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Clerk, Supreme Court of Appeals
Richmond, Va.

209 VR 636

Record Nos. 6908,6909

In the
Supreme Court of Appeals of Virginia
at Richmond

FRANCIS LEWIS FLETCHER
v. Record No. 6908
COMMONWEALTH OF VIRGINIA

FRANCIS LEWIS FLETCHER
v. Record No. 6909
COMMONWEATLH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

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.

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IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6908

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 1st day of March, 1968.

FRANCIS LEWIS FLETCHER, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Arlington County
Walter T. McCarty, Judge

Upon the petition of Francis Lewis Fletcher a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 25th day of July, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony (Case No. C-5355); 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6909

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 1st day of March, 1968.

FRANCIS LEWIS FLETCHER, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Arlington County
Walter T. McCarty, Judge

Upon the petition of Francis Lewis Fletcher a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 25th day of July, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony (Case No. C-5356); 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.

AFFIDAVIT

DISTRICT OF COLUMBIA)
) to-wit:
CITY OF WASHINGTON)

FRANCIS LEWIS FLETCHER, first being duly sworn on oath according to law, deposes and says that he is without funds and is financially unable to pay or secure to be paid the cost of printing the record in his case, attorney's fees, costs and expenses of appeal.

GIVEN under my hand this 6th day of June, 1968.

FRANCIS LEWIS FLETCHER

SUBSCRIBED AND SWORN TO before me this 6th day of June, 1968.

My Commission expires: July 14, 1972.

WILMA MOORE
Notary Public

Rec'd. 6-14-68. H. G. T.

* * * * *

A CERTIFICATE

THIS CAUSE came on to be heard upon the Affidavit of Plaintiff in Error, Francis Lewis Fletcher, upon the evidence presented, upon argument of counsel.

IT APPEARING TO THE COURT after its investigation that the Plaintiff In Error, Francis Lewis Fletcher, is unable to pay or secure to be paid the cost of printing the record in his appeal, attorney's fees, costs and expenses of appeal.

THIS COURT accordingly certifies that the Plaintiff in Error, Francis Lewis Fletcher is unable to pay or secure to be paid the cost of printing the record, attorney's fees, costs and expenses on appeal.

DATED this 10th day of June, 1968.

WALTER T. McCARTHY
Judge of the Circuit Court of
Arlington County, Virginia

Recd. 6-14-68. H. G. T.

* * * * *

Record No. 6908

* * * * *

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* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the said body of the said County of Arlington, and now attending the said Court at its February Term, 1967, upon their oaths do present that FRANCIS LEWIS FLETCHER did, while in said County of Arlington, on or about the 15th day of October, 1966, feloniously make an assault on one Evan Wayne Thompson, and by striking and beating the said Evan Wayne Thompson, did feloniously, maliciously and unlawfully cause bodily injury to the said Evan Wayne Thompson, with the intent to maim, disfigure, disable and kill the said Evan Wayne Thompson, feloniously and against the peace and dignity of the Commonwealth.

* * * * *

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* * * * *

PURSUANT to adjournment the 24th day of March 1967 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorney, Anthony S. Gallucio.

WHEREUPON the matter of instructions was considered by the Court and at the conclusion thereof, the jury was polled and placed in the jury box and was instructed by the Court and after hearing closing arguments of the Attorney for the Commonwealth and counsel for the Defendant the Jury retired to its room to consider its verdict.

THEREUPON the Court adjourned for the luncheon recess, and the members of the jury were excused, in custody of the Sheriff, after being admonished by the Court not to discuss this case with anyone nor to permit anyone to discuss it with them or in their presence nor to reach any conclusion until so directed by the Court.

WHEREUPON after the luncheon recess, the jury in custody of the Sheriff, retired to its room to consider its verdict and after a time returned into Court and presented the following verdict, to-wit:

"We, the jury, find the Defendant guilty of maliciously causing bodily injury upon Evan Wayne Thompson with intent to maim, disfigure, disable or kill the said Evan Wayne Thompson, and fix his punishment by confinement in the Penitentiary for ten years."

(Signed) John H. Geiger
Foreman

THEREUPON the jury was polled and each member thereof answered affirmatively as to the foregoing being his verdict.

WHEREUPON the jury was discharged.

THEREUPON the Court withheld imposition of sentence and granted the Defendant until April 10, 1967 to file any motions he deemed desirable, and further ordered the Defendant to give a copy of said motions, if any, to the Commonwealth Attorney with authorities in support thereof.

AND the Defendant is hereby remanded to jail.

Entered this 29th day of March 1967.

WALTER T. McCARTHY, Judge

* * * * *

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* * * * *

THE 20th day of July 1967 came the Commonwealth of Virginia; by its Attorney, the Defendant in custody of the Sheriff and his Attorney, Anthony S. Gallucio.

THEREUPON this case came on for the imposition of sentence and was argued by counsel.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper doth hereby adjudge

that the Defendant is guilty as charged herein and so finds.

THEREUPON the Court ordered the Defendant to stand and demanded of the accused if anything for himself he had or knew to say why Judgment should not be pronounced against him according to law, the Defendant made a statement to the Court.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the Defendant, Francis Lewis Fletcher be and he is hereby sentenced to confinement in the Penitentiary of this Commonwealth for a term of ten (10) years, the period by the Jury ascertained as aforesaid and that the Commonwealth of Virginia do recover of and from the said Francis Lewis Fletcher its costs by it about its prosecution in this behalf expended.

IT IS FURTHER ORDERED by the Court that the period of incarceration shall not be extended for failure of the Defendant to pay the costs herein.

IT IS FURTHER ORDERED that as soon as possible after the entry of this order, the prisoner be removed and safely conveyed according to law from the jail of this Court to the State Penitentiary, therein to be kept, confined and treated in the manner provided by law.

WHEREUPON the Defendant moved the Court to set aside the Judgment of the jury as being contrary to the law and the evidence, which said motion the Court denied, and to which said ruling of the Court the Defendant duly excepted.

THE COURT ORDERS that the prisoner be allowed credit for the time spent in jail awaiting trial, namely, since February 20, 1967.

THE COURT CERTIFIES that at all times during the trial of this case the accused was personally present.

AND the Defendant is hereby remanded to jail.

Entered this 25th day of July 1967.

WILLIAM L. WINSTON, Judge

* * * * *

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* * * * *

AFFIDAVIT

* * * * *

Francis Lewis Fletcher, first being duly sworn on oath, according to law, deposes and says that he was convicted in the above styled cause for felonious assault; that he desires to appeal the said conviction to the Supreme Court of Appeals at Richmond; that he is without funds and is financially unable to pay his attorney's fees, costs and expenses incident to an appeal and he prays that payment of such an appeal be paid on his behalf in compliance with Section 17-30.2 of the 1950 Code of Virginia as amended.

Given under my hand this 31 day of July, 1967.

FRANCIS LEWIS FLETCHER

SUBSCRIBED AND SWORN TO before me this 31 day of July, 1967.

My Commission expires: 19 July 1969.

E. E. GIBBON
Notary Public

Filed Aug-2, 1967.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington County,
Va.

By: V. G., Deputy Clerk

* * * * *

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* * * * *

NO. C-5355

* * * * *

NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

TO: H. BRUCE GREEN
Clerk of the Circuit Court of Arlington County
Court House, Arlington County, Virginia

NOTICE is hereby given that Francis Lewis Fletcher appeals in this case and will apply for a writ of error.

ASSIGNMENTS OF ERRORS

The following are the errors assigned:

1. The court erred in refusing to grant Defendant's Motion for a new trial.
2. The court erred in refusing to strike plaintiff's evidence.
3. The verdict of the jury and the judgment of the court was contrary to law and evidence.
4. The court erred in refusing defendant's motions to set aside the verdict and judgment.
5. The court erred in refusing to grant defendant's motions for a mistrial.
6. The summation and evidence presented by plaintiff was improper, prejudicial, and *inflamatory.*
7. The court erred in granting instruction No. 9.
8. The indictment did not state the means by which the injury was caused.
9. The court erred in refusing to grant defendant's instruction No. F, defendant was entitled to an instruction on his theory of the case.

page 22 } FRANCIS LEWIS FLETCHER

SHAFFER, VAN METER & GALLUCIO
2000 16th Street, North
Arlington, Virginia

By ANTHONY S. GALLUCIO
Counsel for Appellant

Filed Sep. 20, 1967.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.

By: F. WOODYARD, Deputy Clerk

* * * * *

Record No. 6909

* * * * *

A CERTIFICATE

THIS CAUSE came on to be heard upon the Affidavit of Plaintiff in Error, Francis Lewis Fletcher, upon the evidence presented, upon argument of counsel.

IT APPEARING TO THE COURT after its investigation that the Plaintiff in Error, Francis Lewis Fletcher, is unable to pay or secure to be paid the cost of printing the record in his appeal, attorney's fees, costs and expenses of appeal.

THIS COURT accordingly certifies that the Plaintiff in Error, Francis Lewis Fletcher is unable to pay or secure to be paid the cost of printing the record, attorney's fees, costs and expenses of appeal.

DATED this 10th day of June, 1968.

WALTER T. McCARTHY
Judge of the Circuit Court of
Arlington County, Virginia

Recd. 6-14-68. H. G. T.

* * * * *

RECORD NO. 6909

* * * * *

AFFIDAVIT

DISTRICT OF COLUMBIA)
) to-wit:
CITY OF WASHINGTON)

FRANCIS LEWIS FLETCHER, first being duly sworn on oath according to law, deposes and says that he is without funds and is financially unable to pay or secure to be paid the cost of printing the record in his case, attorney's fees, costs and expenses of appeal.

GIVEN under my hand this 6th day of June, 1968.

FRANCIS LEWIS FLETCHER

SUBSCRIBED AND SWORN TO before me this 6th day of June, 1968.

My Commission expires: July 14, 1972.

WILMA MOORE
Notary Public

Recd. 6-14-68. H. G. T.

* * * * *

page 5 }

* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the said body of the said County of Arlington, and now attending the said Court at its February Term, 1967, upon their oaths do present that FRANCIS LEWIS FLETCHER did, while in said County of Arlington, on or about the 15th day of October, 1966, feloniously make an assault on one George William Baron, and by striking, beating and kicking the said George William Baron, did feloniously, maliciously and unlawfully cause bodily injury to the said George William Baron, with the intent to maim, disfigure, disable and kill the said George William Baron, feloniously and against the peace and dignity of the Commonwealth.

Witness sworn and sent to the Grand Jury by the Court to give evidence this 20th day of February, 1967:
Det. Faulconer, Arlington County Police Dept.

* * * * *

page 15 } INSTRUCTION 9

The Court instructs the jury that the malice necessary to constitute the crime of malicious wounding or maliciously causing bodily injury, with intent to maim, disfigure, disable or kill, may be either express or implied. The word "malice" is used in a technical sense, and includes not only anger, hatred and revenge, but every unlawful and unjustifiable motive. It is not confined to ill will to any one or more particular persons, but is intended to denote an action flowing from a wicked or corrupt motive, done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them the plain indication of a heart regardless of social duty and deliberately bent on mischief; therefore, malice is implied by law from any wilful, deliberate and cruel act against another, however sudden.

* * * * *

page 18-C } INSTRUCTION NO. F

The court instructs the jury that an intent to permanently maim, disable, disfigure or kill cannot be presumed by a blow from the fist.

* * * * *

page 24 }

* * * * *

PURSUANT to adjournment the 24th day of March 1967 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorney, Anthony S. Gallucio.

WHEREUPON the matter of instructions was considered by the Court and at the conclusion thereof, the jury was polled and placed in the jury box and was instructed by the Court and after hearing closing arguments of the Attorney for the Commonwealth and counsel for the Defendant the jury retired to its room to consider its verdict.

THEREUPON the Court adjourned for the luncheon recess, and the members of the jury were excused in custody of the Sheriff, after being admonished by the Court not to discuss this case with anyone nor to permit anyone to discuss it with them or in their presence nor to reach any conclusion until so directed by the Court.

WHEREUPON after the luncheon recess, the jury in custody of the Sheriff, retired to its room to consider its verdict and after a time returned into Court and presented the following verdict, to-wit:

"We, the jury, find the defendant guilty of maliciously causing bodily injury to George William Baron, with intent to maim, disfigure, disable or kill the said George William Baron, and fix his punishment to be confinement in the penitentiary for ten years.

(Signed) John H. Geiger
Foreman

THEREUPON the jury was polled and each member thereof answered affirmatively as to the foregoing being his ver-

dict.

WHEREUPON the jury was discharged.

THEREUPON the Court withheld imposition of sentence and granted the Defendant until April 10, 1967 to file any motions he deemed desirable, and further ordered the Defendant to give a copy of said motions, if any, to the Commonwealth Attorney with authorities in support thereof.

AND the Defendant is hereby remanded to jail.

Entered this 29th day of March 1967.

WALTER T. McCARTHY, Judge

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* * * * *

C. NO. 5356

* * * * *

MOTION TO SET ASIDE VERDICT

COMES NOW the Defendant and moves this Honorable Court to set aside the verdicts and enter judgments of not guilty for Defendant, or in the alternative, to award new trials on the following grounds:

1. Improper argument of the prosecution in summation.

The Commonwealth in summation appealed to the prejudice, passion and sympathy of the jury by asking that the jury put themselves in place of the prosecuting witnesses, Evan Wayne Thompson and George William Baron. Moreover, the Commonwealth stated that the jury and people of Arlington must be protected against the Defendant, that it could have been one of the jurors or his family who was viciously assaulted without cause by the defendant. Counsel for defendant, in the course of the aforesaid argument, objected and was overruled. The Commonwealth continued its argument in the same vein.

". . . If the statements may be fairly calculated to prejudice the jury and the court fails or refuses to check such argument or properly instruct the jury, or if they cannot be overcome by direction of the court, a new trial may be allowed to prevent injustice." *Harrison* vs. *Commonwealth*, 183 Va. 394, 32 S.E. 2nd, 136. *Boggs* vs. *Commonwealth*, 99 Va. 478, 100 S.E. 2nd, 766.

2. Defendant was entitled to an instruction on his theory of the case concerning Evan Wayne Thompson that the jury could not presume an intent to premanently disfigure or disable from a blow from the fist. *Lee* vs. *Commonwealth,* 135 Va. 572, 115 S.E. 671.

page 26 } Although the evidence was in conflict, there was sufficient evidence from both the witnesses for the Commonwealth and the defendant that Evan Thompson was awake in the back seat of the automobile that the defendant struck Thompson one or two blows with his fist and that the defendant assaulted Thompson no further.

3. There was a variance between the proof and the indictment charging the defendant with causing bodily injury to William Baron.

The said indictment charged bodily injury and did not charge wounding. The evidence would at most support a wounding.

A wounding and a bodily injury are mutually exclusive offenses under §18.1-65 of the Code of Virginia 1950, as amended.

" 'To shoot, stab, cut or wound,' under the statute comprise distinct offenses, and to cause bodily injury is likewise a distinct offense. For instance, one who has sprained his ankle has in no sense received a wound." *Johnson* vs. *Commonwealth,* 184 Va. 409, 36 S.E. 2d, 594.

4. Neither indictment stated the means by which the injury to Baron or Thompson was caused.

"As stated in the *Harris Case,* and in the *Coontz Case, Supra,* when an indictment charges bodily injury, the means by which the injury is caused should be set forth. This has been the rule of law in this Commonwealth since our decision in *Jones* vs. *Commonwealth,* 87 Va. 63, 125 S.E. 226. . ." *Johnson* vs. *Commonwealth, Supra.*

5. That the verdict of the jury was contrary to the law and the evidence.

The evidence showed that Evan Thompson was assaulted by the fists of the defendant. An intent to permanently disable, disfigure, maim or kill could not be presumed from such evidence.

The evidence did not disclose any bodily injury to William Baron.

WHEREFORE, defendant moves that the verdict of the jury be set aside and a judgment of not guilty be

page 27 } entered for defendant or, in the alternative, to award new trials to the defendant.

FRANCIS LEWIS FLETCHER

Filed Apr. 6, 1967.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.

By: V. GREEN. Deputy Clerk

* * * * *

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* * * * *

THE 20th day of July 1967 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorney, Anthony S. Gallucio.

THEREUPON this case came on for the imposition of sentence and was argued by counsel.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper doth hereby adjudge that the Defendant is guilty as charged herein and so finds.

THEREUPON the Court ordered the Defendant to stand and demanded of the accused if anything for himself he had or knew to say why Judgment should not be pronounced against him according to law, the Defendant made a statement to the Court.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the Defendant, Francis Lewis Fletcher be and he is hereby sentenced to confinement in the Penitentiary of this Commonwealth for a term of ten (10) years, the period by the Jury ascertained as aforesaid and that the Commonwealth of Virginia do recover of and from the said Francis Lewis Fletcher its costs by it about its prosecution in this behalf expended; said sentence to run concurrently with the like sentence of ten (10) years previously imposed in the Circuit Court of Arlington County, Virginia on July 20, 1967 in a case styled Commonwealth of Virginia vs. Francis Lewis Fletcher, C-5355.

IT IS FURTHER ORDERED by the Court that the period of incarceration shall not be extended for failure of the Defendant to pay the costs herein.

IT IS FURTHER ORDERED that as soon as possible after the entry of this order, the prisoner be removed and safely conveyed according to law from the jail of this Court to the State Penitentiary, therein to be kept, confined and treated in the manner provided by law.

WHEREUPON the Defendant moved the Court to set aside the Judgment of the jury as being contrary to the law and the evidence, which said motion the Court denied, and to which said ruling of the Court the Defendant duly *expended.*

THE COURT ORDERS that the prisoner be allowed credit for the time spent in jail awaiting trial, namely, since February 20, 1967.

THE COURT CERTIFIES that at all times during the trial of this case the accused was personally present.

AND the Defendant is hereby remanded to jail.

Entered this 25th day of July 1967.

WILLIAM L. WINSTON, Judge

* * * * *

page 33 }

* * * * *

Francis Lewis Fletcher, first being duly sworn on oath, according to law, deposes and says that he was convicted in the above styled cause for felonious assault; that he desires to appeal the said conviction to the Supreme Court of Appeals at Richmond; that he is without funds and is financially unable to pay his attorney's fees, costs and expenses incident to an appeal and he prays that payment of such an appeal be paid on his behalf in compliance with Section 17-30.2 of the 1950 Code of Virginia as amended.

Given under my hand this 31 day of July, 1967.

FRANCIS LEWIS FLETCHER

SUBSCRIBED AND SWORN TO before me this 31 day of July, 1967.

My Commission expires: 19 July 1969.

E. E. GIBBONS
Notary Public

page 34 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: H. BRUCE GREEN
Clerk of the Circuit Court of Arlington County
Court House, Arlington County, Virginia

NOTICE is hereby given that Francis Lewis Fletcher appeals in this case and will apply for a writ of error.

ASSIGNMENT OF ERRORS

The following are the errors assigned:

1. The court erred in refusing to grant Defendant's Motion for a new trial.
2. The court erred in refusing to strike plaintiff's evidence.
3. The verdict of the jury and the judgment of the court was contrary to law and evidence.
4. The court erred in refusing defendant's motion to set aside the verdict and judgment.
5. The court erred in refusing to grant defendant's motions for a mistrial.
6. The summation and evidence presented by plaintiff was improper, prejudicial and *inflamatory*.
7. The court erred in granting instruction No. 9.
8. The indictment did not state the means by which the injury was caused.
9. There was a variance between the indictment and the evidence, the evidence disclosed a wounding but the

page 35 } indictment alleged bodily injury.

FRANCIS LEWIS FLETCHER

Filed Sep. 20, 1967.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.

By: F. WOODYARD, Deputy Clerk

Evan Wayne Thompson

Records Nos. 6908-6909

* * * * *

page 74 } EVAN WAYNE THOMPSON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Emrich:
Q. Would you state your full name, please?
A. Evan Wayne Thompson.
Q. Where do you live?
A. Quantico, Virginia.
Q. You are in the United States Marines?
A. Yes.
Q. Do you know a Miss Ann Dobbs?
A. Yes, sir.
Q. Did you know her on October 15, 1966?
A. Yes, sir.
Q. Did you see her on that date?
A. Yes, sir.
Q. Keep your voice up, please.
A. Yes, sir.
Q. Where did you see her?
A. Seen her at my party.
Q. I didn't hear you.
A. Seen her at my party.
page 75 } Q. Where was that?
A. At Ann's house.
Q. Is that Arlington County?
A. Yes, sir.
Q. All right. What time did you arrive?
A. I believe it was 9:00 o'clock, right in that area?
Q. Why were you there?
A. It was my birthday party.
Q. Did anybody arrive when you did, with you?
A. Yes, sir, me and three other Marines.
Q. Who were the three other Marines?
A. Dave Lawson, John Osteen and Bill Baron.
Q. When you arrived, who else was there?
A. Well, there was Ann and her friends and Ann's mother.

Evan Wayne Thompson

Q. Anybody else? Do you know the name of her friends?
A. I don't know.
Q. About how many were there?
A. About ten or fifteen, something like that; maybe twenty.
Q. What were the people doing when you arrived?
A. They were playing music, a couple were dancing; most of them were sitting around talking.

Q. What did you and the other three Marines
page 76 } do when you arrived?
A. We started shooting pool.

Q. How long were you shooting pool?
A. Yes, quite awhile. We shot most of the time.
Q. Do you know the defendant, Francis Fletcher?
A. Yes, I know him now.
Q. Did you see him in the house at the party?
A. No, I didn't see him.
Q. Was there anybody drinking at the party?
A. Yes, there was.
Q. Were you drinking?
A. Yes, I was.
Q. What were you drinking?
A. Beer.
Q. Do you know how many you had?
A. About four.
Q. Did anything occur between you and anybody else at the party inside the house?
A. We had one little incident where he hit my cue stick.
Q. Who did that?
A. I don't know.
Q. Did anything other than that where he hit the cue stick?

page 77 } A. Someone did. I was getting ready to shoot and someone hit the cue stick. I was looking to see who did it.

Q. Keep your voice up.
A. I tried to look around and they said let's beat him up or something; he went walking outside, and I followed him.
Q. Do you know who it was?
A. I don't know.
Q. Was it a boy or a girl?
A. It was a boy who said let's beat him up.
Q. What happened?
A. I followed him outside, so we went outside, and they seen me, and so I went up to him, "Who wanted to beat me

Evan Wayne Thompson

up?" You know, because I didn't—I told him I would like to know—to see who was going to beat me up. Nobody said anything, so me and the others were talking, he had a brother in the Marines. We started talking about life; they left and I left.

Q. Was there any more problems or any further difficulties other than that?

A. No.

Q. When the people separated, was their relations with you and the other people good as far as you know?

A. As far as I am concerned, it was good.

Q. About what time was that, do you know?

page 78 } A. I guess it would be 10:30 or something. I didn't have no watch on.

Q. What occurred after that incident?

A. I went back inside the house.

Q. When you went back inside, who was there at that time?

A. It was me and Bill, John Osteen and Dave Lawson and Ann, and a couple of other people there.

Q. The four Marines and Ann and a couple of other people?

A. Yes.

Q. What did you do when you went back inside the house?

A. We started shooting pool again.

Q. How long did you shoot pool?

A. I would say a half hour, forty-five minutes.

Q. Then what did you do?

A. Went outside.

Q. Do you recall what time it was when you went outside?

A. I guess about 11:30.

Q. What did you do when you went outside?

A. John and I went outside and went to sleep.

Q. Why did you do that?

A. Because I was tired.

Q. Who drove to the party?

page 79 } A. I believe I did—either I or Bill; I can't remember now.

Q. What did the other two Marines do when you and John Osteen got inside the car?

A. They stayed inside the house.

Q. What is the next thing that you recall?

A. The next thing I recall I was being hit. After I fell asleep, I woke up in a couple of seconds. I couldn't identify the face—I can't identify Fletcher, because after I guess I

Evan Wayne Thompson

was knocked out. The only thing I remember again was Ann waking me up.

Q. Do you know how many times you were hit?

A. No, I don't.

Q. Now, do you know where you were hit?

A. I was hit all over the face.

Q. Were you bleeding after you came to?

A. Yes.

Q. Where were you bleeding?

A. I was bleeding out of my eye, nose, and some out of my mouth, more on the side of my mouth, and all over my face.

Q. Was your skin cut or broken?

A. Yes, sir.

Q. What did you do after that?

page 80 } A. Went inside the house and Mrs. Dobbs started to clean up, wiped some blood off.

Q. Then what happened?

A. We left.

Q. Where did you go?

A. Back to Quantico.

Q. Why did you go back there?

A. Well, they got the hospital there. We went to the hospital to get patched up.

Q. Prior to this incident, have you seen the defendant, Francis Fletcher?

A. No, sir.

Q. Had you heard anything about him?

A. I heard his name.

Mr. Gallucio: Objection.

Mr. Emrich: Just if you heard his name?

Mr. Gallucio: Objection.

By Mr. Emrich:

Q. Was there any trouble between you and Francis Fletcher?

A. No, sir.

Q. Did you see him that night?

A. No, sir.

page 81 } Q. Now, while you were inside the house *ar* the party, did you observe any trouble between anybody else other than yourself?

A. Well, I don't recall any trouble, just Bill.

Q. Bill who?

A. Bill Baron and Dave Lawson said something to a guy who threw some beer around the house, getting noisey; that is about all that was said. He just told him to keep quiet.

Q. Do you know who the people were, to whom the Marine talked?

A. No, sir.

Q. Now, prior to the time when somebody beat you that night, did you have any difficulty with your eyes?

A. No, sir.

Q. Do you have any difficulty now?

A. Yes, sir.

Q. What is that difficulty?

A. I got double vision.

Q. Now, when you went down to Quantico and turned yourself in, what treatment did you received?

A. They just wiped the blood off my face and everything, and they sent me—they couldn't do nothing.

Q. Were you sent back there?

page 82 } A. I went back and they sent me to sleep and then in about five days later, I went back to sick bay again. I noticed I couldn't see nothing. My nose was all swollen and my eye was swollen. I went to sick bay and they sent me to Bethesda.

Q. How long were you at Bethesda?

A. Two months.

Q. What is your current duty status?

A. Limited duty.

Q. What is the reason for that?

A. Because of my double vision.

Q. Now, were any stitches taken in your face?

A. Yes, I had surgery.

Q. What was surgery—

A. Plus the plaster plate mark.

Mr. Gallucio: If the Court please, the stitches were taken immediately; that is one story. We are talking about surgery; that is something else. I would object to that as immaterial.

By Mr. Emrich:

Q. Were stitches taken after the fight as a result of the fight itself to any cuts you received?

A. No, sir, not from any cuts I received.

page 83 } Q. Would you point to your face and the area in which it was cut as a result of the fight so the jury can see it.

A. Just the place where I had the surgery.

Q. Where it was cut?

A. It was cut on my forehead and three cuts on the forehead, my eye, I had a cut under the eye, a cut over the side of my mouth and a cut over the side of my cheek.

Q. Do you know how long it was between the time you

went out to the car to go to sleep and the time you went back into the house when Ann Dobbs had brought you to consciousness?

A. I don't know; I couldn't tell you. It couldn't have been too long. I believe they came right after I went to sleep, but I can't tell really, because I was asleep. I can't tell the time it was.

Q. Were you aware of anything that happened after you were beaten other than Ann Dobbs coming out and taking you to the house?

A. No, sir.

Q. Would you answer so the reporter can take it down.

A. No, sir.

Q. At the time you left the house, was anybody there except the Marines, Ann Dobbs and her mother?

page 84 } A. I believe there was a few people. Almost everybody left. Maybe there was a few people there.

Q. You don't know who they were?

A. No, sir, I don't.

Q. Prior to the time you were conscious of the fact that somebody was beating on you, were you aware of anything else going on in the car?

A. No, sir.

Q. That was when you woke up, somebody was beating on you?

A. Yes, sir.

Q. Do you know of any reason why the defendant would attack you?

A. No, sir.

Mr. Emrich: I have no further questions.

CROSS EXAMINATION

By Mr. Gallucio:

Q. When you went out to the automobile and left the party, did you and Mr. Osteen go out by yourselves?

A. Yes, sir.

Q. Did you leave Mr. Baron?

A. Baron.

Q. And Mr. Lawson—you left Mr. Baron and Lawson in the party?

page 85 } A. Yes, sir.

Evan Wayne Thompson

Q. What was your purpose in going out to the automobile?

A. Well, there wasn't nothing happening at the party, and we wanted to get some sleep.

Q. Didn't you think about going back to the base?

A. Yes, we was wanting to go back to the base. We was waiting for Bill Baron and Dave Lawson still at the party.

Q. They were still at the party?

A. They figured we was going with them.

Q. What kind of automobile was it you went in?

A. 1956 Ford.

Q. 1956 Ford, two-door?

A. Yes, sir.

Q. The front seats in this automobile were not the regular front seats, were they?

A. No.

Q. They were bucket seats?

A. Yes.

Q. And bucket seats taken from what model automobile?

A. I believe it come out of a 1964 Angelia?

Q. 1964 Angelia?

A. Yes.

Q. Is it not?

page 86 } A. Yes.

Q. Did you immediately get in the back seat?

A. Yes, sir.

Q. Did Osteen immediately get in the front seat?

A. Yes, sir. He wanted to get in the back seat, but I beat him to it.

Q. You beat him to it. You said you and Osteen went to sleep?

A. Yes, sir.

Q. Did Mr. Osteen go to sleep first?

A. I don't know. I had my eyes closed.

Q. You don't know if he went to sleep, do you?

A. When I had my eyes closed, I don't know if he was asleep; I don't know if he was asleep or not.

Q. You don't know if he was asleep or not?

A. I just have to take his word.

Q. I see. You of your own personal knowledge, you don't know if he was asleep or not?

A. No, sir.

Q. These two seats in the Angelia, they were quite small for that Ford, are they?

Evan Wayne Thompson

A. I don't think so.

Q. They leave a space in between?

page 87 } A. Not much. I got the seat back; I have a floor shift; I got the seat back.

Q. In between the bucket seats—

A. There is about a foot in between the two bucket seats.

Q. I see. When you were first aroused in the back seat, did you see Osteen in the car?

A. I didn't see anything in the car. I saw the person hitting me, that is all I seen. As far as I seen, I couldn't see. As far as anything else, I couldn't say.

Q. This happened in October?

A. Yes, sir.

Q. On or about October 15, 1966, was that?

A. That is right.

Q. And you did not obtain a warrant for the charge until December, approximately December 12, 1966, is that correct?

A. That is correct.

Q. And at that time, was Mr.—I can't remember this Marine—Baron was with you?

A. Yes.

Q. He obtained the warrant, too, at that time?

A. Yes, he did.

Q. Mr. Osteen obtained a warrant, too, at that time?

A. Yes.

page 88 } Q. All three of you?

A. Yes.

Q. Did you obtain a warrant because the Navy had some medical bills for your treatment?

A. Yes, I would say that is part of it.

Q. That is part of it. Did anyone tell you the difference between a criminal and civil case with regard to recovering damages?

Mr. Emrich: Your Honor, I object. This is irrelevant to this case; it is also hearsay.

Mr. Gallucio: Your Honor, I would cite *Commonwealth* versus *Green.*

The Court: I don't think it is hearsay; it isn't hearsay. I don't think it is irrelevant, either. He is going into the man's motive for getting the warrant.

Mr. Emrich: All right, your Honor.

Evan Wayne Thompson

By Mr. Gallucio:

Q. Did anyone tell you that civil and criminal actions were two different things?

A. I know that.

Q. You know that you did not need to file a criminal charge to recover liability, damages?

page 89 } A. I know that.

Q. What relation is there to the medical expenses with your obtaining the criminal warrant?

A. As far as I am concerned, there is no connection.

Q. I see. Now, do you know that Baron had a disagreement with—

A. No, I don't. I don't know any of their names.

Q. Was it just one time or two times?

A. Just one as far as I know.

Q. Was it a boy or a girl?

A. It was a boy.

Q. Did he subsequently have some words with a girl by the name of Debby Dyer?

A. Not that I know of.

Q. Were you in the poolroom all evening?

A. Yes, I was.

Q. Where was this boy that Baron had some words with?

A. He was in the sort of living section, in the poolroom.

Q. Who asked Mr. Baron to go over to this party?

A. Mrs. Dobbs did.

Q. Mrs. Dobbs? Who told him to tell this boy?

page 90 } A. They told us if anybody started to rioting, to just try to keep everybody quiet.

Q. Had you known Mrs. Dobbs before?

A. Yes, I had.

Q. You had visited their home?

A. Yes, I had.

Q. When you left the party and got in the automobile, you went to sleep immediately?

A. It was pretty quick.

Q. Pretty quick. You didn't feel anything or the car shaking or the noise or anything while you were asleep?

A. No.

Q. You don't even know whether there was a fight from your own personal knowledge?

A. Not my personal knowledge.

Q. Whether there was a fight between Osteen and Mr. Fletcher?

A. No.

Evan Wayne Thompson

Q. If there was one, you slept all through it?
A. That is correct.
Q. Now, at the time you had this disagreement with someone, you said that was about someone poking your—
A. Someone hit my cue stick.
page 91 } Q. And then you went outside?
A. Yes.
Q. And asked if anybody wanted to fight?
A. I asked who said they was going to beat me up and nobody said nothing. I don't know who it was going around saying they was going to beat me up.
Q. What did you do, did you go outside?
A. In the first place, they hit my cue stick and I scratched on the eight.
Q. You were mad?
A. I was mad that they hit my cue stick, and then they said they was going to beat me up.
Q. Do you know whether it was a boy or a girl?
A. It was a boy who said that.
Q. And they kept going outside?
A. Yes.
Q. You followed them out?
A. Yes.
Q. What were you going to do outside when you followed them out?
A. Someone said they was going to beat me up, and I wanted to see who was going to do it, and no one said nothing.
Q. And if someone stepped up, you were going to fight?

page 92 } Mr. Emrich: I object to what he might have done, your Honor.
The Court: Objection sustained.

By Mr. Gallucio:
Q. Now, Johnny Osteen was a friend of yours, was he?
A. Yes, he was.
Q. Were you present—were you the one who talked to someone outside about his brother being in the Marines?
A. Yes, I was.
Q. Have you seen that person in here?
A. I don't believe so.
Q. Do you know Mr. Lawson?
A. Mr. Lawson?
Q. Yes.

Evan Wayne Thompson

A. Do I know who he is or where he is?
Q. Yes. Is he at Quantico now?
A. Yes, he is.
Q. He is at Quantico. The four of you were together all night at the pool table?
A. Yes, mostly.
Q. All four of you shooting pool?
A. Yes. May I say if someone wasn't playing, they was walking around. Mainly everyone stuck to playing pool.
page 93 } Q. Was Miss Dobbs with you all night?
A. Yes.
Q. She went across the street to eat, didn't she? Miss Ann—
A. I don't know.
Q. Weren't any of your friends with her?
A. Sure, we was talking to her.
Q. Didn't they dance with her or anything like that?
A. I don't believe so; they might. I didn't pay attention.
Q. You weren't drunk?
A. I had been drinking but I wasn't drunk, no.
Q. You just had four beers?
A. Yes.
Q. Was that during the course of the whole evening?
A. Yes.
Q. And part of the beer you had consumed before the party?
A. Yes.
Q. Some you consumed before you got to the party?
A. Yes.
Q. Did you bring any beer when you come up?
A. If it was, it was one can. We drank it all coming up.
page 94 } Q. You drank it all coming up. As far as you know when he was hitting you, were you hit with anything but Francis Fletcher's fists?
A. Yes, as far as I know.

Mr. Gallucio: No further questions.
Mr. Emrich: I have nothing further.
I would like to call Mr. Baron.
The Court: You are excused.

(Witness excused.)

George William Baron

Whereupon,

GEORGE WILLIAM BARON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Emrich:

Q. Would you state your full name, please.

A. George William Baron.

Q. You are in the United States Marine Corps?

A. Yes.

Q. Do you know Miss Ann Dobbs?

A. Yes.

Q. On October 15, 1966, did you have occasion to be at her home in Arlington County, Virginia?

page 95 } A. Yes.

Q. What time did you arrive?

A. About 8:30, quarter to nine.

Q. Did you come with anybody?

A. Yes, three other people.

Q. Who were they?

A. Evan Thompson, John Osteen and David Lawson.

Q. What was your purpose in coming up to Miss Dobbs' home?

A. It was a birthday party for Evan.

Q. When you arrived at the house, was anybody else there?

A. There was a couple of people. I don't know who all were there. I believe Ann and a couple.

Q. Keep your voice up.

A. I believe it was Ann and a couple of people; I don't remember who the people were.

Q. What did you do when you arrived?

A. Just shoot pool and mess around.

Q. What other things did you do?

A. Just talked.

Q. During the course of the evening, did other people arrive other than the ones who were there when you arrived?

page 96 } A. Yes.

Q. Did you know any of their names?

A. I know Francis Fletcher and some other people tried to come in, but Ann told them she didn't—

George William Baron

Mr. Gallucio: I object to that.
Mr. Emrich: It was in the defendant's presence.
The Court: Objection overruled, if he heard her tell him anything.

By Mr. Emrich:
Q. What did she say?
A. She said she didn't want them there.
Q. You saw Francis Fletcher at the door?
A. No, I didn't see him at the door.
Q. Do you know about what time that was?
A. No, I don't.
Q. Was there any drinking going on at the party?
A. Yes, some.
Q. By whom?
A. Just about everybody, I guess, kind of—
Q. What were they drinking?
A. Beer.

Q. Was there any difficulty between you and
page 97 } anybody else at the party?

A. Just on one occasion. There was a little rowdiness and I had a few words back and forth, no physical—
Q. Who was being rowdy?
A. One of the boys that was there.
Q. What was he doing?
A. One of the boys said, "Give me a beer." He took a full can and threw it across the room and it was opened and it sort of made a mess.
Q. Is that what the words were about?
A. Just rowdiness. Calm down some.
Q. Was there any other difficulty at the party?
A. No, not that I know of.
Q. Did you see Francis Fletcher inside the house during the party?
A. No, I didn't.
Q. Did you know Francis Fletcher before this evening?
A. No.
Q. Had you ever seen him before?
A. No.
Q. Was there any difficulty between you and him?
A. No.

Q. Did there come an occasion when two of the
page 98 } Marines went out to the automobile?

A. Yes.

George William Baron

Q. About what time was that?
A. I am not quite sure. It wasn't a long time. I believe it was 11:30, quarter to twelve, somewhere around there.
Q. Did you go out of the house at that time?
A. No.
Q. Who was in the house when the two Marines went out?
A. The best I can remember, there was me, Miss Dobbs, David Lawson and maybe somebody else; I am not sure.
Q. Why did they go out to the car, do you know?

Mr. Gallucio: Objection, your Honor.
The Court: If they told him why they went, objection is overruled.

By Mr. Emrich:
Q. Did they tell you why?
A. They were getting ready to leave.

The Court: It is not hearsay.
The Witness: They just were tired.

By Mr. Emrich:
Q. Who were they with?
A. That is Evan Thompson and John Osteen.
Q. After they went out, did there come an occa-
page 99 } sion when you went out?
A. I don't know how much longer it was, and I decided to go out and see, you know, how they were. She went out and never came back.
Q. Do you know about what time that was?
A. No, I don't.
Q. Do you know how much time elapsed after Osteen and Thompson went out?
A. Before she went out?
Q. Yes.
A. Maybe twenty minutes, maybe longer, but she went out and never came back, and so I just decided to walk, you know, and see what was going on. I walked out and that is when everything started.
Q. Will you tell us what "everything" was that you are speaking about?
A. I walked out of the house and got to the driveway. I got half way to the driveway where I saw these people gathering.

George William Baron

Q. Did you know any of them?

A. Just Ann. I saw Ann standing off the road. There was someone standing and he had something in his hand and it looked like a stick to me. I started walking towards the car. I heard someone yelling, you know, and I
page 100 } figured there was some kind of trouble. I looked around.

Q. Did you hear what they were yelling?

A. Just "get out of the car." I heard this yelling. I started to take off my coat which was loaned to me. I threw the coat, you know, and everybody was yelling, and so I walked —I seen this guy, whatever he had behind him. I asked him what he had. "I got a ten gauge shotgun to blow your brains out." I said something and then somebody hit me from the side.

Q. Did you see a gun?

A. Yes, I saw a gun. He pulled it out and pointed it at me.

Q. Did you see that man?

A. No.

Q. Would you recognize him if you saw him again?

A. I don't really think so.

Q. Do you see this person that you saw on the night—

A. After I was hit, I didn't hear really clear. I believe—I am almost positive it was Francis Fletcher.

Q. What happened after you were hit?

A. I went down; I got up, I went down.

Q. Did you get hit each time you went down?

A. Yes.

Q. Who was hitting you?
page 101 } A. Francis.
Q. Where were you being hit?

A. In the face.

Q. Prior to the time the first blow was struck on you, had you said anything to the defendant?

A. No. Not to him, no.

Q. Had you seen him?

A. (No response.)

Q. Did he do anything other than hit you?

A. Once I was down, I was kicked; I don't know how many times.

Q. By whom were you kicked?

A. Francis Fletcher. I suppose he was on top of me.

Q. Did the person who was kicking you have his shoes on?

A. Yes.

George William Baron

Q. Were you able to determine what kind of shoes?
A. No.
Q. What happened after you were kicked?
A. Somebody—I heard someone say "leave him alone," he was hurt, and Francis got up. He said something about if you want to pick on someone, pick on a man. I am a man. I started that I am coming after you, Slick. He yelled out the address. He came back again.

page 102 } Q. How many times did he hit you that time?
A. I don't really know; he just hit me.

Q. What happened then?
A. Everybody left.
Q. What did you do after everybody left?
A. I got up and walked over to the car to see if Evan and Johnny were hurt. I hadn't seen them. They were in the car.
Q. What did you do after you saw them?
A. We went in the house.
Q. Were you bleeding?
A. Yes.
Q. From where?
A. Kind of all over.
Q. Would you for the jury and His Honor point out on your face?
A. I had stitches over this eye and just small cuts and stuff around the rest of my back. I had five stitches.

The Court: How many stitches?

By Mr. Emrich:
Q. How many stitches were there up above your eye?
A. I believe seven.
Q. How many in the back?

page 103 } A. Five.
Q. Would you show His Honor and jury this over the left eye?
A. (Indicating).
Q. Can you come down and show the jury the scar?

The Court: Go down to the other end.

By Mr. Emrich:
Q. How about the back of your head, is that visible?
A. No, it isn't.

George William Baron

Q. Did you observe any marks on Osteen and Thompson?
A. I didn't really see any marks. They were all bloody and everything.
Q. What did you do after you went back in the house?
A. We went in the house and wiped some of the blood and went back to the Naval Hospital at the base.
Q. Were you confined to the hospital?
A. No, I wasn't.
Q. I am sorry, I didn't hear you.
A. No, I wasn't.
Q. Do you know of any reason why the defendant would have attacked you?
A. No, I don't.

Mr. Emrich: I have no further questions at
page 104 } this time, your Honor.

CROSS EXAMINATION

By Mr. Gallucio:
Q. Mr. Baron, did you arrive at the party with beer?
A. Yes, there was a couple of cans in the car, I believe.
Q. Did you take them into the party?
A. No.
Q. Did you drink beer at the party?
A. Yes.
Q. Whose beer did you drink?
A. I don't really know.
Q. Where did you get it?
A. It was just sitting there.
Q. Sitting where?
A. On the table.
Q. In plain view?
A. Yes.
Q. Was there very much of it?
A. No, not that I saw.
Q. You say you never saw Francis Fletcher at the party?
A. No.
Q. Did you call anyone at the party "Slick" that night?
page 105 } A. One person I got in an argument with.
Q. This person that you got in an argument with, didn't he tell you not to call him Slick?
A. No.

George William Baron

Q. He didn't like the term "Slick"?
A. No.
Q. Did he tell you that his name wasn't Slick, it was Francis Fletcher?
A. No.
Q. Now, when did you decide to take off your jacket?
A. As I started walking towards the car.
Q. And did you carry it to the car?
A. No, I just tossed it up on the *trun* of the car.
Q. Did you walk or run?
A. Walk.
Q. Normal gait?
A. Yes.
Q. Was there a lot of commotion out there?
A. There wasn't a lot of people moving around; there was just some yelling.
Q. They were all around the car?
A. They were all out in the street.
Q. Did you see Ann Dobbs?
page 106 } A. Yes.
Q. Where was she?
A. She was standing a few feet back off the road a little.
Q. Did she yell anything to you or anything like that?
A. No.
Q. And this person you said, I believe, some person said that they had a shotgun?
A. Yes.
Q. Was it Francis Fletcher you were talking to at the time?
A. No.
Q. You don't know who it was?
A. I don't know his name; I never seen him before.
Q. Did you see him at the party?
A. No.
Q. Hadn't seen him at the party? What did he do? You say you saw the gun, did you see what he had behind him?
A. I asked him what he had. He said that he had a ten gauge shotgun.
Q. A ten gauge?
A. Yes.
Q. He pointed it at you?
page 107 } A. Yes.
Q. You said "shoot"?
A. Yes.

George William Baron

Q. He didn't shoot?
A. No.
Q. And you didn't try to knock the gun away or anything like that?
A. No.
Q. Was he a big person or a little person?
A. He was tall.
Q. Did you know how tall Francis Fletcher is?
A. No, I don't.
Q. If I told you five foot four, would that be your best estimate?
A. Pretty close.
Q. How tall are you?
A. Five-nine.
Q. He is quite a bit smaller than you?
A. Yes.
Q. You say you saw Francis Fletcher at the door that evening?
A. No, I didn't.
Q. Well, how did you know that Ann Dobbs
page 108 } told him he couldn't come in?
A. When she came back.
Q. She told you this, you didn't hear her say that to Francis Fletcher?
A. I heard her talking to someone at the door. I didn't pay any attention.
Q. You didn't hear her say this?

Mr. Emrich: Your Honor, he asked that question previously.
The Court: His testimony is that she told Fletcher to stay away. So far as it coming from him, it is hearsay.

By Mr. Gallucio:
Q. So you don't know who was at the door at the time; you didn't see him?
A. No.
Q. And you say you had trouble with one person?
A. Yes.
Q. That was a boy?
A. (Nodding.)
Q. Did you have words with a girl that evening?
A. Yes, I did.
Q. Debby Dyer?

A. No.

page 109 } Q. Wasn't she talking to you about anything when you were talking to this boy or anything?

A. No, we had been with them the previous night; we were talking about that.

Q. Were you shooting pool most of the night?

A. No, I wasn't.

Q. Where were you?

A. I was just talking.

Q. Were you in the pool section of the room or the lounging section?

A. I don't even remember.

Q. Were you shooting pool with Thompson?

A. I shot a couple of games with Thompson and a couple of the other boys at the party.

Q. Did you stay in the pool section of the room all night?

A. No.

Q. You didn't stay in the pool section?

A. Yes.

Q. You were floating around in the other room, too?

Would you say you were separated from Thompson quite a bit that evening?

A. I wouldn't say quite a bit. We weren't to-

page 110 } gether all night, no.

Q. Was Thompson in the other lounging section with you?

A. I don't really remember.

Q. You don't remember. You don't know if he was over there with you or not?

A. No.

Q. I see. How about Lawson, was he shooting pool all night? Did he shoot pool all night?

A. I don't believe he shot pool all night, no.

Q. Was he in the poolroom section?

A. I don't really know what he was doing.

Q. Were you with him most of the night?

A. Most of it, yes.

Q. What?

A. He was talking off and on, yes.

Q. Were you with Ann Dobbs a good part of the time—Miss Dobbs, Ann Dobbs?

A. I don't really remember. It has been six months ago.

Q. How about Lawson, was he with Miss Dobbs?

A. I don't know.

George William Baron

Q. After everyone left when Mrs. Dobbs came home, did one of the others of you or Baron feel you were
page 111 } with Miss Dobbs or her date or anyone?
A. No.

Q. And Thompson and Osteen did want to go home?
A. Yes, they did.
Q. Had you any intention of going back to the base?
A. Yes, we did.
Q. Did you expect to stay very long?
A. No.
Q. Did you tell them that?
A. Yes.
Q. Did you tell them you would be right out?
A. We would be out in a few minutes.
Q. In a few minutes. You weren't in there very long after they did leave, were you?
A. No.
Q. Now, did there come a time in the evening when the party broke up and then everyone came back again?
A. I don't understand what you mean by that.
Q. Did there come a time when everyone left the party except yourself and your buddies and maybe one or two others?
A. The party had broken up, I guess, more or less, and everybody was leaving, and then they—I don't know where they went. They were out in the street the next time I saw them.
page 112 } Q. Is that when you went out?
A. Yes.

Q. And the boys and girls out there—
A. There was a couple of girls, yes.
Q. Now, earlier that evening, do you recall some fellow and a girl leaving and then coming back to the party?
A. No, I wasn't paying much attention.
Q. You weren't paying much attention?
A. (Nodding.)
Q. I see. Do you know if anyone left the party or a group of people left the party because they felt there was going to be trouble or something?
A. No.
Q. Do you recall any part of the evening where the crowd or the party lessened and grew again?
A. No.
Q. Now, is it your testimony that you went outside, you did not talk to Francis Fletcher at any time?

George William Baron

A. No, I didn't talk to him.
Q. You did not talk to him before the fight?
A. No.
Q. You did not have a conversation with him?
A. No.
page 113 } Q. Did he hit you with his fists?
A. I don't know what he hit me with.
Q. Did you see anything in his hands?
A. No.
Q. As far as you know it was his fists?
A. As far as I know.
Q. You went down?
A. Yes.
Q. And you got up again?
A. Yes.
Q. While you were down, you don't remember if you were hit?
A. I don't remember.
Q. You got hit again?
A. Yes.
Q. And you got up again and he hit you?
A. Yes. It went on like that for three or four times.
Q. It went on like that for three or four times?
Your biggest injury was a cut?
A. Yes.
Q. Basically that is all you had were cuts?
A. Yes, sir.
Q. They could have been coming from the
page 114 } blows from his fists?
A. They could have, yes.
Q. Were you on the street portion?
A. I don't really know where I was.
Q. Where were you standing in relation to the car?
A. I had—I was standing maybe three, four feet from the car on the edge of the street. I don't know where I was when I was on the ground.
Q. Near the curb side where the car was parked?
A. Yes.
Q. To the rear?
A. Yes.
Q. And you say Francis Fletcher came at you from behind you?
A. Yes.
Q. Which way were you facing?

A. Out towards the street.

Q. Towards the street, and was the automobile more or less at your back?

A. My side and the rear, yes.

Q. Side and rear?

A. (No response.)

Q. He didn't come from the passenger's side
page 115 } from the front, did he?

A. The passenger side was on the—

Q. —street side?

A. Close to me, yes.

Q. Did he come from the—

The Court: Wait a minute. I think he is confused.

By Mr. Gallucio:

Q. Did he come from the driver's side?

A. He wasn't on the driver's side. If he came from the driver's side, I would have seen him.

Q. You didn't see him?

A. No.

Q. Did you threaten this person you say allegedly had a shotgun?

A. What do you mean threaten him?

Q. With fighting or anything?

A. No, he just said that I have a shotgun and I will blow your brains out.

Q. Why did you then throw your coat on the trunk?

Mr. Emrich: I think he answered the question.

The Court: He has already testified why he threw it on the trunk. You can ask him over again.

Did you say you threw it on the trunk?

page 116 } The Witness: When I was walking out, I seen it was some kind of trouble going on, some people. It wasn't my coat so I took the coat off.

By Mr. Gallucio:

Q. It wasn't your coat?

A. If you have something *borrwed* from somebody, you dont' want to get it messed up.

Q. You didn't want to get the coat messed up?

A. Yes.

Q. To your knowledge, did Mr. Fletcher break off this fight or did somebody pull him off?

A. I don't know if somebody pulled him, but somebody said, "Leave him alone, he is cut up."

Q. He was on the ground with you?

A. I wasn't in a position to say.

Q. When you did get up, he did say if you want to pick on somebody, pick on a man, not a boy, did he?

A. I don't think so. All I know he said he was a man. I said, "I don't want any trouble." "Go find him—he told me his address.

Q. He told you his address?

A. Yes.

Q. "I am Francis Fletcher, if you want to get me—"?

A. Yes.

page 117 } Q. You remember?

A. Yes.

Q. He said, "Remember it."?

A. Yes, I will remember it.

Q. You said you would get him?

A. I don't remember if I said I would get him. I said, "I would remember."

Q. Do you recall testifying to that down in County Court?

A. No, I don't.

Q. You don't? Do you recall telling him you were drunk, if you were sober, you would kick the hell out of him?

A. No, I don't remember saying that.

Q. You weren't drunk, were you?

A. No, I wasn't drunk.

Q. How many beers did you have?

A. Two.

Q. Have you ever been back to Arlington County from Quantico on any other occasion excepting an occasion to appear in Court?

A. Yes, I have been up here.

Q. Have you been with your friends looking for Francis Fletcher?

page 118 } Mr. Emrich: I object to that. I think it goes beyond the question.

The Court: Objection overruled.

By Mr. Gallucio:

Q. Have you been with some of your friends looking for Francis Fletcher?

A. No.

Q. Did you drive pass his house?

A. Yes. Shortly after we drove by to see if that was the address.
Q. Who was that?
A. Me and a couple of the other guys.
Q. *Coule* of the other guys?
A. Yes, and I don't know who.
Q. This was before you got the warrant?
A. Yes.

Mr. Gallucio: No further questions.

RE-DIRECT EXAMINATION

By Mr. Emrich:
Q. Mr. Baron, at the time you were walking when you saw the people around the car, did you at that time see that Osteen and Thompson were in the car?
A. No, I didn't.
page 119 } Q. Did you see them?
A. I didn't notice them. I was wondering what the gathering would be. I didn't see them around.
Q. You didn't know where they were?
A. Yes.
Q. This scar over your eye, this cut, was that caused by kicking in the area in which you were kicked?
A. Yes, it is.

Mr. Emrich: I have no further questions.

RE-CROSS EXAMINATION

By Mr. Gallucio:
Q. When you were going down, were you dazed?
A. Yes, I was.
Q. Did you have your senses back?
A. No.
Q. You couldn't tell whether it was a blow coming from a foot or a fist, could you? You don't know where he kicked you?
A. Yes, I remember being kicked in the back once.
Q. It wasn't in the back of the head?
A. No, it was in the face.
Q. Weren't you hit over the eye with a fist?
A. When I was hit the first time which was

George William Baron

page 120 } from the rear, that is the only time I really remember being hit, you know.

Q. You don't remember much being hit after that?

A. No, I don't remember too much about it.

Q. When you were—the first time you were hit, were you hit in the back of the head?

A. Yes.

Q. You mean they hit you in the back of the head, not the face?

A. Right here (indicating).

Q. You don't know who hit you the first time?

A. No.

Q. You did testify earlier that Francis Fletcher hit you?

A. I said I was struck from the rear, and when I turned around, Francis Fletcher was there.

Q. The first time you were hit, didn't you say you went down?

A. Yes, and I turned around and then started getting hazy.

Q. You went down and had a delayed reaction, I guess, is what you want to call it?

A. Yes.

page 121 } Q. And one other question: You say when this fight was over that you went in and saw Johnny Osteen in the front of the automobile?

A. Yes.

Q. Are you positive of that?

A. Yes.

Q. Are you sure he didn't get out of the automobile?

A. No, he was never out of the automobile.

Q. He was never out of the automobile?

A. No.

Q. At any time?

A. When I walked over to the car, he was in the front seat.

Q. Are you sure he didn't run and get around the automobile?

A. No.

Mr. Emrich: I think he testified he wasn't out of the automobile.

Me. Gallucio: No further questions, your Honor.

Mr. Emrich: I have nothing further.

The Court: When was it that the defendant was on top of you on the ground, did you see he was on top of you on the ground?

Joseph Harold Bowlds

The Witness: Yes, sir.

page 122 } The Court: Was that before or after you said he kicked you?

The Witness: I was struck the first time and I went down, and I guess I was hit again and each time—actually, more or less he was on top of me swinging.

The Court: You mean by that he wasn't lying on top of you?

The Witness: He was more or less,—

The Court: He was never lying on top of you?

The Witness: No.

The Court: I thought he got up off you?

The Witness: He was bent down over me. He got up—what I mean, he got off.

The Court: You say he never was lying on top of you?

The Witness: No, sir, he was never lying.

The Court: Is there anything further?

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page 126 }

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Whereupon,

JOSEPH HAROLD BOWLDS, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Emrich:

Q. Would you state your full name, please.

A. Joseph Harold Bowlds.

Q. Where do you reside?

A. 4722 Fallon Street, Rockville.

Q. What is your occupation?

A. Physician in the United States Navy.

Q. Would you briefly describe to the Court and jury your educational training?

A. My premedical was at Denver University where I graduated with a Bachelor of Science, 1956; I then attended the University of Colorado and received my M.D. degree in

Joseph Harold Bowlds

1960. Having been previously a Reserve Commissioned Officer in the Navy, I went on active duty following graduation and interned at the U.S. Naval Hospital at Oakland, California, having served as medical officer in instructions and then at Pennsacola as a flight surgeon until coming to
page 127 } Washington in May of 1965. Since that time I have been a resident and programming of ophthalomology at the Naval Hospital at Bethesda.

Q. Doctor, have you received any other degrees or certificates in your training as a medical doctor?

A. No.

Q. How many years have you been working and receiving training in the field of ophthalomology?

A. There was special training and instructions at *Pennsacola* for six months. During the three years I have been assigned as flight surgeon, I was doing all the ophthalomological work at the station hospital. I have been doing nothing but ophthalomology work for the past two years.

Q. Do you perform operations in the specialized field of ophthalomology?

A. I do.

Mr. Emrich: Your Honor, I offer the doctor as an expert in his field.

Mr. Gallucio: I have a few questions.

VOIR DIRE EXAMINATION

By Mr. Gallucio:

Q. Have you done any work in the field of surgery, any formal training?

A. Yes.

page 128 } Q. Have you obtained a diploma from any surgical board?

A. No.

Q. You have not. Normally a surgeon will have premedical training as general medical training and then he will go to a residency of what is generally four or five years?

A. This depends on the field. In ophthalomology, it is three years.

Q. I am talking about surgery.

A. Ophthalomological surgery is substantially different. The resident training is for four years.

Q. You did not have a resident training for surgery?

Joseph Harold Bowlds

A. Not general surgery.

Mr. Gallucio: Thank you.

Mr. Emrich: Your Honor, I submit he is qualified as an expert.

The Court: The Court will add he is an expert in his field.

DIRECT EXAMINATION (Cont'd.)

By Mr. Emrich:

Q. Doctor, in the performance of your duties as a Navy doctor, did you have occasion to see a one Evan Thompson, a private in the United States Marine Corps?

A. Yes.

page 129 } Q. When and where was this examination, Doctor?

A. I first saw him on the 20th of October, 1966, at which time after examining him, I admitted him to the hospital.

Q. Would you tell the jury and the Court what you observed on your examination?

A. At the time of the examination, the patient had normal vision, normal correctible vision in each eye; he had bruises below the lower lid of the right eye and moderate superficial hemorrhage situated in the lateral aspect of the right eye. There is limited motion of the right eye, particularly downward. He had double vision in all fields of gaze. Muscle testing showed that he had a definite depression of the left eye.

Q. What do you mean, Doctor, "depression"?

A. I mean the visual axis of the left eye was depressed with regard to the right. This was constant in all fields of gaze but was marked on gaze down and to the left—correction, to the right—and forced reduction consisting of opening and testing rotation and the ability to rotate, with limited motion of the right eye. On the basis of these findings, the more specific details which I wasn't planning on enumerating, I feel that the patient had suffered what was known as a blow-out fracture of the orbital floor with incarceration of muscle and the orbital tissue in the fracture.

page 130 } Q. What do you mean by that if you can describe in layman's terms as best you can?

A. Considering the orbit to be a perimetal space of bone, the eye and the ocular muscle and extra ocular fat tissue

situated in this bone, and in certain circumstances the orbital floor, which is from one half to one millimeter, can be fractured, and certainly the muscle, particularly the lower fracture of the inferior rectus and the associated tissue can be trapped in this fracture and thus limition of motion of the eye, and this is termed a blow-out fracture.

Q. All right. What, if anything, was done to treat this blow-out fracture?

A. Ibitially the patient was evaluated by special study including x-ray and placed on a regiment of influences to help chemically reduce the swelling, the hemorrhage and edema of the orbit and following this period of medical management, we operated on the patient to correct the fracture.

Q. What did you do during this operation?

A. We exposed the covering of the orbital floor, found the fracture of the orbit, disserted and freed the trapped tissue caught in the fracture and placed a super plate over and closed the periosteum over.

Q. After the operation, did Mr. Thompson
page 131 } suffer any further medical problems?

A. His double vision persisted and did not clear completely following the operation, although it was improved.

Q. About when was the last time you saw him?

A. On the 3rd of December.

Q. At that time was he still experiencing double vision?

A. At that time he had double vision on gaze down and to the right.

Q. What is the medical prognosis of the correction of this double vision?

A. Normally in favorable cases the double vision is corrected immediately upon and after surgery. If it is not corrected immediately, some of the patients get better and some don't, and only time will tell. Because of this period and because of the convalescence leave, there has been some improvement of the amount of gaze down and to the right. He has been recommended for six months limited duty.

Q. Do you have an opinion as to the connection, whether or not there is a connection between the blow-out fracture you described and the double vision which you described?

A. I feel the double vision is as a result of the blow-out fracture.

Q. Now, did you bring a slide which depicts
page 132 } the type of force that could cause this fracture?

A. Yes, I did.

Joseph Harold Bowlds

Q. Is that slide we showed before the jury came in?

Mr. Emrich: Would you turn that slide on.

For the record, Mr. Gallucio, we Xeroxed the slide as best we could. Just so there will be something in the record, we have marked for identification Commonwealth's Exhibit 1; the slide cannot be introduced in evidence because the doctor has to take it back.

The Court: Have you seen that?

Mr. Gallucio: Yes, sir.

The Court: Do you offer that in evidence?

Mr. Emrich: Yes, sir.

The Court: All right.

Mr. Emrich: We are offering it in lieu of the slide being shown.

The Court: Yes.

Mr. Gallucio: No objection.

By Mr. Emrich:

Q. Doctor, would you step down to the screen here and if you could for the jury just describe what the slide depicts.

A. The slide attempts to show the fracture of the orbit. This is the mavillary bone situated in the maxil-
page 133 } lary sinus. The floor of the orbit is actually the roof of the maxillary sinus and occupied in this area right here (indicating). The remaining of the orbit is this bony case right around here, (indicating), the eye and the extra ocular fat in the orbit and the fat, here, are contained within the orbit. When force is applied to the orbit in such a manner to compress all the structure, and they only compress to a certain degree, and then something has to give. Since this is only a half to a millimeter in thickness which is what usually takes place, this tissue here and this thin bone here break and some of the tissue may get caught as in the fracture as shown here (indicating). What happens, either the inferior rectus muscle or the associated tissue on the fracture site—when the pressure is relieved, the force tends to return to the margin, and some of the tissue is caught. This limits the action of the muscle and thus limits the motion of the eye.

Q. Doctor, as to the eye that is depicted there, does it fairly and accurately depict what happened to the patient, Mr. Thompson, in your opinion? I mean, disregarding the fist if you want.

A. In my opinion, yes, the force applied to the orbit.

Darryl Calvin Brown

Q. Now, that force or a force which could cause the type of fracture which you described as that which the patient suffered, where would the force be applied in
page 134 } relationship to the force—to the eye?
A. It is applied directly over the eye and right in front of the orbit.
Q. Like the fist that appears there?
A. Yes.
Q. I mean, this area?
A. The contrast, the force to the bone is much more difficult —some force is applied to the orbital rim—is very unlikely to produce a fracture.

* * * * *

page 142 } DARRYL CALVIN BROWN, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Emrich:
Q. Would you state your full name, please?
A. Darryl Calvin Brown.
Q. Keep your voice up so I can hear you back here.
A. Darryl Calvin Brown.
Q. How old are you, Darryl?
A. Sixteen.

The Court: Wait just a minute. Mr. Brown, you will get a little more power behind your voice if you sit up in the chair and lean forward instead of leaning back.

By Mr. Emrich:
Q. How old are you?
A. Sixteen.
Q. Do you know the defendant, Francis Fletcher?
A. Yes, sir.

Mr. Gallucio: One moment.

Mr. Emrich:
Q. Do you know what his age is?

Mr. Gallucio: May we approach the bench?

page 143 } (AT THE BENCH)

Mr. Gallucio: I note that the boy's age is sixteen. I also note that by the allegations of the Commonwealth's attorney, he has stated that he had a sawed off shotgun. If that is the case, then I think he may be exposed to liability, criminal liability, and I think he should be advised of his rights.

Mr. Emrich: Your Honor, I have no objection to that. However, I will state for the record that this defendant is presently incarcerated in the youth shelter as a result of —well, I am not going into the reasons why, but he testified in Juvenile Court—let me restate that:

He was represented by Paul Varoutsos in Juvenile Court when he was a defendant down there. He was advised of his rights in great detail by Mr. Varoutsos and offered to testify down here.

The Court: We can clear that up in a minute just by asking him some questions.

(IN OPEN COURT)

The Court: At one time did you have a relationship with an attorney by the name of Mr. Varoutsos?

The Witness: Yes, sir.

The Court: Did he represent you at one time?

page 144 } The Witness: Yes, sir.

The Court: Do you approximately know what testimony is required of you? Do you know what this is all about?

The Witness: Yes, sir.

The Court: Did Mr. Varoutsos give you advice about giving any testimony in relation to that? Were you advised you don't have to testify if you don't want to?

The Witness: Yes, sir.

The Court: Do you know that now?

The Witness: Yes, sir.

The Court: Do you wish to testify or not?

The Witness: Yes, sir.

The Court: All right, go ahead.

By Mr. Emrich:

Q. Do you know the age of the defendant, Francis Fletcher?

A. Yes, sir.

Q. What is that?

Mr. Gallucio: Objection; objection.
The Witness: Approximately twenty-three.
Mr. Gallucio: Objection, your Honor.
The Court: Do you know his age?
The Witness: Twenty-three.

page 145 } By Mr. Emrich:
Q. Did you know the defendant on October 15, 1966?
A. Yes, sir.
Q. Do you see the defendant on that date?
A. Yes, sir.
Q. About what time was it when you first saw him?
A. I saw him earlier in the evening.
Q. Could you state about what time?
A. Maybe 7:30.
Q. Where did you see him?
A. I seen him at his house.
Q. Keep your voice up.
A. I seen him at his house.
Q. Where is that?
A. At 311 South Adams.
Q. Who else was there, if anybody?
A. There might have been a boy, Larry *Holafield.*
Q. Please, *Daryl,* keep your voice up.
A. There might have been a boy there, Larry *Holafield.*

Mr. Gallucio: I object to what might have been. That is not the question.
Mr. Emrich: I think the weight can be given by the jury. He doesn't have to be absolutely positive.
page 146 } The Court: I don't know whether he means that he thinks there was somebody there when he says "There might have been somebody there." I don't know if he is just guessing or not.
Your best recollection, who was there?
The Witness: Larry *Holafield.*

By Mr. Emrich:
Q. How long did you stay there?
A. Twenty or thirty minutes.
Q. Where did you go after that?

Darryl Calvin Brown

A. I went with a friend of mine over to ride around, went over to Ann Dobbs' party.

Q. Was the defendant with you on that occasion?

A. No, sir.

Q. What did you do when you got over to Ann Dobbs?

A. I got out and walked around, started to go downstairs. One of the girls—

Q. Don't say what they told you. The defendant wasn't present, was he?

A. No, sir.

The Court: Wait a minute. We are getting into the question of what they told him. Everything that people tell somebody out of the presence of the defendant is not hearsay.

page 147 } By Mr. Emrich:

Q. All right. Would you state what they told you?

A. She said some Marines were there, and they were going to be leaving later. If we wanted to come back, we could.

Q. Who told you that?

A. That was Ann Dobbs' girl friend; I don't know which one of us.

Q. Keep your voice up.

Mr. Gallucio: I am going to object. The proffer made by the Commonwealth's attorney is diametrically opposed to what he said, and the materiality of this witness' testimony from here on in is immaterial and irrelevant.

Mr. Emrich: I don't understand.

The Court: Objection overruled. I have already indicated that testimony as regards to what went on that afternoon will be admitted—that night.

Mr. Gallucio: Would the Court note my exception.

By Mr. Emrich:

Q. Do you know who the girl was?

A. No, sir.

Q. All right. What did you do after you were told that?

A. Well, then I *road* over to Larry—this is Larry Hittle, he was supposed to be having a fraternity party. After that, I went back to Francis' house.

page 148 } Q. About what time was that?

A. 8:30, 9:00 o'clock.

Darryl Calvin Brown

Q. What did you do when you got to Francis' house?
A. He was getting cleaned up so he could go out, I guess, so he was going to have a party at his house later.
Q. Who was there the second time you went back?
A. Just me and Francis.
Q. All right. Did there come a time when you left? Did you stay or what did you do?
A. I stayed there until somebody knocked on the door. There was someone who come to the door.
Q. Darryl, keep your voice up.
A. Everybody came to the door.
Q. Well, do you know who that somebody was? Do you know?
A. No, sir. They said there was trouble.

Mr. Gallucio: Please, your Honor, objection.
The Court: Objection sustained.
Mr. Emrich: All right. Your Honor, this point I am not offering as to the truth of the matter, but just to show what people did.
The Court: As a result of what he heard, what did he do.

By Mr. Emrich:
Q. As a result of what someone said, did you do anything?
page 149 } A. We left.
Q. Who is "we" now?
A. I, Francis—and I.
Q. Was anybody else there when you left?
A. There was somebody out in the car that were waiting to go over to Ann Dobbs party.
Q. All right. Before you left, did you do anything?
A. Yes, sir.
Q. What did you do?
A. Francis went to the bedroom.

Mr. Gallucio: Your Honor, I am going to object.
The Court: The objection is overruled.

By Mr. Emrich:
Q. All right. What did you do?
A. Francis went into the bedroom and went up to inside the chimney.
Q. Went where?

Darryl Calvin Brown

A. Up inside the chimney, there is a ledge and pulled out a shotgun.
Q. What kind of a shotgun?
A. Sawed off.
Q. What was done with it?

page 150 } Mr. Gallucio: I renew my objection.
The Court: Your objection goes to all the evidence. And note your exception.
Mr. Gallucio: At this time I am going to move for a mistrial.
The Court: Motion denied.

By Mr. Emrich:
Q. What did you do after you got the shotgun?
A. It was in two pieces and he got a pin for it out of the top desk drawer. He gave me the front part of it, the barrel and stock part of it.
Q. What did you do?
A. We went to this car, proceeded to go to Ann Dobbs' house.
Q. What was said?
A. Proceeded to go to Ann Dobbs' house.
Q. Who went to Ann Dobbs' house?
A. Just me and Francis and this other boy.
Q. Did you see Larry *Holafield?*
A. Yes, he was at the party.
Q. You say you saw him when you got there?
A. Yes, sir.
Q. All right. About what time did you get to Ann Dobbs?
page 151 } A. That I couldn't say.
Q. Where is Ann Dobbs' house?
A. It is—I don't know what the road it is on now. I know how to get there.
Q. Was it in Arlington County?
A. Yes, sir.
Q. All right. You don't recall what time it was when you got there?
A. No, sir.
Q. What was your relationship with the defendant prior to this occasion, October 15?

Mr. Gallucio: Objection, your Honor.
The Court: You mean with regard to being friendly?

Darryl Calvin Brown

Mr. Emrich: Friendly or unfriendly.
The Court: Objection overruled.
The Witness: Just friendly?

By Mr. Emrich:
Q. Friendly?
A. Yes, sir.
Q. When you got to Ann Dobbs' house, what occurred?
A. Francis got out of the car and asked for the other piece that goes to the shotgun. He slide it together, put the pin through it, and then he was walking around.
page 152 } After he—then he walked up to this blue Ford.
Q. What?
A. Walked up to this blue Ford that was parked outside Ann Dobbs, and there was a Marine sitting up in the front seat on the driver's side. The Marine rolled down the window and *there* were talking back and forth.
Q. Who is "they"?
A. The Marine and Francis.
Q. What were they saying?
A. Well, they were arguing about somebody starting a fight at Ann's house. That was just, more or less, arguing whether this boy had started it with another boy. It was at the party.
Q. Are you sure you recall this happening?
A. Yes, sir.
Q. All right. What happened after you heard the argument?
A. Francis had the rest of the shotgun like this (indicating).
Q. Keep your voice up, Darryl.
A. Francis had it rested like this in the general direction of the Marine.
Q. Where was it resting on something?
page 153 } A. Yes, the window. The window wasn't rolled down all the way, only half way.
Q. Was it resting on top of the car or on top of the window?
A. Yes, sir.
Q. Then what happened?
A. Then Francis said something about, "you like to play games or something." He handed me the shotgun.
Q. What did he do then?
A. Opened the door and him and this other Marine got into a fight.

Darryl Calvin Brown

Q. What happened then?

A. I went—I took the shotgun and started to proceed across the street with it, and this other Marine named—I think his name is Barnes came out of the house and had asked me what I had behind my back.

Q. Let's stop there. When you started across the street, did you see anybody in the car except the defendant and the Marine you have told us about?

A. No, sir, I didn't see anybody else.

Q. Did you look in the back seat of the car?

A. No, sir.

Q. Where were you looking at the car when
page 154 } you were walking across the street?

A. No, sir.

Q. All right. Then you proceeded with this other Marine, Baron, you are telling me about?

A. Then this other Marine came walking up to me, asked me what I had behind me, behind my back. I had my hand behind my back—the shotgun. I pulled it out like this. I told him it was a shotgun.

Q. Keep your voice up. I can talk louder than that.

A. So when he saw it, it was a shotgun. I said, "Wait a minute. Like this." And I just held the shotgun like at an angle, pointing it like if you want with a gun. And then Francis came up, hit this boy named Baron.

Q. Where did Francis come from?

A. Around the side of the car.

Q. What was the Marine Baron doing at the time the defendant hit him?

A. Looking at me.

Q. Where was the defendant in relationship to the direction of the Marine who was facing you?

A. He was to the blind side; it was his right-hand side, more or less, his blind side over here.

Q. You mean the defendant came up on Baron's blind side?

page 155 } A. Yes, sir.

Q. Did he — was there any conversation or words exchanged between the defendant and the Marine Baron before the defendant hit him?

A. No, sir.

Q. What happened after the defendant hit him?

A. Baron was knocked down, and then Francis beat on him.

Q. What do you mean he beat him?

A. He hit him in the face.

Darryl Calvin Brown

Q. How many times did he hit him?
A. I don't know; he just kept on fighting.
Q. How hard did he hit him?
A. I guess it was about as hard as he could.
Q. Keep your voice up.
A. As hard as he could.
Q. Did he do anything besides hit him with his fist?
A. Kicked him.
Q. Where did he kick him?
A. In the side, kicked him in the shoulder, in the head.
Q. Did you see the defendant kick Baron in the head?
A. Well, I seen him kick him around his head. Maybe he kicked his head, maybe he didn't. I was standing there; there was five or six people standing there at the
page 156 } time and everything was all grouped around.
Q. How many times did he kick him?
A. Five, six.
Q. How hard did he kick him?
A. As hard as he could.
Q. Was the Marine Baron doing anything at this time?
A. Just laying there.
Q. Now, did the defendant say anything to Baron while he was doing all this beating?
A. Baron said—
Q. What did the defendant say?
A. The defendant said, "You like to pick on boys, you don't like to pick on a man. If you want to pick on somebody, pick on me, I am a man."
Q. How many times did he say that?
A. I think he said, "I am a man" twice. He said, "If you want to pick on somebody, pick on me." He said that once.
Q. Now, after the defendant kicked the Marine Baron four, five times, then what happened?
A. Then he, this boy Baron said if he wasn't drunk, I'd get up and beat on you, and so, anyway, Francis says, told him his address, told him where he lived, his name and his address, and then this girl, Ann Dobbs came run-
page 157 } ning over there, told us to try to break it up so we finally—Francis stopped, and we went and got in the car and left.
Q. What did you do when you left?
A. Francis took the shotgun and dismantled it.
Q. Where did you go?
A. Back to Francis'.

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Q. What did you do when you got there?
A. Put the gun up on the shelf.
Q. What did Francis do besides, if anything?
A. Went on upstairs and got cleaned up, changed his clothes.
Q. Did you see the defendant clean his shoes?
A. Yes, sir.
Q. Why was he cleaning his shoes?
A. He had blood on them.
Q. What did the defendant say, if anything, after you got back to his place?
A. I don't know; I can't say too much. He just sat around and talked.
Q. Do you recall what was said? What was the defendant's mood after this happened?
A. The mood he was in?
Q. Yes.
A. I don't know; he just forgot about it, just page 158 } like he just had been to work and come back.

Mr. Emrich: May I have the Court's indulgence a moment, please.

By Mr. Emrich:
Q. Now, everything you testified to, did that occur at Ann Dobbs' house or in the immediate *vacinity* of Ann Dobbs' house?
A. You mean as far as the beating?
Q. The beating.
A. Yes, sir.
Q. And all of that time in Arlington County?
A. Yes, sir.
Q. Now, as far as you know, did the defendant Fletcher know these Marines or had he seen them before he went there that night and the beatings took place?
A. No, sir.

Mr. Emrich: I have no further questions, your Honor.
The Court: Who was the person who was in the car with you and the defendant when you went over to Ann Dobbs' house?
The Witness: I didn't know him, sir.
The Court: You don't know him at all?
The Witness: No, sir.

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page 159 } CROSS EXAMINATION

By Mr. Gallucio:

Q. Who was driving this automobile? You weren't driving this automobile?

A. No, sir.

Q. Francis wasn't driving this automobile?

A. No, sir.

Q. You don't know the person who was driving the automobile?

A. No, sir, I never seen him before.

Q. Now, how did you get over to the party the first time without Francis?

A. With a boy named Jimmy Besit.

Q. James Besit?

A. Yes.

Q. Where did James Besit go?

A. He left after that.

Q. Where did he go?

A. What? You mean after I went back to Francis'?

Q. Yes. Did he drive you back to Francis'?

A. Yes, sir.

Q. And he left?

A. Yes, sir. He was supposed to have a date that night.

page 160 } Q. He was supposed to have a date that night. Did you see James Besit the night that Francis was fighting these Marines?

A. No, I didn't.

Q. Did you see Larry *Holafield?*

A. Yes, sir, I did.

Q. Was he with you in the automobile?

A. No, sir.

Q. He was with you in no automobile at no time, is that correct, that evening?

A. I think he was with me and Besit.

Q. You think he was with you and Besit?

A. Yes, sir.

Q. Was this the first time you were at Mr. Fletcher's house?

A. Yes, sir.

Q. Where did *Holafield* go?

A. That I don't know.

Q. Did he go to the party with you?

Darryl Calvin Brown

A. Yes, sir.
Q. Did he come back from the party with you?
A. Yes, sir, but he stayed in the car with Besit.
page 161 } Q. He stayed with Besit?
A. Yes.
Q. Do you know Billy Rice?
A. Yes, sir.
Q. Do you know Doug Carsgale?
A. Yes, sir.
Q. Were either one of them driving the automobile you were in?
A. No, sir.
Q. Let me get this straight: Is it your testimony you were at Francis Fletcher's house earlier in the evening?
A. Yes, sir.
Q. And then you left with Besit and *Holafield,* and you went to Ann Dobbs house to go to the party?
A. Yes, sir.
Q. You knocked on the door and they wouldn't let you in?
A. They didn't say they wouldn't let us in. This girl said that the Marines would leave later on; it would be better if we would come back later.
Q. You left with Besit and *Holafield* and they dropped you off at Fletcher's home?
A. Yes.
Q. Then some unknown person came over to the house?
page 162 } A. Yes.
Q. And picked you and Fletcher up and took you both back to Ann Dobbs' party?
A. Yes, sir. That was later on in the evening.
Q. Well, let's retrack that, then. Then you went back to the Fletcher house the second time?
A. Yes, sir.
Q. Francis Fletcher was there?
A. Yes, sir.
Q. Some unknown person came to the door, is that correct?
A. Yes, sir.
Q. You all left?
A. Yes, sir.
Q. Is that when you got a shotgun?
A. Yes, sir.
Q. Then the shotgun was in two pieces?
A. Yes, sir.

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Q. And you carried it out normally?
A. I carried half of it.
Q. You carried half, exposed, in your hands to the automobile?
A. Yes, sir.
Q. And Francis Fletcher carried the other half?
page 163 } A. Yes, sir.
Q. Who had the pin to hold the gun together?
A. Francis?
Q. Now, did the person in the automobile make any remarks about you two walking out with a shotgun, this unknown person?
A. He didn't say anything.
Q. Didn't say anything. Where did you put the shotgun in the car?
A. Laid it on the seat.
Q. Laid it on the seat. Both sections, on the same seat?
A. Yes, sir.
Q. The front seat or the back seat?
A. The back seat.
Q. Did you get in the back seat by yourself?
A. No, sir.
Q. Did Francis get in the back seat with it?
A. Yes, sir.
Q. And the driver was in the front seat by himself?
A. Yes, sir.
Q. You don't know who the driver was?
A. I know what kind of car it was, but I don't
page 164 } know the driver.
Q. Then you went to the Hittle party?
A. No, sir.
Q. Where did you go?
A. Went to Ann Dobbs' party.
Q. What happened there?
A. We wanted to explain it.
Q. Is that when you—is that when the fight started?
A. Yes, sir.
Q. When did you go to the Hittle party?
A. I went to the Hittle party earlier in the evening. We dropped in at the Bettem party with Jim Besit.
Q. Jim Besit?
A. And Larry *Holafield.*
Q. And you then—is it your testimony you went to Francis Fletcher's?
A. It isn't my testimony I went directly back.

Darryl Calvin Brown

Q. Who went to Bettem party with you?
A. Me and Besit and *Holafield.*
Q. Did you go inside the party?
A. No, sir.
Q. They wouldn't let you in?
A. There was a *fraternight* party and I didn't know it.
page 165 } Q. They wouldn't let you in because it was a fraternity party.
You think you were all going to the party that night?
A. Yes, sir.
Q. Well, why did Besit leave you?
A. Besit said he was going to Francis' house; Francis was going to have a party that night.
Q. But he was going to these other parties with you, wasn't he?
A. I guess.
Q. He was going to attend the party with you, wasn't he?
A. Yes.
Q. So why did he finally leave you?

Mr. Emrich: Who is "he"?

By Mr. Gallucio:
Q. Besit?
A. He was supposed to have a date that night.
Q. *Holafield* was supposed to have a date?
A. I don't know if *Holafield* had a date or not.
Q. Where did *Holafield* leave you?
A. I don't know.
Q. Where did you go, back to Francis Fletcher's?
A. Because there wasn't nothing to do. I didn't
page 166 } want to go into the other party, so I went back to his house. He said he was going to have a party there later.
Q. Now, after this fight occurred, who did you leave with?
A. I left with Francis and that other boy.
Q. Which other boy?
A. The boy that was driving the car.
Q. This unknown person?
A. Yes, sir.
Q. You never seen him and never saw him afterwards?
A. Yes, sir.
Q. You don't know his name, no one ever used his name that night, is that correct?

A. Yes, sir.
Q. I see. But they called him, Buddy?
A. Apparently he knew Francis.
Q. Didn't Francis say, "Joe," or, "Jack," come on or we are going?
A. I don't know; I don't remember what his name was.
Q. You just never heard it that night?

Mr. Emrich: I think he said numerously he didn't hear the name that night.

page 167 } By Mr. Gallucio:
Q. How long were you with this driver, this unknown person?
A. Just to Ann Dobbs' party and back.
Q. Where was he went this fight was taking place?
A. I don't know. I know he was outside of the car. He wasn't in the car.
Q. He wasn't in the car?
A. No, sir.
Q. Did he help you take the shotgun out?
A. No, sir.
Q. You took it out by yourself?
A. Francis helped me.
Q. Francis what?
A. Francis took the one piece and asked me for the other one and then I handed it to him. He put it together.
Q. You put it together or he put it together?
A. He put it together.
Q. So the time Francis Fletcher left his house, approximately what time was this?
A. I don't remember.
Q. Was it 9:00, 10:00? You went there initially about 9:30?
page 168 } A. Yes, sir, that was earlier.
Q. Then you went to Ann Dobbs. You went to Hittle's and then you came back. Did that take you an hour, two hours?
A. We sat around Francis' house about—
Q. Half an hour or so?
A. Yes, sir.
Q. How long did it take you to get to Ann Dobbs and to Harry Hittle and get back to Francis' house?
A. I don't know.

Darryl Calvin Brown

Mr. Emrich: Keep your voice up.
The Witness: I don't know.

By Mr. Gallucio:
Q. You don't know?
A. No, sir.
Q. Normally how long would it take?
A. Considering we stopped?
Q. You say—well, after 8:30, when you got to Francis Fletcher's house?
A. About.
Q. Close to 9:00?
A. Between 8:30 and 9:00 o'clock.
Q. Between 8:30 and 9:00 o'clock?
page 169 } A. Yes.
Q. You didn't see Billy Rice or Doug Carsgale there?
A. No, sir.
Q. Didn't you say Francis Fletcher wasn't with you that evening?
A. No, sir.
Q. It wasn't Doug Carsgale and Billy Rice? He was in Billy Rice's automobile?
A. No, it isn't.
Q. How many times have you been questioned about this evening by the police?
A. Just once.
Q. Just one time?
A. They took me over and asked me for my testimony; that is all.
Q. How many times have you discussed it with your attorney?

Mr. Emrich: You mean Mr. Varoutsos?
The Witness: Just before I went to Court.

By Mr. Gallucio:
Q. Do you recall testifying in County Court or Juvenile Court?
A. No, sir, I didn't testify.
page 170 } Q. Did you not take the stand and I questioned you?
A. You asked me—yes, you had.
Q. So you testified in Court?

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A. Yes, sir.
Q. Do you remember saying that evening you had never been with Larry *Holafield?*
A. No, I do not.
Q. Do you deny that you said that?
A. No, I do not deny it. Maybe I did say that.
Q. You sure did, didn't you?

Mr. Emrich: I object.
The Court: If you want to be sworn, you have to get on the stand.

By Mr. Gallucio:
Q. Now, you have had certain difficulty with the police with regard to this matter, haven't you?
A. Yes, sir.
Q. Isn't it your feeling as favorable as your testimony is that you will be treated well in any Court proceeding?
A. No, sir, I haven't been treated well.
Q. Weren't you told you—
A. No.

The Court: I don't know what you said or not.
page 171 } Mr. Gallucio: I don't know.
The Court: I think he said he hasn't been treated well.

By Mr. Gallucio:
Q. You haven't been treated well?
A. Just as well as could be expected.
Q. You have been on probation, haven't you?
A. Yes, sir.
Q. And you were asked to testify in Court against Mr. Fletcher, weren't you?
A. Yes, sir.
Q. You took the stand against him, didn't you?
A. When?
Q. Previously.
A. No, sir, I haven't.
Q. Didn't you tell—
A. I didn't take the stand against him.
Q. Who called you? I didn't call you as a witness.

Mr. Emrich: I think you should let him answer.
The Court: I am confused myself. I thought that you

asked him before which had to do with his testimony in Juvenile Court which wouldn't be a proceeding against the defendant.

Mr. Emrich: It wasn't.

Mr. Gallucio: It was a proceeding *agsint* this
page 172 } defendant.

The Witness: But I never testified—

The Court: All right.

The Witness: I never testified against him.

By Mr. Gallucio:

Q. Did I call you as a witness?

A. No, sir.

Q. Commonwealth called you as a witness?

A. Yes, sir.

Q. I see. When you talked to the policeman, which policeman did you talk to?

A. I didn't talk to the—exactly to the policeman; I talked to Detective Light.

Q. Detective Falkner?

A. No, sir, just to Detective Light.

Q. Just to Detective Light. On how many occasions have you talked to him in the last four months?

A. About five times.

Q. I see. When you first talked to him, did you deny there was a shotgun present?

A. I wouldn't under oath tell him anything.

Q. I am asking you, did you deny when you first talked to him?

A. I didn't deny anything. I denied—I wasn't
page 173 } —I didn't talk to him for giving any testimony at that time.

The Court: We are talking about testimony. When you talked to the detective, did you at any time talk to him about testimony or not testimony whether under oath or not under oath? Did you tell him that you knew nothing about a shotgun?

The Witness: Yes, sir, at the time I said there was no shotgun. I said I didn't know anything about.

By Mr. Gallucio:

Q. You told Detective Light you didn't know anything about a shotgun being there?

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A. Yes, sir.
Q. Were you told you could be charged with this incident?
A. He told me I would be charged.
Q. You were charged with it?
A. Yes, sir.
Q. With regard to growing out of this thing, weren't you?
A. Yes, sir.
Q. I see. It was subsequent that you told Detective Light that there was a shotgun there?
A. I don't understand the question, sir.
page 174 } Q. It was after the first time you talked to him and you told him there was no shotgun there? And he told you you could be charged and so forth and charges were brought against you subsequent to that time? You told him there was no shotgun, didn't you?
A. No, sir, I didn't.
Q. You never told him there was a shotgun there?
A. I told him I had been charged. I told—
Q. After you had been charged?
A. Yes, sir.
Q. In Court?
A. Not in Court. They brought up the papers on me for felonious assault.
Q. That is when you testified or told Detective Light there was a shotgun present?
A. I don't remember *whehter* I told him then or not.
Q. But it was well after the first time you talked to him?
A. Yes, sir, after.
Q. You have talked to Detective Light more than one time on the charges?

Mr. Emrich: He testified numerous times.
Mr. Gallucio: The first testimony he talked to
page 175 } the police one time.
The Court: You make a distinction between the detective and police?

By Mr. Gallucio:
Q. Have you talked to Detective Light numerous times on this?
A. Yes, sir.
Q. I see. Did you talk to a policeman about it?
A. Yes, sir, there was—they had a policeman come over or something, and that was Mr. Falkner who was going to

press charges. They had an officer up there. He was asking me some questions.

Q. Mr. Falkner was going to do what?
A. Mr. Falkner, he was the one who pressed charges.
Q. Did you talk to Mr. Falkner at that time?
A. Yes, sir, I talked to him, too.
Q. I see. He is a detective, isn't he?
A. I don't know what he is, really.
Q. He doesn't wear a uniform?

The Court: Find out what he knows.

By Mr. Gallucio:

Q. He wasn't in uniform, was he?
A. No, sir.
page 176 } Q. He talked about charging—
A. Yes, he told me—
Q. You talked to Detective Light?
A. Yes.
Q. Those are the two detectives?
A. I never told him anything.
Q. You wouldn't tell him anything?
A. No, sir.
Q. I see. And it was after charges were brought against you for felonious assault—
A. It was after.
Q. Francis Fletcher had the shotgun, didn't you?
A. It was after the last charge about him having a concealed weapon.
Q. You testified in Court?

Mr. Emrich: When?
The Witness: On the concealed weapon?
Mr. Emrich: Wait for the question.

By Mr. Gallucio:

Q. With regard to the charge of felonious assault against you, were they ever dismissed?
A. I don't know whether they were dismissed; I had to go to Court.
page 177 } Q. They didn't fine you?
A. No.
Q. They dismissed them?
A. It was *nolle prossed.*

Q. *Nolle prossed* as to the felonious assault charge?
A. Yes, sir.
Q. Exactly.

Mr. Emrich: Are you through?
Mr. Gallucio: No, not yet.

By Mr. Gallucio:
Q. I don't recall something. You said—did you say after the fight you left with Francis Fletcher?
A. Yes, I believe I said I left with Francis Fletcher.
Q. You in fact left with Francis Fletcher?
A. Yes, sir.
Q. Who was driving the car at this time?
A. The same person.
Q. This unknown person?
A. Yes, sir.
Q. Did you see Billy Rice that night at the fight?
A. Yes, sir, I did see Billy Rice at the fight.
Q. How did he leave?
A. I don't know.
page 178 } Q. Do you know he was driving that night?
A. No, sir, I don't know whether he was driving or not, whether he was driving his automobile.
Q. How about Doug Carsgale, did you see him that night?
A. (Nodding.)
Q. Yes?
A. Yes, sir.
Q. Do you know how he got to Ann Dobbs' party?
A. No, sir.
Q. Do you know how he left?
A. No, sir.
Q. I see.

Mr. Gallucio: I have no further questions.

RE-DIRECT EXAMINATION

By Mr. Emrich:
Q. Now, Darryl, at the time this whole incident occurred where the police talked to you, were you under the control of the Juvenile Court?
A. Sir?
Q. Were you under the control of the Juvenile Court?
A. Yes, sir.

Darryl Calvin Brown

Q. Did you remain under the control of the Juvenile Court?

page 179 } A. Yes, sir.

Q. Where do you now reside?

A. In northern Virginia, a detention home.

Q. Detention home?

A. Yes, sir.

Q. *Wbre* you promised or promises made by anybody in regard to your testimony here in regard to this case?

A. No, sir.

Q. Did anybody threaten you?

A. No, sir.

Q. Did you consult with Mr. Varoutsos, your attorney, and did he tell you you didn't have to testify?

A. I knew I did not have to testify.

Q. You are testifying of your own free will?

A. Yes, sir.

Q. This is the truth that you told today?

A. Yes, sir.

Mr. Emrich: I have nothing further.

RE-CROSS EXAMINATION

By Mr. Gallucio:

Q. You say you are residing at a detention home now?

A. Yes, sir.

Q. Do you know what is going to happen to you?

page 180 } A. Yes, I have been committed to the State Department of Welfare.

Q. For rehabilitation?

A. No, sir.

Q. Center?

A. No, sir.

Q. I see. And was it with regard to this charge that you were committed?

A. No, sir.

The Court: Is there anything further?

Mr. Emrich: Yes, I would like to call Larry *Holafield.*

The Court: Is there any objection to the witness who was on the stand coming back? Are you going to call him?

Mr. Emrich: I don't intend to call him again.

Mr. Gallucio: I don't intend to call him.

Mr. Emrich: I refer him to Mr. Stabach if he remains.

Mr. Gallucio: I lodge the same objection to the testimony of this witness.

The Court: I am overruling your objection. We will find out about it in a minute.

Is the witness who just came in in somebody's custody?

Mr. Emrich: Yes, he is.

The Court: Who is he—

page 181 } Mr. Emrich: The probation officer. Both of them are in custody.

The Court: This boy is not. Well, the probation officer can take the witness who just testified away, then.

Mr. Sheriff, he is excused. What is his name Joe Brown?

Mr. Emrich: Darryl Brown.

The Court: The probation officer can take him away wherever he is supposed to go.

Mr. Emrich: I think he has made arrangements for him to go down.

Whereupon,

LARRY GENE HOLLIFIELD, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Emrich:

Q. Would you state your full name, please?

A. Larry Gene Hollifield.

Q. Spell your last name.

A. H-o-l-l-i-f-i-e-l-d.

Q. How old are you?

A. Sixteen.

page 182 } Q. Where do you reside?

A. Sir?

Q. Where do you live?

A. 1500 South Borton, apartment 584.

Mr. Gallucio: Your Honor, with regard to asking about the same thing with regard to his rights.

The Court: Yes, I am going to ask him.

You are going to be questioned about what went on at the party given by Ann Dobbs, and you know know that you do not have to testify. If your testimony will in any way involve you in that affair can be a criminal offense; you know that?

The Witness: Yes, sir.
The Court: Have you been advised about that?
The Witness: Yes, sir.
The Court: Do you wish to testify or do you not wish to testify?
The Witness: I wish to testify.
The Court: You wish to testify?
The Witness: Yes, sir.
The Court: Have you consulted an attorney about it?
The Witness: An attorney?
The Court: Lawyer.
The Witness: No, sir.
The Court: Have you been charged in any way?
page 183 } The Witness: No, sir.
The Court: But you do know that you could be charged and you might say something that would involve you that could be used against you?
The Witness: Yes, sir.
The Court: You want to testify any way?
The Witness: Yes, sir.
The Court: All right, go ahead.

By Mr. Emrich:
Q. Larry, regarding your testifying, have any promises been made to you if you testify things will be done or not be done?
A. No, sir.
Q. Has the probation officer or the police or myself or anybody in authority told you that if you do not testify, they will do something to you?
A. No, sir.
Q. Are you testifying of your own free will?
A. Yes, sir.
Q. You know the defendant, Francis Fletcher?
A. Yes, sir.
Q. How long have you known him?
page 184 } A. Since about—
Q. Keep your voice up.
A. About the last of September, 1966.
Q. Keep your voice up. You can do that so I can hear you.

The Court: Lean forward a little bit.

By Mr. Emrich:
Q. Since when have you known him?

A. Since the last of September, 1966.
Q. Did you tell us what your age was?
A. Sixteen.
Q. Do you know what the defendant's age is?

Mr. Gallucio: Objection.
The Witness: Twenty-two.
The Court: Objection overruled.

By Mr. Emrich:
Q. All right. Now, on October 15, 1966, did you see the defendant, Francis Fletcher?
A. Yes, sir.
Q. Where did you see him?
A. At his house.
Q. Where is that?
A. South Adams in Arlington.
page 185 } Q. I can't hear you.
A. South Adams Street in Arlington.
Q. About what time was that?
A. About 8:00 o'clock.
Q. Who else was there?
A. Darryl Brown, myself; that is about all. Maybe James Bessit.
Q. Keep your voice up.
A. Maybe James Besit.
Q. What were you doing?
A. We were sitting talking.
Q. How long did you sit and talk?
A. Maybe an hour or half.
Q. Maybe an hour?
A. Hour and a half, maybe.
Q. What did you do then?
A. About 10:00 o'clock, we went to Miss Dobbs.
Q. Where is her house?
A. South Oakland Street in Arlington.
Q. In where?
A. South Oakland Street in Arlington.
Q. Who went there now?
A. It was Fletcher, Brown, Rice, Carsgale—I
page 186 } am not sure about Carsgale.
Q. What did you do when you got there?
A. We went around to the back door. She was having a party, and we just stepped in the doorway, and then—

Larry Gene Hollifield

Q. Larry, if you look at me and keep your voice up, we can all hear you.

A. We went to the back door, and there was some Marines shooting pool, and so we went in and one Marine—

Q. Did you go inside the party?

A. Yes, sir, it was just Billy inside the doorway.

Q. You or everybody that was there?

A. Everybody.

Q. So did you stay at the party?

A. Not long.

Q. About how long?

A. About ten minutes.

Q. And when what did you do, leave?

A. Yes.

Q. Where did you go?

A. Back to Fletcher's.

Q. What did you do?

A. Sat around, talked.

Q. All right. How long did you stay there that time?

page 187 } A. About maybe another hour.

Q. And then what did you do?

A. Went back to Miss Dobbs'.

Q. Who went back to Miss Dobbs?

A. It was Fletcher, Rice, Brown, myself and Doug.

Q. How did you get back there?

The Court: He didn't finish it.

Mr. Emrich: I am sorry.

The Witness: Maybe Doug Carsgale; I can't remember.

By Mr. Emrich:

Q. How did you get back there?

A. Drove.

Q. Did you all go in one car?

A. No.

Q. How many cars were used?

A. Two, I think.

Q. Did you leave the house at the same time, that is, the defendant's house?

A. I left maybe a minute or two before he did.

Q. Did you see him come out?

A. No.

Q. When is the next time you saw him after you left the house?

Larry Gene Hollifield

page 188 } A. At the party.
Q. What occurred?
A. Well, I went around to the back door, and—

The Court: Speak out so they can hear what you are saying.

The Witness: I went back around to the door, and the Marine wanted—I asked where the Marine trouble was. She said she didn't want any *troubl.* She asked me where Fletcher was. I said he was in front of the house. She started to walk around.

The Court: Who started to walk around?

The Witness: Miss Dobbs, and she says she wanted to talk to Fletcher. Don't go, there is nothing. She went around.

By Mr. Emrich:

Q. Did you say there was going to be trouble?

A. There was going to be a fight.

Q. All right. Go ahead.

A. She wanted to talk to Fletcher. I went across the street, and then—then I saw Fletcher get in the car with the two Marines started beating them.

Q. All right. What happened just before you saw Fletcher get in the car and start beating the two Marines?

page 189 } A. Nothing. I was just standing across the street and the next thing I knew, he was getting into the car.

Q. Where were the Marines in the car?

A. One was in the front seat and one was in the back seat.

Q. Who did he beat first?

A. The one in the front seat.

Q. Then what did he do?

A. He got in the back and started beating the one in the back seat.

Q. Did you see the second Marine before Fletcher started beating on him?

A. Yes, he was leaning back in the seat, just lying there.

Q. He wasn't doing anything?

A. No.

Q. Then what did Fletcher do?

A. Got in the back seat and started hitting him.

Q. Started hitting him?

A. Yes.

Q. How many times did he hit him?

Larry Gene Hollifield

A. Yes.

Q. Can you tell us how hard he was fighting?

page 190 } A. No, sir.

Q. Then what did Fletcher do?

Q. Well, when Fletcher was in the car, Brown was standing about fifteen or twenty feet away from him and one Marine hit him, and he was standing with something behind his back, and the Marine, he said, "What you got behind your back?"

Q. Who—he was talking to Brown?

A. Yes.

Q. Keep your voice up.

A. Brown pull in like this. About that time Fletcher hit him.

Q. Where was Fletcher before he hit the Marine?

A. Just a little to the side of him.

Q. Was there a conversation between Fletcher and the Marine?

A. No, just hit him.

Q. How many times did he hit him?

A. Numerous.

Q. What?

A. Very numerous.

Q. Did he knock him down?

A. Yes, he did.

Q. How hard was he hitting him?

page 191 } A. It was pretty hard.

Q. What was hitting with, anything?

A. With his fists.

Q. Did he hit him?

A. Yes.

Q. Did you see him kick him?

A. He kicked him.

Q. How many times did he kick him?

A. Two or three.

Q. How hard did he kick him?

A. Pretty hard.

Q. Where did he kick the Marine?

A. He kicked him in the side and in the head.

Q. Was he kicking him hard?

A. Yes.

The Court: I didn't hear what he said.

Mr. Emrich: I didn't hear what he said either.

Larry Gene Hollifield

By Mr. Emrich:

Q. How hard was he kicking him?

A. He was kicking him pretty hard.

Q. What was the Marine doing?

A. Just lying there.

page 192 } Q. Was the defendant Fletcher saying anything?

A. Yes, he said to the marine, he said "I am a man." "I am drunk." Fletcher said—

Q. Come on, keep your voice up.

A. Fletcher said a couple of profane words.

Q. What did he say?

A. Exactly?

Q. Yes.

A. Yes, "mother fucker, punch drunk."

Q. Then what happened?

A. Then the Marine said, "I am going to Viet Nam." Fletcher said, "You are a fuck, you are going in a pine box."

Q. Then what happened?

A. Then Fletcher quit beating him.

Q. Now, when Fletcher made this last statement, was he still beating him?

A. Yes, sir.

Q. Was that before or after he kicked him?

A. It was after.

Q. After?

A. Yes, sir.

Q. What did he do then, come back and beat him again with his fists?

page 193 } A. Yes, sir.

Q. Then what happened?

A. And then Fletcher says, "I am a man. Fight a man; don't fight boys."

Q. How many times did he say that?

A. Once or twice.

Q. All right. Then what happened?

A. Then we left.

Q. Where did you go?

A. I think we went back to Fletcher's — we went to Fletcher's.

Q. What did you do when you got back to Fletcher's?

A. We sat around and in a couple of minutes, we left.

Q. Keep your voice up.

A. We sat around a couple of minutes and then we left.

Larry Gene Hollifield

Q. Did Fletcher do anything when he went back to his house?
A. Not particularly.
Q. I cannot hear you.
A. Nothing particularly.
Q. How about his shoes, did he do anything in regard to his shoes?
A. Cleaned them.
page 194 } Q. Why did he clean them?
A. There was blood on them.
Q. Now, as far as you know, did Fletcher know those two Marines before this happened?
A. No.
Q. As far as you know, was there bad blood between them before this happened?
A. No.

Mr. Emrich: I have nothing further.
The Court: We will take a recess, gentlemen.

(Short recess.)

The Court: Bring the jury in.

(In the presence and hearing of the jury.)

CROSS EXAMINATION

By Mr. Gallucio:
Q. Mr. Hollifield, the night in question, the night of the fight, is it your testimony—how did you get to Francis Fletcher's house the first time?
A. You mean how did I get there?
Q. How did you get there?
A. I walked.
page 195 } Q. When you arrived, who was there?
A. Brown—I don't remember, maybe Jimmy Bessit.
Q. You don't remember.
A. No.
Q. Was anybody else there?
A. No, I can't remember.
Q. In other words, Fletcher was there and Brown was there, you are sure of that?

A. Yes, sir.
Q. And you are sure you were there?
A. Yes, sir.
Q. And maybe and maybe not Bessit was there?
A. Yes, sir.
Q. About what time did you get to Mr. Fletcher's home?
A. About 8:00 o'clock.
Q. About 8:00 o'clock?
A. (Nodding.)
Q. What did you do?
A. We just sat around and talked.
Q. I see. Did he take—they took out the shotgun then?
A. No.
Q. What did you do, just sat around and talked about an hour?
page 196 } A. Yes, about that.
Q. Where did you go from there?
A. Miss Dobbs.
Q. To Miss Dobbs?

Mr. Emrich: Keep your voice up.
The Court: You better. I don't believe the jurors can hear what you are saying.

By Mr. Gallucio:
Q. When you left Francis Fletcher's home the first time, where did you go?
A. We went to Miss Dobbs. I am pretty sure we went to Miss Dobbs.
Q. You are pretty sure you went to Miss Dobbs. Who went to Miss Dobbs?
A. It was Fletcher, Rice, Brown, and myself.
Q. Fletcher?
A. Rice, Brown, and myself.
Q. Brown and Rice?
A. Maybe Bessit.
Q. Yourself and maybe Bessit?
A. Yes, sir.
Q. When did Rice join you all?
A. I don't remember. Sometime after I got there.
Q. Do you recall Larry Hollifield being there?
page 197 } A. Yes.
Q. He was there at Francis' house?
A. Yes.
Q. You forgot him?

Larry Gene Hollifield

A. No, sir.
Q. You never mentioned him before.
A. Larry Hollifield was there.
Q. Larry Hollifield was there?
A. Yes.
Q. Who else was there?
A. I don't recall.
Q. Was Larry Hollifield on—

Mr. Emrich: This is Larry Hollifield.
Mr. Gallucio: Oh! It helps.

By Mr. Gallucio:
Q. How did you leave Francis Fletcher's house?
A. By car.
Q. Whose car?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. You don't know who was driving?
page 198 } A. No, sir.
Q. Was there one car or two cars?
A. Two cars.
Q. Two cars?
A. Yes, sir.
Q. Which car did you go in?
A. The first time I think it was a Cadillac.
Q. A Cadillac?
A. Yes, sir.
Q. Who was with you in that car?
A. I don't remember.
Q. You don't remember?
A. No, sir.
Q. Do you know who was in the other car?
A. No, sir.
Q. You don't remember whether it was Francis Fletcher who rode with you?
A. No, sir.
Q. Or in the other car?
A. (No response.)
Q. Both cars went to the party?
A. Yes, sir.
Q. And you went in the party?
page 199 } A. Yes, sir.

Larry Gene Hollifield

Q. All six of you go in or all five? Did all five of you go in?
A. We all went around the back.
Q. You all went around?
A. Yes.
Q. Did all five of you go in?
A. I think so.
Q. Who let you in?
A. Miss Dobbs.
Q. Let Francis Fletcher in, too?
A. Yes, sir.
Q. How long did you stay at the party?
A. About ten minutes.
Q. Please?
A. About ten minutes.
Q. Was there any trouble there at the time?
A. No.
Q. No trouble at all?
A. (Nodding.)
Q. I see. Then you left?
A. Yes.
Q. All five of you left together?
page 200 } A. I think so; I am not certain.
Q. Did anyone join you?
A. I don't know; I can't remember.
Q. You can't remember?
A. No, sir.
Q. Whose car did you leave in?
A. Sir?
Q. Whose automobile did you leave in?
A. I don't remember.
Q. Did you leave in one or two automobiles?
A. I think we left in two.
Q. You think you left in two. Who was driving the automobile?
A. I don't know.
Q. You don't remember?
A. No.
Q. Where did you go to?
A. After we left Miss Dobbs? Back to Fletcher's.
Q. And who all went to Fletcher's?
A. Rice, Brown, and that's all I remember.
Q. Please.
A. Rice, Brown, and Fletcher.

Larry Gene Hollifield

page 201 } Q. Rice, Brown, and Fletcher?
A. Yes.
Q. And yourself?
A. Yes.
Q. What was your purpose in going back to Fletcher's?
A. Just to go back.
Q. Just to go back?
A. Yes.
Q. What did you do at that time?
A. Sat around and talked.
Q. Sat around talking?
A. (Nodding.)
Q. Why did you leave the party?
A. I don't know.
Q. You don't know or you all just decided to leave?
A. Yes.
Q. Was Bisset with you then?
A. I don't know.
Q. You don't know?
A. No.

Mr. Emrich: I object to repeating the answer each time. I am sure he has the answer.

page 202 } The Court: I don't think it is necessary. It is a habit that attorneys get into some times. I don't believe it is necessary to do that.

By Mr. Gallucio:
Q. The next time you left Fletcher's house, where did you go?
A. Back to Miss Dobbs.
Q. Back to Miss Dobbs?
A. (Nodding.)
Q. You never went to Harry Hittle?
A. I think we went after the second time we went to Miss Dobbs.
Q. After the second time you were at Miss Dobbs?
A. (No response.)
Q. What kind of party was it?
A. Fraternity.
Q. Did you all go in together?
A. No.
Q. Did anybody go in?
A. I didn't, I know that.

Q. Did Francis Fletcher go in?
A. I don't know.
Q. You don't know?
A. (No response.)
page 203 } Q. Did Billy Rice go in?
A. Yes.
Q. Billy Rice went to the fraternity party?
A. (Nodding.)
Q. Did Doug Carsgale go in?
A. Probably.
Q. When did Doug Carsgale join you?
A. I don't know.
Q. You don't know?
A. (Nodding.)
Q. How do you remember?

The Court: You don't understand what he said. He objected to your keeping on repeating what he says.
Mr. Gallucio: I am sorry, it is just a habit.
The Court: If you want to say it to yourself—
Mr. Gallucio: All right.

By Mr. Gallucio:
Q. Do you remember Doug Carsgale going into the fraternity party?
A. No, sir.
Q. Well, what made you say "maybe he went in"?
A. He belonged to the fraternity.
page 204 } Q. What?
A. He belongs.
Q. I see. He wasn't with you, was he?
A. I don't know.
Q. You don't know?
A. (No response.)
Q. Bisset wasn't with you, was he?
A. I don't know.
Q. John White was with you, was he?
A. I don't know.
Q. You do know that Brown and Fletcher were with you?
A. Yes, sir.
Q. That is all you do know?
A. Yes, sir.
Q. When did you get the shotgun?
A. I don't know.

Larry Gene Hollifield

Mr. Emrich: I don't think there is any testimony he got a shotgun.

The Court: I don't think he has either. I didn't understand the question to be personal.

Mr. Emrich: I am sorry, I misunderstood.

By Mr. Gallucio:

Q. When did anybody get the shotgun?

page 205 } A. I don't know.

Q. Did you see a shotgun?

A. At Miss Dobbs, yes.

Q. Who had the shotgun when you saw it?

A. Brown.

Q. You never saw the shotgun before Brown had it?

A. I saw it at Fletcher's before.

Q. Did you get it from Fletcher's that night?

A. I don't know.

Q. You weren't there when it was taken from Fletcher's place?

A. I don't know.

Q. You don't know?

A. I don't know where they got it from.

Q. The first time you saw that shotgun that night, Darryl Brown had it?

A. Yes.

Q. And that was at the party?

A. Yes, sir.

Q. When you all went in this party the first time, there was no trouble?

A. No, no fights.

Q. No trouble. When you came back the second

page 206 } time, you went to talk to Ann Dobbs?

A. Dobbs.

Q. Dobbs?

A. Dobbs.

Q. You told her where are the Marines that wanted to fight?

A. Yes.

Q. You weren't in the party the second time, were you?

A. I didn't go inside.

Q. What?

A. I didn't go inside.

Q. The second time?

A. Yes.

Larry Gene Hollifield

Q. How did you come to the conclusion that the Marines wanted to fight?

A. Billy Rice came back and said that the Marines wanted to fight.

Q. Billy Rice said this?

A. Yes.

Q. Didn't he go over to Harry Hill's party with you?

A. I think so.

Q. Didn't you say he was at the party the first time?

page 207 } A. I think he was.

Q. So he couldn't have come back the second time? Did you say he left with you?

A. No, I didn't.

Q. You don't know whose automobile you were driving in?

A. No.

Q. Does Billy Rice drive an automobile?

A. Yes.

Q. I see. Now, you have testified before with regard to these matters, haven't you?

A. Yes.

Q. I see. In fact, you were called by either the police or a detective and you were accused of having the shotgun, weren't you?

A. Yes.

Q. And you denied that you had any shotgun, didn't you?

A. Yes.

Q. You denied that a shotgun had ever been there, didn't you?

A. Ever being where?

Q. There that night, the first time that Detective Light talked to you?

A. The first time he asked me that?

page 208 } Q. Yes.

A. Yes.

Q. Then he told you you could be charged with this matter, didn't he?

A. No.

Q. In possession of the shotgun?

A. No.

Q. Do you remember testifying in another court about what you told Detective Light?

A. Yes.

Q. What Detective Light told you?

A. Yes.

Larry Gene Hollifield

Q. Do you remember stating that the first time you talked to Detective Light, you denied there was a shotgun there or that you had a shotgun?

Mr. Emrich: He just stated that, your Honor.

By Mr. Gallucio:
Q. Do you recall that?
A. Yes.

The Court: Did he say "yes" or "no"?
The Witness: Yes.
Mr. Gallucio: I want to go further.
The Court: I am sure about his questions. Is it
page 209 } double barreled. You are now asking about the shotgun or that he had a shotgun; that is not necessary.
Mr. Gallucio: I am asking both.
The Court: You are asking all—
Mr. Gallucio: Let me rephrase the question.

By Mr. Gallucio:
Q. Do you remember testifying at another time in this matter?
A. Yes.
Q. Do you remember my asking you about Detective Light?
A. Yes.
Q. And interrogation of him?
A. Yes.
Q. Do you remember my asking you—do you remember testifying when you first talked to Detective Light you did not have a shotgun, there was no shotgun there?
A. Yes.
Q. Do you also remember testifying you did not state a shotgun was there after Detective Light told you you could be charged?
A. Yes.
Q. That a witness said you had a shotgun?
A. He didn't say I could be charged.
Q. What did he tell you?
page 210 } A. He told me that someone said that I held the shotgun on a Marine.
Q. You denied the shotgun was there?
A. Yes.
Q. You denied you had a shotgun?

A. Right.
Q. You denied you ever saw a shotgun?
A. Yes.
Q. Is it not a fact, Mr. Hollifield, that on the night of this fight that it was you, Darryl Brown, John White, and Bisset were together, and that you were never with Francis Fletcher in the course of the evening?
A. No.
Q. That you were at the party when he arrived?
A. No.
Q. Is it not a fact that you were altogether in the same automobile?

Mr. Emrich: I think you should ask one question.
The Court: I thought he did answer.
Mr. Emrich: I am sorry. Apparently I didn't hear it. Could I have the answer to the first question read back, please.

(Question and answer read.)

page 211 } By Mr. Gallucio:
Q. When I say altogether in the same automobile, Bassit, Darryl, John White and yourself?
A. I don't remember.

The Court: What did he say?
The Witness: I don't remember.
The Court: You don't remember?
The Witness: I don't remember who was in the car.

By Mr. Gallucio:
Q. Do you remember John White being with you?
A. No.
Q. Do you remember testifying at another court that John White was with you?
A. No.
Q. When I asked you that question?
A. No.

Mr. Emrich: Your Honor, I think that testimony that he so testified—he is going to be cross-examined in that manner.
The Court: I instruct the jury Mr. Gallucio asked a question, that doesn't make it so. There is no testimony. There

is no testimony as to what happened to this witness, or whether this witness denied that. The jury doesn't
page 212 } have such matter.

By Mr. Gallucio:
Q. Tell me, do you know if John White was there or not?
A. No, I don't.
Q. You don't remember?
A. No.
Q. Do you remember if he was with you?
A. No.
Q. You just don't remember?
A. No.
Q. You forgot, he could have been?
A. Yes.
Q. That is right.

Mr. Emrich: I object to his comments.
The Court: Objection sustained.

By Mr. Gallucio:
Q. Do you remember at any time in the evening being present with Doug Carsgale?
A. Yes.
Q. Where was that?
A. At Miss Dobbs.
Q. Please?
page 213 } A. At Miss Dobbs.
Q. Inside the party?
A. No, it was outside.
Q. After that?
A. Sir?
Q. When after this—before or after the fight?
A. It was before.

The Court: Didn't he say outside?
The Witness: Yes.
Mr. Emrich: Outside?
The Witness: Yes.

By Mr. Gallucio:
Q. After or before?
A. It was before.
Q. After the fight?

A. Yes.
Q. You and Doug Carsgale—
A. I was just talking to him.
Q. Would you keep your voice up.

The Court: What did you say?
The Witness: I wasn't with him; I was just talking to him.

By Mr. Gallucio:
page 214 } Q. Let me refresh your memory as to who you might have been with. You say—do you know if John White drives an automobile?
A. He used to.
Q. He used to?
A. (Nodding.)
Q. Do you know John Agness?
A. John Agness? Bob Angus.
Q. Do you know Bob Angus?
A. I know a Bob Angus.
Q. Was Bob Angus there that evening?
A. I don't remember.
Q. Do you remember going any place with Bisset to get *gasolene* or Angus or John White?
A. No.
Q. Do you know whether or not John White or Bob Angus, that car belonged to one of their parents which is a 1959 station wagon?
A. That is Bisset's parents.
Q. Bisset's parents?
A. (Nodding.)
Q. Do you remember Bisset running out of *gasolene* that night?
page 215 } A. No.
Q. You don't know?
A. No.
Q. Was Bisset there at the time of the fight?
A. I don't know.
Q. You don't know?
A. No response.)
Q. Before the night of this fight, did you at any time ride in an automobile with more than three people including yourself?
A. Before the fight?
Q. Before the fight?

Larry Gene Hollifield

A. I might have. When we went over the first time.
Q. When you went the first time?
A. Yes.
Q. There may have been four people in the car?
A. There might have been; I don't know.
Q. You don't know; you don't know whose automobile it was?
A. No.
Q. Now, with regard to this fight—I forgot, what made you come to the conclusion that the Marines wanted to fight?

A. Billy Rice came to the house and told us
page 216 } they wanted to fight.

Q. He came back the second time?
A. *Ybs.*
Q. And told you and the group there that the Marines wanted to fight?
A. Yes.
Q. You all piled in your automobiles and went looking for the Marines, is that it?
A. Yes.
Q. And you went around to talk to Ann Dobbs?
A. Yes.
Q. And you walked out together, you and Ann?
A. Walked around to the side.
Q. When you got to the front, what did you see? Was Ann Dobbs walking with you?
A. Yes.
Q. What did you see the first thing you saw out front?
A. There was everybody—everybody was standing out talking.
Q. Where was Francis Fletcher?
A. I don't know.
Q. You didn't see him?

A. No.
page 217 } Q. And did you walk to the street near the automobile?

A. I walked across the street.
Q. Across the street?
A. Yes.
Q. Across the street from the automobile?
A. Yes.
Q. On the other side of the street?
A. Yes.
Q. Did you see Francis Fletcher when you were walking across the street?

Larry Gene Hollifield

A. No.
Q. You didn't see him?
A. No.
Q. What happened to Miss Dobbs?
A. I don't know.
Q. You don't know. You stood across the street?
A. Yes.
Q. How far were you standing from the automobile?
A. About the width of the street.
Q. About the width of the street?
A. Yes.
Q. Did you see Francis Fletcher when you got to that point?

page 218 } A. When I got to the other side?
Q. Yes.

A. He started approaching the car.
Q. Who did?
A. Fletcher.
Q. Francis Fletcher started approaching the car at this time?
A. He started to approach.
Q. What did he do?
A. He then got in the car, started beating the Marines.
Q. Could you see him clearly?
A. Pretty clearly.
Q. Did you see him with the shotgun?
A. No.
Q. Did he get in the car?
A. Yes.
Q. What happened then?
A. He started to beat the boys.
Q. Did you still stand on the other side of the street?
A. Yes.
Q. Was the back of the car towards you?
A. No, the driver's side.
Q. You were standing facing the driver's side?

page 219 } A. Yes.
Q. You were to the side of the automobile, not to the rear?

A. Yes.
Q. You were across the street?
A. Yes.
Q. About how far would you say—

Larry Gene Hollifield

The Court: Wait just a minute. There was a car parked in the right direction?

The Witness: Yes. You see, the house was there and the car here (indicating), and I was on the other side of the street.

By Mr. Gallucio:

Q. It was parked in the normal way, with going traffic, is that correct?

A. Yes.

Q. On the curb?

A. It wasn't on the curb.

Q. Near where a curb would be?

A. Yes.

Q. You were on the other side of the street?

A. Yes.

Q. Where did you see this Marine in the back?

page 220 } A. He was laying in the back seat. He was leaning like that (Indicating). Here would be the front door, and here would be the back seat. He would be leaning against the window.

Q. He was in an up-right position?

A. Just about.

Q. He wasn't lying down?

A. He was kind of an "L" shape.

Q. You don't know whether he was asleep or not, do you?

A. No.

Q. This fight took place in the front seat. What happened to the Marine in the front seat?

A. I don't know.

Q. Did you see him get out of the driver's side?

A. No.

Q. You were standing there, weren't you?

A. Yes, sir. He might have got out after Fletcher.

Q. Did you see him get out at all?

A. No.

Q. Did you see Billy Rice anywhere?

A. No.

Q. You didn't see Billy Rice open the door and open the driver's door?

page 221 } A. No.

Q. You didn't see the Marine get out and run?

A. No.

Q. You were standing right there, of course?

Larry Gene Hollifield

A. Across the street.
Q. Where you could see all that?
A. Yes.
Q. Was there anyone on the driver's side? And you saw Francis Fletcher fighting—hitting the Marine in the back seat?
A. Yes.
Q. Then he stopped himself, no one stopped him, did they?
A. I don't think so.
Q. No other person got in the area—got in the automobile, did they?
A. No one got in the car.
Q. With Francis?
A. No.
Q. When Francis was hitting the man in the back seat?
A. No.
Q. So he got out by himself, no one pulled him out?
A. No.
page 222 } Q. Which side did he get out?
A. He got out the side he went in.
Q. Please.
A. The side he got in.
Q. Was that the passenger side?
A. Yes.
Q. Where was Baron?
A. What?
Q. Where was Baron, the Marine, Baron when he got out of the automobile?
A. I don't know who he is.

The Court: Baron, he is talking about the person right there.

By Mr. Gallucio:
Q. The person, the Marine that was talking to Darryl Brown outside?
A. He was standing in the street.
Q. He was standing in the street?
A. Yes.
Q. Did you see Darryl Brown with a shotgun?
A. Yes.
Q. What was Darryl doing?
A. What was he doing with it?
Q. Yes.
A. I don't know, holding it.

Larry Gene Hollifield

page 223 } Q. Did he put it in the Marine's stomach?
A. No, he pointed it at him.
Q. Pointed it at him, at his stomach?
A. Yes.
Q. What did the Marine do?
A. Jumped back.
Q. Jumped back?
A. He stopped, then Fletcher hit him.
Q. Fletcher hit him?
A. Yes.
Q. Now, Fletcher got out of the passenger side. Did he walk directly up to him and hit him?
A. I think so. I don't know if Fletcher walked across the street to him.
Q. Walked?
A. The Marine was in the street. Fletcher was on one side, I was here, and Brown was here, and the Marine walked towards Brown. I was watching Brown, and Brown pulled the shotgun and Fletcher hit him.
Q. Was the Marine between Brown and Fletcher?
A. Yes.
Q. And Fletcher came up from the rear, his rear?
A. From his side.
page 224 } Q. Have you discussed this case with Darryl?
A. Darryl Brown?
Q. Yes.
A. No.
Q. Never?
A. No.
Q. Even all the time you have been together?
A. No.
Q. You testified in these matters?
A. (Nodding.)
Q. You never talked about it?
A. We don't discuss what happened.
Q. Having discussed it—
A. No.
Q. You talked to—did you talk a lot to the policemen and detectives?
A. Yes.
Q. How many times?
A. I talked to Mr. Light twice, two or three times.
Q. How about to—two or three times?
A. Falkner.
page 225 } Q. Falkner?

A. Falkner.

Q. How many times did you talk to him?

A. About twice, about the same time.

Q. Did he tell you more or less they had heard what happened?

A. Sir?

Q. What they had heard what happened?

A. I told him what I remember. They didn't say anything.

Q. You didn't say you did this or you did that? You did all the talking? They had no questioning?

A. They questioned me.

Q. I see. And have you been in Darryl Brown's company?

The Court: I think we better recess.

Gentlemen of the jury, we will recess now. Be governed by the same instructions given you before. I will ask you to get your coats and hats and leave the floor before anybody else does.

(Whereupon, at 12:30 p.m., the above-entitled matter recessed until 1:30 p.m., this same date.)

page 226 } AFTERNOON SESSION

1:30 p.m.

The Court: All right, call your witness.

Mr. Emrich: Mr. Hollifield was on the stand.

CROSS EXAMINATION (Cont'd.)

By Mr. Gallucio:

Q. Mr. Hollifield, is Darryl Brown — you know Darryl Brown?

A. Yes, sir.

Q. Do you know John Bisset?

A. James Bisset.

Q. James Bisset?

A. Yes, sir.

Q. Robert Angus?

A. Yes.

Q. John White?

A. Yes, sir.

Q. They are all friends of yours?

A. Yes.

Larry Gene Hollifield

Q. Were they all present this night one time or another during the course of the fight?
A. Bisset was.
Q. Bisset was?
A. Darryl was, that is all I remember.
Q. Do you remember testifying in a matter concerning this case at another time?
page 227 } A. Yes.
Q. When I was present?
A. Yes.
Q. Do you remember who were other witnesses there with you?

Mr. Emrich: In a courtroom or what?

By Mr. Gallucio:
Q. You testified in Court that day?
A. It was Doug Carsgale, Billy Rice, myself, Darryl Brown and a girl.
Q. John White was there?
A. No, sir.
Q. Was Jimmy Bisset there?
A. No, sir.
Q. Robert Angus there?
A. No, sir.
Q. Have you all, Robert Agness, Jimmy Bisset, John White, and Darryl and yourself, have you all discussed this case?
A. No, sir.
Q. You never talked about it?
A. No, sir.
page 228 } Q. Have you been out with these boys?
A. Yes, I have been with them—out with them a few times.
Q. You have been out with them a few times socially and you have never talked about the case about the fight?
A. We talked about the case, but we didn't talk about what happened.
Q. You talked about the case, but you didn't talk about what happened?
A. Yes, sir.
Q. This night in question, how hard was it raining?
A. Raining?
Q. Was it raining?
A. It might have been; I don't remember.

Larry Gene Hollifield

Q. Are there many street lights around there?
A. There was one. I forget—directly in front of the house or just to the side of it. There is one there.
Q. Are you sure there is good lighting?
A. There is fairly good lighting.
Q. Fairly good lighting?
A. (No response.)
Q. Did you ever discuss the fight with Billy Rice?
page 229 } A. No, sir.

Mr. Gallucio: No further questions.

RE-DIRECT EXAMINATION

By Mr. Emrich:
Q. Now, during cross-examination in response to a question Mr. Gallucio asked, I believe you stated you went to Miss Dobbs, you went in. How far did you get in?
A. Two steps in the doorway.
Q. You testified—did you get any farther than that in the doorway?
A. No, sir.
Q. Prior to October 15, 1966, what was the relationship between you and the defendant?
A. We were friends.
Q. You were friends?
A. Yes.
Q. All right. I believe you testified in response to a question by Mr. Gallucio on a prior occasion you made the statement and testified that you didn't have a shotgun on the evening of October 15. Why did you make that statement?
A. I didn't, it wasn't true.
Q. It wasn't true?
A. I did not testify I did see it earlier that evening.
page 230 } Q. Now—
A. I saw it that night; I didn't see it earlier in the evening.
Q. You saw it that night? On the occasion, did you see a shotgun at all this evening?
A. Yes.
Q. I am trying to clear it up.

Mr. Gallucio: Objection. Are you talking about this night in question?

Larry Gene Hollifield

The Court: I hope it is all about this night in question.
Mr. Gallucio: All right, fine.
Mr. Emrich: Maybe I am confused as to what—when Mr. Gallucio was cross-examining.

By Mr. Emrich:
Q. Did he ask you prior—you stated or testified or on this evening you didn't see the shotgun at any time?
A. In Court?
Q. In Court or out of Court?
A. Well, when I first talked to Mr. Light, I said I didn't.
Q. Keep your voice up.
page 231 } A. I first told Mr. Light that I didn't.
Q. You didn't?
A. I first told him that I didn't—Mr. Light I didn't see it.
Q. Why did you tell him that?
A. I didn't want to bring it up.
Q. Because—
A. Too much trouble.
Q. Trouble with who?
A. This, Court.
Q. How do you feel about the defendant?

Mr. Gallucio: Objection.
The Court: The reason he didn't bring it up, it was because of Court, you mean, in regard to the gun?

By Mr. Emrich:
Q. Do you know how the defendant would feel if you brought it up?
A. Yes.

Mr. Gallucio: Objection, that calls for an opinion of the witness.
Mr. Emrich: It is his state of mind in issue, your Honor.
page 232 } The Court: Objection overruled.

By Mr. Emrich:
Q. How do you think the defendant would feel if you brought it up?
A. He would be mad if I brought it up.
Q. Were you afraid of him?

A. Yes.

Mr. Emrich: I have no further questions, your Honor.

RE-CROSS EXAMINATION

By Mr. Gallucio:

Q. Now, with regard to one of the questions of the Commonwealth's attorney, did you say something about when you talked—you never talked to me outside the courtroom, have you?

A. No.

Q. Now, when did you say you stayed ten minutes about the party?

A. That was the first time.

Q. What?

A. The first time.

Q. You were in the party ten minutes? Are you through?

A. Yes.

* * * * *

page 248 }

* * * * *

Whereupon,

WILLIAM RICHARD RICE, was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. Would you state your name, please.

page 249 } A. William Richard Rice.

Q. And are you called "Billy"?

A. Yes, sir.

Q. Where do you live, Billy?

A. 5103 South 10th Street, Arlington.

Q. Do you know of the night Francis had a fight; that evening?

A. Yes, I do.

William Richard Rice

Q. What time—where did you see him?
A. Yes, I picked him up.
Q. Who was present when you picked him up?
A. Just Francis.
Q. What do you mean you picked him up?
A. I called him about 7:30, you know, we were invited by Ann Dobbs, and so, I said, you know, "Do you want to go?" He said, "Yes." I said, "I will be by about 8:00 o'clock." I went by his house.
Q. Were you driving or was he?
A. Yes, sir, I was driving.
Q. You were driving?
A. Yes, sir.
Q. You say you were invited by Ann Dobbs?
A. Yes, sir.
page 250 } Q. Approximately how long before this night and under what circumstances?
A. We were double dating—excuse me, at a dance at Legion Hall. He had a date with Ann Dobbs. I had a date with a girl, and then, in our presence in the car, she said that she was going to have a party, that it was open house for everyone. A few days afterwards, she said in school, she says, the people she was talking to, invited, she didn't offer, she was afraid the police might come and break it up.
Q. You have no doubt in your mind she invited you and Francis to this party?
A. No.
Q. When you picked up Francis Fletcher, when you went to his home, did you go inside?
A. Yes.
Q. Was anyone else inside?
A. No, sir.
Q. Just Francis Fletcher?
A. Yes, sir.
Q. Did you stay there very long?
A. No, sir.
Q. Did you leave together?
A. Yes, sir.
page 251 } Q. Where did you go?
A. We went straight to the party.
Q. Which party was that?
A. Ann Dobbs.
Q. Did you get into the party that evening?
A. Well, we walked in the door, we stayed for about five minutes. She *sayd,* would you mind coming back later.

William Richard Rice

Q. Who was with you?
A. Just Francis and me.
Q. Just Francis and you?
A. Yes.
Q. Do you know Darryl Brown?
A. Yes, sir.
Q. Was he with you at any time previously?
A. No, sir.
Q. Do you know Larry Hollifield?
A. Yes.
Q. Was he with you?
A. No, sir.
Q. Do you know Bob Angus, Robert Angus?
A. Yes, sir.
Q. Was he with you at any time?
A. No, sir.
page 252 } Q. Was he with you at any time previously in the evening?
A. No, sir.
Q. Do you know John White?
A. Yes, sir.
Q. Was he with you at any time previously in the evening?
A. No, sir.
Q. Now, when you got to the party, did you both actually get in the first time?
A. Yes.
Q. You stayed there how long?
A. Approximately, about five minutes.
Q. Did you talk to Ann Dobbs in the presence—
A. Yes, sir.
Q. —of Francis Fletcher?
A. Yes, sir.
Q. Was he there?
A. Yes.

Mr. Emrich: Your Honor, I think the witness should wait until the full question is asked.
The Court: Read the last question.

(Record read.)

By Mr. Gallucio:
Q. Now, what did Miss Dobbs say at that time at the party?

William Richard Rice

page 253 } A. She would appreciate us coming back later on in the evening. She wanted, you know—she wanted to ask the Marines to leave, because it was getting a little out of hand, you know, we obliged, we told her we will be back later on.

Q. Did you tell her anything or say anything else?

A. No, sir.

Q. With regard to the other people attending the party, how many were there at the party when you first arrived?

A. We just, you know, as you walk in the door, you have to go, you know, right to your right. You can't see anybody. It was in the far room. It is kind of like, you know, two separate rooms. There is a stairway in the middle. Actually, I didn't have an opportunity to see—there wasn't too many people. In fact, she told us when we left, this is the first time we knew, you tell them to come to the party. She needed more people. We told her we would if we saw anybody.

Q. When you left the party, where did you go?

A. We went—

Q. Strike—

The Court: He didn't answer the question.

Mr. Gallucio: I am sorry, strike the last question.

By Mr. Gallucio:

Q. At the party did you meet anyone else?

page 254 } A. The boy Doug Carsgale, and he went with us when we left the party the first time.

Q. Who all left the party with you?

A. Doug Carsgale and myself and Francis.

Q. Had you seen Darryl Brown and Larry Hollifield, or Robert White, or Robert Angus up to that time?

A. Yes.

Q. Where were they?

A. Sir?

Q. Had you seen them?

A. They were outside. They weren't in the party. They was just standing outside in a group. We didn't say anything to them. We just walked in the party.

Q. Now, when you, Francis, and Doug Carsgale left, where did you go?

A. We went to a boy's, Jimmy Hittle. He was out at a fraternity party.

Q. Did you all three go in?

A. Yes.

Q. Did Darryl Brown, Larry Hollifield, Robert Angus, John White or anyone leave with you and go in your automobile?

A. No, sir.

page 255 } Q. Did you ask them to go over to Jimmy Hittle?

A. No, sir.

Q. Now, how long did you stay there at Jimmy Hittle?

A. I guess approximately a good hour or so.

Q. Where did you go from there?

A. Well, we went to a 7/11 and Francis bought some beer. We rode to another—we went to a party that we heard about at the Four Mile Run Apartments. It was strictly for adults and we didn't know anybody, so we didn't stay.

Q. At that time was Darryl Brown, Larry Hollifield, Robert Angus, John White, and a boy by the—do you know a boy by the name of Bissett?

A. Yes, sir.

Q. Did you see him at any time—were they with you at any time up to this time?

A. No, sir.

Q. When you left the party at Four Mile Run Drive, where did you go to?

A. We went back to Ann Dobbs' party.

Q. Francis Fletcher had been with you all this time?

A. Yes, sir.

Q. From the first time you left his house, had you gone back to his house at any point since you left the—

page 256 } A. No, sir.

Q. —first time?

What happened after you arrived at Ann Dobbs the second time?

A. We went in and there was at that time when we were there a second time, there was a lot more people there.

Q. Approximately how many people were there?

A. I would say between twenty-five and thirty at the most.

Q. Go ahead.

A. And I started playing pool. I played two games of pool. I heard a commotion in the other room, and I walked in and a Marine grabbed Tommy Deuterman. We lived—I have known him about eight years. We were just like *others,* and I talked—he was so upset, he wouldn't tell me what was

wrong. I heard all the commotion. I just went back in the other room and said—everybody started leaving because Ann Dobbs' mother was breaking it up. Everybody started leaving, so we walked out. That is when all the commotion started.

Q. Do you remember talking to anyone outside?

A. Me, myself?

Q. Yes.

page 257 } A. No, sir.

Q. Did you see Tommy Deuterman outside?

A. Yes.

Q. Did you talk to him?

A. No. I just saw him getting ready to go in his car with a date, and they were double dating. I walked up to the car, but I didn't say anything.

Q. You say at this time all the commotion started?

A. Yes, sir.

Q. How long after that Deuterman got in his car and left did the fight start?

A. I would say about five minutes.

Q. About five minutes?

A. Yes, sir, within five minutes.

Q. Were you able to see Francis Fletcher when you went outside?

A. Yes, sir.

Q. Where did Francis go?

A. Well, he was talking to a Marine in the car. I don't know what they said. One of the Marines in the front seat said something to Francis, and Francis said something. The next thing I could see from the side, Francis had opened the door.

Q. Did you see the two Marines in the car?

page 258 } A. Yes, sir.

Q. Where were they?

A. One was in the front seat and one was in the back.

Q. What was the position of the Marine in the back seat?

A. He was leaning up against this—in the driver's side, you know, and the other side the window, and the other guy was talking to Francis, directly at him. He had a window rolled down and was talking to him.

Q. Who had the window down?

A. The Marine.

Q. In the front seat or the back seat?

A. Front seat.

William Richard Rice

Q. Could you see Francis clearly at this time?
A. Yes, sir.
Q. Did you ever see a shotgun in his hand?
A. No.
Q. If he had had a shotgun, would you have seen it in his hand?
A. Yes, sir.
Q. What did Francis do when he was talking to this Marine?
A. Well, one word lead to another. They was just talking and the boy having a conversation and Francis
page 259 } opened the door and got in with the Marines.
Q. Got in with both of them?
A. Yes, sir.
Q. I take it a fight took place?
A. Yes, sir.
Q. What happened to the Marine in the front seat?
A. Well, after I guess within two minutes or so, I went around to the driver's side, I opened the door, and he jumped out of the car. I didn't see any more after that, and this other guy said,—what did you say? And Francis asked the Marine, "What did you say?" Francis said, "I will show you what I said." "I will show you." And that is when he hit him. And then I was standing right at the door. I just watched them. So finally, Francis got out of the car.
Q. When you got over to the car, was the Marine in the back seat asleep?
A. No, sir.
Q. Did you ever get in that automobile?
A. No, sir.
Q. Then what happened?
A. Then this other guy—I don't know his name, but he approached Darryl Brown from the back of the
page 260 } car. At the time, I was, you know, I was still standing on the front door, and then I heard him, you know, say, "Slick Darryl'" he said for Darryl—to put him up against the car. He said, "You want to fight me?" He said, Darryl, "no, I don't want to fight anyone." That is when Francis walked up. "I am a man. Why don't you fight me." He hit him and knocked him down.
Q. Did you have a clear view of Darryl Brown?
A. Yes, sir.
Q. Did you have a shotgun? Did you see a shotgun in his hands?
A. No.

William Richard Rice

Q. If he had a shotgun, would you have seen it?
A. Yes, sir.
Q. Now, in the course of the evening, had Francis Fletcher been with you all evening up until this point?
A. Yes, sir.
Q. Had you ever seen him with a shotgun or near a shotgun?
A. No, sir.

Mr. Gallucio: No further questions.

CROSS EXAMINATION

By Mr. Emrich:
Q. How old are you?
page 261 } A. Twenty.
Q. How old?
A. Twenty.
Q. Are you a good friend of the defendant?
A. I have known him about ten years.
Q. Have you been a good friend for ten years?
A. No, sir.
Q. How long have you been a good friend?
A. I guess ever since last March, really.
Q. March of 1966?
A. Yes, sir.
Q. About six months before this incident happened?
A. Yes, sir.
Q. Now, you stated you picked up Francis at his house, is that correct?
A. Yes, sir.
Q. He was the only one there?
A. Yes, sir.
Q. Now, when was the first time you saw Darryl Brown that evening?
A. The first time I went to the party, they were outside.
Q. Outside?
A. Yes, sir.
page 262 } Q. What time was that?
A. I guess around 8:15. It took us fifteen minutes to get there.
Q. Did you see Larry Hollifield that evening?
A. Yes, sir.
Q. I am sorry.
A. Yes, sir.

William Richard Rice

Q. Where was he?
A. He was with Darryl Brown.
Q. Outside?
A. Yes, sir.
Q. Is it your testimony neither Larry Hollifield nor Darryl Brown had been with Francis Fletcher other than they were outside of the party and that Francis was outside?
A. Yes, sir.
Q. Who was with you, again, when you stopped at the 7/11 to buy beer?
A. The boy Doug Carsgale.
Q. How old is he?
A. I think he is seventeen.
Q. Where did you go when you got the beer?
A. We went with the beer to a party on Four Mile Run Towers.

page 263 } Q. Who drank the beer?
A. Francis.
Q. Only Francis?
A. Yes, sir.
Q. Are you sure of that?
A. Yes, sir.
Q. Now, the first time you went into the party, how far in did you actually get in the house?
A. We got to about the doorway. Ann Dobbs approached us.
Q. While you stood there for five minutes?
A. Yes, sir.
Q. You say that Darryl Brown and Larry Hollifield were not with you at that time?
A. No, sir.
Q. You didn't see the shotgun that night, did you?
A. No.
Q. Are you absolutely certain about that?
A. Yes, sir.
Q. How close to Darryl Brown were you when the third Marine came up to Darryl Brown?
A. I was at the door in the front seat. It was a two-door sedan.

page 264 } Q. You were at the door in the front?
A. Two door—at the front seat. Darryl was in the back.
Q. How far away? I don't know how big a car it was.
A. About fifteen, twenty feet; no more than twenty feet.

William Richard Rice

Q. From what direction—I assume the third Marine that was talking to Darryl Brown—where did Francis Fletcher come from?

A. He came—like the car was there, and he was in the middle between the car and the Marine. He was on the right-hand side of the Marine.

Q. Up here, say?

A. Yes, sir.

Q. Is it your testimony that Francis Fletcher said something before he hit him?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. What did he say?

A. He said, "I am not a punk, I am a man; you can fight me."

Q. What did he do, just hit him?

A. Yes, sir.

page 265 } Q. Did the Marine have his fists up like he was going to fight?

A. Yes, sir.

Q. Just like this (indicating)?

A. To Darryl Brown.

Q. Left one in front, right one in back?

A. He didn't have his defense up like you.

Q. Were his hands behind him?

A. No.

Q. Where were they?

A. The right on the side.

Q. Like this (indicating)?

A. Yes, sir.

Q. He was standing like this (indicating)?

A. Yes, sir.

Q. Francis Fletcher came up and hit him?

A. Yes, sir.

Q. How many times did he hit him?

A. One time.

Q. One time?

A. One time.

Q. That was it?

A. Yes.

page 266 } Q. Did he kick him?

A. I think he did—

Q. How many—

William Richard Rice

A. He kicked—
Q. How many times did he kick him?
A. I would say two or three times.
Q. Where did he kick him?
A. One time in the side and about two times in the face.
Q. On the side of the head?
A. (No response.)
Q. How hard did he kick him?
A. I can't tell you; I don't know, really.
Q. Give us a—
A. Hard.
Q. Did he kick him hard like that?
A. He had the same kind of shoes I have on.
Q. What kind of shoes do you have?
A. They are called Hush Puppies.
Q. Can you tell us how hard? Did he kick him like that?
A. Yes.

page 267 } Q. Hard?
A. I guess you would call that hard.
Q. I would call that pretty hard. He kicked him once or twice in the head?
A. Yes, sir.
Q. And the Marine was knocked down?
A. Yes, sir.
Q. It only took one punch from your friend here?
A. Yes, sir.
Q. Now, you said that the Marine in the back seat of the car had said something, is that correct?
A. Yes, sir.
Q. Where were you standing when he said this?
A. On the driver's side of the door.
Q. Was the window rolled down?
A. The door was open.
Q. The door was open?
A. I had it open.
Q. What did the Marine say to your good friend?
A. He said, "What did you say?" So Francis said, "I will show you what I said."
Q. What did he do, grab him and hit him like that?
A. Yes, sir.

page 268 } Q. He said, "What did you say?"?
A. He was evidently mouthing off to him.
Q. He didn't have the right to do that to your friend, did he?
A. I do know, I think I would have done the same thing.

William Richard Rice

Q. How many times did he hit him?
A. About once or twice.
Q. About two or three times?
A. No, sir.
Q. Are you sure about that?
A. No, sir—yes, sir.
Q. Are you sure about the Marine in the back seat said something before he was hit?
A. Yes, sir.
Q. Darryl Brown was how far away from you when the third Marine Baron came up to him?
A. I guess approximately fifteen or twenty feet.
Q. If I am the Marine, where was Darryl Brown?
A. Right in front of the Marine.
Q. Right in front of—
A. Face to face.
Q. You were over to the side?
A. Yes, sir.
Q. If Darryl had a gun, you could see the gun?
page 269 } A. Yes, sir.
Q. You didn't see any gun?
A. No, sir.
Q. Where did you go after the fight, or, pardon me, after the beatings?
A. After the fight?
Q. Where did you go?
A. We went to get something to eat. I took Francis home; I went on home.
Q. Did you go in the house?
A. No.
Q. Did you see a shotgun at that time?
A. No, sir.
Q. You are sure of that?
A. Yes, sir.
Q. Now, you left the party and came back a second time, is that correct?
A. Yes, sir.
Q. You went into the party?
A. Yes, sir.
Q. You an—your good friend, Francis, went—
A. Yes.
Q. —went to the party?
page 270 } A. Yes, sir.
Q. Where inside the recreation room did you go?

William Richard Rice

A. As soon as you go in the door, you have a door and behind it is the washroom. I would say it was a washing machine. All of a sudden, as you walk in are—is a pool table. You have to turn to the left. You go into another room and there they have a bar. They were sitting down drinking.

Q. When you went in the second time, you saw Deuterman?
A. Yes.
Q. Did Deuterman see you?
A. Yes, sir.
Q. Did he see Fletcher?
A. I don't know if he saw Fletcher.
Q. Where was Francis?
A. Yes.
Q. In the pool room?
A. Yes.
Q. Right next to the—
A. Yes, sir.
Q. How long were you in there?
A. I guess approximately half an hour or forty-five minutes, because I played two games.

page 271 } Q. Was your good friend with you?
A. Yes, sir.

Q. Next to you?
A. Yes, sir.
Q. Did you say anything to Ann Dobbs when you went in?
A. Yes, sir.
Q. Did she say anything to you?
A. Yes.
Q. Did she see your good friend, Francis?
A. Yes, I think as she walked in.
Q. Did you see Mrs. Dobbs that night?
A. No, sir.
Q. You didn't at all?
A. No, sir.
Q. Did you see all four Marines?
A. *YDs,* sir.
Q. Did all four Marines see you?
A. Yes, sir.
Q. Did all four Marines see your good friend?
A. Yes.
Q. Was Larry Hollifield inside the party?
A. No, sir.

Q. Darryl Brown?
page 272 } A. No, sir.

William Richard Rice

Q. Now, who was your girl friend that was at that party?

A. A good friend, you know, I have been dating off and on.

Q. What is her name?

A. Mary Olivier.

Q. Mary Olivier?

A. Yes.

Q. Did she see your good friend, Francis Fletcher?

A. No, sir.

Q. Were you with any girl?

A. No, sir.

Q. You were not?

A. No, sir.

Q. Is it your testimony that—who admitted you to the party on the first occasion?

A. On the first occasion that night?

Q. That night? Yes, that night?

A. Admitted us?

Q. Yes.

A. We had an invitation by Ann Dobbs.

Q. Who? Did somebody come to the door or did you walk right in?

page 273 } A. Walked right in.

Q. Walked right in?

A. She greeted us and she approached—

Q. She said come right in?

A. She told us to come back later on.

Q. How about the second time?

A. We just walked in. Nobody said—we are invited.

Q. Did Ann Dobbs say, "Don't come in."?

A. No, sir.

Q. When you were there for forty-five minutes?

A. No, sir.

Q. Did she talk to you?

A. She said, "Hello," but that was about it.

Q. You didn't carry on a conversation?

A. No, sir.

Q. Now, when Francis, your good friend, walked up to the car where the Marines were, he was on the passenger side in front?

A. Yes, sir.

Q. On the right front door?

A. Yes, sir.

Q. And where were you?
A. I was behind the car at that time.
page 274 } Q. You were behind the car?
A. Yes, sir.
Q. Could you see your good friend?
A. Yes, sir.
Q. You could?
A. Yes, sir.
Q. Could you see if anyone had anything in his hand?
A. Yes, sir.
Q. Did he have anything in his hand?
A. No, sir.
Q. There is no question about it?
A. No, sir.
Q. You said he was having a word with the Marine in the front seat of the car?
A. Yes, sir.
Q. What was he saying?
A. I can't tell you; I wasn't too close.
Q. He fought and beat the Marine?
A. He fought the Marine.
Q. Who took the first blow?
A. Francis opened the door and it was a little bit dark.
Q. You had an awful lot of trouble seeing what
page 275 } was going on?
A. In the car, yes, sir.
Q. You did testify that the Marine in the back seat said something to Francis?
A. Yes, sir.
Q. But it was a little bit dark, wasn't it?
A. Yes, sir.
Q. But you couldn't see who struck the first blow between your good, Francis?

Mr. Gallucio: If the Court please, this is about the fifth time he used the term "good friend" derogatively.
The Court: Refer to anybody's name.
Mr. Emrich: Yes, sir.
The Court: You can get a chance to argue the case later.
Mr. Emrich: Yes, sir.

By Mr. Emrich:
Q. You went to James Little's?
A. Yes, sir.
Q. Who went with you?

A. Francis, myself, and Doug Carsgale.
Q. Darryl Brown wasn't there?
A. No, sir.
page 276 } Q. Larry Hollifield wasn't there?
A. No, sir.
Q. Now, where was Tommy Deuterman when the Marine grabbed him?
A. He wasn't in the room, he was getting a drink. I saw the Marine grab him. That is when I walked in there.
Q. You say Tommy Deuterman grabbed him?
A. Yes, sir.
Q. Was it the red headed Marine?
A. Well, he is not in Court, I know that. I don't know if it was red, light blond, or brown hair. He hasn't been in here.
Q. What did the Marine say to him when he grabbed him?
A. I don't know, sir. He just—I don't know what went on.
Q. They didn't get into a fight?
A. No, sir. The Marine—
Q. I asked you a question.
A. Excuse me, go ahead, I am sorry.

Mr. Emrich: I have nothing further.
Mr. Gallucio: No questions.

* * * * *

page 277 }

* * * * *

Whereupon,

DOUGLAS CARGILL, was called as a witness and, after being first duly sworn, was examined and testified as follows:

The Court: Were you sworn?
The Witness: Yes, sir.

DIRECT EXAMINATION

By Mr. Gallucio:
Q. Would you state your name, please.
A. Douglas Cargill.
Q. Where do you live, Doug?
A. 4626 South 8th Street.

Douglas Cargill

Q. Do you recall an evening when Francis had a fight with three Marines?
A. Yes, sir.
Q. When is the first time you saw Francis that evening?
A. When he came to the party.
Q. Approximately what time was that?
A. 8:30, maybe 9:00 o'clock.
Q. You saw him when he came to the party?
A. Yes, sir.
Q. At that time — I assume you were all at the party?
page 278 } A. Yes, sir.
Q. How long had you been there?
A. About a half an hour.
Q. Now, did you go any place from the party?
A. Yes, sir.
Q. Where did you go?
A. We went over to another party, Jimmy Hittle's house.
Q. Who is "we"?
A. Francis, Billy Rice, and I.
Q. Was Darryl Brown, Larry Hollifield, Robert Angus, or John White, or Bisset, and a fellow by the name of Bisset, at any time with you?
A. No, sir.
Q. Did they come into the party with Francis or Billy Rice.
A. No, sir, not that I saw.
Q. When you left, did they leave with you?
A. No, sir.
Q. Did you go directly from the Dobbs' party to the Little party?
A. Yes, sir.
Q. Did you go to the Little party?
page 279 } A. Yes, sir.
Q. Did you see Darryl Brown, Larry Hollifield, Robert Angus, Bissett—Angus, Hollifield, Brown, Bisset, and White, did you see them at the Little party?
A. No, sir.
Q. How long did you stay at the Little party, approximately?
A. Approximately a half an hour to an hour.
Q. Did there come a time when you left that party?
A. Yes, sir.
Q. And who left the party with you?
A. Bill and Francis.
Q. When you left, where did you go?

Douglas Cargill

A. We went to the 7/11, and then we went to a party down on South Four Mile Run.

Q. Did you go into the party on the South Four Mile Run?

A. They were all older people. We went to it, and it was all older people.

Q. Speak up.

A. We didn't go because it was all older people.

Q. What did you do when you left there?

A. We went back to the Dobbs' house.

page 280 } Q. Did you all go in the Dobbs' party?

A. Yes, sir.

Q. Did you go in?

A. Yes, sir.

Q. Did Francis go in with you?

A. Yes, sir.

Q. Did Billy Rice go with you?

A. Yes, sir.

Q. Now, up to this point, had Darryl Brown, Larry Hollifield, Robert Angus, John White, or a fellow by the name of Bisset been with you at any time during the course of the evening?

A. No, sir.

Q. Did there come a time when you left the party?

A. Yes, sir.

Q. When Rice and Francis left?

A. Same time as I did.

Q. Did you walk out the front with them?

A. Not all the way out front, no, sir.

Q. What did you do?

A. I was talking to someone. They were talking a little bit ahead of me.

Q. When you got to the party the second time,

page 281 } approximately how many people were there?

A. Maybe fifteen, twenty, something like that.

Q. Did there come a time when you—after you had left and gone outside, did you notice some kind of a commotion or noise?

A. Yes, sir.

Q. What did you do?

A. I went to the front to see what was happening.

Q. What did you see?

A. Well, when I got out front, you know, I heard Francis and one of the Marines—I am not sure which one—talking and arguing, so Francis said, "If you want to pick on someone, pick on me." Then Francis hit him.

Q. Francis hit him?
A. Yes, sir.
Q. Now did you see Darryl Brown or Larry Hollifield out there?
A. No, sir.
Q. You didn't see them?
A. No.
Q. Did you see Bisset or Angus out there?
A. No, sir.
page 282 } Q. Did you see John White out there?
A. No, sir.
Q. There was a *fitht* you saw—you saw the fight outside the car?
A. Yes, sir.
Q. Did anyone have to pull Francis Fletcher off the Marine?
A. No, sir.
Q. Did he break off the fight himself?
A. Yes, sir.
Q. Then what happened?
A. Then we left.
Q. Who is "we"?
A. Bill, Francis, and I.
Q. Just you three?
A. Yes, sir.
Q. Whose automobile were you in?
A. Billy Rice's.
Q. Did Darryl Brown, Larry Hollifield, Robert Angus, Bisset, any of those boys go with you?
A. No, sir.

Mr. Gallucio: Your witness.

page 283 } CROSS EXAMINATION

By Mr. Emrich:
Q. How old are you?
A. Seventeen.
Q. How long have you known the defendant?
A. About five months.
Q. Five months from today?
A. No, sir, it was a couple of months before the fight happened.
Q. Were you a good friend at the time the fight occurred?
A. Yes, sir.

Douglas Cargill

Q. Are you still a good friend today?
A. Yes, sir.
Q. What did you get when you went to the 7/11?
A. Beer.
Q. Who drank the beer?
A. He did.
Q. Did you drink any beer with him that night?
A. Not of his, no, sir.
Q. I see. I say, did you drink any beer with him?
A. Yes, sir.
Q. I didn't hear you.
A. Yes, sir.
page 284 } Q. Where was that?
A. I drank at the party, and I drank a couple of cans.
Q. Did you drink any beer at his house?
A. No, sir.
Q. Are you sure of that?
A. No, sir.
Q. Do you recall testifying before Judge Cramer?
A. I say I did.
Q. Would you let me ask the question. Did you testify before Judge Cramer down in Juvenile Court?
A. Yes, sir.
Q. Do you recall testifying you were with Francis Fletcher that night drinking beer?
A. No, sir.
Q. You do not recall that?
A. I said one time. I said one time that I drank beer; at his house, I don't recall.
Q. You don't recall that at this time?
A. No, sir.
Q. Are you now denying it that you did not do that that night?
A. No, sir.
Q. You are not denying it?
page 285 } A. No, sir.
Q. Where did you go after the fight?
A. We went to a party.
Q. Who went?
A. Billy, Francis, and I.
Q. Did you go inside?
A. For a minute.
Q. For a minute?

Douglas Cargill

A. I can't—
Q. Did Billy go inside?
A. I think so.
Q. What did you do inside?
A. We talked inside, and then Billy and I went.
Q. What did you say?
A. We were watching Francis beat him. Excuse me, I want to rephrase that. Between the fight, we talked about the fight. All right.
Q. No, let's talk about what I want to talk about.

Mr. Gallucio: I don't want you to argue with him.
Mr. Emrich: I don't think it is within the scope—
The Court: He answered the question being asked.

By Mr. Emrich:
Q. You are saying there was a fight, is that correct?
A. Yes, sir.
page 286 } Q. Did you see the Marine throw a punch?
A. No, sir.
Q. He didn't throw any?
A. No, sir.
Q. Will you tell us exactly what you saw take place between the Marine and Francis Fletcher?
A. I saw Francis hit him, and the Marine—
Q. What is that?
A. He kicked him a couple more time.
Q. He kicked him?
A. He kicked him.
Q. How many times did he kick him?
A. Three or four.
Q. Where did he kick him?
A. In the head.
Q. I can't hear you.
A. In the head.
Q. How hard did he kick him?
A. I don't really know. I wasn't being kicked.
Q. You did see—
A. I say, I don't know, I wasn't the one being kicked.
Q. Can you tell us how hard?
page 287 } A. I imagine he kicked him pretty hard.
Q. Pretty hard?
A. Yes, sir.
Q. About as hard as he could kick him?
A. Maybe.

Q. When did Francis clean the blood off his shoes?
A. He couldn't.
Q. He couldn't?
A. No, sir. His shoes soaked into them like some kind of soft leather, like desert boots.
Q. You mean the blood soaked in the boots?
A. Yes.
Q. He tried to get it off and he couldn't?
A. No, sir, it left a stain.
Q. Now, did you see Francis inside that car?
A. No, sir.
Q. When you came out, was Francis talking to the Marine you testified he kicked in the head?
A. Yes, sir.
Q. Where were you when they were talking?
A. I was coming from the back.
Q. Back of what?
A. The house.
page 288 } Q. How far away from them were you when you heard this?
A. Five or ten yards.
Q. Five or ten yards?
A. Yes, sir.
Q. You heard what they said?
A. I said when I got closer, I heard what they said.
Q. What did they say?
A. The only thing I heard them say, "If you want to pick on somebody, pick on a man."
Q. Where was the Marine's hands?
A. On his sides.
Q. Just hanging like this (indicating)?
A. I guess so.
Q. Were you looking at Francis Fletcher?
A. I don't really know.
Q. You don't know?
A. No, sir.
Q. But you know the Marine was standing with his hands at his side and Francis Fletcher hit him?
A. Yes.
Q. And hit him again and again and again?
A. Yes, sir.
page 289 } Q. And then he kicked him?
A. Yes.
Q. Did you see Darryl Brown?
A. No, sir.

Douglas Cargill

Q. You didn't see him at all?
A. I saw him; I didn't see him out there then.
Q. Where did you see him?
A. I saw him at the back of the house the first time I was there.
Q. What time was that?
A. I don't really know.
Q. Is that the only time you saw him?
A. Yes, sir. Then I saw him later on after the fight had happened outside.
Q. Where did you see him then?
A. Out on the street.
Q. What was he doing?
A. He was just standing there.
Q. Did he have anything with him?
A. No, sir.
Q. Are you sure of that?
A. No, sir.
Q. Did you see Larry Hollifield there?
page 290 } A. Yes.
Q. Where was he?
A. The only time I saw Larry, he was in the back of the house, the entrance down to the basement.
Q. Where was Francis in relationship to Larry at this time?
A. Francis was downstairs in the basement.
Q. How long were you inside the house that night before the fight?
A. I would say maybe an hour all-told altogether.
Q. You went there one time and left and came back?
A. Yes, sir.
Q. How long were you there the first time?
A. About thirty minutes, maybe forty.
Q. Thirty or forty minutes?
A. Yes, sir.
Q. Were you inside the house at that time?
A. I was inside the house the whole time.
Q. Was Francis Fletcher inside the house with you?
A. He came later, about—see, when I met Francis and Billy there—
Q. You met Francis and Billy there?
A. Yes, sir.
page 291 } Q. Did they come in the house?
A. Yes, sir.

Douglas Cargill

Q. All the way in the house?
A. Yes, sir.
Q. Where were they in the house?
A. Where the pool table was.
Q. And about what time in the evening was this?
A. 8:30.
Q. And how long was Francis there?
A. He was just a few minutes.
Q. He was there a few minutes?
A. Yes.
Q. You were there for forty?
A. Yes, before he got there.
Q. Did you have a date that night?
A. No, sir.
Q. What was Francis doing while he was inside the house by the pool table?
A. Ann Dobbs came up to him and asked him to leave and come back later.
Q. She said that to you?
A. Leave now and come back in an hour or so.
page 293 } Q. What were you doing the rest of the time?
A. We were just there for a couple of minutes. He came back, he came up to him, he was the other—
Q. He just came to the door?
A. No, he was inside.
Q. Well, which is it? Was he inside or just at the door?
A. I said he was inside.
Q. By the pool table?
A. Yes, sir.
Q. When that—Ann Dobbs said to come back later?
A. Yes, sir.
Q. How long had you been there when Ann Dobbs came up and said to come back later?
A. A couple of minutes.
Q. What was he doing in that couple of minutes?
A. He was standing around talking.
Q. To whom was he talking?
A. I don't know.
Q. Where were you in relation to him?
A. I was in the other room. I heard somebody say his name, so I came back in there, and then Ann was talking to him, and then we left.
page 294 } Q. So far as you know, did the four Marines see him?

Douglas Cargill

A. Yes, sir, they were in shooting pool.
Q. Did Deuterman see him?
A. I don't really know.
Q. Did you see Deuterman?
A. Yes, sir.
Q. Where was he?
A. He was in the room where I was at.
Q. Did Francis go in that room?
A. No, sir, not the first time.
Q. All right. Then you left. Who did you leave with?
A. Billy and Francis.
Q. Keep your voice up.
A. Billy and Francis.
Q. Where did you go?
A. I went to Little's house.
Q. When did you get the beer at the 7/11?
A. After Little's.
Q. Then where did you go?
A. Out to South Four Mile Road to the party.
Q. Then where did you go?
A. Went over to Ann Dobbs' house.
Q. What time was that?
page 295 } A. I don't know, 9:30, 10:00 o'clock.
Q. 9:30 or 10:00 o'clock?
A. Yes, sir.
Q. What did you do that time?
A. We went back in, and there was a commotion going on and every—Ann said it was getting—she said everybody to leave and we started to leave.
Q. How long had you been there before she asked you to leave?
A. Maybe ten, fifteen minutes.
Q. What did you do in the ten or fifteen minutes?
A. I was—went back to another room and talked to a boy.
Q. Where was Francis Fletcher?
A. He was in the poolroom—at the pool table.
Q. Could you see him?
A. Yes.
Q. How do you know—
A. When I left, he was in there.
Q. When you came back, he was in there?
A. Yes, sir.
Q. Did the Marines see him at that time?
A. I guess they did.
page 296 } Q. Did Ann Dobbs see him?

Douglas Cargill

A. I guess so.
Q. Did Deuterman see him?
A. I don't know.
Q. Did you see Deuterman?
A. Yes, sir.
Q. Where was he?
A. He was in the room where I was.
Q. Did you leave when all the trouble started?
A. Yes, sir.
Q. Did you walk into the room—poolroom was?
A. Yes, sir.
Q. Where was Francis Fletcher when he talked to you?
A. I don't know. I didn't go through there right then.
Q. Where did you go?
A. I was standing in the other room.
Q. You were the last one to leave?
A. No, sir. Deuterman was the second to the last.
Q. I can't hear you.
A. There was a lot of people there.
Q. That isn't the answer—

The Court: Deuterman was the second to the last.

By Mr. Emrich:
Q. He left before you?
page 297 } A. Yes, sir.
Q. Did you see Mrs. Dobbs that night?
A. Yes, sir.
Q. Was she there when you were?
A. Not the whole time. She wasn't there, she would come and go back across the street.
Q. Did she come into the party?
A. Yes, sir.
Q. Did she come in when Francis Fletcher was there?
A. I don't believe so.
Q. When did she come in?
A. She was there when I was there the first time. She would come and stay a couple of minutes and leave again.
Q. Was that the last time you saw her?
A. Yes, sir, I believe so. I believe I saw her outside that night; I am not sure, though.
Q. When you walked out and saw Francis Fletcher hit the Marine and then kick him, where was Billy Rice?
A. Billy Rice was standing over there by him.
Q. By whom?

Douglas Cargill

A. Francis.

Q. How close was he to him?

page 298 } A. Maybe a couple of feet.

Q. Maybe a couple of feet?

A. Yes, sir.

Q. Was he between the Marine and Francis Fletcher?

A. No, sir.

Q. If I am the Marine and Francis Fletcher is some place over here, where was Billy Rice?

A. He was over on this side.

Q. Over here?

A. Yes, sir.

Q. A few feet away?

A. Yes.

Q. Where was Darryl Brown?

A. I don't know; I didn't see him.

Q. Did you see him that night?

A. (No response.)

Q. Where was he—when did you see him in relationship to this fight between Francis Fletcher and the third Marine?

A. Afterwards.

Q. How much afterwards?

A. About five minutes.

Q. Where was he standing?

A. He was down the street.

page 299 } Q. How did he leave the area, the fight?

A. I don't know.

Q. He didn't leave with you?

A. No, sir.

Q. Did you see a sawed off shotgun that night?

A. No, sir.

Q. Did you see anything that looked like one?

A. No, sir.

Q. Are you sure of that?

A. I am positive.

Q. Did you hear Francis say anything about the sawed off shotgun that night?

A. No, sir.

Q. Did you hear anybody in his presence say anything about a sawed off shotgun?

A. I heard there, you know, something around—that somebody had a shotgun. I didn't see one; I didn't hear Francis talk of one. I didn't see Darryl Brown.

Q. Is that the night you heard about a sawed off shotgun?

A. Yes, sir.

Douglas Cargill

Q. Before the fight between Francis Fletcher or the third Marine or after?

A. Afterwards.

page 300 } Q. Afterwards?

A. Yes, sir.

Q. Who said that?

A. I don't know.

Q. Now, what did Francis Fletcher say after about the fight, after you, Billy Rice, and he went back to his house?

A. I don't remember.

Q. I can't hear you.

A. I don't remember.

Q. Did you say anything?

A. I told him he beat—

Q. I can't hear you.

A. I think he beat him pretty bad.

Q. What did Billy Rice say?

A. I don't remember.

Q. What did Francis say about the Marines in the car that he beat?

A. He didn't.

Q. I can't hear you.

A. Not to me, he didn't.

Q. He didn't say anything?

A. Maybe a couple of days later, but the only thing I saw, you know, just that one fight where he had the

page 301 } Marine outside the car.

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page 308 }

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Mr. Gallucio: If it please the Court, with regard to all the instructions, I am going to reserve my objections and exceptions, that they are not admissible under the proof and the indictment.

* * * * *

page 325 }

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Mr. Gallucio: The Court will note my objection to the granting of No. 9.

The Court: Yes.

Mr. Gallucio: On the ground one is technical—technically used in the instruction, and, two, that it does not go into malicious as a matter of fact.

* * * * *

page 337 }

* * * * *

It might be that this defendant is on the street and one of you may be in an automobile accident with him,
page 338 } and there may be an offense at that time and he decides our heads are going to be kicked—

Mr. Gallucio: I object. This line is purely speculative and prejudicial.

The Court: Objection overruled.

Mr. Emrich: He may decide whether it is an offense and we may not be luck as Marine Baron who just had a permanent scar on his head.

* * * * *

page 344 }

* * * * *

Somebody came to the door and said something. As a result of this the defendant, this man here, who announced he was a man after he kicked a man who was down on the ground three times in the head. This man, armed with a shotgun, sawed off shotgun, went to the scene apparently where there were two Marines in the car; one in the front seat and one in the back seat. * * *

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page 345 }

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* * * You don't mess around with Francis Fletcher. He has certain rights the rest of us don't have. He can
page 346 } come before the population of the county, "Don't mess with me or you are going to be in trouble. I am a big man. I am Francis Fletcher." * * *

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page 350 }

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* * * It is interesting to note that a twenty-year old boy has a great deal of admiration for a twenty-three year old man who can knock a man down who has not been looking at him, one blow of his fist. * * *

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page 351 }

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* * * If, gentlemen, this is a demonstration of the men living in Arlington County, I think we can do without it. He is nothing but a coward, this man was on the ground, he isn't moving. He had to come out to demonstrate to his teenage friends how tough he is. He kicked him as hard as he could two or three times. There is a man for you. Now, that is really a man. We need protection from men like that.

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page 352 }

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* * * It is not unsubstantiated with the Commonwealth except the shotgun, whether or not Darryl Brown and Larry Hollifield were present and when they were present and where they were present. * * *

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page 353 }

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* * * The Commonwealth is saying to you gentlemen of the jury, a man like this who is out in the street is going to kill somebody some day. I don't think there can be any doubt about that from the evidence of this case. Only by the grace of God the Marine Baron wasn't killed, being kicked in the head, maybe not this time, but next time. Society has a right to protect itself. We don't have to prove our case beyond all reasonable doubt, we have to prove our case beyond a reasonable doubt. We don't have to allow people like him to be in the street. We want you to dis-
page 354 } charge your duty to see that it doesn't continue. I don't know who the next one will be if this man is out in the street. I do know and I respectfully submit that there has been malice demonstrated in the case, and it is a demonstration of this man's personality. It wasn't a one shot thing. People don't do this on a one-shot affair. This man is a dangerous man. When you begin your deliberations, I respectfully ask you to keep that in mind. The Commonwealth is asking you to bring in a verdict on both indictments of felonious assault.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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