mr. Sacks: All right, Your Honor—of course I except, to the ruling of the Court.

The Court: All right, sir—are you gentlemen ready to proceed, now?

Mr. Whitehurst: Yes, Your Honor.

Mr. Sacks: Yes, Your Honor.

The Court: Bring the jury back in, then.

(The jury returned, at 12:37 P.M.)

The Court: Next witness.

Mr. Whitehurst: Mr. Richardson, Your Honor — R. V. Richardson.

page 71 } R. V. RICHARDSON, witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name, please sir?

A. R. V. Richardson.

Q. Where do you live, Mr. Richardson?

A. Hampton, Virginia.

Q. What is your occupation, sir?

A. Attorney.

Q. With reference to Frank Kelly, how long have you know him sir?

A. I knew him right after World War II, and I have known him since he was approximately five years old—that's, how long I've known him.

Q. All right, sir—in the community in which he lived, do you know what his reputation was for truth and veracity?

A. Yes.

Q. What was that, sir?

A. This young man has always *born* a very excellent reputation, for truth and veracity.

Mr. Whitehurst: All right, sir—answer counsel for the Defense, or the Court.

page 72 } CROSS EXAMINATION

Examined By Mr. Tavss:

Q. Mr. Richardson, you say you have known Mr. Kelly since he was five years old?

A. Yes, sir.

Q. And, have you represented him?

A. No.

Q. How do you know his reputation then, for truth and veracity?

A. I knew the neighborhood in which he lived, and his home was on Lamington Road; his father operated a service station garage and parts business, with some $150.00 to $200.00 income.

The family has always lived on Lamington Road; I have several clients on the same street, and his sister lives on the same street. The family has lived in *Hamoton* all their lives, and I know people in the area and I know people who know him.

Q. You have never talked with anyone concerning his reputation, have you?

A. I have never questioned anybody about his reputation, but I have heard remarks in the area about what type the boy was.

Q. But you have never talked with anybody about his reputation, as such?

page 73 } A. I—no, I have not questioned anybody; I have had no reason to question anybody either, about his reputation.

Q. In other words, you have not heard anything bad about him, right?

A. Correct—but, I have heard some good about him.

Q. That is, that he's a good boy?

A. Right—and that he has been, all his life.

Q. All right—now before you came over here today, did

you know in your mind or did you have any knowledge of the fact, that Mr. Kelly had admitted to the burning of a vehicle and so forth?

A. Yes.

Q. Doesn't that change your testimony here today, as to his truth and veracity?

A. No, sir—it does not.

Q. Not even if you knew that he admitted that he burned a car, and so on?

A. No, sir—I heard that he had told, what he did.

Q. And you still say that his reputation is excellent, for truth and veracity?

A. Yes.

Mr. Tavss: Thank you—that's all.

page 74 } Mr. Whitehurst: You may step down, sir.

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

Mr. Whitehurst: Ronald Purchase.

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name, please sir?

A. Ronald Purchase.

Q. You are a member of the U. S. Navy, is that correct?

A. Yes, sir.

Q. How long, have you been in the Navy?

A. Twelve and a half years, about that sir.

Q. Where, do you live?

A. 7901 Hampton Boulevard, Lot No. Seven.

Q. What is that place, there?

A. Lewis' Trailer Park.

Q. All right, sir—Frank Kelly, do you know him?

A. Yes, sir.

page 75 } Q. How long, have you known him?

A. (pause) Since last July, sir.

Q. And the Defendant here, Edward Phillips—do you know him, Mr. Purchase?

A. Yes, sir.

Ronald Purchase

Q. How long, have you known him?

A. I met him the last part of August, or the first part of September.

Q. All right, sir—and how, did you come to know Edward Phillips?

A. My ship was in the Shipyard, over in the Berkley section —the Navy had me in the Shop there, to oversee the equipment that I maintain aboard ship.

Q. Do you mean, the Norfolk Shipbuilding and Drydock?

A. Yes, sir.

Q. Let me ask you this question, Mr. Purchase: did you or did you not, ever discuss a Mercury with the Defendant?

A. Yes, sir.

Q. You did—if you would sir, start from the beginning and relate just what your conversation was with him; tell us what it was, and when?

A. Well, it was the last part of October; I had asked Frank Kelly, who had already borrowed some money from
page 76 } me,—

Mr. Sacks: I'm going to object to any conversation he may have had with Frank Kelly, Your Honor.

The Court: Don't relate any conversation that you may have had with anyone, other than the Defendant.

Witness: Well, me and Frank were talking; he asked me 'to talk to Phillips about this car', and he said 'he wanted something done to it', and so I asked Phillips 'if it was his car' and he said 'yes', and he said 'he wanted to get rid of the car, the windows and doors didn't work properly; that probably the car would get paid for, if it was a total loss, that the insurance company would pay for it'.

So I asked him 'how he wanted it done and where did he want it done', and he said 'he didn't care how it was done or what we took off the car, as long as we made sure the car was totaled out when the job was done'.

By Mr. Whitehurst:

Q. Go ahead, sir—did you have any further con-
page 77 } versation?

A. We talked about it and decided we'd pick it up one day, when it was convenient for me and Frank to pick it up, and he would furnish the keys.

Mr. Sacks: Objection, Your Honor—it isn't clear, whether he said that to the Defendant.

Ronald Purchase

By Mr. Whitehurst:

Q. When was this, sir?

A. The same day.

Q. Tell us, exactly what was said?

A. We decided—we didn't actually know how to get it, unless he gave us the keys; so the following day, he got the keys and said 'they were his wife's keys', and 'if we would pick up the car, we could do what we wanted to'.

Q. And how long—when did you let him know when you were going to pick it up?

A. We didn't set no definite time at that time, because I didn't know when I would get liberty or when I was going off, so it was a couple days later when we decided and told Phillips 'we'd pick up the car Friday evening, between 8:00 and 9:00 o'clock'; we already had the keys then, and he said 'he was sure he would be home at 9:00 o'clock and the car would be parked in front of his house, where we could pick it up', and that's where he left it; and he said 'the next morning when he got up to go to work, he'd turn the car in as stolen, and that would give us sufficient time for doing whatever we were going to do with the car'.

page 78

Q. All right, sir—did you have any further conversation with him, before seeing the car?

A. No, sir—I didn't.

Q. You used the *work* 'totaled', what was meant by that?

A. He said 'he wanted it where the insurance company would pay it off, and he'd have no more worries about the car'.

Q. Was there any other conversation, concerning the word 'totaled'?

Mr. Sacks: I'm going to object, Your Honor—I think only what was said between them,—

The Court: Overruled.

Mr. Sacks: Exception.

Witness: He told me 'he had been involved in another thing, a car of his that was not totaled out and that $50.00 was all he got, and he wanted to make sure—he didn't care how we did it or what we took out, but when the job was done, to make sure the job was done and the only possible way it could be done, was to be totaled out and then if it was totaled out, the insurance company would pay off his policy'.

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Ronald Purchase

By Mr. Whitehurst:
Q. All right—what happened?
A. We picked the car up Friday evening, and—

The Court: Who, is 'we'?
A. Me, and Frank Kelly—we picked the car up, and I drove Frank's car back into Norfolk to Hampton Boulevard and Little Creek Road to 'Bills', we parked Frank's car and proceeded in Phillips car, the Mercury, to get something to eat; when we got through, we came back and picked up Frank's car and went to Lewis Trailer Park and pulled, or cut the motor and transmission with the air-conditioner which comes from the engine, we pulled that out for Frank's car; then the Mercury, that was towed to Naval Base Road by me driving Frank's car, where we removed the radio and set the car afire; then we got in Frank's car and went back to Lewis Trailer Park.

By Mr. Whitehurst:
Q. Why, did you go back to the Trailer Park?
page 80 } A. Because I had—my tools were there, and I worked on other cars part-time, and I had left them there when I pulled the engine out of the car.
Q. All right—when, did you next see the Defendant?
A. The following Tuesday.
Q. And, where was that?
A. At the Norfolk Shipbuilding and Drydock.
Q. Was there any conversation?
A. I asked him 'how come he didn't come to work until Tuesday', and he told me 'he had to go to Richmond, to settle with the insurance company on the car'; and he said 'he had settled up with the insurance company to pay $2,911.00 and that he had no more worry, that it was all taken care of'.
Q. All right—was there any further conversation?
A. No, sir.
Q. The keys, what happened to them?
A. The keys were returned to Phillips, on that Tuesday.
Q. Who, did that?
A. Frank did.
Q. Kelly, Frank Kelly?
A. Yes.

Mr. Sacks: Were you present?
page 81 } Witness: Yes, sir.

Ronald Purchase

By Mr. Whitehurst:

Q. Were you involved in any further conversation, between you and the Defendant?

A. No, sir—they had some more, but there wasn't anything said between me and him about it, I just heard them talking.

Q. Well, don't tell what you heard.

A. All right.

Q. That is, unless you shared in the conversation?

A. There was no further talking, between me and Phillips, about the car.

Q. What about the engine, from the Mercury?

A. It remained on the Trailer Park Lot for over a month, and then I installed it in Kelly's 1961 Ford.

Q. What happened to the engine, from the '61 Ford?

A. I was given that engine, for installing the '66 engine in Frank's car; in return, I sold the engine from Frank's car, the '61 Ford.

Q. What did you receive, from this?

A. From selling the engine?

A. The total thing?

page 82 } A. I received $35.00 from Frank, for helping him pull the engine out of the Mercury, taking it out on Naval Base Road, and for installing the other engine in his car.

Q. The Mercury—where was it purchased, do you know?

A. It was purchased from some Mercury Dealer in Richmond, Virginia.

Q. How, do you know that?

A. Phillips told me.

Q. Was there any further conversation, concerning that?

A. A day or two after, he said—

The Court: Who, is 'he'?

A. Phillips.

Q. The Defendant?

A. Yes, sir—he said 'the car was a lemon, it had been in a wreck prior to him buying the car, and he couldn't get Warranty papers on the car; he said the company he bought it from went bankrupt a week after he bought the car, and he wanted, but he couldn't get the Warranty papers and so he wanted to get rid of it, because it was a lemon'.

Mr. Whitehurst: All right, sir—answer Mr. Sacks' questions.

Ronald Purchase

page 83 } CROSS EXAMINATION

Examined By Mr. Sacks:

Q. Mr. Purchase, how old are you?

A. Twenty-eight, sir.

Q. Where, is your home?

A. Omaha, Nebraska.

Q. How long, have you been in Norfolk?

A. Since 1965.

Q. And how long had you known Mr. Kelly, before you and he got together with this proposition to take this Defendant's car?

A. I met him the last part of July, or the first part of August.

The Court: Of last year?

A. Yes, Your Honor.

By Mr. Sacks:

Q. So then you knew him, as far as time is concerned, a little bit ahead of time—that is, you knew him a week or two before you knew the Defendant; you knew Mr. Kelly first, before you knew the Defendant, Mr. Phillips, right?

A. Yes.

Q. Were you and Kelly, friendly?

A. Well, I'd talk to him at work there.

Q. You just talked with him, sometimes?

A. Not a whole deal, no sir.

page 84 } Q. You didn't?

A. No, sir.

Q. Were you more friendly with Kelly though, than you were with Phillips?

A. Yes.

Q. All right, sir—you did talk to the Defendant, Phillips?

A. I talked to Phillips a time or two, before this.

Q. Now who was it, that brought this to you in the beginning, with you in the Navy?

A. Well, I was working there.

Q. That's not what I asked you, Mr. Purchase.

A. Well, I had done work on Frank's car.

The Court: Whose car?

A. Kelly's car, Frank Kelly's car, Your Honor—I worked on his car, so it could be inspected.

Ronald Purchase

By Mr. Sacks:

Q. My question is, who came to you—not what was said, but who came to you first, with this illegal proposition?

A. Frank Kelly?

Q. There's no question, about that?

A. No, sir.

page 85 } Q. Where were you, when you first had any conversation?

A. At theNorfolk Shipyard, in the Valve Shop.

Q. And was that part of the Machine Shop, where Kelly first spoke to you about this proposition?

A. Yes.

Q. Now was it, or do you by any chance remember the day—and if you don't, I'll understand.

A. No, sir—I don't remember the exact day, but it was the first part of the week.

Q. Where was the Defendant, Phillips?

A. Phillips wasn't right there.

Q. Was he in the Shop, was he present at that time and within ear-shot?

A. He couldn't hear it.

Q. Could anybody else, have heard it?

A. No, sir.

The Court: How long, did this conversation take place?

A. A few minutes, Your Honor.

By Mr. Sacks:

Q. All right—now then, when did Kelly tell you about this automobile; was it in the morning, or afternoon?

A. Morning.

Q. Then, what happened?—after you talked to

page 86 } Kelly and Kelly talked to you, what happened?

A. Well Kelly talked to me, and asked me about it; and I told him what I told you, that 'I couldn't tell when I'd get off', and so then he wanted me to talk to Phillips.

Q. Well when you got through talking with Kelly, did he leave you?

A. No, he went with me.

Q. Then, you all were together?

A. Yes, sir.

Q. And that was the Defendant, Mr. Kelly and you?

A. Right.

Q. Now Mr. Purchase, I want you to listen to this very carefully; I want to know if you agree with me, that you told us

here a few minutes ago, not once, but three times, that 'the Defendant told you all that he wanted something done to his car, and he didn't care what it was'—is that what you told me, sir?

A. Yes.

Q. That's what was told to you, by Phillips?

A. Right.

Q. And you said that, three times?

A. Yes.

Q. That's what he told you, 'he didn't care how you did it'?

page 87 } A. No, sir.

Q. He just 'wanted it done away with, and he didn't care what you did with it'?

A. Yes, sir.

Q. You remember that, completely?

A. Yes, sir.

Q. Now you were asked by the Commonwealth's Attorney, in reciting these conversations, 'if you told us everything'?

A. Everything, that I can remember.

Q. Then you did tell us everything you can remember about it, didn't you?

A. Yes.

Q. Then, that's exactly what was discussed?

A. Phillips told us 'he didn't care what we took off the car or how it was done, and after we took what we wanted off the car, he wanted it totaled out'.

Q. All right—you never talked to the Defendant alone, did you; every time you talked to the Defendant, Kelly was with you, was he not?

A. (pause) I were not definite, I can't make it definite.

Q. All right—if you can't, then do you remember any other time anything was said about it?

A. Not clear, I don't—I worked where they were,

page 88 } on the second floor, the upper floor.

Q. All right—so now then, we're sure from you, that's your clear recollection of what was said?

A. Yes, sir.

Q. And this man, the Defendant, said to you all that 'he wanted to get rid of a lemon', and you say he said 'he didn't care how you did it'?

A. Right.

Q. And 'he didn't care, as long as the car was totaled'?

A. Right.

Ronald Purchase

Q. All right—after the first conversation, you remembered a second conversation; the first was actually clearer, the one you had with the Defendant?

A. Right.

Q. Now where did you go that day, that morning; where did you go after that, with reference to this?

A. I went to the ship, to get a couple cartons of cigarettes for Kelly, and I came back to the Shop then.

Q. Now, did you give them right to Kelly?

A. He had asked me 'to get him a couple cartons of cigarettes', and—

Q. Incidentally; have you discussed this case with Kelly, before you testified here today?

A. No, sir.

page 89 } Q. You have not talked to him about it, at all?

A. Not since we were arrested, and the trial date.

Q. When was your trial date, Mr. Purchase?

A. I was in the same room with him, and we were tried together.

Q. You were tried in this Corporation Court, and pleaded 'guilty', did you not?

A. Yes, sir—we were tried together.

Q. And you both entered a common plea, of 'guilty'—that was on the 24th of February, was it not?

A. We both pleaded 'guilty', yes sir.

Q. On the 24th of February, you and Mr. Kelly both were tried at the same time, and you all pleaded 'guilty' to having burned this car?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. And, have you talked with him about it, since?

A. I didn't talk to Kelly, no sir.

Q. None, at all?

A. No, sir.

Q. All right—now, where were you; first of all, when did you get any money for your part in this?

A. That very first day.

page 90 } Q. Where, were you?

A. Norfolk Shipyard.

Q. Where?

A. In the Valve Shop, and Kelly gave me the money.

Q. Who else, was there?

A. Nobody.

Q. Nobody else, saw that—how much money, did he give you?

A. $20.00 to start with, and then he said 'he would give me the rest of it later on'; he came back in two or three minutes and gave me another twenty-dollar bill, and $5.00 in change was for getting his cigarettes.

Q. I understand that—first he gave you a twenty-dollar bill, and then that's when he left you?

A. Yes.

Q. You remember that?

A. Yes, and then I turned around—I was doing some lathe work.

Q. All right—would you please describe it, how long would you say it was; tell these gentlemen of the jury, what you estimate it would have been, from the time he gave you a twenty-dollar bill and then as you say, you turned around to do your lathe work, until he came back?

A. A few minutes, sir.

page 91 } Q. A few minutes—would you estimate, at least five minutes?

A. Three or four, good minutes.

Q. All right—he left a twenty-dollar bill with you, and you remember that?

A. Yes, I remember that.

Q. But you don't remember discussing with him, the facts in this case?

A. No, I don't.

Q. Now you remember that Kelly came back to you later, and handed you a second, or another twenty-dollar bill?

A. Yes.

Q. And, you're sure of that?

A. Yes.

Q. He didn't break it?

A. No.

Q. He didn't give you any change?

A. No.

Q. He gave you a twenty-dollar bill, each time?

A. Yes.

Q. He gave you two, twenty-dollar bills?

A. Yes.

Q. Did he give you any more, than two twenty-dollars bills?

A. $5.00 was my money, for getting him cigarettes.

page 92 } Q. How much, were the cigarettes?

A. $4.00—and I gave him $1.00 change, when he got them.

Q. They were only $4.00?

A. $2.00 a carton, and I got him two cartons.

Q. And you say 'you gave him $1.00 in change'—you're sure, you gave that back to him?

A. Yes, sir—I gave that to him, with the cigarettes.

Q. There's no question that you gave him back $1.00 in change, and you remember that?

A. Yes, sir.

Q. Are you telling, the truth?

A. Yes.

Q. What would you say, if you knew Kelly said 'he didn't get back any change when he paid you for the cigarettes'—would you say you are mistaken, or would you say he's mistaken?

A. I'd say he's mistaken, sir.

Q. You would—and you're quite sure that you're not mistaken, about what was said to be done with the car?

A. No, sir.

Q. You're positive, about that also?

A. Yes, sir.

Q. The Defendant said 'do away with it, do
page 93 } anything you want'?

A. Yes, sir.

Q. Now tell these gentlemen of the jury, whose idea it was to burn it?

A. (pause) (no answer)

Q. This is a big thing, in this case—whose idea was it, to burn it?

A. I can't say definite, who came up with the words to 'burn it'.

Q. All right—now, did this idea come about through conversation between you and Kelly?

A. It came along, between the three of us.

Q. In other words, in a conversation between Kelly and you, and Phillips?

A. Yes.

Q. Then it was a three-way conversation, about this car—were there any other conversations between you and Kelly, in the presence of the Defendant?

A. No, sir.

Q. That's all there were?

A. Yes.

Q. All right—so anything that the Defendant ever said

about that car and its disposal, was told to us here by you before?

A. I reckon.

page 94 } Q. You reckon—then 'burning' wasn't mentioned by Phillips; he just said 'he didn't care what you all did with it, he wanted the vehicle totaled out', right?

A. I reckon he figured we'd burn it or run it in a ditch or in the water—he didn't care, as long as it was totaled out.

Q. You didn't tell us that, before; that there was anything said about 'running it in a ditch or running it in the water, or *buring* it'—you said 'he didn't care how it was done, as long as it was totaled out', but you never said those other words before.

A. I just figured I didn't need to say anything, about what he wanted.

Q. All right—now in Police Court, in Municipal Court, when you were there on the 27th day or the 26th day of January, when Kelly and you testified, and that is before the Municipal Court Judge,—

A. Yes.

Q. —you stood right there, didn't you?

A. Yes, sir.

Q. And at that time, you could hear everything that was said?

A. Yes.

Q. Did he say then, meaning Kelly, that 'he asked me if I was willing to total loss his car in some manner'—

page 95 } did he say that; is that what Kelly said that Phillips said?

A. I'm not going to say, that Kelly said those exact words.

Q. You wouldn't deny it, would you?

A. I can't deny it, no sir.

Q. Now Mr. Purchase, you told us that you have pleaded 'guilty' to this felony?

A. Yes.

Q. And you have not yet been sentenced, have you?

A. No.

Q. So you don't know, what your punishment is going to be?

A. I'm waiting for a Probation Report hearing.

Q. For a Probation Report?

A. Yes, sir.

Q. Then, you're hoping to get probation?

A. Yes, sir.

Q. Now, were you told that 'if you cooperated when you testified', that is when you came in here today, that 'you might get it'—was that your understanding?

A. No, sir—no, sir; the only thing I was told, was 'to tell it, exactly as I remember it'.

Q. And have you told us everything, exactly as you remember it?

A. Yes, sir.

page 96 } Mr. Sacks: That's all I have, Your Honor.

Mr. Whitehurst: Let me ask you one more question, sir.

RE-DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. Do you know exactly whose idea it was, to burn the car?

A. I can't say definite, whose idea it was to burn the car, sir.

Q. Do you know exactly whose idea it was, to drive it to Wards Corner?

A. (pause) I think I brought the subject up, of Wards Corner; and the Defendant did, one time.

Q. What conversation did you have with the Defendant, concerning that?

A. He asked me one time, 'where I was going to do it', and I told him 'I didn't know where' and he suggested the Wards Corner area; and, I had suggested it, prior to that.

Mr. Whitehurst: All right—you may step down, sir.

Mr. Sacks: Just a minute, please.

RE-CROSS EXAMINATION

Examined By Mr. Sacks:

page 97 } Q. Well now, which conversation was that—in which conversation, was it actually suggested?

A. I think the second conversation, was when I brought it up; and the third conversation, Phillips did.

Q. Wait a minute; in the second conversation, when you suggested the Wards Corner area, who was there, the Defendant or Kelly?

A. Both.

Q. You didn't tell us that, before?

A. (pause) No, sir.

Reverend James William Hines

Q. The Defendant didn't say anything about Wards Corner, the second time or the second *onversation?*
A. No.
Q. You, brought it up at that time?
A. Yes.
Q. All right—now when was the other time, because I thought you told me, other than now, of having one more conversations with Kelly, but you didn't mention that you also talked to the Defendant.
A. I know the Defendant was there, too.
Q. When, was that?
A. When he was told 'we would take the car'.
Q. Where, was that conversation?
A. Norfolk Shipbuilding, in the Valve Shop.
Q. And, there was still another occasion?
page 98 } A. Yes.
Q. Was the Defendant there, then?
A. I believe he was, yes sir.
Q. And that was when you said 'you were going to get it'?
A. Yes.
Q. You were there, when the Defendant was told that?
A. Yes.
Q. Was there any other occasion, different from that day?
A. When we set a definite date, sir.
Q. And that was a different occasion, from the other one?
A. No, sir—it was included, in one of them.
Q. Well, which conversation?
A. The last conversation.

Mr. Sacks: That's all.
Mr. Whitehurst: Step down.
The Court: How many other witnesses?
Mr. Whitehurst: Your Honor, I have two very short witnesses.
The Court: All right.
Mr. Whitehurst: Your Honor, I have the Reverend Hines to put on now.

page 99 } REVEREND JAMES WILLIAM HINES, witness, appearing on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Mrs. Elsie Bell Carter

DIRECT EXAMINATION

Examined by Mr. Whitehurst:

Q. State your name, please sir?

A. James William Hines.

Q. What is your profession, sir?

A. I'm a Minister, of the Southern Baptist Church.

Q. Where, is that located?

A. I'm located, in Linwood Park.

Q. All right, sir—Mr. Ronald Purchase, do you know him?

A. Yes, I do.

Q. Let me ask you this question, sir: in the community in which he lives, do you know his reputation for truth and veracity?

A. I have known Mr. Purchase for approximately four years, and so far as I know,—

Q. Let me ask it, this way: not personally speaking, but I'm asking you what reputation he bears, if you know, in the community in which he lives—what, is his reputation?

A. Nothing bad, at all—there's nothing lacking in his character at all, as far as I know.

Mr. Whitehurst: All right, sir—answer De-
page 100 } fense counsel's questions.

Mr. Sacks: No questions.

Mr. Whitehurst: You may step down, sir.

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

Mr. Whitehurst: Mrs. Carter, please.

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:

Q. State your name, please mam?

A. Mrs. Elsie Bell Carter.

Q. And, your address?

A. 7901 Hampton Boulevard, Lot No. Seven—Lewis Trailer Park.

Q. Ronald Purchase—do you know him, mam?

A. Yes, sir.

Mrs. Elsie Bell Carter

Q. How long, have you lived in the area of Lewis Trailer Park?
A. (pause) Ever since Benmoreell.
Q. Let me ask you this question, mam: in the
page 101 } community in which Mr. Purchase lived and where he worked, do you know his reputation for truth and veracity?
A. Yes.
Q. What is the reputation, he bears?
A. Very good.

Mr. Whitehurst: All right—answer Defense counsel's questions.

CROSS EXAMINATION

Examined By Mr. Tavss:
Q. How long have you known Mr. Purchase, and how long have you lived in the area where he lived?
A. Well, he's been here since June.
Q. Have you known him, since then?
A. He comes by my house, all the time.
Q. Then you've known him since June of 1966, and not before?
A. No, sir.
Q. You never discussed his reputation with anyone, did you?
A. He's always (pause) talked to the neighbors, and all.
Q. And you've only known him since June, right?
A. Yes.
Q. Do you know that he pleaded 'guilty' to the
page 102 } burning and stealing of a car?
A. (pause) I heard it recently, yes.
Q. Knowing that now, does that change your thinking of him?
A. (pause) My only—
Q. Does that change anything, about his reputation; that is, your understanding of his reputation, is it still the same, after knowing of all that?
A. Yes.
Q. He's still a truthful, and honest person?
A. To me, he is.

Mr. Tavss: No further questions.
Mr. Whitehurst: You may step down, mam.

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

The Court: Gentlemen, I believe—how many more witnesses do you anticipate, Mr. Whitehurst?

Mr. Whitehurst: Perhaps two, Your Honor.

The Court: Gentlemen, I'm going to adjourn for lunch; and you gentlemen of the jury are not to allow anyone to approach you concerning this case, and in the event that anyone should do so, you are to let me know.

page 103 } Do *you* read any newspaper articles concerning this, nor listen to any news media, in the event there could be any news of any kind, concerning this case.

You are not to visit any of the alleged scenes which may have been mentioned in the evidence or by the testimony of the witnesses; and in other words gentlemen, you are to come back and resume the status of this case as you now leave it.

Court is going to stand adjourned until 2:15 this afternoon, and I will ask you please, when you do return to the Courthouse, do not stand in the hallway or in the Courtroom, but go immediately into your juryroom; you are excused, until 2:15 P.M.

Bring in all the witnesses.

(All witnesses appeared before the Court.)

The Court: Counsel, look these witnesses over now;—

(Counsel looks around, at witnesses.)

The Court: —ladies and gentlemen, those witnesses who have not yet testified, we're going to stand adjourned until 2:15 P.M., for lunch.

page 104 } Mr. Clerk, swear the witnesses for their appearance back in this Courtroom, at that time.

Deputy Clerk: Yes, Your Honor.

All witnesses are sworn, under penalty of $100.00 each, payable to the Commonwealth of Virginia, for your appearance back in this Courtroom at 2:15 P.M. this afternoon, for the further trial of this case—you're excused, until 2:15 P.M.

The Court: Court stands adjourned, until 2:15 P.M. this afternoon.

(At 2:15 P.M., Court reconvened.)

The Court: All witnesses please retire to the witness rooms or to the hallway, but don't stay in the Courtroom.

Sergeant, if you will hand those exhibits to the jury when they come out, I'll appreciate it.

(The jury returned at 2:16 P.M. and the jury roll was called, with one juror not answering.)

The Court: We'll wait for just a minute, to page 105 } see if he comes in.

(At 2:17 P.M., after the arrival of a gentleman, the jury roll was called *called* again, with all jurors answering.)

Deputy City Sergeant: All the members of the jury are present, Your Honor.
The Court: All right—proceed, gentlemen.
Mr. Whitehurst: Ronald DuBoise, please.

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:
Q. State your name, please sir?
A. Ronald C. DuBoise.
Q. And, what is your occupation?
A. U.S. Navy, ST-1.
Q. And you live where, sir?
A. 1352 Strand Street.
Q. Back in October and November of last year, where did you live?
A. 7901 Hampton Boulevard, Lot No. Six, Lewis page 106 } Trailer Park.
Q. Is that located in the City of Norfolk, Virginia?
A. Yes.
Q. Mr. DuBoise, I direct your attention to November 5th of last year, and ask if you had occasion to see a 1966 Mercury?
A. Yes, I did.
Q. Where, did you see it?
A. At my driveway, at Lot No. Six.
Q. What time—do you know what time that was, Mr. DuBoise?

Ronald C. DuBoise

A. Approximately 9:00 o'clock, in the evening.

Q. Did you know the car was going to be there, sir?

A. No, sir—I did not.

Q. Tell us, what you saw exactly—you say 'it was a 1966 Mercury'; do you recall the color, sir?

A. No, I don't—but I saw Ronald Purchase and Kelly there, with the car.

Q. Ronald Purchase, and Kelly?

A. Yes, sir—Ron, and this other fella named Kelly.

Q. Is 'Ron', Ronald Purchase?

A. Yes.

page 107 } Q. So that was Ronald Purchase, and Kelly—and, what is Kelly's first name?

A. Frank, Frank Kelly.

Q. All right, sir—you saw Ronald Purchase and Frank Kelly with the car, there?

A. Yes, and I had some conversation with them.

Q. All right, sir—don't tell us what conversation you had with them, but what was done to the car?

A. The engine and transmission were removed, and placed on a (pause) two-wheel cart.

Q. All right, sir—why, was it done at your place?

A. Well, I—when I first moved there quite a few months ago, I set up a ramp and a hoist in a small area there.

Q. And, was this at Lewis Trailer Park?

A. Correct.

Q. Did you know Mr. Purchase?

A. Yes, I did—I knew Ron.

Q. How long have you known him?

A. I'd say, about four years.

Q. You mentioned Frank Kelly, too—had you known him before, sir?

A. No, sir—I did not.

Q. Do you know any reason, for them removing the engine?

page 108 } A. Do I?—the only thing I know, is that the car was going to be junked.

Q. Did you know, who the owner of the car was?

A. No, sir—I did not.

Q. What did you do, with reference to the car?

A. I insisted I was not going to help with the program, I just wanted to watch; my wife was there, though—she was in bed and didn't want to wake the children in the Trailer Park at that hour of the night, so I give them a hand.

Q. What did you do, with reference to the car?

Ronald C. DuBoise

A. Well at first, when I went out there, the transmission was removed.

Q. Where, were the ignition keys?

A. They were either lying on the front seat, or on the dash; I just wanted to make sure that the engine could not start, accidentally.

Q. How many keys, were there?

A. There were two keys together, either on a small ring or chain—they were just in a type of keyring, of some sort.

Q. And what was done, with the keys?

A. They were either laid on the seat of the car or on the dash, I don't remember.

Q. What time did they leave the place, do you know?

page 109 } A. It was about two hours, after they got there.

Q. The engine, sir—what happened to it, do you know?

A. The engine remained at my place, lying on a pallet; and then one day after I come home, after that previous day, my wife said 'the engine had been put in another car'.

Q. Don't let's go into another conversation, sir—how long was the engine there, at your place?

A. About, a month.

Q. 'About a month', you say?

A. Yes, sir.

Mr. Whitehurst: All right, sir—answer Defense counsel's questions.

CROSS EXAMINATION

Examined By Mr. Sacks:

Q. Is your name DuBoise?

A. D-u B-o-i-s-e.

Q. And, that's DuBoise?

A. Yes, sir.

Q. Mr. DuBoise, were you friendly with Mr. Purchase?

A. Yes, sir—I've known Purchase for quite a while; I've known Ron, yes sir.

page 110 } Q. Then he lived right next door to you, and you were close to him?

A. Yes.

Q. All right—now you did know that he didn't have a brand new '66 automobile, did you not?

A. Right.

Ronald C. DuBoise

Q. Now when they did this motor lifting—by the way, do you charge people, for your automotive work?

A. No, sir—most people I know are real good friends around the Trailer Park, who just want to work on their vehicles and things.

Q. So they just more or less use your ramp, is that it?

A. They're just good friends of mine, and they use my lift there at the Trailer Park when they'd be working on their cars; they didn't work on them all the time, though.

Q. Then you'd just give these folks the service of your hoist, but you didn't get paid—only your lift and hoist were used, but you weren't paid for it?

A. Right—no, sir.

Q. Now, did you have occasion to ask either of these men 'whose car they were working on'?

A. No, sir—I thought it belonged to the man that was with Purchase.

Q. And you were willing to work with them on
page 111 } it, for a couple hours?

[redacted]s.

Q. You we[redacted]ng to do that for a man you didn't know, without saying an[redacted]ing about it?

A. I was satisfied, as long as Purchase was.

Q. Who told you 'they were going to junk a brand new automobile'?

A. I don't know whose car it was, sir—I thought it belonged to the fellow with Purchase, there.

Q. Who said 'they were going to junk the car'?

A. There wasn't a lot of conversation going on there, and when people would be working on cars and things like that, I wouldn't pay much attention to what was going on around me—I couldn't state what they were doing, or who said that.

Q. How old a man, are you?

A. Twenty-eight.

Q. How long, have you been in the Navy?

A. For a long time, folks worked on their cars at my place—I didn't mind them, using my lift.

Q. Mr. DuBoise, how long have you been in the Navy?

A. Oh, four or five years—ever since I was a kid, I've been tinkering with automobiles.

Q. All right, sir—and you chose to work at
page 112 } night out there, on that particular night, helping them junk a good new automobile that didn't belong to the man you knew, and you tell us 'you didn't know the other man'?

Ronald C. DuBoise

A. No, sir.
Q. And you didn't question that, at all?
A. No, sir—I did not.
Q. Were you aware of any plan, to destroy this automobile?
A. No, sir—I didn't know anything, about it.
Q. You're sure now, you knew nothing about it?
A. Right, sir—I didn't know.
Q. Have you discovered anything about that, now?
A. I know about it through the papers, and what has been said.
Q. But, you didn't have anything to do with it?
A. No, sir.
Q. As I understand it then, you were willing to work on the car and help them take those parts out of a brand new automobile at the Trailer Park that night, is that right?
A. I didn't know sir, that the car didn't belong to Kelly—the thought never crossed my mind, that it wasn't his car.
Q. And, you didn't question the man about that?
A. I didn't ask any questions, no sir.

Q. You didn't ask 'why they were taking these
page 113 } things out of a brand new car'?
A. No, sir.

Q. Nobody said 'the car was a lemon', or 'it was no good', or anything like that?
A. No.
Q. There was nothing said about 'saving anything', or what they were going to do with these parts?
A. No, sir.
Q. And you've just learned about it since, and you come in here today and say 'you had no idea what was happening, back in November'?
A. Right.
Q. You just worked out there for two hours in the Trailer Park area, around that car, and the only one thing you remember to tell us, is that 'there were two keys to the ignition to that automobile, on a ring'?
A. Yes.
Q. You don't remember any of the conversation; you'd never seen Kelly, the other man, before; you never had any doubt when someone left an engine there, and then one evening you were informed that 'the engine was gone'?
A. Right, sir—and, I never knew who got it.
Q. Didn't you ever try to find out why it was taken out of the car, and left at your place; and, didn't you ever try to find out who picked it up?

Ronald C. DuBoise

page 114 } A. I didn't consider it any of mine, or anyone else's business.

Q. Why does the one thing stand out in your mind, about the keys to the car?

A. Because that's the first thing I did, and the first thing I asked.

Q. That's the first thing, you did?

A. That's the first thing I did, after I walked out there.

Q. All right—what did you do, before you asked anything?

A. I come out to give them a hand, see—the neighbors were all asleep, and I didn't want them to make a racket; I walked by the car and looked in automatically, to see if the keys had been removed from the ignition.

Q. All right, sir—now you stated, and I believe I'm correct, that 'the car's engine stayed there in your driveway for something like a month'?

A. Yes, sir.

Q. That car's engine stayed there in your driveway for a month, and you knew it was there, right?

A. Yes, I knew it was there.

Q. All right—the first day of those 30 days that those people left the engine in your driveway, you didn't ask anything about it; 'what they were doing, leaving
page 115 } that engine there in your driveway'—you didn't ask them that, did you?

A. No, sir.

Q. The second day of those 30 days, you didn't ask any questions?

A. No.

Q. I assume, you didn't ask any questions for any of those 30 days—am I right, sir?

A. I didn't ask any questions about it at all, sir.

Q. And your only reason, is because Purchase is a friend of yours?

A. Yes, sir—he's a friend of mine.

Q. All right—have you talked with him, about this case?

A. Now I have, yes sir.

Q. And you'd do anything you could to help him, would you not?

A. Not against the law, I wouldn't.

Q. But you'd do anything else to help him, would you not?

A. What do you mean, by that?

Q. What I mean, is that you don't remember what happened to the keys to the car,—

A. No, I do not.

Ronald C. DuBoise

page 116 } Q. —and you didn't ask them 'why they were junking a brand new car',—

A. I didn't really consider it any of my business, sir.

Q. —so you worked on the car at night like that, right?

A. Right.

Q. And, you didn't ask any questions?

A. Right—a lot of times I work at night like that.

Q. Isn't that a little unusual, after working all day?

A. No, sir—I can work all day and still work on cars like that at night, even to 2:00 or 3:00 o'clock in the morning.

(Mr. Sacks held a conference with Mr. Tavss.)

Q. I'm going to ask you this, sir: were you not out there, where this car was ignited and set on fire, and were you not one of the people running from the scene?

A. Negative.

Q. You say, 'negative'?

A. I say 'negative' to that, sir.

Q. And when you say 'negative', do you mean to tell us 'you were not there'?

A. No, sir—I was not there, sir.

page 117 } Q. You deny that?

A. Yes, sir.

Q. How did they get the car out, away from your driveway?

A. I—there was another vehicle there, that I later found out belonged to Mr. Kelly.

Q. Then as I understand it, there was another vehicle there—now, can you tell us just how the car was taken out of your driveway after it was worked on, and as you say 'you gave them a helping hand', for two hours there in the dark?

A. With a piece of towing chain, sir.

Q. Did you help them?

A. Yes.

Q. What kind of car, was the other vehicle?

A. It was a Ford, sir.

Q. Do you know, who brought it up there?

A. I don't know which man drove it up, but when I come out of the house, there were two cars there.

Q. Then, you don't know who drove the Ford to your place?

A. No, sir—they were both there, when I come on out.

Q. How many people were there, then?

A. There were the two men, Purchase and Kelly.

Q. There were not three people, there?

Ronald C. DuBoise

page 118 } A. No, sir—there was just two.

Q. Who drove away, in the Ford?

A. I'm sorry sir, I don't remember.

Q. You can't tell us, who drove it away?

A. No, sir—I don't remember.

Q. Do you remember how you helped them hook it up to the other car, if you don't remember who drove it away?

A. They hooked it onto the other car with a towing bar, sir.

Q. And, how did they hook the towing bar, onto the other car?

A. With a chain and the towing bar, on the back of the Ford.

Q. And, you helped them do that?

A. Yes, I did.

Q. And, you were there when they moved off?

A. Yes.

Q. But, you were not in the car with them?

A. No, sir—I was not in the car with them, sir.

Q. You deny that?

A. Yes, sir.

Q. All right, sir—then you were just standing there, when they drove off?

A. Yes, sir—I watched them move off from in
page 119 } front of my place, and then I went on in.

Q. You just watched them drive off, and then went into your house?

A. Right, sir—I went on in, took a shower and went to bed.

Q. As you stood there and watched them drive off in the car, do you remember who was driving?

A. I don't remember that, sir.

Q. How many men, were in the car?

A. As far as I know, there were two men; one man, was in each car.

Q. There was one man in each car, but you don't remember which man was in which car?

A. No, sir.

Q. You helped them work on the car, you helped them hook up the towing bar and chain, you watched them drive off from your place—this took a couple hours, and yet you can't tell us which man was in each car?

A. I don't remember that, sir.

Q. And, you say you didn't go out with them to Naval Base Road?

A. No, sir—I did not.
Q. You're sure, of that?
A. I'm sure, sir.

Mr. Sacks: All right, sir—that's all I have.
page 120 } Mr. Whitehurst: Step down, sir.

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

Mr. Whitehurst: Your Honor, may be have a brief recess?
The Court: Yes, sir—gentlemen, step into your jury room.

(Recess from 2:35 P.M. until 2:43 P.M., when the jury returned.)

Mr. Whitehurst: Mr. Thomas Clough.

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

DIRECT EXAMINATION

Examined By Mr. Whitehurst:
Q. Would you state your name, please sir?
A. Thomas P. Clough.
Q. Would you spell your last name for us, please?
A. C-l-o-u-g-h.
Q. And your occupation is what, sir?
A. I'm Manager of the Muse Insurance Agency,
page 121 } Incorporated, of Richmond.
Q. With respect to your occupation, I refer your attention to a 1966 Mercury, Serial Number 6W68M-508787—are you familiar, with that vehicle?
A. Yes, sir.
Q. And with whom, is it insured?
A. The American Security Insurance Company, of Atlanta, Georgia.
Q. All right, sir—let me ask you this question: on the 7th day of November, did you have occasion to see the Defendant here?
A. Yes, sir.
Q. Where, did that take place?
A. He came to my office, in Richmond.
Q. He came, to your Richmond Office?

Thomas P. Clough

A. Yes, sir.
Q. What was the subject matter, that was discussed?
A. He came in, to report the loss of his Mercury.
Q. What kind of loss, was this?
A. He told me 'theft, followed by fire'.
Q. He told you 'theft followed by fire', and that was with respect to his 1966 Mercury—where was it purchased, did he tell you from whom the Mercury was purchased?

A. He told me 'he purchased it from Watts
page 122 } Mercury Incorporated, of Richmond'.

Q. What kind of business, is Watts Mercury Incorporated, of Richmond?
A. Automobile.
Q. Do you know how much loan, is on that vehicle, the 1966 Mercury?
A. No, sir—I don't.

Mr. Whitehurst: Answer Mr. Sacks' questions.
Mr. Sacks: We have no questions at this time; I know this gentleman came from Richmond, but I want to ask him to remain for just a little while, bearing in mind that he has to get back.
The Court: Stand down and retire to the witness room or the hallway, please.
Next witness.
Mr. Whitehurst: The Commonwealth rests, * * *

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Mr. Sacks: If Your Honor please, at this time the Defense would move the Court to strike the evidence of the Commonwealth on two grounds; first, on the ground that the elements of the offense have not been proven beyond a reasonable doubt.

* * * * *

Edward Duffy Phillips

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* * * * *

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

DIRECT EXAMINATION

Examined By Mr. Tavss:

Q. State your full name, please sir?

A. Edward Duffy Phillips.

page 131 } Q. Where, do you live?

A. 2952 Greenwood Drive, Portsmouth.

Q. How old are you, sir?

A. Twenty-nine.

Q. Are you married?

A. Yes, sir.

Q. What's your wife's name?

A. Jevelyn.

Q. How do you spell that, sir?

A. J-e-v-e-l-y-n.

Q. How long, have you been married?

A. I've been married, twelve years.

Q. Do you have any children?

A. Yes, sir—four.

Q. How many?

A. Four.

Q. All right, sir—you've been living at that address in Portsmouth, how long?

A. Ever since I moved down here, approximately seven months ago.

Q. And you moved here, from where?

A. From Richmond.

Q. And for whom, do you work?

A. Norfolk Shipbuilding and Dry Dock.

page 132 } Q. You've been working for them, and living in Portsmouth—that is, since you came from Richmond about seven months ago?

A. Yes, sir.

Q. Before you came to live in Portsmouth, where did you live in the Richmond area?

A. 613 South Street.

Q. How many years, did you live in Richmond?

Edward Duffy Phillips

A. Eight years.
Q. And for whom did you work, in the Richmond area?
A. Phillip Morris Tobacco Company.
Q. All right, sir—now Mr. Phillips, did you own a 1966 Mercury?
A. Yes.
Q. Describe that car, for us?
A. Describe it?
Q. What kind, or style was it?
A. It was the best one they make, Parklane, four-door hard top, with everything on it.
Q. When, did you get it?
A. June or July, of last year.
Q. Did you like the car, Mr. Phillips?
A. Yes, sir—it was the best car, I ever had.
Q. What kind of car, did you have before that?
A. An old 1959 Mercury.
page 133 } Q. And how long had you had the1966 Mercury, when it was destroyed by fire?
A. I had had it, approximately four months.
Q. Where, did you purchase it?
A. I bought it from Watts Mercury, in Richmond.
Q. And then, did you drive the car here from Richmond?
A. Yes, sir—I drove it, to Portsmouth.
Q. Did you just drive it, or did your wife also drive it?
A. My wife and I, both drove it.
Q. Now what was the first thing you knew, about this car being missing, burned, stolen or what?
A. About, I would say, 3:00 or 4:00 o'clock on November 5th.
Q. Would that make it the early morning, then?
A. Yes.
Q. What happened, then?
A. Two police, or detectives or something, came to the door and were telling me about it.
Q. And, what did you find out?
A. Well sir, they told me (pause)—
Q. They told you what, Mr. Phillips?
A. —that 'they had found my car and it had been burned and everything, and a bunch of stuff taken off of
page 134 } it'.
Q. Now, do you know two boys—that is, do you know Ronald Purchase and Frank Kelly?
A. I had spoken to Purchase on about three occasions, and to Kelly on about five or six occasions.

Edward Duffy Phillips

Q. How, did you come to know them?

A. I—well, Purchase was in charge of the work that we were doing in our section or department; I don't know just what he was in charge of, but he come over there.

Q. Were you friendly, socially in any way?

A. No, sir—no more, than usual.

Q. Were you friendly with Mr. Kelly, or didn't you get along with him?

A. No, sir.

Q. Why, didn't you get along with Kelly?

A. Kelly would aggravate me, sir.

Q. What did he do, to aggravate you?

A. Well I'd go to do something, and maybe lay something down to do my work; the next thing I knew, somebody would come along behind me and mess it up and everything, and it always looked bad—he didn't do good work.

Q. Did you ever tell Kelly, about it?

A. We had three or four arguments, about it.

Q. Are things the same, did they remain the same and do you still have the same idea about him?

page 135 } A. (pause) That was about all, of that—the first week it was over, it was over after the first week he got over there.

Q. Now you heard the testimony that was brought here this morning against you, and I'm going to ask you now, under your oath, I'm going to ask you openly and directly this question: did you, at any time, ask or procure Mr. Frank Kelly or Mr. Ronald Purchase or did you encourage them in any way, to destroy your car?

A. No, sir—I did not.

Q. Do you have any idea, why they would say that?

A. (pause) To have me charged with it and so they would not be charged with it, I imagine, because they were not charged with it.

Q. Now Mr. Phillips, as you know, that's a serious charge; and as you know, you're under your oath here today—now about all the conversations, about your asking them 'to burn the car' and 'paying money'; did you pay them any money, Mr. Phillips?

A. No, sir—I never had any money, to pay them with.

Q. Was your car paid for, Mr. Phillips?

A. No, sir.

Q. All right—were the payments, up to date?

A. Yes, sir.

page 136 } Q. You made your payments?

A. Yes.

(Mr. Tavss held a conference with Mr. Sacks.)

Q. Now Mr. Phillips, did you have insurance on this car?
A. I don't know, Mr. Tavss.
Q. You don't?
A. No, sir.
Q. (Mr. Tavss hands paper to the witness) I show you this policy here, from American Security Insurance Company; do you recognize that policy, Mr. Phillips?
A. (Witness looks at paper) That's my policy, that's it.
Q. Is this the policy on your 1966 Mercury, that we have been talking about?
A. Yes, it is.

(Mr. Tavss shows paper to Mr. Whitehurst, who looks at same)

Mr. Tavss: Your Honor, I'd like to offer this and have it marked as D-1, for the purpose of identification.
The Court: So marked, for the purpose of identification.

By Mr. Tavss:
Q. Mr. Phillips, I show you this policy and ask page 137 } you if you would read 'Item Three'?
A. Item Three, says: 'The insurance offered is only with respect to such of the following coverages as are indicated by specific premium charge or charges'.
Q. Down here now, under 'Fire, Lightning'; is there any premium charge noted thereon, sir?
A. None, at all.

(Mr. Tavss shows paper to Mr. Whitehurst, who looks at same again.)

Q. Now, has the Insurance Company paid for the loss of this car?
A. Not a dime, sir.
Q. All right, sir—now,—

The Court: Are you offering that?
Mr. Tavss: I will, Your Honor.
The Court: It hasn't been introduced, yet.
Mr. Sacks: We do want to introduce it, Your Honor.

Edward Duffy Phillips

The Court: All right—D-1 for identification, will be received as Defendant's Exhibit D-1 into evidence.

By Mr. Tavss:

Q. Now when you went to Richmond, was that to check on this insurance—or just why did you go to Richmond, Mr. Phillips?

page 138 } A. I didn't know what it covered, and I went to see what I had coverage on—and even today, I still don't know.

Q. You still don't know?

A. No, sir.

Q. And, that's why you went to Richmond?

A. Yes, sir—I went up there, to see if I had coverage.

Mr. Tavss: All right—answer Mr. Whitehurst.

CROSS EXAMINATION

Examined By Mr. Whitehurst:

Q. You heard the insurance man say that 'you were covered', didn't you?

A. Yes, sir.

Q. And yet you're telling us that this was the first time you were told 'you were covered'?

Mr. Sacks: Now if Your Honor please, I object to what he was told by the insurance man.

The Court: That's one of the contentions, in this case.

Mr. Sacks: He told me, Your Honor, that 'he was told he was not covered', up there.

page 139 } The Court: I'll sustain the objection at this time, as to the form of the question.

By Mr. Whitehurst:

Q. So then you went to Richmond on Monday, the day after or the first working day after that occurred, didn't you?

A. That's correct, yes sir—I was supposed to go Saturday, but I didn't get off work.

Q. And you couldn't find out whether your car was covered, or not?

A. No, sir—I tried to call, but I couldn't get in touch with them until Monday.

Q. And I take it, that you couldn't find out whether your car was covered by insurance or not, until Monday?

A. No, sir.

Q. Monday, was the first time you heard the car was covered by insurance?

A. That's right.

Q. You say 'they have not paid off', and 'you don't know whether you're covered or not'?

A. Correct.

Q. Have they not paid off, waiting to see whether you're convicted?

page 140 } A. Well, I—

Mr. Sacks: Objection, Your Honor.

The Court: Sustained.

By Mr. Whitehurst:

Q. Today, is the first day you heard the insurance man say 'you were covered'?

Mr. Sacks: Objection.

The Court: I believe that material—I'm going to overrule your objection, Mr. Sacks.

Mr. Sacks: Exception.

By Mr. Whitehurst:

Q. Today, is the first day you heard the car was covered by insurance?

A. He said 'it was covered, but they would have to check on it', and that's all I know.

Q. He was satisfied, but he'd have to check on it as to whether you'd be paid or not?

Mr. Sacks: Now the Commonwealth's Attorney is putting hearsay in the record, and I object to it.

The Court: Overruled, as to the form of the question—this line of inquiry has been opened by the statement of 'not knowing whether or not', and that rules out the

page 141 } caliber of hearsay.

Mr. Sacks: We still object to it, Your Honor.

The Court: Overruled.

Mr. Sacks: Exception.

By Mr. Whitehurst:

Q. And today, you learned for the first time that your car is covered by insurance?

Edward Duffy Phillips

Mr. Sacks: We still object, Your Honor.

A. I still don't know whether it's covered, or not.
Q. You still don't know?
A. No, sir.
Q. You don't believe the testimony, of Mr. Clough?
A. I believe the man, yes sir.
Q. You heard him say 'the car was covered'?
A. He didn't say 'it was covered, at that time'.

Mr. Sacks: I object to these questions, Your Honor.
The Court: Overruled.
Mr. Sacks: Exception — and objection, throughout this whole line of questioning, Your Honor.

By Mr. Whitehurst:
page 142 } Q. So you don't know, with reference to time—but you knew what premium you were paying all along, did you not?
A. No, sir.
Q. Didn't you know, what the premium entitled you to?
A. No, sir—it was supposed to be figured in the amount of money I borrowed, when I bought the car.
Q. You said a while ago, that 'you kept up the payments on the car'?
A. Yes, sir.
Q. You had been making the payments for the last several months then, had you not?
A. No, sir.
Q. You had not made your payments?
A. Not for these months.
Q. Before, this happened to your car?
A. Oh, yes.
Q. You paid then, right?
A. I made payments then, yes sir.
Q. How much did you owe, on your automobile?
A. Roughly, I'd say between $3,700.00 and $4,000.00.
Q. You owed close to $4,000.00, roughly?
A. Yes, sir.
page 143 } Q. And you never received any type of settlement figure, from the insurance people?
A. No, sir.
Q. You owned another car at that time, too—did you not own another car at that time, sir?
A. Yes, sir—an old 1960 Mercury.

Edward Duffy Phillips

Q. You did own a 1960 Mercury?
A. Yes, sir.
Q. Do you own it, now?

Mr. Sacks: Objection, Your Honor—it's immaterial.
The Court: What is the materiality, Mr. Whitehurst?
Mr. Whitehurst: Your Honor, I think it's important for me to ask what car he owns, and has owned.
The Court: I'll allow him to answer that.
Mr. Sacks: Exception.

By Mr. Whitehurst:
Q. Do you own a 1960 Mercury, now?
A. Yes, sir.
Q. Do you own a *Cadilac,* now?
A. Yes, sir.

Mr. Sacks: Same objection, throughout.
The Court: Overruled.
page 144 } Mr. Sacks: Exception.

By Mr. Whitehurst:
Q. You have had quite a few automobiles that you've owned in recent years, have you not?
A. The 1960 Mercury won't run, and the *Cadilac* is a 1959 model.
Q. How much, did you pay for it?
A. I paid $900.00 for it, sir.

Mr. Sacks: Same objection—I think he's getting off the collateral issue; he had that car a while back, Your Honor.
Mr. Whitehurst: He had a car a while back that he 'totaled', so to speak.
Mr. Sacks: Now Your Honor, even if there was a car a while back that was a total loss, I object to that—this man is not charged with any such thing, here today.
The Court: He's already testified about it before, on cross examination as well as on direct—I'm going to allow the question.
Mr. Sacks: Exception, sir.

By Mr. Whitehurst:
Q. Did you not total loss a car, sometime back, before this one?
A. Yes, sir—in 1962, I had a wreck.

Edward Duffy Phillips

page 145 } Q. In 1962, you had a wreck?
A. Yes, sir.
Q. Now, what kind of an automobile was that?

Mr. Sacks: For the record, Your Honor, my objection is throughout this line of questioning.
The Court: I understand that, Mr. Sacks.
In view of what evidence has come in, he's already paid for it, and I'm not going to allow him to be asked any more about it.
Mr. Whitehurst: All right, Your Honor.

By Mr. Whitehurst:
Q. Now this Mercury, was purchased from Watts Motor Company?
A. Yes, sir.
Q. And they're bankrupt, now?
A. Yes.
Q. Now these two people, Purchase and Kelly—you say 'they are not friends of yours, at all'?
A. No, sir.
Q. They would not know anything about your private affairs, would they?
A. Well they probably would know some of my personal affairs, because I told several people that I worked with, lots of things.
page 146 } Q. Did you tell a lot of people, all types of information?
A. (pause) Well sir, when you come down to the part about 'a lemon', I said one thing that was wrong with my car.
Q. And, what was that?
A. The window in the back didn't work, sometimes; still it was covered by a Warranty, but the window wouldn't go down through the door—I never said anything else about that, though.
Q. You never complained about anything else, just that 'the window didn't work sometimes'?
A. Yes, sir.
Q. You were well pleased with your car, is that it sir?
A. Yes, I was.
Q. And there was nothing wrong with it, other than the window in the back?
A. No, sir.
Q. Did you try, to have that corrected?

Edward Duffy Phillips

A. They told me 'to see a man over to Portsmouth about it', but by the time I brought it back, they were in bankruptcy.

Q. They were in bankruptcy?

A. Yes, sir—and then, it didn't matter.

page 147 } Q. It didn't matter?

A. No, sir—it still had the Warranty, with it.

Q. It did?

A. It was a Ford Dealer line, sir.

Q. When, did you go to Richmond?

A. November 7th.

Q. When?

A. November 7th.

Q. What time, was that?

A. I—oh, I went there in the morning.

Q. By what mode of travel, did you *to go* Richmond?

A. I had rented a car, sir.

Q. You rented an automobile, to go?

A. Yes, sir.

Q. Would Purchase and Kelly, or would either one of them normally have keys to your automobile, that is to your Mercury?

A. Nobody but my wife and myself, would have keys to my car.

Q. Nobody else, had keys to your Mercury?

A. No, sir.

Q. They did not?

A. No, sir.

Q. And you and Frank Kelly, were not so

page 148 } friendly, as I understand you—and, did you say 'he was aggravating'?

A. To me, he was.

Q. And was that the word you used, 'aggravating'?

A. Yes, sir.

Q. Nothing was wrong, with the roof of your Mercury?

A. Nothing at all, was wrong with the roof of my Mercury.

Q. It didn't have a 'crumpled roof'—you heard Kelly say 'crumpled roof'?

A. Yes, sir—but I don't know what he's talking about, because I never used that term and I don't know what he would mean.

Q. You never had any conversation at all with him, concerning this?

A. Concerning what, sir?

Q. This whole transaction?

A. No, sir—no, sir.

Edward Duffy Phillips

Q. But you did talk to them about the window, didn't you?
A. I talked with Purchase one time, and asked him 'if he would fix my rear window for me, that I heard he did mechanic work' and I told him 'I was working ten hours a day then, six days a week, and I couldn't get a regular mechanic to fix it for me'.
page 149 } Q. You told Mr. Sacks, that 'the reason Purchase and Kelly said the things they're saying here today, was to help themselves'?
A. That's the way it looks, to me.
Q. How could what they said here today, help them?
A. By blaming everything on me, in my opinion.
Q. Was that, the opinion of your lawyer?
A. No, sir—that's my opinion.

Mr. Sacks: I think perhaps that's a good point, but I think the man's speculating and I object to it—'how it would help them', is for the jury to determine, Your Honor.
The Court: Sustained.

By Mr. Whitehurst:
Q. Would you say their testimony in this, was to help themselves?
A. That's what I would say, yes sir; it looks like to me, that's what they're doing.
Q. Did I understand you to say 'they were not charged, with the theft'?
A. Not to my knowledge, they were not charged with it—as far as I know, they were only charged with Arson.
Q. That's all you know about it, or did you check their charge?
A. No, sir—nothing, except the papers.
page 150 } Q. You only know what you've read in the papers, is that it?
A. Yes, sir.
Q. And you reported the loss when the police woke you up that morning, didn't you?
A. Yes, sir—that's when I reported it.
Q. Were the keys in it, or was it locked up that night?
A. I'm not positive, I can't answer definitely.
Q. You're not certain whether it was locked, or not?
A. No, sir—it's got like a trick door lock on it.

Mr. Whitehurst: I have no further questions—oh, one other question, if I may.

Q. This Mercury was involved in a wreck before you purchased it, I believe?
A. Yes, sir.
Q. You knew that, did you not?
A. Yes.

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

DIRECT EXAMINATION

Examined By Mr. Sacks:
Q. State your name, please mam?
A. Jevelyn Phillips.
Q. You are the wife, of course, of the Defendant, Edward Duffy Phillips?
A. Yes, sir.
Q. How long, have you been married?
A. Twelve and a half years, sir.
Q. Where do you make your home, now?
A. 1262 Greenwood Drive, Portsmouth.
Q. And you live there with Mr. Phillips, and your children?
A. Yes, sir—I live there, with my family.
Q. Now you've lived here in this area, how long?
A. Seven months.
Q. All right — and you moved down here, from Richmond?
page 152 } A. Yes, sir.
Q. What kind of work does your husband do, now?
A. He works for Norfolk Shipbuilding and Dry Dock in Berkley, sir.
Q. For whom did he work, in Richmond, before you moved down here?
A. He worked for Phillip Morris, there.
Q. Do you know how long he work there, mam?
A. Not exactly—I think, it was seven or seven and a half years.

Jevelyn Phillips

Q. All right, mam—where are you folks from, originally?
A. Newburn, North Carolina.
Q. The both of you?
A. Yes, sir.
Q. Did you know each other, in high school?
A. Yes, sir.
Q. And you're married now, is that it?
A. Yes.
Q. Now do you have any knowledge, of your own knowledge, of any difficulty or anything unusual happening to the 1966 automobile that belonged to your husband?
A. I wasn't, until the detective came to the house and told us.

Q. Tell us please, the first you knew that some-
page 153 } thing was amiss?

A. Well, about 3:00 o'clock Saturday morning, I heard a knock on the door and the first thing I thought of, was that something happened to my parents, and it scared me; my husband got up, and I heard two men say 'they wanted to talk to him' and they came in; then I got up, and they said 'what kind of car did he have'.
Q. Did you know who the men were, mam?
A. They said 'they were detectives, police'.
Q. They said 'they were police officers'?
A. Yes, sir.
Q. All right—and they wanted to know 'what kind of car your husband had'?
A. Yes.
Q. Now, did you know where the automobile was at that time?
A. Yes, sir—it was in the front yard.
Q. And how about the keys to that automobile, mam—tell me about the keys, who normally or usually kept the keys?
A. Well, I had a set of keys and my husband had a set of keys.
Q. Both of you, had keys to that car?
A. Yes, sir.

Q. All right — was anything said that night
page 154 } about that car, that caused you to do anything for one of the detectives?

A. One of the detectives asked me, 'if I had taken—
Q. Don't say or tell us what was said, but you had some conversation about the car and the car keys?
A. Yes, sir.
Q. And was the result of that conversation, that you made a search for the keys?

Jevelyn Phillips

A. Yes, I did.

Q. What did—tell us what you found out about the keys, right there in your house in Portsmouth at 3:00 o'clock that Saturday morning?

A. Well, I went and got my keys from my pocketbook; when my husband comes in, he usually empties his pockets and puts his keps on top of the refrigerator, and he showed both sets of keys to the detectives.

Q. So then how many sets of keys were there, in the house?

A. Two sets of keys, sir.

Q. And so then you all had the two sets of keys; the one set that was kept in your pocketbook, and the other set that was kept on top of the refrigerator?

A. Yes, sir.

page 155 } Q. And you all made both sets of keys available, that night?

A. Yes, sir.

Q. All right—now, was your husband arrested at that time?

A. No, he was not.

Q. The police officers left?

A. Yes, sir.

Q. All right—now, is that the extent of what you saw and witnessed of your own knowledge?

A. Yes, sir.

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Mr. Sacks: Your Honor, at this time the Defense would renew its motion; that is, at the conclusion of all the evidence,

page 165 } to strike the evidence and impose a finding for the Defendant of 'not guilty', on the same grounds as previously stated.

As the evidence now stands before the Court, there has been no showing in the evidence of the jurisdictional requirements, and they are absolutely essential, that 'at the time of the alleged act, he was insured'; the language of the Statute says, 'the goods that were stolen, were at that time insured against loss or damage by fire', and I urge Your Honor to grant my motion from that standpoint and strike the Commonwealth's evidence on the time element.

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OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS

By Mr. Sacks:

The Defense objects and excepts to the action of the Court in granting Instruction C-1 at the request of the Commonwealth and over the objection of the Defense, on the ground that there is no evidence to support the Instruction, either insofar as there being any insurance in effect against loss or damage by fire, nor was there any evidence to support a finding by the jury of the specific intent as required by the Statute, on the part of the Defendant.

The Defense objects and excepts to the action page 172 } of the Court in refusing to grant Instruction D-2 as tendered by the Defense, the same being a proper and appropriate statement of the law, in that the Defendant was entitled to the consideration of the basic principal of the presumption of innocence and the degree of proof necessary in order to dispel the presumption which the Defense is otherwise entitled.

The Defense objects and excepts to the action of the Court in refusing to grant Instruction D-6 on the ground that the same was a proper and appropriate Instruction to which the Defendant was entitled under the law, on the evidence in this case, and the refusal by the Court constitutes reversible error; and for the same reason, the Defense objects and excepts to the action of the Court in refusing to grant Instruction D-7 as tendered by the Defense.

The Defense objects and excepts to the action of the Court in refusing to grant Instruction D-8 as tendered by the Defense, as it was the only Instruction that informed the jury of the importance of the proper application of law under the evidence and facts in this case concerning the testimony of accomplices, and the Court's refusal to use Instruction D-8 as offered, which has been approved in several cases from the Supreme Court of Appeals and should have been granted, constitutes reversible error.

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Mr. Sacks: If Your Honor please, I would like to move the Court to set the verdict of the jury aside, as being contrary to the law and evidence and without sufficient evidence to support it.

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A Copy—Teste:

Howard G. Turner, Clerk.

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