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Clerk's Supreme Court of Appeals
Richmond, Virginia

Record No. 6961

In the Supreme Court of Appeals of Virginia at Richmond

JARETTE ARLO DEAN

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKINGHAM 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 4:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6961

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 23rd day of April, 1968.

JARETTE ARLO DEAN, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Rockingham County
Hamilton H. Haas, Judge

Upon the petition of Jarette Arlon Dean a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Rockingham County on the 10th day of April, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

* * * * *

This 17th day of July, 1968, personally appeared before the undersigned Notary Public JARETTE ARLO DEAN, who being first duly sworn made oath that he is unable to pay or secure to be paid the costs of printing the record in his case now pending before the Supreme Court of Appeals of Virginia.

JARETTE ARLO DEAN

Recd. 6-12-68. H. G. T.

* * * * *

The undersigned Judge certifies that after investigating he is of the opinion that Jarette Arlo Dean is unable to pay or secure to be paid the costs of printing the record in the case of Jarette Arlo Dean v. Commonwealth now pending on appeal before the Supreme Court of Appeals of Virginia.

Given under my hand this 10th day of June, 1968.

HAMILTON H. HAAS, Judge

Recd. 6-12-68. H. G. T.

* * * * *

RECORD

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* * * * *

In The Circuit Court of Rockingham County, October Term, 1966

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, now attending the Circuit Court of the said County, upon their oaths present that Jarette Arlo Dean, on or about the 20th day of February, 1966, in the County aforesaid, feloniously did kill and murder one Larry Elwood Lam, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of W. B. Wilmore, Jr., witness sworn in open court and sent to the Grand Jury to give evidence.

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MOTIONS

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Comes now the accused by counsel and moves the Court as follows:

1) That the Attorney for the Commonwealth be required to file a bill of particulars stating the following:

(a) The means by which the accused allegedly killed and murdered Larry Elwood Lam.

(b) The actions of the accused which the Commonwealth will rely upon to establish any criminal liability.

2) That at the beginning of the trial the accused by his counsel be permitted to examine each prospective juror individually and out of the presence of the other prospective members.

3) That the members of the jury be kept together during the trial and all recesses including overnight recesses.

4) That counsel for the accused have examined the list of proposed jurors and find that several prospective members reside within an area of two miles from the place where the alleged murder was supposed to have been com-
page 23 } mitted. That the accused does now and will at the time of the trial object to service by any person as a juror who lives within such area.

JARETTE ARLO DEAN
By Counsel

Filed in the Clerk's Office Rockingham County, Va. Feb. 27, 1967. GEORGE W. KEMPER, Clerk

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Proposed Questions on *Voir Dire*

1. Have you ever served as a juror in criminal cases previous to being on the present panel?

2. Do you know anything about the facts of this case except what you have heard in court today?

3. Have you read any newspaper accounts of this case?

4. From the accounts you have read in the newspapers of this case have you formed or expressed any opinion as to the merits of the case?

5. Have you formed any opinion as to the guilt or innocence of the defendant?

6. Have you any impression or opinion as to the merits of this case?

7. If you have formed an opinion as to the guilt or innocence of the defendant would it require evidence to change or remove the opinion you entertain?

8. If you are sworn as a juror would you lay aside any opinion you may now have and act solely upon the evidence introduced here and the instruction of the court?

9. Do you understand that under the law the defendant is not required to prove his innocence in this case but that it is the duty of the State to prove his guilt beyond a reasonable doubt?

page 25 } 10. Would you render a verdict in this case according to the law and the evidence and not allow the fear of criticism from any source to influence your verdict?

11. Would your verdict be based solely on the evidence and instructions on the law given you by the court and not be influenced by any other matter or thing?

12. Would you give the defendant the benefit of your individual opinion in arriving at your verdict in this case?

13. Would you allow the fact that a considerable number of jurors were voting differently than you were to influence you to change your verdict for that reason alone?

14. The defendant is presumed to be innocent under the law until he is found guilty. Would you give him the benefit of that presumption in considering the evidence in this case and find him not guilty unless you are satisfied of his guilt beyond a reasonable doubt?

15. If you have a reasonable doubt as to the guilt or innocence of the defendant, will you give him the benefit of that doubt and find him not guilty?

16. Do you understand that you must follow the instructions in this case as to the law given you by the court whether you believe them to be the law or not and irrespective of whether you believe the law as declared by them to be wise or unwise or good or bad?

page 26 } 17. If you are sworn as a juror to try this case

could you and would you give the defendant a fair and impartial trial?

18. Have you ever been interested in a murder case in which some member of your family, relative, or close friend has been killed?

19. Did you know Larry Lam in his life time, or any member of his family?

Those questions lined out denied and exception taken to such ruling.

3-6-67. H. H.

* * * * *

(Note: Questions Nos. 9, 12, 14, 18 and 19 were lined out.)

3-6-67. H. H.

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IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, March 22, 1967.

* * * * *

This day came the attorney for the commonwealth, James R. Sipe, and William A. Julias, attorney, also on behalf of the commonwealth, and the accused, Jarette Arlo Dean, came pursuant to his recognizance and by his self-employed counsel, J. Lynn Lucas and Donald D. Litten. And it being made to appear to the Court that the accused, Jarette Arlo Dean, was seventeen years of age at the time of the offense charged in the indictment, and a report as to the physical, mental, and social condition and personality of the accused, and the facts and circumstances surrounding the violation of the law which is the cause of his being before this court, heretofore made and submitted to the County Court of this County, having this day been made available to this court, and the court having considered the said report, on the motion of the attorney for the commonwealth it is ordered that the said Jarette Arlo Dean be tried as an adult offender.

Thereupon, the said accused was arraigned on the indictment, and after consulting with his said counsel, tendered a plea of not guilty.

Whereupon, the accused, by counsel, moved the court for the suppression of a confession made by said accused, and after hearing evidence and argument on said motion, the court overruled the same, to which action said accused, by counsel, excepted.

And from persons summoned by the sheriff of this county under writs of *venire facias,* twenty persons were examined by the court and found duly qualified and free from exception; and a list containing the names of said twenty persons was handed to the attorneys for the commonwealth and the accused, who each alternately struck therefrom the names of four persons, and the remaining twelve, namely:

page 39 } Kermit H. Rhodes, Ivan L. Will, Lloyd K. Hoover, James F. Edwards, Charles W. Wampler, Jr., Dwight H. Jordan, George Abbott, Robert Gilmer, W. Stanley Evers, James N. Jefferson, George F. Roberts, and A. P. Liskey, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the defendant at the bar and a true verdict render according to the law and the evidence.

Counsel for the accused then moved the court that the jury herein be kept together and segregated from others at all times during the trial of this case, which motion the court granted, and George R. Price, G. M. Wilcox, M. D. Baker, and G. W. Moyers, Deputies for A. L. Strawderman, Sheriff of this County, were sworn to keep the members of this jury together or segregated from others at all times during the trial of this case, particularly during a recess or whenever out of the presence of this court, and to allow none of said jurors to hold communication with outsiders nor to hold any communication with them other than in attending to their necessities.

The Court then proceeded with the hearing of the evidence herein, and having heard the evidence on behalf of the commonwealth thereupon, the accused, by counsel, moved the court to strike said evidence, and, further, said accused, by counsel, renewed his motion to suppress a confession made by said accused, both of which said motions the court overruled, to which action of the court in overruling said motions the accused, by counsel, excepted. And having heard a portion of the evidence on behalf of the accused, further proceedings in this case were continued until tomorrow morning, March 23, at nine-thirty o'clock.

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IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, March 23, 1967.

* * * * *

This day came again the attorneys for the commonwealth, and the accused, Jarette Arlo Dean, came pursuant to his recognizance and by his self-employed counsel, J. Lynn Lucas and Donald D. Litten; and the jury impanelled and sworn for the trial of this case came pursuant to adjournment; and having completed the hearing of the evidence herein, thereupon, the accused, by counsel, renewed his motion to strike the evidence on grounds heretofore stated or assigned, which motion the court overruled, and said accused, by counsel, excepted thereto. And having received the instructions of the court and heard the argument of counsel, the jurors retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "March 23, 1967. We find the defendant, Jarette Arlo Dean, guilty of voluntary manslaughter as charged in the indictment, and fix his punishment at confinement in the penitentiary for five years. (signed) Chas. W. Wampler, Jr., foreman." Thereupon, the accused, by counsel, moved the court to set aside the verdict of the jury on the ground that said verdict is contrary to the law and the evidence; and the court fixed the 10th day of April, 1967, at 2:00 p.m. for argument on said motion. The accused was thereupon committed to jail to await the further action of this court herein.

* * * * *

page 56 } March 23, 1967

We find the defendant Jarette Arlo Dean guilty of voluntary manslaughter as charged in the indictment and fix his punishment at confinement in the penitentiary for five years.

Chas. W. Wampler, Jr., foreman

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* * * * *

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, April 10, 1967.

* * * * *

This day came again the attorney for the commonwealth, and the accused, Jarette Arlo Dean, came in the custody of the sheriff of this county and by one of his counsel of record, Donald D. Litten. And the Court having heard the argument of counsel on the motion to set aside the verdict of the jury, made at a former day of the term, and having considered said motion, overruled the same; to which action of the court, the accused, by counsel, excepted. And it being required of said accused if anything he had or knew to say why the court should not pronounce sentence on him in accordance with the verdict of the jury herein, and nothing being offered or alleged in delay thereof, it is therefore considered by the court that the commonwealth recover of the said Jarette Arlo Dean the costs incident to this prosecution, and that he be confined in the penitentiary of this state for the term of five (5) years at hard labor in accordance with the verdict of the jury. Thereupon, said accused, by counsel, moved the court to suspend execution of said sentence for a period of sixty (60) days in order to afford said accused opportunity to apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of this court, which motion was granted. Said accused, by counsel, further moved the court that he be admitted to bail pending such application for a writ of error, which motion the court overruled, to which action of the court, said accused, by counsel, excepted. And said accused was remanded to jail.

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It appearing to the Court this 3rd day of May, 1967, that the defendant Jarette Arlo Dean intends to seek an appeal from the judgment of conviction of this Court and is financially unable to pay the expense of a copy of the transcript

of the evidence necessary for such appeal, it is Ordered that the evidence presented at this trial be transcribed for such appeal and the cost therefor paid by the Commonwealth;

The Court doth further certify that the defendant Jarette Arlo Dean is financially unable to pay his attorney's fees, costs and expenses incident to an appeal and the Court doth appoint Donald D. Litten and J. Lynn Lucas as counsel for the accused in connection with such appeal.

ENTER: H. H.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * * *

Counsel for Jarette Arlo Dean, the defendant in the above styled case, gives notice of appeal from the order of final judgment entered herein April 10, 1967, and sets forth the following assignment of errors.

1. The Court erred in its denial of defendant's motion to propound the questions identified in the record as Numbers 9, 12, 14, *15,* 18 and 19 to the prospective jurors and in its denial of the motion for individual and independent examination of such prospective jurors out of the presence of the other prospective members.

2. The Court erred in admitting the in-custody confession of defendant obtained from him in violation of his constitutionally guaranteed rights.

3. The Court erred in admitting as evidence and allowing comment by the Commonwealth's Attorney upon testimony that at the trial of another person the defendant had declined to testify by assertion of his constitutionally guaranteed protection against possible self-incrimination.

page 60 } 4. The Court erred in refusing to strike the evidence of the Commonwealth and in denying defend-

ant's motion to set aside the verdict because of insufficient evidence.

DONALD D. LITTEN
306 First National Bank Building
Harrisonburg, Virginia

J. LYNN LUCAS
Lucas Building
Luray, Virginia

Counsel for Defendant

Filed in the Clerk's Office Rockingham County, Va. May 19-1967. GEORGE W. KEMPER, Clerk

* * * * *

Pre-trial conference on above matter, held on March 6, 1967, before Honoroble Hamilton H. Haas, Judge.

* * * * *

page 1 } Court: For the purpose of the record in the case of the Commonwealth of Virginia vs. Jarette Arlo Dean who is charged under an indictment in the Circuit Court of Rockingham County with the crime of murder, which case is set for trial on the 22nd day of March, 1967, it can be shown that on this the 6th day of March, 1967, a pre-trial conference in the case was held in the chambers of the Court with the accused Dean in person present together with Mr. Donald Litten of counsel for the defense, together with Mr. James R. Sipe, the Attorney for the Commonwealth. The conference was set up primarily for the purpose of expediting the trial of the case at the time the venire is to be assembled and one of the first questions to be discussed and presented is the matter of the examination of the prospective jurors on their *voir dire*. In response to the suggestion of the Court, counsel for the Defense has laid before the Court a list of 19 numbered inquiries to make of the prospective jurors in the Dean case. I don't know if it is the purpose now, or will be the purpose of the defense counsel to follow the thought initially suggested to have the jurors, or prospective jurors, examined in their *voir dire* individually, each juror apart from the others. I'm not aware of any authority to support such procedure and the Court does not look with

favor upon the idea, primarily because it consumes a tremendous amount of time, most of which is wasted.

page 2 } This Court doesn't see any reason why a complete and thorough and adequate examination of the prospective jurors on their qualifications cannot be conducted in the customary and usual practice of this Court, namely the examination of the jurors in a group examination by the Court with further opportunity afforded the prosecution as well as the defense to submit further questions dealing with the qualifications of the panel and freedom from bias or prejudice. Most of these questions would seem to be reasonably acceptable with some few exceptions and in order to save time in that connection the Court would say that no objection has been interposed by the prosecutor and the Court does not raise any of its own as to the first eight questions on the list submitted, which incidentally will be initialed by the Court for identification bearing also the date label of March 6. But beginning with listed question no. 9, "Do you understand that under the law the defendant is not required to prove his innocence in this case, but that it is the duty of the State to prove his guilt beyond a reasonable doubt?" While the Court does not have any tremendous objection to this inquiry again this is merely time consuming and covers a point that will ultimately be adequately covered during the course of the trial of the case with instructions dealing with that particular point of law and the

page 3 } Court does not see any point at this stage in having a preliminary run, you might say, or preliminary charge to the jury on substance and principles of law that will of course be ultimately included in the instructions to be given to the jury. The Court is open to further persuasion if the defense has any authority to support the inquiry on the *voir dire* or any further argument to support the question on the manner of the *voir dire,* the Court would like to have the benefit of it.

Mr. Litten: Question no. 9 impresses upon the jury a concept of law and that is that the defendant is presumed to be innocent. It may well be that a prospective juror is unfamiliar with this concept or that he is not in sympathy with it. I think the statutes in Virginia are broad enough to allow the questioning—Section 8-199 as amended allows counsel to ask the jurors directly any relevant question to ascertain whether or not the juror is related to either party, has any interest in the case, has expressed or formed any opinion or is sensible of any bias or prejudice. Now certainly if a juror was not in sympathy with the concept of law, the presumption of innocence, and the requirement of proof beyond a

reasonable doubt, he would be biased, and he would be biased in favor of the State and against the defendant. One other point, the matter of independent examination of the jurors, counsel for the defendant says that
page 4 } —and I hope that the Commonwealth's Attorney agrees, that this is an unusual case and has aroused a considerable amount of public speculation and gossip; one person who was with the defendant, allegedly, at the time that the alleged offense was committed, has already been tried in this Court which resulted in more talk and speculation, and under these circumstances on the charge of homicide, a capital offense, we think it is proper to make every effort to secure a fair and unbiased jury. I think I can vouch to the Court that even if all of these proposed questions are asked of each juror independently, that the amount of time consumed would not exceed two hours.

Court: I might say further that as far as the Court is concerned the eight questions would not normally be asked but in the absence of any objection and the thought that this can be covered without any undue consumption of time, why the Court will not of its own motion deny the opportunity to propound the first eight questions. It might further be pointed out that the Court's looking on question 9 with some disfavor is the result of the fact that a later question included in this series of inquiries on the *voir dire* propounds to the jurors whether or not they understand that they must follow the instructions in the case as to the law, given by the Court, whether the jurors believe them to be the law or
page 5 } not and irrespective of whether or not the juror believes that the law is wise or unwise, good or bad. That inquiry I think should be adequate to remove any possible theory of objection to the qualification of the prospective jurors without pursuing the inquiry in any further detail. The next question that the Court feels would be improper to ask is the question no. 12 "Would you give the defendant the benefit of your individual opinion in arriving at your verdict in this case?" The Court's hesitancy in looking with any favor upon that question is the fact that it is so phrased and couched as to lend some uncertainty in the real subject of the inquiry and that is the primary purpose in the Courts refusing to permit the question to be asked. It's being recognized that an individual opinion might well be reversed or persuaded to the contrary by good, logical, reasonable persuasion from the lips of fellow jurors and if that be true and the individual initially was in the minority he would still be giving the defendant the benefit of his individual opinion be-

cause conceivably that situation might well arise but to put the question in the language that it is put would suggest to the juror that he is supposed to hang on to his individual opinion to the exclusion of any reason or persuasion or logic that may be laid before him in deliberation by his fellow jurors. The hide bound rule of suggesting to a juror that he page 6 } should not surrender his sound opinion just merely to agree with his fellow jurors would be considerably damaged by creating the impression from this question that he should never surrender his opinion in resolving the verdict that he would come to individually. And of course the law does not contemplate that a man shall be immune to persuasion or that he should turn a deaf ear to somebody with a differing judgment. So for that reason I think the framing of the question is such as to suggest improper responsibility of the jurors.

Mr. Litten: We say that No. 12 again goes to a fundamental point of our law and that is under the jury system each person is supposed to bring with him into a jury room his own individual opinion as to the guilt or innocence of the accused based on the instructions and based on the evidence that he has heard and he is not supposed to function as a member of a committee and simply because his viewpoint might be in the minority or might even be a minority of one, he is not supposed to surrender that viewpoint simply because other people might be differently inclined. Further, he is supposed to use his individual judgment in this State, in the matter of punishment, should a verdict of guilty be obtained and not allow any sort of quotent arrangement to take place. And unless he understands this and unless he is made aware of this at the beginning of the trial the importance of it is apt to page 7 } be submerged at the conclusion. Certainly the question again under our Statute is proper, to determine whether or not he is disinterested and whether or not he will render a fair and impartial verdict.

Court: The Court might make this further observation—that the primary or real meat of the objection of the defense to the Court's ruling on that question 12 is granted by the following question 13 which publicly asks the prospective juror "Would you allow the fact that a number of jurors voted differently, would that influence you to change your verdict for that reason alone?" That question the Court has seen fit to retain in the list of questions to be propounded and inquiry 13 should certainly cure any possible harm that would arise from the omission of no. 12. The next question that the Court has seen fit to look upon with disfavor is 14 and I think

I will take 15 too, because they both deal with instructions of law on the principal of presumption of innocence and burden of proof. Again the Court would hesitate to proceed with instructing the venire on the law of the case when it has not even been determined which members of the venire will comprise the jury for the case. The selection of the jury will ultimately be made and at the appropriate and proper time those jurymen will be adequately instructed on the law of the case. Question 14 in substance asks the prospective juror whether he would abide by the law of the case as instructed

page 8 } by the Court and the same with No. 15 and actually suggests that the prospective juror would deliberately violate his oath which ultimately will be administered to him. Once he has been selected he will be duly sworn to well and truly try the case according to the law and the evidence and that is exactly what it means, that they will decide according to the evidence in the case and according to the law embodied in the official instructions of the Trial Court. So to ask those questions at this stage seems to me would be doing nothing more than laying excessive emphasis on those particular principles of law. There is no more reason why that question should be asked at the *voir dire* stage of the selection of the jury than there would be for the defense to offer half a dozen instructions on presumption of innocence, or another half dozen instructions on the burden of proof. I don't think any Court would permit it, I don't think any Appellate Court would ever charge the Trial Court with error for denying a repeated statement of the same principle of law. So for those reasons, unless the Court is otherwise persuaded, the numbered inquiries 14 and 15 will not be permitted to be asked.

Mr. Litten: The purpose of questions 14 and 15 is to ascertain whether or not the prospective jurors will consider and give weight to the fundamental concept of presumption of innocence and requirement of proof *behond* a

page 9 } reasonable doubt. Conceivably a juror could be opposed to either or both of these concepts. If they are opposed, even after they have been given the oath and have been instructed in the case, nevertheless, at least subconsciously their opposition to these concepts would react against the defendant. These are not intended to be instructions to the jury, but they are intended to ascertain whether or not the jurors will give weight to established concepts of law.

Court: The Court will adhere to its view that it is not persuaded that either inquiry 14 or 15 is a proper inquiry on the *voir dire* of the prospective jurors. The next numbered ques-

tion, No. 18, which is in effect an inquiry as to whether or not any of the prospective jurors have ever been interested in a murder case in which some member of the family of the juror, or relative or close friend, had been killed. The Court does not look with favor on the propounding of that inquiry because it would again be uselessly time consuming and does not reflect any, would not reflect any qualification of a prospective juror whether he had been concerned with a previous murder case or not, as long as it had no connection or bearing with the case at bar. But the Court will invite further opportunity to be persuaded against that judgment.

Mr. Litten: Question 18 is intended as a preliminary question. Should a prospective member of the jury

page 10 } answer in the affirmative, that is that some member of the family or close friend had been killed, the next question probably would be whether or not that fact by itself would tend to bias the prospective juror against the defendant in this murder case. It is quite possible that a prospective member of the jury may have some subconscious prejudice against any defendant in any murder case which could be flushed to the surface by the asking of question no. 18 and made apparent by a follow up question. The question by itself, admittedly, if it were answered in the affirmative, would probably not be grounds to discharge the juror for cause, but should he answer the next question, that is whether or not this fact would bias him, should he answer this question in the affirmative certainly it would.

Court: Of course in answer to that I might say that that question can be propounded to the jurors and usually is propounded in the general inquiry made by the presiding Judge as to the qualifications of the jurors and invites any disclosure from any juror that he feels might in any way affect his ability to sit impartially on the trial of the case. But even if there conceivably would be a situation where a prospective juror had some connection with a person who has been the victim of a homicide, the affirmative answer to that inquiry would in no way affect the qualifications of the juror

page 11 } merely because he knew somebody else, was a friend of somebody else who had been killed in some other case of a homicide. It can be also pointed out that to permit an unlimited exploration of the prospective jurors on their qualifications results in such deplorable manifestations of endless time spent in the preparation of the trial of a criminal prosecution, particularly cases of notoriety, we frequently read in newspapers that weeks and weeks and sometimes months have been consumed in the selection of a

jury. According to our rules of procedure in this Commonwealth to have such an experience as that seems incredible and it could only take place by permitting exploration and examination well and way beyond the limits of proper examination on the qualifications of the jurors. That is my main purpose in taking the position that I am taking. I don't know of any principle, or precedent of rule accepted in this jurisdiction that would encourage endless inquiries into the qualifications of a jury. In the end, the inquiry should be directed to show the disqualification for cause, that is the purpose of the *voir dire* examination, disqualification for cause. The opportunity to explore into the freedom of the prospective jurors from any such objection as that or at least the opportunity to determine whether or not there are any well founded objections on the ground of bias or interest is afforded well
page 12 } in advance of the trial of any criminal case and then on the assembling of the prospective jurors those matters that have been discovered by preliminary investigation where it has been learned for this reason or that A,B, C or D as members of the *venire* should be required to stand aside because of some discovered bias or prejudice that is brought out on the *voir dire* it is perfectly sound procedure. But just to endlessly pursue the inquiry into some unknown or unheard of area results in just such things as taking two, three, four, five, six weeks to pick a jury for the trial of a case. So the Court will adhere to its disfavor in the propounding of the question last mentioned, number 18, and will deny the opportunity to propound the question. As to question number 19 "Did you know Larry Lam in his lifetime or any member of his family?" That of itself, I can't see where it would result—regardless of how the prospective juror answered the question—I don't see how it could possibly result in any disqualification. Of course, as indicated it could conceivably be followed with other questions, but I think the question ought to be put and framed in the first instance on some theory that would reflect disqualification if the answer be made in the affirmative. I will be glad to hear from you on number 19.

Mr. Litten: The fallacy in asking a blanket question to a prospective member of a jury, that is: Are you
page 13 } conscious of any reason why you should not sit as a juror in this case? or, are you related to blood or by marriage to the defendant or the alleged victim? is that a jury may unconsciously answer the question the wrong way. If the question is asked in a blanket form he may answer it incorrectly. Now, question 19 would ask the jury whether or not they knew the alleged victim, Larry Lam, or

whether they knew any member of his family. If they answered in the affirmative it would certainly be followed up by questions which were designed to elicit how well they knew the victim or how well they knew the members of the family. If they were for instance next door neighbors or members of the same committee in a church or something of that sort, the relationship might very well be so intimate that they could not sit in judgment of his alleged killer and we think that the question is relevant to determine the bias or prejudice.

Court: Again, the Court feels that the question to inquire into remote possibilities of some attachment or some friendship is plainly available to the defense as it is in any criminal case when the *venire* has once been selected and unless the question is so framed as to disclose by the answer to the question some *liklihood* of prejudice the Court sees no reason to consume time in asking those questions so the question 19 will be eliminated from the list of questions to be propounded on the *voir dire.*

page 14 } Mr. Litten: The defendant excepts to the action of the Court on each one of these questions for the reasons already stated.

Mr. Sipe: Should the record also disclose that all the rest of the questions were permitted to be asked. I think the Court mentioned the first eight but after that did not mention the other numbered questions that—

Court: The only ones to be eliminated, that the Court on its own motion has seen fit to eliminate would be 9, 12, 14, 15, 18 and 19. The other questions will be available to counsel to propound to the prospective jurors. Is there any further question about the method of conducting the *voir dire* examination?

Mr. Litten: On the motion that has been made by the accused, that he be allowed to examine each prospective juror individually and out of the presence of the other prospective members, I have this to say. In the ordinary case, either civil or criminal, I don't think this procedure is necessary or even desirable. My point is, as I think the Commonwealth will concede, this case is somewhat unusual and has attracted more notoriety in this community than any case in recent times. I think that while the question of how the jurors are examined lies within the discretion of the Court, the Court should take into consideration the fact that this is a capital case, the fact that there has been a great

page 15 } deal of discussion about the matter out in the County and in the City of Harrisonburg, and that the procedure itself will not take over two hours of time,

and in order to give the defendant the *benedit* of a completely fair trial he should be allowed this opportunity to examine the prospective jurors out of the presence of the other members. If you have a group examination you have more or less group therapy and the way one member answers, the one who answers first, the other members are inclined to follow along, nodding their heads or shaking their heads. It is much easier to determine the qualifications of the jurors on an individual basis out of the presence of the other members than it is by examining them in a group.

Mr. Sipe: I think the Court has already covered it, the fact that any capital murder case gets a certain amount of notoriety; the case has been discussed somewhat; maybe because there has been one trial resulting in acquittal of a cohort. However, I feel that the prospective jurors can adequately be examined as a body without the necessity of individual questioning.

Court: It is a practice that never has been engaged in in this Court to my knowledge; I am not aware that it has been engaged in in any other Court of this Commonwealth; there certainly is no statutory law on the subject and I page 16 } do not look with favor upon establishing any such precedent. Once the door has been opened in that type procedure it would literally be requested in all succeeding cases and my thought is that if it is a matter of such grave concern in the rules of procedure in criminal prosecutions that there should be some legislative enactment; even then I wouldn't be in favor of it—I don't mean I wouldn't be in favor of it after the enactment, I mean I would not be in favor of the enactment. It seems to me that would be the place to make the rule if there is to be any such rule made. So the motion for the opportunity to conduct the *voir dire* examination one by one, out of the presence of the remaining *veniremen,* is denied.

Mr. Litten: We except. Defense has various other motions to make. First, we move the Court that the Commonwealth's Attorney be required to file a Bill of Particulars stating the means by which the accused allegedly killed and murdered Larry Elwood Lam, and further stating the actions of the accused which the Commonwealth will rely upon to establish any criminal liability. We have again I say an unusual case here. We have a situation where one party, one person has been charged with the murder of Lam, has been tried, has been acquitted. That person, as I recall, confessed to the crime. Now it is important for the defense to know upon what theory the Commonwealth proceeds in this

page 17 } case so that it may summon whatever witnesses are necessary to repudiate that theory or to establish the innocence of the defendant, and we make this motion for a Bill of Particulars.

Mr. Sipe: If the Commonwealth's Attorney had to file a Bill of Particulars for—

Court: I might say here that the Court will favorably entertain the motion for the Bill of Particulars and will require the prosecution to file a Bill of Particulars within 10 days, but to permit a motion for a Bill of Particulars to be founded on specific questions, one, two three, again the Court does not know of any such procedure as that ever having been established by the laws of this State in procedure or pleadings, either in criminal or civil matters. The motion for a Bill of Particulars is either granted or denied and when a Bill of Particulars is filed further question can then be raised as to the sufficiency of the Bill. But as to requiring any litigant or prosecutor in a criminal case to specify in numbered detail about specific circumstances is a procedure that this Court has not followed and doesn't expect to follow until there has been a rule of Court established requiring it. The general granting of the motion and direction to the opposing party to supply a Bill of Particulars is all that is necessary and that is as far as the Court will go in this instance. If page 18 } there is any objection to be made to the sufficiency of the bill, that can be made at a later date.

Mr. Litten: Our other motion is that the members of the jury be kept together during the trial and during all recesses, including over-night recesses. Again we think this is important in order to insure a jury that is free from bias or outside or adverse influences of any nature. It is particularly true in this case because as I said before the case has attracted more than the average amount of public discussion and speculation.

Mr. Sipe: I do not feel it is necessary to keep the jury together, especially to rule favorably on this motion at this time. If the development of the trial were such that it became necessary, it could be taken up at that course of the trial itself. But I feel there would be no necessity to keep them together.

Court: Let me refresh my recollection. What is the name of this accused man's companion, woman companion, who was previously tried for this same homicide?

Mr. Litten: Barbara Shifflett.

Court: I think by reason of the fact that Barbara Ann Shifflett, and the Court takes of course knowledge of the fact

since the case was tried in this Court, where Barbara Ann Shifflett was indicted for the murder of this same
page 19 } Larry Lam, and despite the fact that there was evidence of a confession made by her as to her guilt in that connection she was nevertheless acquitted at the hands of the jury. The case has given rise to considerable speculation and discussion and comment in the community and it might well be that to reopen an inquiry into the same homicide with another party accused of the crime would result in still further fairly common speculation and conversation.

Mr.Sipe: I would like to remind the Court of course that this accused Arlo Dean was already indicted for the same offense as Barbara Ann Shifflett at the time of her trial. This was not an indictment after her acquittal, both of them were charged.

Court: Were they indicted jointly? By the same Grand Jury?

Mr. Sipe: No sir, I believe they were separate.

Court: Nevertheless, the prosecution saw fit to try Barbara Ann Shifflett first which resulted in an acquittal. But I myself have heard so much comment about the outcome of the Barbara Ann Shifflett case, almost of necessity when the word gets around that the Jarrette Arlo Dean trial will be held, it stands to reason that even more conjecture and speculation will be *iniated* at the time of that trial. I am disposed to look with favor upon the suggestion to keep the jury together and it will be so ordered. I would rather that the
page 20 } order be kept in confidence because once the prospective jurors learn of it they may start thinking up all kinds of grounds to be relieved from their assignment. But nevertheless, plans have to be made pretty well in advance, or should be. I think the record can show then that the motion to keep the jury together will be granted and it will be so ordered. I will see that the Sheriff's Office makes the necessary arrangements for the *accomodation* of the jury if there is an over-night session. Are there any further motions or matters to be heard?

Court: Let the record show that the Court has now moved from the preliminary motions in the case of Commonwealth v. Jarrette Arlo Dean to the consideration of the instructions in the case and so far the Court has reached Instruction No. 6 tendered on behalf of the Commonwealth and will entertain an objection which defense has indicated it has to Instruction No. 6.

Mr. Litten: We have no objections to the form of the first 5 instructions, depending on what the evidence is, we may

object to them at the conclusion of the trial. As to Instruction 6, I think that the statement that a man is presumed to intend the natural and probable consequences of his act goes in the form of a solemn instruction from the Court to the jury is not only irrelevant but vague, the jury won't know what it means; I don't know what it means. It has no
page 21 } application to any possible evidence in this case and should not be entered.

Mr. Sipe: If Your Honor please, this was given at the last trial and I think it was appropriate at that time according to the evidence. It was based mainly on the confession which the accused had made and later repudiated. The evidence before the jury was that this girl at that stage had shot the victim with a gun and I think that this is appropriate to show that regardless of why she did it or anything like that, this is what she intended doing, she took a deadly weapon and shot this boy. Now here again of course the evidence as presented at this trial might be different and it might not be appropriate, but at this stage I think it certainly is.

Mr. Litten: I think the instruction might possibly be appropriate if it was added to the language of another instruction in a case where the killing was accidental and where the accused came in and said I didn't intend to shoot so and so although I was aiming the gun right at him. The defense in this case will not be one of accidental death.

Court: To be in order there would have to be some proof to point to the accused, Dean, as the *perpertrator* or at least the joint *perpertrator* of the shooting. It may be appropriate at the time the evidence is in, conceivably. But on the other hand it is difficult to imagine any criminal charge
page 22 } in which the instruction would not be applicable where there is positive evidence, assuming that there is some positive evidence to implicate the accused. It's an instruction that has been long recognized as proper, one that hundreds of times has been, or the substance of it has hundreds of times been recognized in criminal law. But the Court will note the objection to the instruction at the moment anyhow, will preserve your objection to it. Which brings us to Instruction No. 7, is there any objection to that?

Mr. Litten, Yes sir, I think that the instruction should conclude with the language "that if the jury have a reasonable doubt as to the guilt of the accused by reason of the absence of any proof of motive, then they should acquit him. Other than that we have no objection.

Mr. Sipe: I think the instruction as given there is a correct statement of the law. It is not necessary for the Common-

wealth to prove motive, and it goes on to say that in the absence of motive, circumstance can be considered in favor of the accused. I don't think it is necessary to go into reasonable doubt or that they have the right to acquit or anything of that nature. I think it is correct as stated.

Court: I think the instruction is appropriate and adequate. If by chance the evidence would support the page 23 } theory of the defendant that the absence of motive is sufficient to give rise to a reasonable doubt, I think this better could be considered in an independent instruction on behalf of the defense.

Mr. Litten: We would except. Your Honor, Instruction 8 we object to because the words reasonable doubt are clear and rather precise standing by themselves and any attempt to define the word reasonable or the word doubt will probably confuse the jury; we would be better off simply to have no instruction defining reasonable doubt and it is for that reason able doubt should not be given. The Court of Appeals has that we object to it. We think that instructions defining reasonable doubt should not be given. The Court of Appeals has said in a number of cases that it is to be discouraged.

Court: I am mindful of that expression of the Court of Appeals. On the other hand the Court has had direct exposure to illustrations of the jury's misinterpretation of what constitutes reasonable doubt, and it has been sufficient to impress this Court with the advisability of giving some further definition of reasonable doubt to avoid a juryman going off on some tangent of his theory or application of what constitutes reasonable doubt. So Instruction 8 will be given over the objection of the defense.

Mr. Litten: We have no objection to Instruction 9. Instruction 10 is objected to as a mis-statement of page 24 } the law, or an erroneous statement of the law. In order to be guilty of aiding and abetting, which is the same thing as being a principal in the second degree, you not only have to be present, aiding and abetting, participating, you must also share in the criminal intent of the principal in the first degree and the instruction ignores this requirement of sharing in the criminal intent.

Mr. Sipe: If Your Honor please, I think the definition of aiding and abetting as propounded here in this instruction is a correct statement of the law. It states that this person is not only present, but he is aiding and abetting and participating therein, in the commission of this crime. I think that is the definition under our law of what constitutes aiding and abetting.

Court: The objection is not looked upon with any favor and the instruction will be given over the defense objection to the instruction. The instruction is premised on the theory that the murder was committed and in order to constitute the murder there must be an intentional killing, so it ties in with the recognition of the homicide so that intent is to be read into the instruction. If the defense wants to tender an instruction to the effect that intent is a necessary element even to constitute aiding and abetting, the Court would not hesitate to give it. But the Court feels that Instruction No, 10 is adequate as tendered and it will be given over the objection of the defense.

* * * * *

BILL OF EXCEPTION

BE IT REMEMBERED that at trial of this case during final summation by James R. Sipe, Commonwealth's Attorney, said Commonwealth's Attorney did comment upon the fact that the defendant, Jarette Arlo Dean, had, at the trial of one Barbara Ann Shifflett previously held in this same Court, declined to testify after being called as a witness on the grounds that doing so might tend to incriminate him.

BE IT FURTHER REMEMBERED that objection was made by Donald D. Litten, Esquire, of counsel for defendant, to such comment on the grounds that the same was unfair, prejudicial and contrary to the law and on the further grounds previously stated during the taking of testimony in this case, which objection was overruled by the Court and to which ruling the defendant, by his counsel, excepted.

* * * * *

Judge

Filed in the Clerk's Office Rockingham County, Va. Jun 16 1967

George W. Kemper, Clerk

* * * * *

Transcript of above trial, held at Harrisonburg, Virginia, on March 22 and March 23, 1967, the Honorable Hamilton H. Haas presiding. The motion section of the following transcript

was reduced to writing from the tapes of the court room recorder by the undersigned and the evidence portion was taken in shorthand and reduced to writing by the undersigned court reporter.

* * * * *

page 1 } Court: The Court is now about to entertain one or more motions in chambers, this 22nd day of March, 1967, in advance of the trial of the pending charge against Jarrett Arlo Dean in the form of an indictment returned against him charging him with the crime of murder of one Larry Elwood Lam. What was the motion?

Mr. Sipe: Your Honor, at the time of this offense the accused was 17 years of age—

Court: Before we proceed further let it be shown that the prisoner Jarrett Arlo Dean is present, attended by his two privately employed lawyers, Mr. Lucas of Luray and Mr. Litten of Harrisonburg, and that also present are the Attorney for the Commonwealth, Mr. James R. Sipe, and the assistant prosecutor, Mr. William Julias of Harrisonburg.

Mr. Sipe: If Your Honor please, at the time this offense occurred on February 20, 1966, the accused, Jarrett Arlo Dean was 17 years of age. The Rockingham County Court upon consideration of a report having been filed herein, the Judge of the Rockingham County Court determined that the accused should be treated as an adult. Subsequent to the preliminary hearing the accused was indicted by the Grand Jury on October 17, 1966. The records do not disclose whether this Court also held whether the accused should be treated as an adult or juvenile and my purpose today is, prior to the trial, is moving that the accused, in consideration of this report—he is now 18 years of age, having been 18 in December of last year—that he be treated as an adult.

page 2 } Court: Does the defense want to be heard on the motion?

Mr. Litten: Your Honor, we have reviewed the findings of the County Court and the reasons for that Court's treatment of this Defendant as an adult. We believe that the reasons were sufficient to support the finding and we do not believe that anything done now at this stage would change the findings of the County Court. We have discussed the matter and we do not wish to be heard on the motion.

Court: The record can show that the Court has before it not only earlier reports made by investigating authorities and probation officers, particularly the report of William H. Wade,

the court social worker, made to the County Court under date of March 25, 1966 and in the light of those reports respecting the involvement of this young man in these numerous other offenses of one character or another, considered together with the fact that he was approaching the age of adult responsibility, this Court will have no hesitancy in treating him as an adult offender and we will proceed against him as an adult offender.

Mr. Sipe: Your Honor, wouldn't it be appropriate or proper that he be re-arraigned now?

Court: Possibly so. In the light of the fact that at the time of the previous arraignment of this prisoner there was some uncertainty about the Court having to resolve to deal with him as an adult offender, it is considered advisable to proceed with re-arraignment of the prisoner and the Court is ready to proceed with his re-arraignment at this time and

page 3 } unless there is some further objection the Court can go ahead with that part of the proceeding.

Clerk: You are Jarrett Arlo Dean?

Dean: Yes.

Clerk: In the Circuit Court of Rockingham County, Virginia, at its October term, 1966, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham now attending the Circuit Court of said County, upon their oaths do present that Jarrett Arlo Dean, on or about the 20th day of February, 1966, in the County aforesaid, did murder one Larry Elwood Lam, against the peace and dignity of the Commonwealth of Virginia. How do you plead?

Dean: Not guilty.

Court: This case was previously set for trial today and we will proceed to dispose of the case today unless some good reason can be shown against further proceedings in the matter. If there are no objections to that the Court will entertain any other matters pertinent to be entertained at this stage.

Mr. Litten: We are not taken by surprise by the ruling and by the motion of the Commonwealth's Attorney; we were prepared for it and have no objection to proceeding with the trial.

Court: I understand that the next matter to be entertained will be in chambers and out of the presence of the jury. Incidentally, the jury has not even been selected yet. This hearing is still in chambers and out of the presence of the public generally and the prospective jurors as well and the

page 4 } Court is told that there is some matter to be presented with the idea of disposing of it at this

point. It has to do with the admissibility of a confession I believe in connection with the prosecution of this murder charge against Dean. What is the motion to be made?

Mr. Litten: The motion, Your Honor, which we think should be ruled on prior to resuming the trial is to suppress the alleged confession which was obtained as a result of police interrogation; a confession, or admission of the defendant on the morning of February 20, 1966 in the county jail. We will show to the Court that the defendant, while in custody, was not given the warnings as to the various constitutional rights discussed and enumerated in the Miranda decision of the Supreme Court of the United States and such admission or confession will not be admissible at the trial.

Mr. Sipe: If Your Honor please, of course this is a matter of fact that will have to be determined by the Court. However, the position of the Commonwealth is that although this statement was taken prior to the decision of the Miranda v. Arizona and the trial was subsequent to that time, we concede that we are bound by that decision. However, we feel that the statement of confession obtained from this accused in this case is admissible. The evidence will show first of all that the accused of his own accord made an admission as to who had shot the deceased, Larry Lam and further that the written statement obtained from the accused was not the product or result of any interrogation by police officers.

page 5 } Mr. Litten: I don't want to prolong the preliminary argument although we do not agree with the Commonwealth's Attorney.

Court: The controversy then is as to whether or not the manner of securing the contemplated statement to be presented, I assume it is a written confession.

Mr. Sipe: Actually there are both. The first is an oral statement given and the second then is a written statement. So there are actually two parts to this confession.

Court: Then the real issue it seems to me is whether or not the confession was the product of interrogation by the police officers. My judgment of the Mirando decision is that a voluntary confession that was not solicited or provoked or persuaded by any interrogation or any *intimdation* or any compulsion on the part of the law enforcement officers is nevertheless admissible despite the absence of any forewarnings as to any constitutional rights and right to counsel, the right to remain silent and things of that kind. So I think we will proceed to hear the evidence on that point.

Mr. Litten: I think too it is best to reserve the argument on the point until after the evidence. I do not however, in the

beginning agree exactly with that statement by the Court, but we can argue that later.

Court: I expect the Court had better swear the witness on the point to be heard at this stage as to the admissibility of the confession of this accused. Trooper, do you *solemny* swear that the evidence you are about to give at page 6 } this time will be the truth, the whole truth and nothing but the truth so help you God?

Trooper: I do.

Examination by Mr. Sipe:

Q. Please state your name to the Court.

A. Trooper D. M. Weatherholtz.

Q. And your occupation?

A. State Trooper.

Q. Did you investigate a certain homicide that occurred in Rockingham County on February 20, 1966?

A. Yes sir.

Q. Passing over your preliminary investigation, did you on the morning of February 20, 1966, go to a home where the accused, Jarrett Arlo Dean was present?

A. Yes sir.

Q. And who was with you at that time?

A. Trooper Wilmore, Deputy Sheriff Baker and Deputy Sheriff Wilcox.

Q. Where did you first see the accused on this morning?

A. He was at this house.

Q. And what house was that?

A. A house in the Fox Mountain section of Rockingham County.

Q. Who else was present there along with the accused?

A. There was Joyce Monger, Barbara Ann Shifflett and Floyd Smith.

Q. After seeing the accused there that morning, then where did you proceed to?

A. We asked the two men, Floyd Smith and page 7 } Arlo Dean if they would go along with us to the county jail for questioning and they came with us in the car.

Q. Who else was in the automobile?

A. Dean, Floyd Smith, myself, Trooper Wilmore, Deputy Baker and Deputy Wilcox.

Trooper D. M. Weatherholtz

Q. Did you all then proceed to the Rockingham County Jail in Harrisonburg, VA.?

A. We stopped at the hospital and dropped off the two Deputies to get their car and then proceeded to the county jail.

Q. Do you recall approximately what time of morning that was on February 20?

A. I would estimate 8 o'clock.

Q. Will you state what you did after you and Trooper Wilmore, the accused and Floyd Smith arrived at the County jail?

A. We asked Arlo Dean to come back to the back room at the jail, that we wanted to talk to him. We asked him some questions about where he was that morning and things like that.

Q. Did you tell him at that time what you were investigating?

A. We told him that we had a murder at Montevideo, that we had a body, and that we just wanted to know the facts on it.

Q. Was the accused in custody at that time?

Mr. Litten: Objection, he is calling for a conclusion.

Q. Had the accused been arrested at that time?

A. No sir

Q. Had you compelled the accused to come page 8 } with you here to the Rockingham County jail?

A. No sir.

Q. Had he come of his own free will?

Mr. Litten: Objection, asking for a conclusion.

Q. You stated that you told him what you were investigating—what replies, if any, did the accused make at that time?

A. He stated he had not been around Montevideo that night; that he had stayed in the Fox Mountain section of Rockingham County, east of Elkton all night.

Q. Did he say whether he knew anything with regard to the body of the deceased which had been located near the Montevideo High School?

A. He knew nothing about it.

Q. What occurred then?

A. Well, we took him on out to the front office in the jail

and we took Floyd Smith back, and while we were questioning Floyd Smith, Mr. Hook, the jailer, came back and said come out to the front office, he believed it would be to our advantage, that Dean wanted to talk to us.

Q. Who had been in the back room with Floyd Smith?

A. Myself and I believe Deputy Sheriff baker.

Q. After being informed of this by the jailer, what did you do at that time?

A. I went out to the office and Arlo Dean said he would tell me what happened but first I had to let him talk to the two girls who had followed us over in a red Corvette.

page 9 } Q. Who were the two girls?

A. Joyce Monger and Barbara Ann Shifflet.

Q. Were they the same two girls who had been present at the home where you had first seen the accused?

A. Yes sir, they were. I told him I didn't see what difference it would make if he talked to them, for him just to tell me what happened. No, he wasn't going to tell us anything until he talked to the girls, so we had these two girls to come into the front office with him.

Q. Then what occurred?

A. About 5 or 10 minutes later he said he would talk and we went in and he said "I shot the Lam boy." I asked him to tell us what happened and he said they were coming out of McGaheysville and this car pulled up beside of them and started blowing the horn and gunning the motor. He said they went on up the road and—

Mr. Litten: Your Honor, I don't think it is necessary to go into the details now.

Q. He did give you some verbal statements then as to what occurred?

A. Yes sir.

Q. Was Trooper Wilmore present there at that time when he first said that he had shot the Lam boy?

A. No sir, he was in the back with Floyd Smith.

Q. Did the accused later make a written statement relating what had occurred?

page 10 } A. Yes sir.

Q. I show you this statement and ask you if this is the statement that he wrote out?

A. Yes sir.

Trooper D. M. Weatherholtz

Q. And I believe it is signed by the accused, Arlo Dean, and witnessed by you and Trooper Wilmore?
A. That is correct.
Q. And in whose handwriting is this?
A. That's Arlo's, he wrote it out himself.
Q. Did you all interrogate him or ask him any questions in making this statement or is it a statement that he wrote out of his own accord?
A. I think we helped him with the statement although we told him he did not have to make a statement if he did not want to.
Q. Did you advise him of certain rights prior to making this statement?
A. We advised him that anything he said could be used against him. That is all I advised him of. Trooper Wilmore advised him of some things.
Q. But the written statement here, was this the result of any interrogation of him?
A. No.

Mr. Litten: Objection.
Court: I think that objection is over ruled.
Mr. Litten; That is the question we are here page 11 } to determine right now.

Q. Did you all ask the accused any questions at the time he was making this written statement?
A. No, we didn't ask him any questions.

EXAMINATION BY MR. LITTEN:

Q. Trooper, you had been on this case since about 1:30 or 2 o'clock that morning?
A. We were called at 1:45 A.M.
Q. And I believe the first place you went was to the scene of the shooting?
A. Yes sir.
Q. And you made some preliminary investigation there?
A. Yes sir.
Q. You observed the body and surroundings?
A. Yes.
Q. From there, where did you go?
A. We came to the hospital and stood by and watched while the doctor examined the body.

Trooper D. M. Weatherholtz

Q. And I believe you discovered that the dead man had been in the company of some other men that night?

A. Yes sir.

Q. And you found those men and talked to them, did you not?

A. Yes sir.

Q. Richard Taylor and two boys from New Jersey?

A. We talked to the two boys from New Jersey first.

Q. And then you talked to Richard Taylor?

page 12 } A. Trooper Wilmore talked to Richard Taylor about 4 o'clock in the morning.

Q. And as a result of your investigation to that point, you discovered that possibly some other people were involved, including this defendant, did you not?

A. Yes sir.

Q. And you then went to the home of Claude Shifflett, is that correct?

A. I believe that is Barbara Shifflett's husband's name.

Q. When you got to the Shifflett home you found Arlo Dean, Floyd Smith, Barbara Shifflett and Joyce Monger, is that right?

A. Yes sir.

Q. And did you observe the appearance of all four of those people?

A. Yes sir.

Q. And what did you notice about the appearance of Arlo Dean?

A. Arlo Dean had what appeared to be traces of blood on his clothing and also had the knuckles of both hands skinned.

Q. And what generally was the appearance of Floyd Smith?

A. Floyd Smith had a slight laceration on his chin, slight laceration of his left ear, there were traces of dry blood at his right nostril, and also traces of blood on his pants and shirt.

Q. So both of these men appeared to have blood on their clothing and on their person?

page 13 } A. Yes sir.

Q. It was because of this that you took the two boys in the police car to the jail?

A. Because of this?

Q. Yes?

A. Also because the car had been seen in the vicinity.

Q. You were suspicious of the boys?

Trooper D. M. Weatherholtz

A. Yes sir.

Q. And you were about ready to accuse them of this offense?

A. No sir.

Q. You interrogated them there at the house, didn't you?

A. We asked them a few questions.

Q. You gave them no warnings at that time as to their constitutional rights?

A. I did not give them any warnings of their constitutional rights and I don't remember me asking any questions at the house. Mr. Wilcox asked the questions.

Q. Dean was interrogated there at the house?

A. Maybe a few questions.

Q. And at that time he denied knowing anything about this offense, isn't that right?

A. To the best of my knowledge, I think Deputy Sheriff Wilcox asked him where he had been that night and he denied being in this vicinity.

Q. And you then asked the boys, Smith and Dean, to come with you in the police car, is that right?

page 14 } A. Yes sir.

Q. And you allowed the other two persons to come in their own car?

A. They followed us on in.

Q. And your purpose in taking these two men to the jail was to interrogate them further, is that correct?

A. Yes sir.

Q. When you got to the jail you then took Dean back into the room which you use for interrogation, is that correct?

A. Yes sir.

Q. And you isolated him from the rest of the people?

A. The two girls were outside in the car, probably ten minutes behind us.

Q. The only persons then in the interrogation room were the police officers and Dean?

A. Yes.

Q. And the door was closed?

A. Yes sir.

Q. And you then proceeded to interrogate him, is that correct?

A. Yes sir.

Q. And did you give him any warnings at that time before you started to interrogate him?

A. I did not give him any warnings because I still did not classify him as a suspect.

Trooper D. M. Weatherholtz

Mr. Litten: Let me ask this. Does the Commonwealth concede that the warnings required by the Mirando
page 15 } decision were not given?

Mr. Sipe: Let me answer it this way. At this stage as the Trooper just testified, he was not a definite suspect at that time and no warnings were given at all at that time. Subsequently he was brought back into the room and gave a written statement and he was advised of certain rights, the right to remain silent, that any statement he made could be used against him, that he had the right to call an attorney. This does not comply with the Mirando decision in that he was not warned that he had the right to court appointed counsel who would be present prior to interrogation.

Mr. Litten: If it is conceded that he was not given these warnings I see no point in going into it further.

Q. Now Trooper, he was interrogated there in that room for a period of what, 5, 10, 15 minutes?

A. I would say probably 5 minutes.

Q. And he denied any knowledge of the crime?

A. Yes sir.

Q. You then proceeded to leave him in the room and—

A. No, we took him out and took him in the front office where the jailer stays.

Q. And you proceeded then to interrogate Floyd Smith?

A. Yes sir.

page 16 } Q. Now, Trooper, you don't really mean that what you were doing was just investigating the case, do you? I mean, you could have investigated by questioning them back at the house, couldn't you?

A. No, we wanted to get the people out of familiar surroundings.

Q. You wanted to get them into surroundings that were better suited for purposes of your interrogation, isn't that right?

A. We didn't have anything—the only thing we had was two people and—

Q. I understand that Trooper, but you wanted to get them away from their familiar surroundings and get them into surroundings that were more suited to your purpose, isn't that right?

A. I reckon so.

Q. That is more or less standard police procedure, isn't it?

A. Yes sir.

Trooper W. B. Wilmore, Jr.

Q. Did you ask the girls to come in, or did they just follow?
A. We didn't ask them as I remember.
Q. They just followed anyway?
A. Yes.
Q. So as a matter of fact, this boy was there to some extent, at your mercy? I don't mean really mistreat him or anything, but he had no way to get home for one thing, did he?
A. He had my car, that is what he came in.
Q. You would have had to take him home?
A. Yes sir.
Q. Either that or he would have had to walked, page 17 } or found his own transportation?
A. Right.

TROOPER WILMORE, being sworn by the Court:

Examination By Mr. Sipe:
Q. Will you please state your name and occupation?
A. W. B. Wilmore, Jr., Trooper, Virginia State Police.
Q. Did you, along with Trooper Weatherholtz who just testified, investigate a possible homicide that occurred in Rockingham County on February 20, 1966?
A. Yes sir.
Q. Skipping briefly the preliminary investigation that was made by the officers—did you on that morning proceed to the —to a home in Rockingham County where the accused Jarrett Arlo Dean was present?
A. Yes sir.
Q. Approximately what time?
A. It was about 7:20 A.M.
Q. Where was the accused at that time?
A. At the home of Claude Shifflett.
Q. How did it come about that you had gone to this home?
A. We had received information that this party was involved in this.
Q. What evidence did you have at this time that led you to go to this home?
A. We didn't have any evidence, any incriminating evidence, just circumstantial evidence was all it was. page 18 } He was seen at the time this was supposed to have happened.
Q. In other words, you went to the home because an automobile had been seen in the vicinity where this occurred that

was similar to one Floyd Smith had been seen in, is that right?

A. Yes sir.

Q. What did you observe when you arrived there at the home where the accused was present?

A. The automobile which we were looking for was parked in front of the house and there were four people there.

Q. Who were they?

A. Joyce Monger, Barbara Shifflett, Floyd Smith and Arlo Dean.

Q. What was the condition of the accused and Floyd Smith?

A. Both of these subjects had what appeared to be blood on their clothing; Floyd Smith had cuts about his face, a slight laceration on his chin, a slight laceration on his ear and blood caked in one nostril. Arlo had some blood on his clothing and his knuckles were skinned up.

Q. Did any questioning of the accused take place there at the home by you or any of the other officers?

A. No sir, not to my knowledge.

Q. What did you then do?

A. We asked the two boys if they would drive to Harrisonburg with us so we could talk to them at the jail.

Q. What reply did they give, if any?

A. They said that they would.

Q. Did you then proceed to bring these two boys into Harrisonburg?

page 19 } A. Yes sir.

Q. And where did you take them at that time?

A. To the County jail.

Q. What did you do after arriving at the County jail in Harrisonburg?

A. We separated Floyd and Arlo and took Arlo into the lounge at the jail and asked him about the preceding night, where he had been.

Q. Were any warnings given to Arlo Dean at that time?

A. No sir.

Q. Who was present?

A. Trooper Weatherholtz, Sheriff Strawderman and myself.

Q. And I believe you first asked him some questions about where he had been earlier that night?

A. Yes sir.

Q. What reply, if any, did he make?

A. He said they had been riding around the east end of the

County, and had been down to Waynesboro, the four of them together had just been riding around.

Q. Did he say he knew anything regarding—

A. No sir, he just said he did not know anything about it.

Q. What did you all do then?

A. We told Arlo Dean to go on over to the jailer's office and we ask Floyd Smith to come over to the interrogation room.

Q. What did you do then?

A. We asked him where they had been, what
page 20 } they had done, how he had gotten skinned up.
Mr. Hook, the jailer came to the door and told us it would be to our advantage to step next door to the jailer's office.

Q. Did you or Trooper *Weaterholtz* go out then with the jailer?

A. Trooper Weatherholtz went over with Mr. Hook to the jailers office.

Q. And you remained in the room with Floyd Smith?

A. Yes sir.

Q. What was the next contact you had then with the accused?

A. The next contact I had with the accused was when he came over to the interrogation room to make a statement as to what had happened.

Q. You do not know what the accused told Trooper Weatherholtz in the outer office.

A. No sir, I did not hear that conversation.

Q. What *ocurred* then after you went out?

A. After I went out?

Q. Out to where the accused was present?

A. I went out there and Trooper Weatherholtz told me that he had admitted to him that he had done the shooting and I asked him if he would make a statement.

Q. Then did he make a statement? A written statement?

A. Yes.

Q. Did you advise him of any rights at that stage?

A. I told him that he could call a lawyer several times during the course of our being over there and even
page 21 } after he had been—I also told him, you know,
when he started, that he didn't have to say anything. And Weatherholtz told him that he didn't have to make a statement and it could be used against him.

Q. And then he did make a written statement?

Trooper W. B. Wilmore, Jr.

A. Yes sir.

Q. I show you this and ask you if that is the written statement made by the accused in his own handwriting?

A. Yes sir, that's correct. This was written by Arlo in his own handwriting.

Q. Signed by him?

A. Yes sir.

Q. And witnessed by you and Trooper Weatherholtz?

A. Yes sir.

Q. When he made this written statement had you all—did you all ask him any questions or was this a statement that he made on his own?

A. We didn't ask him any questions during the course of his writing this statement, no sir.

Examination by Mr. Litten:

Q. Trooper, I think you and the other Trooper, Trooper Weatherholtz arrived at—were called at between 1 and 2 o'clock in the morning?

A. Yes, that's true.

Q. And you made considerable investigation, went to the scene of the shooting, you went to the hospital,
page 22 } you interviewed a boy named Richard Taylor, you interviewed two boys from New Jersey, is that correct?

A. Yes sir.

Q. And as a result of all of this investigation you were led to the Shifflett home where you found Dean, Joyce Monger, Barbara Shifflett and Floyd Smith, is that correct?

A. Yes sir, that is.

Q. Now you did—they were questioned there in the home some, weren't they?

A. Not by me.

Q. Do you remember Deputy Sheriff Wilcox asking them some questions there?

A. I don't recall that he did.

Q. Didn't you testify at the trial of Barbara Shifflett on November 16, 1966, as follows:

"Q. Did you and the other officers go into the home, or did they come out?

A. We went into the house. Floyd Smith came out first and then we went into the house.

Trooper W. B. Wilmore, Jr.

Q. Were they asked whether they knew anything about this incident that had taken place regarding Larry Lam?
A. I didn't ask them any questions about it at the time.
Q. Were they asked in your presence?
A. I recall Deputy Sheriff Wilcox asking their whereabouts on the previous night."

Did you give those answers to those questions?
page 23 } A. Yes sir, I am sure that I did.
Q. Wasn't this question asked you and this reply given?

"Q. What was their reply?
A. They said they had been riding around together the previous night."

Is that correct?
A. Yes sir.
Q. So your memory is refreshed now to the extent that you recall Deputy Sheriff Wilcox asking these questions there at the house.
A. Mr. Litten, I'll be truthful with you. I still don't recall it, but if that's what I said it is apparently what had happened there. I don't recall it at this time.

Mr. Litten: I would like for the Commonwealth's Attorney to concede that these are the questions asked and the answers given.
Mr. Sipe: I concede that.

Q. Now Trooper, when you saw Smith and Dean in the house there, they had blood on their clothing and on their person, both of them, didn't they?
A. Yes sir.
Q. And this was suspicious, wasn't it?
A. Yes sir.
Q. And when you saw that blood on their clothing and on their person and having already been advised about the car that Smith was driving and of the circumstances,
page 24 } your investigation focused around these two men, didn't it?
A. Yes sir.
Q. And it was no longer just a general investigation, but you had suspects at this time, didn't you?

A. Yes, I felt that we did.

Q. And you requested these two men to come with you in the police car into the jail for further interrogation, isn't that right?

A. Yes sir.

Q. And the purpose of that of course was to take them out of their familiar surroundings and put them in the surroundings that were better suited for questioning, isn't that right?

A. Yes sir.

Q. Psychologically, *its* better procedure to interrogate suspects on your grounds than on their grounds, isn't that right?

A. Well, there was no way that you could separate them there at the house, it was kind of hard to do.

Q. And they were suspects when you saw their appearance? You would say that?

A. Yes sir.

Q. And when you got them into the jail you took Dean first back into the room used for interrogation, right?

A. Yes.

Q. And you isolated him there from everybody? Shut the door?

A. Yes sir.

page 25 } Q. And there was no one in there at that time but Dean and police officers?

A. That's correct.

Q. And then you proceeded again to interrogate him. He had already been interrogated a little bit back at the house, and you then proceeded again to interrogate him there, correct?

A. That's correct.

Q. Now at no time, during any part of any interrogation, was he ever told that he had the right to consult with counsel appointed by the Court before being interrogated, was he?

A. That's correct, he was not.

Q. At that time you did not even know there was such a right, isn't that correct?

A. Yes sir.

Q. After interrogating him then for what—5 minutes, 10?

A. I would say around 15, no longer than that.

Q. And after 15 minutes there in the jail you left him and you all proceeded then to interrogate Smith, isn't that right?

A. Yes, we let him go out and called Smith in.

Q. And you told him to think about it and you would talk to him later, isn't that right?

A. I didn't tell him that.

Q. Who told him that?

A. Trooper Weatherholtz or the Sheriff might have, but I didn't.

Q. But somebody told him to think about it

page 26 } and they would get back to him, or words to that effect. Isn't that right?

A. I won't say that they didn't but I can't recall that they—

Q. Well, tell us the best you can remember what they did tell him when they let him go out of the room. Didn't tell him to go home or anything like that?

A. No, we told him we would get back to him. I didn't tell him that.

Q. Who told him that?

A. I don't recall.

Q. He was told that, wasn't he?

A. I don't recall it.

Q. Well, what did you tell him?

A. To the best of my recollection we told him—I mean—I didn't tell him, but Trooper Weatherholtz and the Sheriff told him to go on back over in the jailers office and wait there.

Q. And wait there?

A. Yes sir.

Q. He was at that time, for practical purposes, in your custody, wasn't he?

A. For practical purposes, yes sir.

Q. You weren't about to let him go?

A. No sir.

Q. And if he had wanted to go he would not have gotten away right then, would he?

A. It's not likely.

page 27 } Mr. Sipe: Your Honor, it was a defense motion to suppress the introduction of any evidence of these confessions.

Mr. Litten: Your Honor, I have tried to shorten this hearing as much as I can but I must take some time in argument because I am deadly serious and completely sincere. A resume of this testimony is to this effect: these two troopers and other police officers had made an investigation of this case from about 1:45 in the morning until shortly before 8 o'clock in the morning. Now this is a period of about 6 hours. For 6 hours they had been investigating the case. As a result of their preliminary investigation they were led to the home of

Claude Shifflett and there they found the defendant and three other people. They noticed on the person and on the clothing of the defendant and Floyd Smith, blood. They noticed there were some marks indicating physical violence on their person and they testified, the Commonwealth's witness did, that at that time they had suspects. These two men were suspects and they were in the custody of the police; there can be no doubt about that because the Commonwealth's witnesses say that. They were taken in a police car, they were not at liberty to leave, the Trooper testified that if Arlo Dean had asked to go home that it was not likely he would have been allowed to go at that time. They were suspects, they were in custody, this boy was taken to the interrogation room at the County jail because, psychologically *its* easier to interrogate a person or a suspect on these surroundings that are away from anything familiar. Now those facts are not disputed. Also,
page 28 } he was not warned as required by the Mirando decision. Now that is not in dispute. If it is in dispute I want to argue it, but it is not, isn't that right?

Mr. Sipe: That is agreed.

Mr. Litten: He was not given the warnings required by Mirando. Further, the Mirando decision does apply to this case, that is conceded, and was conceded earlier. Now he was interrogated in that room at the jail in complete isolation for a period of from five to fifteen minutes. One of the Troopers said five minutes and the other one said fifteen minutes. At the conclusion of that they shifted their questioning to Smith. Then, having never given at any time the warnings required by Mirando, while the prisoner was in custody, while the suspect was in custody, as they conceded, the boy then decided that he would give them a statement and told the jailer that he would do so and they took the statement from him. Those are the facts. Now we go back to the law in this case, behind Mirando, to the Escobedo case. Escobedo at the time that he was questioned was not under arrest. He was in custody; he had been arrested, his lawyer had gotten a writ of habeas corpus, he had gotten him released and that process had been quashed. He was then taken into custody again and was interrogated. There were facts in the Escobedo case that are not present here, I concede. But, in *Escabito* the Court held in these words: "We hold therefore that where, as here, the investigation was no longer a general inquiry into
page 29 } an unsolved crime, but had begun to focus on a particular suspect, the suspect has been taken into police custody. Now these troopers testified, both of them,

that they had a suspect and they answered in the words of this opinion, the question, they said that their investigation had begun to focus on these two men. They were asked that question and they gave an affirmative answer to it. The Court further says that when this happens and the police carry out a process of interrogation that lends itself to elicit incriminating statements, then the accused is entitled to counsel. Now from Escobedo you go to Miranda, and this decision the Court knows better than I do, although the last few days I must have read it a half dozen times. Now in Miranda and by the way in the Miranda opinions there were four cases consolidated, Miranda v. Arizona, a case from California, a case from New York, etc. In one of the cases, the Vignera v. New York case, which was consolidated with Miranda, Vignera v. the State of New York, in that case Vignera had not been arrested, he was only in custody. In the Miranda decision the Court says this: "Our holding will be spelled out with some specifity in the pages which follow, but briefly stated it is this: The prosecution may not use statements whether exculpatory or inculpatory stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action page 30 } in any significant way." Now let's fit his case to that because it fits just as perfectly as can be. He was in custody first, the troopers say he was in custody, they say so in so many words. They say further that he would not have been allowed to leave the jail if he wanted to. He was isolated from the world when he was in there. He was in terrogated while in custody, his freedom of action was deprived, he was brought there in a police car, he had no way to get home except by use of the police car—the trooper said he'd take him home, but he'd *takek* him when he wanted to—and the facts, the definitions of custodial interrogation laid down in Miranda fits this like a glove. Further, *its* interesting in the—in that the trooper said they took this man and Smith to the jail for interrogating because they wanted to get him away from familiar surroundings. In the Miranda decision it goes into that—that very thing. I didn't ask the question in those words, the trooper gave it in those words. The Miranda decision says, "The modern practice of in-custody interrogation is psychologically rather than physically oriented. The

officers are told the principal psychological factor contributing to a successful interrogation is privacy, being alone with the person under interrogation." The Court says, "An individual swept from familiar surroundings into police custody, surrounded by antagonistic persons, and subjected to the techniques of persuasion cannot be otherwise than under compulsion to speak." I'm speaking on the record now and I'll be careful what I say. I may not as a person, or as a lawyer agree with everything that's in this decision, but page 31 } this is what the Court said, this is the law of the land, *its* the rule that we have to operate on. The Court further said, "As a practical matter the compulsion to speak in the isolated setting of a police station may well be greater than in Courts or other official investigations." There can't be any questions but what first, the Mirando decision applies, second he was not given the warnings, third he was in custody, fourth the investigation had ceased to be a general investigation into the *commision* of a crime, the solving of a crime and had begun to focus on these two suspects, fifth he was taken from his home or the home where he was in police custody to unfamiliar surroundings, to the jail isolated and he was interrogated. The fact that he confessed, the fact that he made the statement after they had ceased questioning him does not relieve them of the responsibility to give him the warnings in the first place. They put him in a room and let him sweat there, asked him nothing, and then when he had decided, according to these psychological reasons, or whatever reasons, that he wanted to confess and he called them in there, then they could say this was all voluntary, but that isn't the test. If he was in custody and he was, then he was a suspect, and he was if he was deprived of freedom of action, and he was, then the warning must be given and they weren't given, and there isn't any way they can escape it. The Court says that the circumstances surrounding in custody interrogation can operate very quickly to overcome the will of one merely made aware of his privilege by his interro- page 32 } gators. Therefore the right to have counsel present at the interrogation is indispensible to the protection of the Fifth Amendment. We hold that an individual held for interrogation—and he was an individual and he was held for interrogation, and was in custody—must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today, and

that if he is unable to afford counsel, counsel will be appointed for him. It seems to me that there is just no escape for it. One further thing; who has the burden in this thing? The Court says this, "A heavy burden"—the Court says, "if the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the Defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retain or be appointed counsel. This Court had always set high standards of proof for waiver of Constitutional rights, and we reassert those standards as applied to in custody interrogation since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborative evidence and warnings the burden is rightly on its shoulders." Your Honor, I'm afraid I'm repeating myself, but I'm perfectly sincere in saying that this confession simply cannot be admitted because of this decision and I see no way out, no way at all that they can avoid the decision. I might also mention that this boy of course was only page 33 } seventeen years old at the time this confession was taken.

Mr. Sipe: If it please your Honor, I'll try to make my remarks as brief as possible. The Commonwealth feels that the oral statement and written statement both should be admitted into evidence in this case under the facts that have been presented to the Court. The evidence shows of course that this phase was certainly investigatory, the Troopers that testified the only evidence they had that sent them to this home was that it had been reported that a vehicle had been seen in the vicinity of where this crime was committed, and that they found some evidence that the accused and Floyd Smith had been in such an automobile. Upon arriving there they did observe blood and certain cuts on Floyd Smith and that they started investigating and did question them; they brought them into the jail where not only did they question the accused, they also questioned this Floyd Smith. They say at that stage they had nothing to go on to implicate anyone in this particular crime. And it was certainly investigatory at that stage. Further, I think that the important part here is that this Mirando decision has to do with a stage of interrogation and I think Mr. Litten has passed over that. I think the Mirando decision goes ahead and says that you have to be warned of certain rights if at any stage of the interrogation the accused,

or the suspect makes it known that he wants to be silent or wants to consult with an attorney then all interrogation has to cease. I think this case is analogous to the recent page 34 } case that was in this court where an appeal was noted and the Writ was denied by the Supreme Court of Appeals of Virginia. The facts here show that they asked the accused certain preliminary questions and he said he knew nothing about it. They told him to go on over in another room and they started questioning another suspect, Floyd Smith, and after about ten minutes it was reported that the accused here wanted to see an officer and Trooper Weatherholtz went over there. There were no questions whatsoever, no interrogation asked by Trooper Weatherholtz. A statement was made by the accused that he had shot the Lam boy. Now certainly the trooper did not have the duty of saying "You can't say anything, or "You keep quiet." This boy was there, he had talked with his girl friend and his sister there in the jail, they were present there at that time, and this boy, this accused, stated that he had shot the Lam boy and this was not the result of any interrogation by any officer and I think that is the important difference and is similar to the recent case we had here in this Court. So I think there can be no doubt at that stage that this verbal, oral statement—admission by the accused that he had shot the Lam boy is admissible in Court. Now proceeding further, the evidence further shows that he said that he wanted to give a statement. The trooper then advised him of the rights as well as he knew how; he could not anticipate what the United States Supreme Court would lay down in a subsequent decision, and it is admitted he did not advise him of his right to Court appointed counsel to be present prior to interrogation. However, the evidence page 35 } shows again that there was no interrogation, that this boy said that he would give a statement as to what had occurred and the accused sat down and wrote out in his own handwriting a narrative statement as to what had occurred and both officers have testified that there was no interrogation and this was not the result of any interrogation on their part. So, in summarizing, we feel that first of all it was certainly investigatory at the stage that the statement was made and further that both the verbal and the written statement was a voluntary act on the part of the accused, that it was not the result of any interrogation by the officers and should be admissible into evidence in this case.

Mr. Litten: Your Honor, the Commonwealth's argument will not hold water. There was only one sequence of events as far as custody is concerned. He was taken into custody the moment he stepped into that police car. He was in custody during the trip to Harrisonburg; he was in custody when he was in that interrogation room; he was in custody when he came out into the room where the jailer was; he was in custody the whole time and once he was taken in custody and the investigation had begun to focus on him as a suspect, the required warnings must be given him. There are not two isolated series of event. He wasn't taken into custody and then discharged, and then made this statement. If that had been the case, if he had been told to go home and he had gone home and he had come back and said, "Look, I want to make a statement"; I would agree with the Commonwealth's Attorney's argument, but the first custody had not

page 36 } been broken, he was still in custody. And he said that the statement was not written as a result of interrogation; there was interrogation at the beginning, there was interrogation at the end; the fact that there was no interrogation in the middle had nothing to do with whether or not he was in custody, and whether or not his freedom of action had been taken away from him in any significant aspect, and since he was in custody from the beginning until the end and the warnings were not given at any time, the statement is inadmissible.

Court: Obviously your interpretation of the Mirando decision is different from mine because I've reached the conclusion previously and I hold an even firmer judgment that the Mirando case turns on whether or not the confession was the product of custodial interrogation, and it is the judgment of the Court in this case that this was not the result of custodial interrogation but was more the result of the pangs of conscience, and I don't think the law has ever gotten to the ridiculous stage that prohibits a man from moving through his conscience. This prisoner can still contend before the jury that is selected to try his case that his confession was involuntary and the jury can pass on the voluntariness of his confession, but the judgment of the Court at the moment on the motion to suppress it is that the Motion be denied.

Mr. Litten: We vigorously except.

Richard Ray Taylor

page 1 } Witness: Richard Taylor

DIRECT EXAMINATION

By Mr. Sipe:

Q. State your name.
A. Richard Ray Taylor.
Q. How old are you?
A. 19.
Q. Where do you live?
A. McGaheysville, Virginia.
Q. How long have you lived there?
A. Around 8 years.
Q. What is your occupation?
A. I am in school.
Q. Do you work part time?
A. Yes sir.
Q. Did you know Larry Elwood Lam?
A. Yes.
Q. Did you live close to him?
A. Yes.
Q. How close?
A. About a mile and a half.
Q. How well did you know him?
A. I have known him all my life.
Q. Did you have occasion to be with him on various evenings?
A. Yes sir.
Q. On the evening of February 19 and early morning of February 20 were you and Larry together for any period of time?

page 2 } A. Yes sir.
Q. What time did you get together?
A. About 6 or 6:30.
Q. Where?
A. At my house.
Q. What was the purpose of getting together that evening?
A. Two boys from New Jersey was here and we were just riding around.
Q. The boys from New Jersey, were they your friends or Larrys?
A. Larrys.
Q. How did they come to be friends of his?
A. He met them in the Air Force.

Richard Ray Taylor

Q. Throughout the course of the evening—were you with Larry all evening?
A. Yes.
Q. What did you do most of the evening?
A. We just rode around.
Q. Did you have anything particular in mind you intended to do?
A. No sir.
Q. Was there any drinking going on between you and Larry and the boys from New Jersey?
A. Yes sir.
Q. What kind of drinking? Who was drinking and what?
A. Larry drank three beers.
Q. Where did he drink them?
A. One at my house, one at the motel and—
page 3 } Q. Which motel?
A. Marvilla Motel.
Q. Who was staying there?
A. The two boys from New Jersey.
Q. What is the last time Larry had a beer?
A. Around 9 or 9:30.
Q. Did he have anything to your knowledge after that?
A. No.
Q. Was he ever out of your presence until he let you out of his car at your home?
A. No.
Q. Whose car were you riding around in?
A. The boys from New Jersey for a while.
Q. Did you ever get into Larry's car?
A. Yes.
Q. What kind of car did he have?
A. 66 Chevelle.
Q. What color?
A. Bronze.
Q. Approximately what time did you decide to go home?
A. I guess it was around 1 or maybe 5 minutes after 1 o'clock.
Q. How did you get home?
A. Larry took me.
Q. Any one else in the car?
A. No.
Q. Where did you leave the boys from New
page 4 } Jersey?

Richard Ray Taylor

A. One was at the motel and the other one got out to ride around with Larry's girl friend.

Q. Just tell the Court and jury what happened as you were being taken home.

A. We went down below my house and pulled into the church yard to turn around and as we was backing out this car went by.

Q. What kind of car?

A. A 1962 Corvette.

Q. What color was it?

A. Burgandy.

Q. Had you ever seen it before?

A. Yes.

Q. Where?

A. In Elkton.

Q. Do you know whose car it was?

A. Yes.

Q. Whose?

A. Floyd Smith's.

Q. Did that car stop?

A. No.

Q. Was it going fast or slow, or how was it traveling?

A. It was going slow.

Q. On what highway was this?

A. Route 33.

Q. Could you tell who the driver was?

A. No.

page 5 } Q. Could you tell how many occupants there were?

A. No.

Q. Which direction was the Corvette headed?

A. West on 33.

Q. Did the vehicle stop?

A. No.

Q. What happened after you saw it go by?

A. We backed out, turned around and went to my house and I got out.

Q. Was that the last time you saw Larry Lam alive?

A. Yes.

Q. What conversation took place between you and Larry Lam and the occupants of this Corvette?

Mr. Lucas: Objection.

Court: Sustained.

Richard Ray Taylor

Q. While you were with Larry, did you or Larry get next to the Corvette?
A. No sir.
Q. The last time you saw Larry Lam what was his condition as far as sobriety?
A. He was OK.
Q. Did he indicate where he was going when he let you out?
A. He said he was going to Kay's house.
Q. Who is Kay?
A. His girl.
Q. Where does she live?
page 6 } A. On Jefferson Street.
Q. In Harrisonburg?
A. Yes sir.

CROSS EXAMINATION

By Mr. Litten:
Q. You are 18?
A. Yes.
Q. And you go to school?
A. Yes.
Q. You are single?
A. No, married.
Q. You were with Larry Lam on the 19th of February from 6:30 until about 1 o'clock?
A. Yes sir.
Q. His two friends from New Jersey were with him when he came to see you, is that right?
A. Yes.
Q. These were Army buddies?
A. Air Force.
Q. And you stayed around your house for a while?
A. Maybe 10 or 15 minutes.
Q. And had a beer?
A. Yes.
Q. The boys from New Jersey brought three cartons of beer with them, didn't they?
A. Yes.
Q. Three cartons, that's 18 bottles, right?
page 7 } A. Right.
Q. And from your house you went to the Marvilla Motel?

Richard Ray Taylor

A. Right.
Q. These two boys were staying there?
A. Right.
Q. And while you were there you had some more beer?
A. Right.
Q. During this time you were in whose car?
A. The boys from New Jersey.
Q. When you got to the Marvilla did you switch cars?
A. Yes.
Q. And got in Larry Lam's car?
A. Yes.
Q. When you left Marvilla who was driving?
A. Larry.
Q. And during the night you drove around different places, the Bar-B-Que Ranch, Biff-Burger a couple of times. Just driving around?
A. Right.
Q. And you ran out of beer during the night?
A. Yes.
Q. And you bought two more at the Echo Restaurant, two more cartons?
A. Yes.
Q. That made 12 more beers?
A. Right.
page 8 } Q. So you had a total of 30 beers?
A. Right.
Q. You were with various girls during parts of the night, is that right?
A. Yes.
Q. One of them was Kay Armentrout, right?
A. Not her, no.
Q. Is that the one who was with one of the boys from New Jersey?
A. Right.
Q. Joan Kyle, Sue Miller, the Hepner girl and another one, is that right?
A. Yes.
Q. Kay Armentrout did not drink any beer?
A. No.
Q. Did Joan have any?
A. No.
Q. Did Sue Miller have any?
A. No.
Q. Did the Hepner girl?

Richard Ray Taylor

A. I don't know, she was in the back.
Q. So three of them at least did not have any beer?
A. No.
Q. And the other two you don't know about?
A. No.
Q. During the night all 30 beers were consumed, right?
A. Not all of them.
page 9 } Q. How many were left?
A. I don't know.
Q. The first three cartons were gone when you bought the other two, is that right?
A. Yes.
Q. And you bought the other two before 11 oclock?
A. Right.
Q. And you did not part company until 1 o'clock?
A. Right.
Q. So from 11 to 1 you were working on the last two cartons?
A. Right.
Q. How many beers did you drink?
A. I had three all evening.
Q. How many did the boys from New Jersey drink?
A. I couldn't tell you.
Q. The two boys from New Jersey and Larry Lam drank 27 beers between them?
A. Right.

Mr. Sipe: He testified there were some left.

Q. What was left, two bottles, three?
A. I don't know, it was in a bag.
Q. You were all drinking together?
A. Yes.
Q. Larry Lam would take a bottle when the others did?
A. No sir.
Q. You do know he had as many as six, don't
page 10 } you?
A. All I saw was three.
Q. He was in the back seat a good bit of the time?
A. Right.
Q. You heard him opening beer there, didn't you?
A. I heard somebody.
Q. And you actually saw him drink three?
A. Right.

Richard Ray Taylor

Q. As far as you know he was drinking along with everybody else?
A. I don't know for sure.
Q. And you only had three?
A. Right.
Q. I have never talked to you before, have I?
A. No.
Q. You did talk to Mr. B. L. Keyser the other day?
A. Yes.
Q. Was that Monday?
A. Monday or Tuesday.
Q. Didn't you tell Mr. Keyser you were sure Larry had at least six beers?
A. I told him I was sure about three and he might have had six.
Q. Actually you don't know, do you?
A. Right.
Q. You were doing a good bit of the driving, weren't you?
A. Yes, I did some.
Q. When did you see Kay Armentrout that night?
A. We seen her at Biff-Burger.
page 11 } Q. About what time?
A. Around 9:30 or 10, I don't remember for sure.
Q. Kay Armentrout was Larry Lam's girl?
A. Right.
Q. They had been engaged, hadn't they?
A. I don't know.
Q. She was introduced by Lam to the boys from New Jersey?
A. Right.
Q. And she went with one of the boys?
A. Yes sir.
Q. Do you remember which one?
A. Frank I believe.
Q. I believe Kay was driving her car?
A. Yes.
Q. And Frank got in her car and they went somewhere?
A. Right.
Q. You all went back to the Biff-Burger after that, didn't you?
A. Yes.
Q. Is that when you got with the other girls?
A. Right.

Richard Ray Taylor

Q. The first ones were Joan and Sue?
A. Right.
Q. How long were you with them?
A. I don't know, an hour and a half maybe.
Q. Then you went with the last two girls after that?
A. Right.
page 12 } Q. You brought Joan and Sue back to the Biff-Burger?
A. Yes.
Q. Where did you get with the last two girls?
A. Biff-Burger.
Q. What were their names?
A. One's name was Hepner and I don't know the other one.
Q. You met them at Biff-Burger?
A. Right.
Q. Did Larry seem to be glad to see the boys from New Jersey?
A. Yes.
Q. You all were sort of partying?
A. Yes sir.
Q. They had driven from New Jersey just to see him?
A. Yes.
Q. The purpose of the whole evening was to drink some beer, go with some girls and have fun?
A. Right.
Q. And you did all of those things?
A. Yes.

RE-DIRECT

By Mr. Julius:
Q. What was Larry Lam's appearance when you last saw him at 1 or 1:15 in the morning, on the morning of his slaying?
A. He was in good shape.
Q. What was his appearance, how did he look?
A. He was dressed neat and everything.
Q. What was his facial expression?
page 13 } A. Normal.
Q. Was there anything unusual about him that you noticed?
A. No sir.

Sidney Armentrout

Q. How did he drive the car from Harrisonburg to McGaheysville?
A. He always drove between 50 and 55.
Q. Did he drive all right this night?
A. Yes sir.
Q. You made mention that Kay Armentrout was a girl that Larry was going with and who had gone with one of the boys from New Jersey. On February 20 was Larry going with Kay Armentrout at that time?
A. Yes sir.
Q. Was he going steady with her at that time?
A. No, he was dating her.

RE-CROSS

By Mr. Litten:
Q. When Larry left you, you said his appearance was all right. How did you appear?
A. I was all right.
Q. How about the boys from New Jersey?
A. The one that got out at the motel was pretty well lit.
Q. That was Jack?
A. Yes.
Q. Larry did have his hair messed up when he left you, didn't he?
A. No sir.
Q. His hair was not down in his eyes?
page 14 } A. No.
Q. You testified he always drove between 50 and 55?
A. Right.
Q. All the time?
A. Yes sir.

Witness: Sidney Armentrout

DIRECT EXAMINATION

By Mr. Julius:
Q. State your name.
A. Sidney Armentrout.
Q. Where do you live?
A. McGaheysville.
Q. How old are you?

Sidney Armentrout

A. 34.
Q. Are you married?
A. Yes.
Q. Did you know Larry Elwood Lam?
A. No sir.
Q. On the morning of February 20, 1966, did you have occasion to run into Larry Elwood Lam?
A. I found him that morning.
Q. Where was that?
A. A little ways west of Montevideo High School.
Q. In Rockingham County?
A. Yes.
Q. At the time you found him, who was with you?
A. My wife and Dorothy King.
page 15 } Q. Where were you going?
A. I was bringing Dorothy King home to Harrisonburg.
Q. She had been a visitor in your home that night?
A. Yes.
Q. Approximately what time was this?
A. A little after 1 o'clock.
Q. What were the weather conditions at the time?
A. It was dry and reasonably warm for that time of year.
Q. Was it dark, or was there a moon?
A. I don't really recall, it seems it was pretty dark.
Q. Tell us how you happened to see Larry Lam and what you observed.
A. He was lying beside his car and as I drove down the road I thought he had been clipped by a car.
Q. Was he on the hard surface or on the shoulder of the road?
A. I would say just on the edge of the hard surface.
Q. Where was his car?
A. Just off the hard surface.
Q. Were there any light on on the car?
A. The parking lights.
Q. Were the car doors open?
A. No.
Q. What did you do when you saw the body?
A. I had gone by and I was undecided whether to stop, but I backed up and put my lights on him and saw he was hurt so I went down the road to Dr. Hearn's, and he—

Sidney Armentrout

page 16 } Q. Did your wife or Mrs. King get out of your car?

A. No.

Q. Had you inspected the body prior to going for Dr. Hearn?

A. No.

Q. After you went to get Dr. Hearn what happened?

A. I told him a guy was hurt and he said he would call the police and the Rescue Squad and be right up there.

Q. Did he come up?

A. Yes.

Q. What happened then?

A. He examined the body.

Q. When did you learn for the first time that this young man had been shot?

A. While Dr. Hearn was there.

Q. Did you see any blood around the scene?

A. Yes.

Q. Where did you see blood?

A. It was slightly off from his right shoulder.

Q. Was it confined to one area or scattered about the scene?

A. All I saw was the one spot.

Q. How about any other objects, did you see anything else?

A. A small pistol and a small piece of metal.

Q. What kind of metal?

A. It looked like it may have been a bullet.

Q. A spent bullet?

A. Yes, and there was a slight hole in the road

page 17 } that we thought a bullet might have hit there.

Q. Were there any other objects that you saw?

A. There was a blackjack slightly behind the Lam boys car.

Q. Do you have any idea how close it was to the Lam boy?

A. I would say about 20 feet.

Q. Was Larry Lam's car motor running?

A. No sir.

Q. Were the parking lights throwing off enough light to see without other lights?

A. I don't really know, I did not turn my lights off.

Q. Did you stay at the scene until the police arrived?

A. Yes.

Q. Did any one move the body until such time as the authorities arrived?

A. No one but Dr. Hearn, he had to move him slightly.
Q. He is the only one who touched him?
A. Yes.
Q. Did Dr. Hearn move him very far?
A. No sir.

Witness: Trooper W. B. Wilmore, Jr.

DIRECT EXAMINATION

By Mr. Sipe:
Q. You are W. B. Wilmore, Jr.?
A. Yes sir.
Q. What is your occupation?
A. I am employed as a State Trooper with the Virginia State Police.
page 18 } Q. Approximately how long have you been so employed?
A. Approximately three and a half years.
Q. Were you on duty the night or early morning of February 20, 1966?
A. Yes sir.
Q. Did you receive a call or a radio message regarding a body being found in the area of Montevideo High School?
A. The message originally was called in as a traffic accident, that there was a body lying beside the road.
Q. Approximately what time did you receive this message?
A. This was approximately 1:45A.M.
Q. On February 20, 1966?
A. Yes sir.
Q. What day of the week was this?
A. This was Sunday morning.
Q. After you received this message, where did you proceed to at this time?
A. I proceeded east on 33, I was on traffic control near Harrisonburg, and proceeded to the scene which was 1.4 miles east of Penn Laird on Route 33.
Q. Is this in Rockingham County, Virginia?
A. Yes.
Q. Approximately what time did you arrive at the scene?
A. This was approximately 2 A.M.
Q. Did you observe an automobile parked there or beside the road?
page 19 } A. Yes, I did.

W. B. Wilmore, Jr.

Q. What type vehicle was it?
A. 1966 Chevelle Sports coupe.
Q. Where was this automobile parked?
A. This vehicle was parked on the right shoulder of the west bound lane.
Q. That would be on the north side?
A. Yes sir.
Q. Is this a divided highway at the place where this occurred?
A. Yes it is.
Q. This would be on the dual lane highway headed toward Harrisonburg?
A. That is correct.
Q. Were the lights on this automobile?
A. The lights were not on when I arrived.
Q. Were any of the doors open?
A. No.
Q. Did you observe a body which you later identified as that of Larry Elwood Lam?
A. Yes sir I did.
Q. Where was this body at the time you arrived?
A. This body was lying on its left side beside the left door of the vehicle, partly in the road.
Q. Was the boy dead at that time?
A. Yes sir.
Q. Who else was present there at the time you arrived?
page 20 } A. The Harrisonburg Rescue Squad and a number of spectators who had stopped.
Q. What were the weather conditions?
A. Clear and cool, I would say in the 20s.
Q. Dry?
A. Yes sir.
Q. What did you do after you arrived at the scene and observed the body and the automobile?
A. After I arrived on the scene and observed the condition of the body I told one of the Rescue Squad to call Dr. Byers, the medical examiner, and I proceeded to identify the victim. I removed his bill fold and—
Q. Who was the victim?
A. The victim's name was Larry Elwood Lam.
Q. Do you know his age at that time and his address?
A. He was 23 and his address was McGaheysville, Va.
Q. What did you then do?

W. B. Wilmore, Jr.

A. I then made a general search of the scene where this took place, around the vehicle and to the rear.

Q. During your investigation of the scene at that time did you find anything?

A. At the time I searched the scene I found a police type blackjack lying to the rear of the victim's vehicle. It was on the shoulder in the grass.

Q. Approximately how far from the automobile?

A. This was approximately 12 feet to the rear

page 21 } of the victim's vehicle.

Q. I show you this blackjack and ask you if this is the same article that you found?

A. Yes.

Mr. Sipe: I wish to introduce this as Commonwealth's Exhibit 1.

Q. Did you find any other articles there at that time?

A. A blank revolver was also found lying in the roadway to the left of the victim's automobile.

Q. I show you this and ask if this is what you found?

A. Yes sir.

Q. Where was this in relationship to the body?

A. This was on the road side of the body, partly in the traveled portion of the highway.

Q. Would you please describe to the jury what type pistol this is and what it does?

A. This is not a deadly weapon; it is a blank cartridge type gun used to start races and things of that sort.

Q. Do you recall whether this pistol had any blanks in it at the time?

A. Yes sir, as well as I recall there were four cartridges in the pistol when it was recovered.

Q. And did you remove those four blank cartridges?

A. Yes I did.

Mr. Sipe: I will offer this pistol in evidence as Commonwealth's Exhibit 2.

page 22 } Q. I will show you these and ask if they are the four blank cartridges you removed from the pistol?

A. Yes sir they are.

W. B. Wilmore, Jr.

Mr. Sipe: I offer these as Commonwealth's Exhibit 3.

Q. Could you tell whether the safety was on or off the pistol at the time you found it?
A. At the time I arrived the safety was on.
Q. Did you examine the pistol to see whether there was any odor to indicate it had been recently fired?
A. There was nothing to indicate it was recently fired.
Q. Were any other articles found at the scene?
A. Yes, there was also a spent projectile found in the road near the body of the victim.
Q. Did you take that into your custody?
A. Yes sir.
Q. I show you this spent projectile and ask if this is the one taken by you?
A. Yes sir.

Mr. Sipe: I offer this as Commonwealth's Exhibit 4.

Q. Were there any other articles found during your investigation?
A. I also found an empty Kool cigarette package which appeared to be in good condition.
Q. I show you this photograph marked Commonwealth's Exhibit 5 and ask you if you will please explain this to the jury.
page 23 } A. This is a picture of the body of the victim showing the relation of the victim's body to the left side of the auto.
Q. Was this the location of the body when you arrived?
A. Yes.
Q. Please state what these colored substances are on the road.
A. That was blood.

Mr. Sipe: I offer this as Commonwealth's Exhibit 5.

Q. I show you this picture marked Commonwealth's Exhibit 6 and ask you to explain this.
Q. This is the scene taken from the rear of the victim's auto showing the relationship of the auto to the roadway and the relationship of the victim's body.
Q. This is the automobile that was owned by the deceased?
A. Yes sir.

W. B. Wilmore, Jr.

Q. And that was the location of the automobile?
A. When I arrived.
Q. It was just a short distance off the hard surface?
A. Yes.
Q. This shows the position of the body?
A. Yes.

Mr. Sipe: I offer this as Commonwealth's Exhibit 6.

Q. I show you this photo marked Commonwealth's Exhibit 7 and ask you to explain this.

A. This was also taken from the rear of the
page 24 } victim's automobile, a little to the right, showing the relation of the police type blackjack to the auto.

Q. Was this where you found the blackjack?
A. Yes sir.

Mr. Sipe: I offer this as Commonwealth's Exhibit 7.

Q. I show you this photo marked Commonwealth's Exhibit 8 and ask you to explain that.
A. This photo was taken at the emergency room of the Rockingham Memorial Hospital, showing the condition of the victim after the body was brought in.

Mr. Sipe: I offer this as Commonwealth's Exhibit 8.

Q. I show you this photo marked Commonwealth's Exhibit 9 and ask you to explain this.
A. This is a close up picture taken of the left side of the victim's head, showing some lacerations on the scalp. This was also taken at the hospital.

Mr. Sipe: I offer this as Commonwealth's Exhibit 9.

Q. I show you this photo marked Commonwealth's Exhibit 10 and ask you to explain this.

A. This is also a picture of the same side of the
page 25 } victim's head showing further laceration marks.

Q. Is this a different laceration from the one *showin* in the previous picture?
A. Yes sir.

Mr. Sipe: I offer this as Commonwealth's Exhibit 10.

W. B. Wilmore, Jr.

Q. I show you this photo marked Commonwealth's Exhibit 11 and ask you to explain that to the jury.

A. This is also a picture of the victim's head showing the course of one of the bullets which struck the victim.

Q. Would you please describe what these marks were on the other side?

A. These appeared to be bruises over the left eye.

Mr. Sipe: I offer this as Commonwealth's Exhibit 11.

Q. I show you this photo marked Commonwealth's Exhibit 12 and ask you to explain that.

A. This is a picture taken of the deceased's chest. The shirt was raised by the nurse to show the bullet hole in the chest.

Mr. Sipe: I offer this as Commonwealth's Exhibit 12.

Q. Later on at the hospital were two spent bullets removed from the body of the deceased?

page 26 } A. Yes sir.

Q. Are these the two spent bullets that were turned over to you, one from the chest and one from the left arm?

A. Yes sir.

Mr. Sipe: I offer these as Commonwealth's Exhibits 13 and 14.

Q. I believe that you testified at the scene, was it light or dark?

A. It was very dark that night, I think it was around the last or the first quarter of the moon.

Q. After examining the scene, what did you do at that time?

A. The Medical Examiner had instructed us to bring the body to the hospital and it was taken by the Rescue Squad to the emergency room. I followed the Rescue Squad to the emergency room and Dr. Byers came and examined the body of the victim.

Q. And after the Doctor examined the body, and you observed it, what did you do?

A. The Sheriff's Department had been notified and had a

Deputy at the scene and along with them we tried to trace the victim's activity.

Q. Did you talk to two boys who were here from New Jersey and who had been in the service with him?

A. Yes sir, we did.

page 27 } Q. Where did you find them?

A. These two subjects were staying at the Marvilla Motel on East Market Street in Harrisonburg that weekend.

Q. Did you proceed to the Marville Motel?

A. Yes sir, I did. Deputy Baker, Deputy Wilcox and myself went to the motel.

Q. Were they there at that time?

A. Yes.

Q. Did you ask them, regarding their whereabouts and whether they were with the deceased boy on that night?

A. Yes sir.

Q. And did they state whether they had been with him?

A. Yes sir.

Q. Did they state where they had last seen him?

A. Mr. Frank Philcraft stated the victim last let him out at the Marvilla Motel at a little after midnight, approximately 12:30.

Q. And that was the last time he had seen him?

A. Yes sir.

Q. What about the other boy?

A. Mr. Jackson Turner had been riding around with Kay Armentrout and he arrived at the motel shortly after the victim had let Mr. Philcraft out of the automobile

page 28 } and he had not seen him since about 11 P.M.

Q. After talking to these boys, what did you do?

A. I learned from the two men at the motel that the victim left there in the company of a Richard Raylor. I proceeded to Mr. Taylor's home along with Baker and arrived there at approximately 4:15 A.M.

Q. Was this young boy at home when you arrived?

A. Yes.

Q. Did you proceed to question him?

A. Yes sir.

Q. What did he tell you?

A. He said—

W. B. Wilmore, Jr.

Mr. Litten: I have let a good bit of hearsay go in but I will have to object to this.

Court: Objection sustained.

Q. From information received from Taylor where did you proceed to?

A. We came back to the County jail.

Q. Then what did you do?

A. Mr. Taylor came back with us and we questioned him further and called Kay Armentrout to come down.

Q. Then what did you do?

page 29 } A. From information we received we discovered this vehicle was owned by Floyd Smith of Route 1, Elkton.

Q. Then what did you do?

A. We then proceeded to the Elkton area and attempted to locate Mr. Smith.

Q. Who was with you at that time?

A. There was Deputy Wilcox, Deputy Baker, Trooper Weatherholtz and myself in Weatherholtz's police car.

Q. Tell the jury where you proceeded and what you found at that time.

Q. We learned that the owner of this vehicle lived in the Fox Mountain area, northeast of Elkton. We went to this section in search of this subject and located the owner of the auto.

Q. What type automobile was it?

A. A 1962 Corvette.

Q. What color?

A. Maroon.

Q. And where was this car?

A. Parked in front of the home of Claude Shifflett.

Q. What did you do after you arrived at the home of Claude Shifflett?

A. We arrived at Mr. Shifflett's home at approximately 7:20 A.M. I checked the car belonging to Mr.

page 30 } Smith and found that the right headlight was out on the vehicle and also located a package of Kool cigarettes on the dash of the vehicle. We went into the house and found the accused, Mr. Smith, Barbara Shifflett and Joyce Monger to be the occupants of the house.

Q. Was there anyone there besides those four?

A. No sir.

W. B. Wilmore, Jr.

Q. That was the accused, Arlo Dean, Floyd Smith, Joyce Monger and Barbara Shifflett?

A. That is correct.

Q. Did you notice anything regarding the appearance of any of the four at the home?

A. Yes sir, I observed that Mr. Floyd Smith had a slight laceration on his chin, a slight laceration on the left ear and a trace of dried blood in his right nostril. There were also traces of blood on his pants and shirt. I also observed that the accused had some traces of blood on his clothing and his knuckles on both hands were skinned.

Q. I show you these trousers and ask if they are the ones that were worn by the accused at the time you arrived?

A. Yes they are.

Q. Are they in the same condition now as they were the time you first saw them?

page 31 } A. Yes sir.

Q. I show you a shirt and ask if this is the garment the accused was wearing at that time?

A. Yes sir, this is the shirt.

Q. Is it in the same condition now as the first time you saw it?

A. Yes sir.

Q. Can you state, in your opinion, what these stains are on the trousers and shirt?

A. Those are blood stains.

Mr. Sipe: I wish to introduce the trousers as Commonwealth's Exhibit 15 and the shirt as Commonwealth's Exhibit 16.

Q. After arriving there and observing the accused and Floyd Smith and the girls, what did you do?

A. We asked the two men occupants of the house, Mr. Smith and the accused, if they would consent to come to Harrisonburg with us and this they did. They said they would.

Q. Did you then come to Harrisonburg?

A. Yes sir, we all got into the automobile and came to the County jail.

Q. State to the jury what occurred after you arrived at the Rockingham County jail in Harrisonburg.

A. After we arrived at the County jail, the ac-
page 32 } cused and Mr. Smith were separated at that time. We took the accused into the recreation room of

the jail and asked him about his whereabouts of the previous night and told him what had happened and asked if he knew anything about it.

Q. What replies, if any, did the accused make?

A. He denied any knowledge of this incident.

Q. Did he state where he had been the *preceeding* night?

A. He said they had ridden around the east end of the County, the four of them, Floyd Smith, the accused, Mrs. Shifflett and Mrs. Monger.

Q. Then what occurred?

A. At that time we told the accused to go next door to the jailer's office and we called Mr. Smith over to talk to him.

Q. And did you proceed to ask Smith questions regarding his whereabouts?

A. Yes sir.

Q. What occurred then?

A. Mr. Smith also denied any knowledge of this incident. When we asked about the lacerations on his face he said he and the accused had gotten into a fight and denied any knowledge of this shooting.

Q. Had the accused said anything about how his hands had gotten skinned?

page 33 } A. He said he had gotten mad in Elkton and had struck a fence with his hands.

Q. Did you all proceed to ask questions of Floyd Smith?

A. Yes sir.

Q. For approximately how long?

A. Approximately 5 or 10 minutes.

Q. What occurred then?

A. We were interrupted by Mr. Hook, the jailer, and Mr. Hook said he believed it would be to our advantage to come to his office. At that time Trooper Weatherholtz and the Sheriff went to the jailer's office.

Q. And did you later get up and go where the accused was, at the jailer's office?

A. Yes.

Q. What occurred then?

A. I went over then to the jailer's office and Trooper Weatherholtz informed me that the accused had admitted to him—

Mr. Litten: At this time we renew our motion, repeat our objection and preserve our exception.

Court: Your point will be saved.

W. B. Wilmore, Jr.

A. —had admitted to him that he had done it, the accused.

Q. What did you do then?

page 34 } A. The accused was taken over to the recreation room by Trooper Weatherholtz and myself and he said that he would tell us how it happened.

Q. Did you inform the accused of any rights that he had?

A. We informed him of his right to be silent and asked him if he wanted to call an attorney and he said that he did not.

Q. Did he proceed to make a written statement?

A. Yes sir.

Q. Did you ask him questions or did the accused write out the statement in his own handwriting?

A. The statement was written by the accused in his own handwriting. We did not interrogate him during the process of writing.

Q. I show you this written statement and ask you if this is the statement written by the accused in his own handwriting in the presence of you and Trooper Weatherholtz?

A. Yes sir it is.

Q. Would you please read this statement to the jury.

A. "I Arlo is making this statement on my own free will. I have been told by the police that any statement I make can be used against me. We was going through McGaheysville, Arlo Dean, Floyd Smith, Barbara Shifflett and Joyce Monger and saw him turn around, then he pulled up by

page 35 } us at the Amoco Station and stayed beside us for a little ways, then he went around us and pulled over up the road and we blowed the horn and went on by. Then he came up and passed us again where the shooting happened. So we stopped to see what he wanted and he come up to the right side of the car and asked us if we wanted to race. Floyd told him that his car wasn't running very good but he would run him when he got his car worked on. Then he started cussing. He called us a cocksucker and a little SOB and other names. Then I got out on the right side and Floyd got out behind me. Larry then asked me was I going to stay out of it, and I told him I would so they started fighting and they fought for a while and I heard one of them say he had enough. Then Larry started to his car and went into his dash of his car and come out with a gun in his hand and so I reached into the car and got my gun out of the dash of Floyd's car and then he took a step toward me and said something so I shot four times. Then he fell to the ground, then we took off through Keezletown and took the back

roads for home."

page 36 } Q. Did he sign that?
A. Yes sir.

Q. Did you and Trooper Weatherholtz sign it as witnesses?
A. Yes sir.

Mr. Sipe: I offer this as Commonwealth's Exhibit 17.

Q. After the accused made these oral admissions to Weatherholtz and this written statement, did you then charge him with this offense?
A. Yes sir.

CROSS EXAMINATION

By Mr. Litten:
Q. Did you have that blackjack examined for fingerprints?
A. Yes sir.
Q. Were there any on it?
A. No sir.
Q. Did you have it analyzed for blood?
A. No sir.
Q. Did there appear to be any blood on it?
A. No.
Q. Did there appear to be any hair on it?
A. No.
Q. Did you have it analyzed for hair?
A. No sir.
Q. Were there any fingerprints on the 22 pistol?
A. No. I might correct myself on that. There were fingerprints but they were of no value.

page 37 } Q. And you did not have the blackjack analyzed for blood?
A. No.
Q. There does not appear to be any on it?
A. No.
Q. And you could not get any fingerprints from the 22?
A. No.
Q. Did they try to check on the blank gun?
A. There was the same problem there.
Q. Was any analysis made for blood type on the clothing?
A. No sir.
Q. This blank pistol I believe you said had four cartridges in it?
A. Yes.

W. B. Wilmore, Jr.

Q. Did it also have one empty cartridge?
A. Yes.
Q. It holds six, does it not?
A. Yes. There were four in it.
Q. And one had been fired?
A. Yes sir.
Q. This gun won't eject these bullets will it?
A. No sir.
Q. Did you find the box of cartridges near the scene for this pistol?
A. Yes.
Q. Where did you find those?
A. There was a box of blank cartridges of the
page 38 } type used in the glove compartment of the victim's automobile.
Q. Was any blood analysis made of Larry Lam's blood to determine the alcoholic content?
A. I have no knowledge of that.
Q. Who owned this 22 pistol, that pistol or revolver—is this the 22 pistol Arlo Dean told you he shot Larry Lam with?
A. Yes sir.

Mr. Sipe: I will offer this in evidence at this time as Commonwealth's Exhibit 18.

Q. Who owned that gun?
A. That gun was supposed to be owned by Barbara Shifflett's husband.
Q. Did you check to see who owned it?
A. No sir.
Q. You stated Dean had his knuckles skinned and blood on his clothing?
A. Yes.
Q. No wounds, lacerations or bruises on his face?
A. No.
Q. And he told you he struck a fence in Elkton?
A. Yes sir.
Q. He told you at the Elkton Post Office, didn't he?
A. Yes sir.
Q. Did he tell you about what time it was?
A. I don't recall.
page 39 } Q. Did he tell you why he did a bizarre thing like that?

A. He said he had gotten mad.

Q. Did he tell you what about?

A. He said it was something over his sister.

Q. Did he tell you he and his sister were arguing about their mother?

A. No sir.

Q. You testified there was nothing to indicate the blank gun had been recently fired. There isn't any real way to tell that except by smelling, is there?

A. True.

Q. And you could not smell anything?

A. No sir.

Q. You did not run paraffin tests on this man?

A. No.

Q. Did you run a paraffin test on Lam?

A. No.

Q. The blackjack as far as you know could have belonged to anybody?

A. That's true.

Q. Or had no connection with the case at all?

A. It is possible.

Q. Arlo Dean later repudiated his confession, didn't he?

A. Yes.

Q. When was that?

A. April 29, 1966.

page 40 } Q. Did you subsequently obtain an admission from some other party as to this shooting?

A. Yes.

Q. Who was that?

A. Barbara Shifflett.

Q. When was that?

A. On the same day, the 29th.

Q. Did Arlo Dean give any explanation as to why he had taken the blame for this?

A. No sir.

Q. Did you ask him?

Q. I recall asking him but he did not tell me.

Q. Isn't it true that on the morning of February 20 when he made this statement in the jail, that before he made it he asked to talk with his sister and Barbara Shifflett and they talked together in the jail and then he came in and told you he did it?

A. As far as I know.

Q. That is your understanding?

Q. That is your understanding?
A. Yes sir.

Witness: Trooper Weatherholtz

DIRECT EXAMINATION

By Mr. Sipe:
Q. State your name please.
A. Glenn Weatherholtz.
Q. What is your occupation?
A. State Trooper, Virginia State Police.
page 41 } Q. How long have you been with the Virginia State Police?
A. 9 years.
Q. Were you on duty the night of February 19, 1966, or early morning of February 20?
A. Yes sir.
Q. Did you receive a message and did you proceed to the vicinity of Montevideo High School in Rockingham County, Virginia?
A. Yes sir.
Q. Were you by yourself?
A. Trooper Wilmore was behind me in his car.
Q. Do you recall approximately what time you received the call and what time you arrived at the scene?
A. I estimate I received the call about 20 minutes of 2 and arrived about 2.
Q. Please describe to the jury where the scene of this crime was.
A. We measured it 1.4 miles east of Penn Laird on Route 33, on the west bound shoulder.
Q. Is that a dual highway there?
A. Yes sir.
Q. This was in which dual lane?
A. The west bound side.
Q. Could you state to the jury to the best of your recollection what the weather conditions were?
A. There was not any falling weather, and it was cold.
Q. Was it dark?
page 42 } A. It was dark.
Q. When you arrived at the scene do you recall who was present?
A. The Harrisonburg Rescue Squad and several people.

Trooper Glenn Weatherholtz

Q. Did you observe a vehicle parked on the north side of the shoulder of the road?

A. Yes sir.

Q. What type vehicle was it and where was it parked?

A. It was a Chevelle car, I believe a 1964 and it was parked on the right shoulder headed towards Harrisonburg.

Q. Was it on or off the hard surface?

A. Off the hard surface.

A. Did you observe a body there in the vicinity of the parked automobile?

A. Yes.

Q. Would you please state the position of this body?

A. I believe the body was lying with the face toward the car and with the feet toward Montevideo.

Q. Was this person alive or dead at that time?

A. He appeared to be dead.

Q. Was a Doctor present there at that time when you arrived?

A. I believe the Doctor from Montevideo was there.

Q. Dr. Hearn?

A. Yes.

Q. Would you please just state to the jury what you did after you arrived there, what you observed and what investigation took place?

page 43 } A. We got the people back, took pictures, found a lead bullet lying on the highway, searched the scene around the vehicle.

Q. Did you find anything?

A. We found a spent bullet, a little blank pistol and a blackjack.

Q. Would you step over here please. These photos have already been offered into evidence. I show you Commonwealth's Exhibit 5 and ask whether that was the position of the body at the time you arrived?

A. Yes sir. I was wrong, the feet were facing toward Harrisonburg.

Q. Was this blood on the road?

A. Yes.

Q. That was the position of the body and the car?

A. Yes.

Q. I show you Commonwealth's Exhibit 6. Does that show the position of the body and the automobile?

A. Yes.

Q. This circle in the road, what is that?

A. That is where we found the bullet.

Q. I show you Commonwealth's Exhibit 7 and ask if that is the location of where the blackjack was found?

A. Yes sir.

Q. I show you Commonwealth's Exhibit 8 and ask if that was the condition of the deceased boy?

A. Yes sir.

page 44 } Q. I show you Commonwealth's Exhibits 9 and ask you whether these were lacerations which you observed on the scalp of the deceased boy?

A. Yes sir.

Q. I show you Commonwealth's Exhibit 11 and ask you if that shows the condition of the deceased boy?

A. Yes.

Q. Does that show the place of entrance and exit of a bullet?

A. Yes sir.

Q. And also bruises?

A. Yes sir.

Q. I show you Commonwealth's Exhibit 12 and ask you whether that shows the place of entrance of a bullet in the chest of the deceased?

A. Yes sir.

Q. Were you present there when this boy was identified?

A. Yes sir.

Q. Who was he identified as?

A. I don't recall the exact person, but several people told us.

Q. Verified that it was Larry E. Lam?

A. Yes sir.

Q. After arriving and searching the immediate area for any evidence, please state what you did.

A. We had the car towed in and then followed the body to the hospital and took more pictures.

Q. Did you talk to the Doctor at the hospital?

page 45 } A. Yes sir.

Q. What did you do at that time after you left the hospital?

A. We left the hospital and we had a conference and tried to find out who had accompanied the victim and found a Miss Armentrout and questioned her at the jail. She could not give us any leads. Then we found two boys who were visiting from New Jersey and questioned them at the Marvilla Motel and they could not give us any leads. I did not go to

Trooper Glenn Weatherholtz

McGaheysville, Trooper Wilmore and Deputy Baker questioned the Taylor boy.

Q. Later on that morning were you among the officers that proceeded to the Fox Mountain area?

A. Yes sir.

Q. For what purpose did you go there?

A. We went to question the people that lived in this house because we knew that a red Corvette had been in the vicinity of the deceased.

Q. Was Trooper Wilmore with you?

A. Yes sir.

Q. Will you please state whether the accused, Jarrette Arlo Dean was present at the home of one Claude Shifflett?

A. Yes sir.

Q. Do you recall approximately what time this was?

A. I would estimate around 7.

Q. Would you please state to the jury what happened after you arrived there, what you observed and who was present?

page 46 } A. We arrived—Trooper Wilmore, Deputy Baker and Deputy Wilcox—and knocked on the door and found Arlo Dean, Joyce Monger, Floyd Smith and Barbara Shifflett and noticed that Arlo Dean had what appeared to be blood stains on his clothing, the knuckles on both his hands were skinned; Floyd Smith had blood stains on his clothing, his left nostril and his right ear.

Q. What did you do at that time?

A. We asked the two men to accompany us back to Harrisonburg to the jail to ask them a few questions. They came along with us back.

Q. Did you go to the Rockingham County jail?

A. Yes sir.

Q. Please state to the jury what occurred at the jail?

A. We asked Arlo Dean to come into the back room and we started asking questions about the previous night and if he was around Montevideo High School. He denied he had been in that section and did not know anything about a murder on 33. We sent him to the front office and questioned Floyd Smith. While we were questioning him the jailer came in and told us that Arlo Dean would like to see us. I went to the front office and he told me he—

Mr. Lucas: We again save our point, if it please the Court.

Trooper Glenn Weatherholtz

A. Dean told me that he would tell me what happened but first he had to talk to the two girls who had fol-
page 47 } lowed us over. I told him I did not see why, for him just to tell us. He said he would not tell us anything unless he talked to them. I took the girls in the front office and they talked for 5 or 10 minutes and Arlo said he killed him.

Q. Did he also tell you he would give you a statement?

A. Yes sir.

Q. Did he proceed then to give you a written statement?

A. Yes sir.

Q. I show you Commonwealth's Exhibit 17 and ask if this is the statement written by the accused?

A. Yes sir.

Q. Is your name signed along with Trooper Wilmore as a witness?

A. Yes sir.

Q. Was this statement written in the words of the accused and in his own handwriting?

A. Yes sir, he wrote it.

Q. Did you interrogate him regarding this statement?

A. No sir.

Q. After making this statement was the accused charged with this offense?

A. Yes sir.

CROSS EXAMINATION

By Mr. Lucas:

Q. I believe you testified that he said he did want to talk to the girls before he would say anything about who killed the man?

A. Yes sir.

page 48 } Q. How long did he talk with them?

A. I would estimate a little over five minutes.

Q. And then he came in and gave you a statement?

A. We just walked in the office, the door was open and he appeared to be finished talking.

Q. When did you first find out that Mrs. Shifflett said she was the one that killed the man?

A. I don't recall. Trooper Wilmore told me perhaps a month later.

Q. Did she give her statement that she had killed the deceased prior to his repudiating his statement that he had?

A. I don't know. I was not present.

Q. There is something in the evidence about an Armentrout girl; was she a friend of the deceased?

A. Yes sir.

Q. I believe on the night of this tragedy she had gone out with one of the soldiers visiting from New Jersey?

A. To the best of my knowledge, yes.

Q. She had gone to the motel with him, had she not?

A. That I don't know.

Q. So you don't know about that?

A. No sir.

Q. Do you know whether or not you have any evidence as to whether or not the deceased was disturbed because his girl friend was out with his buddy?

A. No sir.

page 49 } Witness: Dr. W. H. Talbot

DIRECT EXAMINATION

By Mr. Julius:

Q. You are Dr. W. H. Talbot?

A. Yes.

Q. What is your occupation?

A. Pathologist at Rockingham Memorial Hospital.

Q. How long have you served as pathologist there?

A. Nine and a half years.

Q. How long have you been practicing medicine?

Mr. Litten: We will waive the doctor's qualification.

Q. In your capacity as pathologist at Rockingham Memorial Hospital were you consulted about an autopsy on Larry Elwood Lam?

A. Yes.

Q. Was an autopsy performed?

A. Yes sir.

Q. When was it performed?

A. February 20, 1966.

Q. Before we go into your findings, do you have any measurements or weight charts on the deceased?

A. Yes, I have a diagram.

Q. Give us his height and weight please.

A. I do not have his height and weight.

Q. In performing the autopsy just state what your findings

Dr. W. H. Talbot

were as to cause of death and what other lacera-
page 50 } tions were on the deceased.

A. First of all there were two non-fatal bullet wounds. One entered in the forehead and coursed downward, went through the right eye and emerged on the right cheek, at about this point. Another wound was on the left shoulder and this wound was also downward starting from here down to the left elbow. This bullet did not emerge from the body; I found two fragments in the soft tissue. The third and fatal bullet wound entered the body in the upper chest just to the right of the sternum and the bullet went through between the first and second ribs to the right of the midline. The course of the bullet was downward and it went through the aorta, the main artery from the heart and continued down to the left and went through the left main artery to the left lung, and entered the lower portion, the lower one-half of the left lung, left the left lung and came to rest in the soft tissue of the back.

Q. You say that third bullet was the fatal bullet; what was the cause of death?

A. The cause of death was hemorrhage. He had approximately four pints of blood in his right chest and another pint in his left chest and this would be the immediate cause of death.

Q. From the nature of the penetration of the third bullet, would that have been instantaneous or slow death?

A. From the massive hemorrhage involving major blood
vessels death would have been almost instan-
page 51 } taneous.

Q. Were there other lacerations on the body of the deceased?

A. Yes, he had several small lacerations and abrasions. One abrasion on the lateral aspect of the right leg, one on the left shoulder, a laceration on the left wrist and also lacerations of the scalp.

Q. *Why* type lacerations did you find on the scalp?

A. Linear lacerations; also contusions or bruises around the left eye and a small laceration on the left forehead.

Q. I show you Commonwealth's Exhibit 11. Does that reflect the bruise on the left eye?

A. Yes.

Q. Would the spot on the forehead indicate the path of one of the bullets?

Dr. W. H. Talbot

A. Yes.

Q. I show you Commonwealth's Exhibit 9 whereby someone is holding back the hair of the deceased. Would that be one of the lacerations?

A. I am not sure that I saw this laceration.

Q. How about on Exhibit 10?

A. Yes, I have that on my *daigram.*

Q. How deep were these lacerations?

A. The one on the scalp was fairly deep but the others as I recall were superficial.

Q. Were there any fractures of the skull?

A. No fractures.

page 52 } Q. In your opinion, would the deceased have sustained these lacerations to his head from a fall on the ground, or striking the pavement?

A. It would be my opinion he would have had to be fall he may have gotten. He may have gotten one or two of them from a fall but you could not ascribe all of them to a fall.

Q. Making specific reference to the laceration of the head. The nature and type you described, would that come from a normal fall or would it take a blunt instrument?

A. It would be my opinion he would have had to be struck because there was one here and another here. He could not have hit the pavement at both places.

Q. You indicated in your testimony with respect to the penetration of the projectiles they were at an angle. One went in the forehead and came out under the eye, one entered the upper chest and the other in the left arm; those paths indicate what to you?

A. This would indicate that the deceased was bent over at the time he was hit by these three bullets.

Q. Would you describe that a bit more fully?

A. You would have to be bent over that way for the bullets to take that course, assuming they were fired by a person on the ground, the deceased would have to be bent over.

Q. Would it have been possible for the bullets to penetrate in this fashion while he was standing erect?

A. You mean to go through the body?

page 53 } Q. In the fashion you have described?

A. Only one went through the body. The fatal bullet lodged in the back and the bullet in the shoulder did not emerge. The only one which emerged went through the face.

Dr. W. H. Talbot

Q. Could they have taken those directions with a shot from you to me as we are now?

A. Not standing erect, no.

Q. Was any check made of the deceased for blood alcohol content?

A. I believe none was done. I did not feel like it would contribute to the cause of death.

Q. In performing the *atuopsy* did you check the bladder to see whether or not it was full?

A. I made a complete examination and the bladder was full of urine and it has no significance.

Q. Would the fact that the bladder was full of urine detract or add anything to the effect that the deceased consumed alcoholic beverages?

A. It would mean he consumed liquid but I could not say what type.

CROSS EXAMINATION

By Mr. Litten:

Q. Doctor, you testified all of these lacerations could not have come from a fall?

A. Yes sir.

Q. The man could have fallen down and gotten either of these lacerations?

A. Right.

Q. Any one of them?

page 54 } A. Right.

Q. The deeper wound in the left forehead could have come from a fall?

A. Yes, it is possible.

Q. He could have hit his head on a railroad tie?

A. Yes, one of them.

Q. Or the railroad track itself, the steel part?

A. Possibly.

Q. Or a car bumper?

A. It is possible.

Q. Or even sharp stubble from brush?

A. I would not think so.

Q. All of these were superficial except one?

A. No, I think two.

Q. None of these lacerations were significant enough to cause unconsciousness?

A. That would be my opinion.

Dr. W. H. Talbot

Q. It is your opinion he would not have lost consciousness from these lacerations?

A. That would be my opinion.

Q. Now you talk about the angle of the bullets. One went in the left arm and traveled down to the elbow?

A. Yes.

Q. A bullet generally follows the law of physics. If a bullet goes in here and strikes bone where does it go?

A. It richochets.

page 55 } Q. It will follow the bone, will it not?

A. The angle that a bullet takes after it hits bone depends on how it hits.

Q. It is possible for the bullet to go in and follow the bone to the elbow, isn't it?

A. That question would be hard to answer

Q. That's what this bullet did in this case, isn't it?

A. You said the bullet went horizontally.

Q. You don't know whether it could do that or not?

A. You would have to know exactly how the bullet hit the bone before you could predict the ricochet.

Q. But it is possible?

A. Not unless it had a very particular angle and I am not in a position to state whether it is possible or not.

Q. Assuming it was, the first shot could have struck here, followed the bone to the elbow which could have caused him to fall?

A. I have not said the bullet could go down.

Q. Assuming it could, it could have come in here, followed downward?

A. Yes, but I don't think this would cause the man to fall.

Q. From the pictures the man did not travel far after he was hit. You don't know whether that would cause him to fall or whether he could run a half mile?

A. I don't know what sequence the bullets were fired in. Maybe he was already half dead when that one was fired.

page 56 } Q. Assuming that the first bullet went in here and traveled down, he could have been falling?

A. He could have.

Q. And if he was falling and the shot was fired while he was falling, it would have entered at an angle?

A. Right.

Q. If he were crouching, bent over at the time, the bullets would have gone downward, isn't that true?

A. If he was bent over.

Examination By Mr. Julius:

Q. The bullet wound in the arm necessarily would cause the deceased to fall?

A. Everybody that gets hit by a bullet does not fall.

Q. You have no way of telling which bullet first struck the deceased?

A. I have no way of knowing. I stated that he died almost instantaneously. Certainly he did not live long, it may have been 30 seconds but not longer and I have no way of telling the sequence they were fired in.

RE-CROSS

By Mr. Litten:

Q. This man *Lamb* had to be bent over at the time each of these bullets were fired into him, that is your testimony?

A. Yes.

Q. He could not have been lying flat on the ground and have been fired on from above?

A. The fatal bullet, certainly not.

page 57 } Q. He must have been bent over or crouching?

A. Yes.

Witness: Dr. F. L. Byers

DIRECT EXAMINATION

By Mr. Sipe:

Q. State your name.

A. F. L. Byers.

Q. What is your occupation?

A. Physician.

Q. Are you also the Medical Examiner for Rockingham County?

A. Yes.

Mr. Sipe: I assume counsel will waive qualification of Dr. Byers?

Mr. Litten: Certainly.

Q. On February 20 of last year, 1966, were you called in

your capacity as Medical Examiner to examine the body of Larry Elwood Lam?

A. Yes sir.

Q. Did you examine him at the scene and also at Rockingham Memorial Hospital?

A. No sir, I saw him at the hospital around 2:50 A. M.

Q. That was early on the morning of February 20?

A. Yes sir.

Q. Would you please state to the jury what you observed about the body of this boy at the time of your examination?

A. He was brought into the emergency room by the Rescue Squad and I don't think anybody saw him
page 58 } before I did and he was dead on arrival. He had numerous cuts and abrasions about the head plus about three bullet wounds in the body. There was blood about the head and face.

Q. Do you have a diagram there showing the places of entrance of the bullets? One to the head, one to the chest and one to the arm?

A. Yes sir.

Q. I will show you this picture marked Commonwealth's Exhibit 11. Does that show in the forehead of the boy the place of entrance of one bullet?

A. That corresponds to my *daigram.*

Q. Does it also show a bruise about the eye?

A. Yes sir.

Q. I show you Commonwealth's Exhibit 12 and ask if that shows the place of entrance of the bullet to the chest?

A. Yes sir, that is about where I have it marked; the first center space, directly downward.

Q. That bullet was still in the body?

A. Yes sir.

Q. Was this determined to be the fatal bullet?

A. That is my opinion. It severed the aorta and pulmonary artery and he bled large quantities of blood internally.

Q. I show you Commonwealth's Exhibits 9 and 10 and ask if they show lacerations on the scalp of the deceased?

A. Yes sir.

Q. Do you have in your report the approximate
page 59 } weight and height of Larry E. Lam?

A. He weighed approximately 190 pounds and was 71 inches tall. This was taken from his driver's permit.

Q. From your observation as to the path the bullets took,

Dr. F. L. Byers

could you express any opinion as to the position of the body when the gun was fired?

A. All the bullets were directed down as though they came from above, either someone taller or higher up because all of them were directed downward, or else he was falling or had fallen.

Q. Commonwealth's Exhibits 9 and 10, as to the lacerations, would you have any opinion as to what would cause these?

tions, would you have any opinion as to what would cause

A. He had to be beat on the head with some type object which was sharp enough or blunt enough to break the skin.

CROSS EXAMINATION

By Mr. Litten:

Q. He could have gotten these lacerations, any one of them, from a fall, could he not?

A. He could have gotten one, but not that many.

Q. One laceration is deeper than the others, on the left side of the head, about 3/4 inch in length?

A. I remember a number of them and I believe one was deeper than the others.

Q. That one laceration could have come from a fall and striking a hard object?

A. Yes sir.

page 60 } Q. You testified that the bullets traveled downward. A bullet sometimes will follow a bone, will it not?

A. Yes sir.

Q. Assume for the moment that the first shot was the one in the left arm. If that was fired horizontally it could have struck bone and followed it down?

A. Possibley.

Q. If that had been the first one that hit him and if he had been in the act of falling, that would account for the path of the other wounds?

A. Possibly.

Q. Or if he were crouching over that would explain the angle of the shots?

A. Yes sir.

Commonwealth rests

Mr. Litten: We move to strike the evidence of the Commonwealth. We do not want to take a great deal of time on this motion because the matter has already been raised at the hearing this morning. The grounds for our motion are that the confession of the defendant should have been *supressed* for the reason stated this morning and we ask the Court to reconsider the matter at this time. If the Court wants further argument we will be glad to go over the reasons why the confession should not be admitted.

Mr. Sipe: The Commonwealth takes the same position that it took this morning. The question was argued at length and we see no reason to go into it again.

page 60-A } Court: Your motion is denied.

Mr. Litten: We except for the reasons already stated.

JARRETT ARLO DEAN

DIRECT EXAMINATION

By Mr. Litten:

Q. State your name.
A. Arlo Dean.
Q. How old are you?
A. 18.
Q. When were you 18?
A. December 18.
Q. Where do you live?
A. Elkton.
Q. Did you shoot Larry Lam?
A. No sir.

page 61 } Q. Did you state to the police on the morning of February 20 that you did shoot him?

A. Yes sir.
Q. If you didn't do it, why did you tell them you did?
A. Cause of Barbara Shifflett's four kids.
Q. Because of Barbara Shifflett's four kids?
A. Yes sir.
Q. Did Barbara Shifflett shoot Larry Lam?
A. Yes sir.
Q. Did you know she was going to shoot him?
A. No sir.
Q. Did you fight with Larry Lam?
A. No sir.

Jarrett Arlo Dean

Q. Did you strike him?
A. No sir.
Q. Did Floyd Smith fight with him?
A. Yes sir.
Q. Where was this?
A. Route 33.
Q. Whose gun is that 22?
A. Barbara Shifflett's if you are talking about the real gun.
Q. Where were you when he was shot?
A. At Montivedeo School house.
Q. What happened just before the shooting?
A. What do you mean?
Q. Were you and Barbara and some other people out riding around?
page 62 } A. Me and Barbara and Joyce and Floyd.
Q. Joyce Monger?
A. Yes sir.
Q. And Floyd Smith?
A. Yes sir.
Q. When did you first see Larry Lam that night? What time and where?
A. I don't know exactly what time, but it was in McGaheysville.
Q. Was it late at night?
A. Yes sir.
Q. Tell the jury how you happened to see him. What directed your attention to him?
A. He pulled up beside us and was going up and back and he finally went around.
Q. Did he stop down the road?
A. Yes sir.
Q. Did you all stop?
A. No sir.
Q. Then what happened?
A. We went on past and he pulled up beside us and rode a ways and went around us and stopped on the highway.
Q. The second time he stopped, did you all stop?
A. Yes.
Q. Why?
A. He was motioning for us to stop.
Q. After you stopped, what happened next?
page 63 } A. He come back and talked to Floyd and asked if he wanted to race.
Q. He asked Floyd if he wanted to race?

Jarrett Arlo Dean

A. Yes.
Q. What reply did he get?
A. Floyd said he didn't want to.
Q. Then what happened?
A. He got a little mad.
Q. Who did?
A. The Lam boy.
Q. Did he say anything? Without going into details of what he said, what type language did he use. Did he use vulgar language?
A. Yes sir.
Q. What happened after that?
A. That's when Floyd got out.
Q. Did you get out too?
A. Yes sir.
Q. What happened then?
A. I got out on the right and Floyd got out on the same side because the Lam boy grabbed hold of the door on the driver's side.
Q. Then what happened?
A. Floyd was coming around the car and Lam said to me "Baby, are you going to stay out of this?"

A. Did you know Larry Lam?
page 64 } A. No.
Q. Did you stay out of it?

A. Yes sir.
Q. What happened between Smith and Lam?
A. They were fighting.
Q. Where?
A. They started behind the Corvette and—
Q. The Corvette is Smith's car?
A. Yes. Then he knocked Smith down over a bank and they got down there.
Q. Lam knocked Smith over a bank?
A. Yes and they was just up and down, one on top and then the other.
Q. One on top and then the other?
A. Yes.
Q. Is there a railroad track near there?
A. Yes.
Q. Were they ever out on the track?
A. I don't know whether they was on it but they was close to it.
Q. What is the next thing that happened?

Jarrett Arlo Dean

A. The Lam boy had enough so they got up and Lam come back to his car.

Q. Where were you?

A. Leaning against the back fender of the Corvette. Lam reached in the glove compartment and come out page 65 } with a gun and said "I'll kill you sons of bitches."

Q. Do you know what kind of gun it was?

A. No sir, I just seen a gun.

Q. How much light was around there?

A. The headlights were shining.

Q. Could you see very well?

A. Yes sir.

Q. Was he behind the Lam car?

A. Yes, at the back bumper.

Q. After Lam got this gun and made this remark about killing you, what occurred next?

A. That's when Barbara shot him, I reckon.

Q. Where did she get the gun?

A. Out of the glove compartment, the console.

Q. Did you see her get the gun?

A. No.

Q. Where was she when Lam came back to the car?

A. Setting on the seat with her feet on the ground.

Q. Still partly in the car?

A. Yes sir.

Q. And the gun was in the glove compartment?

A. Yes sir.

Q. Do you know how many times she fired?

A. Four.

Q. After this, did you all leave?

A. Yes sir, after we got the two girls straight- page 66 } ened out. We was all scared.

Q. What do you mean about getting the girls straightened out?

A. My sister was crying and the Shifflett girl was about to pass out. I had her in the car and I helped Floyd get my sister in.

Q. When did you decide that you would be the one that took the blame?

A. Me and Barbara talked about it that night but I did not decide on it until the next day at the jail when the Troopers got us.

Q. Is that when you asked to talk to your sister and Barbara?

Jarrett Arlo Dean

A. Yes sir.
Q. You had talked about it earlier but you did not decide until then?
A. No sir.
Q. Did you later change that confession and tell the truth about it?
A. Yes sir.

CROSS EXAMINATION

By Mr. Sipe:
Q. You say you are 18 years of age?
A. Yes sir.
Q. Are you attending school?
A. No.
Q. Where do you work?
A. Nowhere right now. I ain't been able to find a job on account of this trouble.
page 67 } Q. Are you living with Barbara Shifflett?
A. No.
Q. You have been, haven't you?
A. Not exactly, I been staying with my sister.
Q. Is Barbara Shifflett there too?
A. She used to be but I am with my mother now.
Q. But you had been living with Barbara Shifflett?
A. I was living with my sister and Barbara was there.
Q. You have been going with her?
A. Yes sir.
Q. Where were you living at that time?
A. Isaac Conleys.
Q. When this happened?
A. At Barbara Shifflett's house.
Q. Her husband was not staying there?
A. No.
Q. So you moved in?
A. No sir, I did not move in.
Q. Then how did you stay there?
A. I stayed once in a while because my sister did.
Q. Prior to February 20 when this shooting occurred, you knew Larry Lam when you saw him?
A. No sir.
Q. You had never seen him before?
A. I don't think so.

Jarrett Arlo Dean

Q. You had never had any conversation with
page 68 } him?
A. No sir.
Q. You don't recall seeing him?
A. I might have.
Q. You had never had any conversation or argument with him?
A. No sir.
Q. Where had the four of you, you and Joyce and Barbara and Floyd been that night, February 19?
A. Just riding.
Q. Where did you go?
A. Charlottesville and—
Q. What did you go there for?
A. Just riding.
Q. Where else?
A. Staunton I think.
Q. What for?
A. Just riding.
Q. Then where?
A. Zions Cross Roads.
Q. What did you go there for?
A. Riding.
Q. When did you start out riding?
A. About 6 or 6:30.
Q. Did you all ride around all night?
A. Yes sir.
Q. Did you have anything to drink?
A. About 5:30 I drank three beers.
page 69 } Q. Where did you drink those?
A. At Barbara Shiffletts, right in the road.
Q. You drank three, and how many did Barbara have?
A. None.
Q. How about Floyd Smith?
A. I don't know.
Q. He was drinking?
A. I think he was.
Q. You were with him, weren't you?
A. Yes.
Q. Did you see him have anything?
A. I think he got a six pack.
Q. Where?
A. At the truck stop.
Q. Which one?

Jarrett Arlo Dean

A. On 340.
Q. Outside of Elkton?
A. Yes.
Q. What time?
A. I don't remember, it was before we went to Waynesboro.
Q. You say you had several beers and Floyd had some and you stopped and got a six pack at the truck stop on 340?
A. He did.
Q. You were in the car when he stopped?
A. Yes.
Q. All four of you were in the automobile?
page 70 } A. Yes.
Q. Who was driving?
A. My sister.
Q. Whose automobile was it?
A. Floyd Smith's.
Q. Does she go with Floyd?
A. Yes.
Q. Is she married?
A. Yes.
Q. How many seats in that car?
A. One.
Q. All four of you were in the front seat?
A. Yes sir.
Q. So you got a six pack and you certainly know what happened to the six pack, with all of you on the same seat?
A. No sir, I didn't pay much attention.
Q. You were sitting right there. Did he open the beer?
A. He might have drank some, I don't know.
Q. Did you?
A. No sir.
Q. Then you went to Waynesboro, Charlottesville, Staunton and Zion Cross Roads?
A. Yes.
Q. Did you stop anywhere else?
A. We ate at the truck stop at Zions Cross Roads, and got gas at Waynesboro.
page 71 } Q. Are they the only places you stopped?
A. Some other place we ate *somthing*.
Q. What was a loaded gun doing in the car?
A. I don't know, it weren't mine.
Q. You knew it was in there?
A. Yes.

Jarrett Arlo Dean

Q. Where was it?
A. In the glove compartment.
Q. On the dashboard?
A. Yes sir.
Q. Where were you headed when you came through McGaheysville around 1 o'clock that morning?
A. Harrisonburg to the diner.
Q. Were you going to eat again?
A. Drink coffee.
Q. Where did you first see Larry Lam?
A. At McGaheysville.
Q. Where in McGaheysville?
A. I don't know exactly.
Q. Which direction were you heading?
A. Coming to Harrisonburg.
Q. Was Joyce driving?
A. Yes.
Q. And Larry was going in the opposite direction?
A. When he pulled up beside us you mean?
Q. The first time you saw him is when he
page 72 } pulled up beside the car?
A. Yes.
Q. In the town of McGaheysville or after you leave town?
A. In the town, I believe.
Q. Did he pass you at that time?
A. Yes sir.
Q. Then what happened?
A. He went off the road and stopped and we went around him.
Q. Where did he stop?
A. At a little store up there on the opposite side.
Q. He pulled off on the opposite side?
A. No sir, on the same side.
Q. The right hand side?
A. Yes.
Q. Where is the store located?
A. Right below the school.
Q. Towards Harrisonburg?
A. Yes.
Q. That is the first time he stopped?
A. Yes sir.
Q. What happened then?
A. We went on.
Q. Then what happened?

Jarrett Arlo Dean

A. He took off again and pulled up beside us before we got up the hill.

Q. The hill at Montevideo school?

page 73 } A. Yes.

Q. How did he stop at the store and then you passed him and he started out and passed you again?

A. We wasn't driving that fast.

Q. How far is it from the school to the place where you stopped?

A. I don't know.

Q. Approximately how far?

A. I don't know.

Q. Was it a half mile or five miles?

A. A half mile, I reckon.

Q. A short distance? The High School is on a hill and this occurred down the road where the four lanes start?

A. Yes.

Q. There is no store there.

A. Yes there is.

Q. Where?

A. On the left hand side.

Q. Where?

A. On the left hand side past the school going towards Elkton.

Q. I asked which side of the school the store was on and you said up the road and I asked did you mean towards Harrisonburg and you said yes.

A. I mean he pulled off on the road towards Harrisonburg.

Q. So he pulled off and stopped; on which side?

A. The store is on the left side and he pulled off on the right.

Q. He pulled off on the right heading toward Harrisonburg?

page 74 } A. Yes.

Q. And the store is on the left side?

A. Yes.

Q. Where is the store in relation to *Montivideo* High School?

A. I don't know the name of it.

Q. How far is it from the school?

A. It ain't too far.

Q. How far? Guess.

A. I ain't good at guessing.

Jarrett Arlo Dean

Q. A half mile or five miles.
A. A half mile, or less than a half.
Q. You went past and then what happened?
A. He pulled up beside us again.
Q. Then what?
A. He went around and stopped on the four lane highway.
Q. Where did he stop? On the side of the road?
A. Yes.
Q. Off the hard surface?
A. Yes.
Q. Where did you pull off?
A. Right behind him but we stayed on the road.
Q. You were pulled off and parked on the road?
A. Yes sir.
Q. Right out in the lane of travel?
A. Yes sir.
Q. That is coming down hill, isn't it?
page 75 } A. I don't remember.
Q. You stopped and parked in the road?
A. We just stopped to see what he wanted.
Q. How far behind his automobile did you stop?
A. Floyd's front bumper was even with his back bumper.
Q. You all were completely on the hard surface?
A. Yes sir.
Q. And you stopped?
A. Yes.
Q. Were your lights on?
A. Yes.
Q. Were his lights on?
A. I don't know.
Q. Then what happened?
A. He come toward the car and asked Floyd to race.
Q. You were on the right side?
A. Yes.
Q. He came to your side?
A. Yes.
Q. And said something about racing?
A. He said it to Floyd.
Q. Did you and Floyd subsequently get out of the car?
A. After he called us them names Floyd got out.
Q. You got out first?
A. Yes.

Jarrett Arlo Dean

Q. Barbara Shifflett had to get out too for you to get out?

page 76 } A. She didn't get all the way out.

Q. You crawled across her?

A. No, she had her feet on the ground and was setting on the seat.

Q. You were on the right outside, Barbara *Next* to you, and then Floyd was between Barbara and Joyce who was driving?

A. Yes sir.

Q. You got out and Barbara swung around and then Floyd got out?

A. Yes.

Q. Then what happened?

A. The boy come back around the car on the side where my sister was.

Q. He went around the car?

A. Yes and grabbed the door handle.

Q. And you got out. Then what happened?

A. He come around back of the car and said "Babe, are you going to stay out of this?" and I said "Yes." and they started fighting.

Q. Floyd Smith and Larry Lam started fighting at the rear of the automobile?

A. Yes.

Q. In the road or off the road?

A. Part on and partly off the road.

Q. It was right dark, wasn't it?

A. Yes.

Q. No headlights back there?

page 77 } A. No.

Q. You did not go back there?

A. No.

Q. Where did you stay?

A. I leaned against the car.

Q. And just watched them fight?

A. Yes.

Q. You could not see too much could you?

A. No sir, but I could see.

Q. It was pretty dark?

A. It was dark.

Q. No lights where they were fighting?

A. Except the headlights of the car. They was behind them.

Q. After the fighting stopped, what occurred?

Jarrett Arlo Dean

A. Lam got up and went to his car.
Q. Which side?
A. The driver's side.
Q. Where were you?
A. Still leaning against the car.
Q. What happened then?
A. He come back out with a gun.
Q. What kind of gun?
A. I don't know.
Q. How much could you see?
A. I could see the barrel sticking out of his hand.
Q. A gun like this? (Showing Exhibit)
page 78 } A. I think so; our headlights was on him.
Q. Where had you gotten the blackjack?
A. We didn't have none.
Q. How big a boy is Floyd Smith?
A. He ain't too big.
Q. He is small?
A. Yes.
Q. Larry Lam was right big, wasn't he?
A. He looked to be pretty big.
Q. You say you were leaning against the car?
A. Yer.
A. Yes sir.
Q. Which side?
A. The right hand side.
Q. The passenger side?
A. Yes, opposite from the driver.
Q. Where was Joyce?
A. In the back, behind it.
Q. Behind what?
A. The Corvette.
Q. Behind your car?
A. Floyd's car.
Q. She had gotten out?
A. Yes.
Q. And was standing behind the car?
A. Yes.
Q. What was she doing?
page 79 } A. Watching.
Q. Where was Barbara?
A. Setting in the car with her feet on the ground.
Q. She never got out?
A. I don't remember if she did or not.

Jarrett Arlo Dean

Q. Which side was she sitting on?
A. The right side.
Q. Where was Floyd?
A. I believe—I don't remember if—I don't know.
Q. Then what happened?
A. That is when the boy come back with the gun and said "I will kill you sons of bitches."
Q. Then what?
A. That is when Barbara shot him.
Q. You were standing next to her?
A. Not next to her.
Q. That is the side you were leaning against?
A. Yes.
Q. She picked up the gun and shot four times?
A. Yes.
Q. Did you see the bullets hit him?
A. I seen him fall.
Q. What did you all do then?
A. We—when everybody got straighted up—we was all shook up—we left.
Q. Who was driving?
page 80 } A. Floyd.
Q. Who was seated next to Floyd?
A. I don't remember.
Q. Where were you?
A. On the outside.
Q. Where did you go then?
A. We took the Keezletown road and other back roads and went home.
Q. Back to Barbara Shifflett's home?
A. Yes.
Q. You did not report this to anyone?
A. No.
Q. About what time did this occur?
A. About 1:30 I reckon.
Q. And you got home at what time?
A. 2 o'clock.
Q. What did you do after you got home?
A. Nothing.
Q. Did you go to bed?
A. No sir, me and Barbara talked about it.
Q. You did not go to bed at all?
A. I fell asleep.
Q. Did the others go to bed?

Jarrett Arlo Dean

A. I don't know.
Q. Had they gone to bed before you fell asleep?
A. I don't think so.
page 81 } Q. Did you go to bed and go to sleep?
A. We just went back there to talk about it, me and Barbara.
Q. You went back where?
A. In the bedroom.
Q. How long did you stay back there?
A. Until the next morning—deciding who was going to take the blame.
Q. You were 17 at that time?
A. Yes sir.
Q. And you all were still there when the officers arrived at 7:30?
A. Yes.
Q. I believe you did have blood on your pants and shirt?
A. Yes.
Q. How did that get there?
A. From my hands.
Q. How did you get your hands skinned?
A. When I hit the fence.
Q. When did you hit the fence?
A. About 6 o'clock, when I got mad at my sister.
Q. Before or after you went to the truck stop?
A. Before.
Q. Who had gone with you in the Post Office in Elkton?
A. We was just riding and that is where I got out.
Q. What did you get out for?
A. Cause I got mad.
page 82 } Q. Why did you get back in?
A. Cause I got over it.
Q. You were just riding around and you got mad?
A. My sister made me mad and to keep from saying anything to her I got out and hit the fence and—
Q. So you got back in and went for beer?
A. Yes sir.
Q. What time did you get out at the Post Office?
A. I believe 6:30.
Q. Who was with you when you got out?
A. Floyd, Joyce and Barbara.
Q. You were all riding around?
A. We had just gotten in.
Q. How long ago?

Jarrett Arlo Dean

A. About a half hour or an hour.
Q. Where had you been riding, up to that time?
A. I don't remember.
Q. Where did you stop for you to get out?
A. We come to a stop sign and I just got out.
Q. What did you do?
A. I started walking down street and my sister grabbed my arm and said she was sorry and I hit the Post Office sign and walked down further and hit the fence.
Q. What type Post Office sign was it?
A. Just a sign that said Post Office.
Q. What was it made out of?
page 83 } A. Metal.
Q. You hit it once?
A. Yes sir.
Q. Then where did you walk to?
A. Down the street and hit the fence.
Q. What fence?
A. A white fence there, a yard fence.
Q. What did you do there?
A. Just hit the fence.
Q. How many times did you hit the fence?
A. Once.
Q. Did you use your left hand one time and your right hand the other time?
A. Yes sir.
Q. And scraped all the knuckles on both hands from hitting the Post Office sign and fence one time?
A. I hit the post office sign and the fence.
Q. That scraped the knuckles on both hands?
A. Yes.
Q. Caused both of them to bleed?
A. Yes.
Q. And that's how you got blood on the tail of your shirt and on your pants?
A. Yes sir.
Q. After the officers arrived, you did come to the jail with them, didn't you?
page 84 } A. Yes sir.
Q. At that time, while you were over there, you told Trooper Weatherholtz you were the one who shot the Lam boy?
A. Yes sir.

Jarrett Arlo Dean

Q. At that time you felt you would be treated as a juvenile?
A. No sir.
Q. It entered your mind, didn't it?
A. No.
Q. You were just 17?
A. Yes.
Q. You thought there was a good possibility of it, didn't you?
A. I didn't know.
Q. You didn't know whether you would be treated as a juvenile or an adult?
A. No.
Q. At the jail you told Weatherholtz that you had killed the Lam boy and would give a statement as to how you did it, isn't that right?
A. Yes sir. I didn't say I would give a statement, he asked me to.
Q. Didn't you then write this in your own handwriting?
A. Yes, but he helped me word it.
Q. Helped you spell too?
A. He helped me to spell too.
Q. This is what you wrote at that time?
A. Yes sir.
page 85 } Q. You went into detail as to how it occurred?
A. Yes sir.
Q. I think we brought out then that you later, on April 29 I believe, repudiated this, saying you had not done the shooting, is that correct?
A. Yes.
Q. That was after the County Court decided to treat you as an adult?
A. She lost the kids.
Q. This was after the Court decided to treat you as an adult?
A. I don't remember.
Q. Didn't the County Court, on March 25 of last year, decide to treat you as an adult?
A. Yes sir.
Q. This statement then repudiating your prior statement, was made after that time, after the Court decided to treat you as an adult?
A. Yes sir.

Jarrett Arlo Dean

Q. And at that time you said Barbara Shifflett had done it?

A. Yes sir.

Q. And I believe Barbara, along with you, was charged with this offense?

A. Yes sir.

Q. And she was tried in this Court?

A. Yes.

page 86 } Q. At that time, didn't you, under oath, decline to testify on the ground it might incriminate you?

Mr. Litten: We certainly object to this question. The privilege of declining to testify against oneself is a constitutional privilege and to assert it carries no inference of guilt. To allow into evidence the fact that the privilege was asserted has the effect of weakening the privilege and doing indirectly what may not be done directly. If this testimony is allowed certainly it will prejudice this man. The previous trial was none of his business. He has not asserted his privilege at this trial and has voluntarily testified.

Mr. Sipe: We think the question is proper.

Court: Your objection is overruled.

Mr. Litten: We except.

A. Yes.

RE-DIRECT

By Mr. Litten:

Q. How far did you go in school?

A. A couple of weeks in the eighth grade.

Q. Do you know what Mr. Sipe is talking about when he says juvenile and adult?

A. I do know now but a little while back I didn't. I reckon I did know it *bur*—

Q. You said that you repudiated your confession after Barbara Shifflett's husband got the children?

page 86-A } A. Yes sir.

Q. What did you mean by that?

A. Then she wanted to admit she done it after she didn't have the kids.

Q. What did the kids have to do with it in the first place?

A. I don't know.

Q. Is that why you took the blame in the first place?

A. Yes.
Q. And later she lost the custody of these children?
A. Yes.
Q. In regard to your knuckles and the blood on your shirt —you did not have any scratches or lacerations on any other part of your body?
A. No sir.

Q. You say you had an argument with your
page 87 } sister?

A. That's right.
Q. That is Joyce Monger?
A. Yes sir.
Q. What was the argument about?

Mr. Sipe: I think he is going back to direct.
Court: Sustained.

Q. As I understand your testimony, at the time that Lam was shot you were standing at the rear of the car?
A. Yes.
Q. And Barbara was in the front door?
A. I don't know if she was sitting down or standing up.
Q. She was towards the front of the car?
A. Yes sir.
Q. You said in that statement you signed this was your gun. That was untrue wasn't it?
A. Yes sir.

Witness: Floyd Smith

DIRECT EXAMINATION

By Mr. Lucas:
Q. Give your name to the Court and jury.
A. Floyd David Smith.
Q. Where do you live?
A. About three miles out of Elkton.
Q. Were you in company with the accused, Mr. Arlo Dean, on the evening of this affair out of which this case arose?
A. Yes.

Q. When did you first see the deceased on this
page 88 } evening?

A. Between 5:30 and 6.
Q. Where did you see him?

Floyd David Smith

A. At Barbara Shiffletts.
Q. I mean the deceased, Mr. Lam?
A. About around 1 o'clock, somewheres along there.
Q. Where was it you first saw him?
A. McGaheysville.
Q. Was he in the car?
A. Yes sir.
Q. Which way was he traveling?
A. Coming toward Harrisonburg.
Q. In McGaheysville?
A. Yes.
Q. What place in McGaheysville?
A. Right there around the Post Office—right above there —we was riding along the road and a car come in behind us and pulled beside us and rode beside us several hundred yards and then mashed down on the gas and went by. He went up the road and got to the other side of McGaheysville at a little store there and in front of a house he pulled over.
Q. West or east of McGaheysville?
A. That would be the other side.
Q. In terms of Harrisonburg and Elkton?
A. Towards Elkton. At Montevideo High School.
Q. This store was on the side toward Elkton from the High School?
page 89 } A. Yes sir, a service station where they sell groceries.
Q. What happened there with reference to the deceased and you?
A. He pulled off and we went by and he pulled behind us again where you start over that hill. He got on the solid line and went around us on the solid line and down through this hollow and pulled back on his side. He went on until you get where the four lanes start and pulled over again.
Q. What did he do? Did he indicate whether he wanted you to stop?
A. He got out of the car.
Q. How far was that from the place where his body was found?
A. That was the same place.
Q. He got out and then what?
A. We pulled up and stopped. He come to the car and said do you want to race and I said no, my car ain't no comparison to your car.

Floyd David Smith

Q. He had what?
A. A 1966 Chevelle.
Q. Yours is what?
A. 1962 corvette.
Q. Then what happened?
A. He said "You are like all them other sons of bitches from Elkton." He walked from that side of the car around to the drivers side and then he got to talking some right vulgar language.

Q. What did he say?
page 90 } A. "You chicken shit, mother fucking sons of bitches." And he reached for the car door and I started out.
Q. Was he directing those remarks to you?
A. Yes.
Q. Then what happened?
A. I started to get out and Joyce would not let me out. She was driving and Barbara was next to me.
Q. Did you know the deceased?
A. No sir.
Q. Had you ever had any trouble with him?
A. No.
Q. No arguments?
A. No.
Q. Do you know whether you had ever seen him?
A. If I saw him I didn't know who he was.
Q. You don't recall?
A. No.
Q. And for no reason whatever he used that language?
A. He did.
Q. Joyce tried to hold you back?
A. Yes.
Q. What did he say next?
A. I started getting out and he said "Are you going to let a little girl hold you?" I could not get out that side so I went out the other side.

Q. Then what?
page 91 } A. He met me at the back of my car and that's where the fight started.
Q. Did you, at any time during the fight, use anything other than your fists?
A. No.
Q. You are sure of that?
A. Yes sir.

Floyd David Smith

Q. Where were you fighting? Over smooth terrain or rocks?

A. In the ditch, on rocks and the railroad track.

Q. Did you fight over the railroad track?

A. All around through there is bushes.

Q. Did you get any blood drawn from yourself in the fight?

A. I got a big skinned place on my chin and on the side of my face.

Q. You are real sure you did not use any instruments other than what nature gave you?

A. No sir.

Q. Did he?

A. I couldn't tell. He hit me the first lick there and knocked me down.

Q. He hit you the first lick?

A. Yes sir.

Q. And knocked you down?

A. Yes.

Q. Then what happened?

A. We scuffled around and I got up and we was up and down.

page 92 } Q. Would it have been possible he could have hit his head on the railroad track?

A. Yes.

Q. Would it have been possible for his head to hit sharp rocks on the railroad?

A. Yes.

Q. You already said it would have been possible for him to hit the railroad?

A. Yes.

Q. How long did this fight continue between you and him?

A. Four or five minutes, I couldn't say for sure.

Q. Did you have guns while you were fighting there?

A. No sir.

Q. What terminated the fight?

A. I had him down and he said he had enough so we got up. My nose was bleeding so I started wiping the blood. I was over there in the bushes.

Q. Could you tell whether or not—while you were fighting could you smell any *alochol* on his breath?

A. No sir, because I drank a couple myself.

Q. Then what happened when he said he had enough?

Floyd David Smith

A. He went back to the car. I thought the fight was over and that's when the other taken place.

Q. How much of the other did you see? I presume that you mean the shooting?

A. I heard the shots.

page 93 } Q. You did not see who did the shooting?

A. No sir.

Q. Did you see anybody else there at the scene that got into battle with him?

A. No.

Q. Did Arlo Dean play any part in that battle?

A. No.

Q. Did you hear him say anything to Arlo?

A. No sir.

Q. Did you personally hold anything against—no, you testified you did not know him?

A. No sir.

Q. Do you know how Arlo got his knuckles skinned?

A. Yes sir. The evening that we got together between 5:30 and 6:00, we come out to Elkton and when we got across from the Elkton Post Office him and Joyce had an argument and he got mad and got out. He walked across the road to a sign in front of the Post Office, hit the sign, went on up and hit a fence.

Q. Who do you mean by his sister?

A. Joyce.

Q. Do you know what they fell out about?

A. Joyce said something about his mother and he just got mad.

Q. About his mother?

A. Yes.

Q. Do you know what she said?

A. I don't remember.

page 94 } Q. I believe you said you could not tell whether the deceased was drinking or not?

A. No sir.

CROSS EXAMINATION

By Mr. Julius:

Q. You indicated you had never seen the deceased Larry Lam?

A. If I had seen him, I didn't know him.

Q. You don't deny having seen him?

Floyd David Smith

A. No, I don't know.
Q. Do you know whether you ever talked to him before?
A. No sir.
Q. Are you sure of that?
A. No sir.
Q. You are not sure?
A. I don't know if I did or didn't.
Q. Where were you all going at one in the morning?
A. Coming to Harrisonburg.
Q. Where had you been earlier?
A. We left Elkton and went to Waynesboro; Staunton; M & M Restaurant; back through Waynesboro, Charlottesville and Zions Cross Roads and stopped there and come back through Ruckersville.
Q. Were you drinking beer over this period of time?
A. No.
Q. Were you drinking whiskey?
A. No.
Q. You said you had a few yourself, a few
page 95 } what?
A. A couple of beers. I drank one earlier on that day and stopped at the truck stop and got a six pack and drank two of them. The other four was left in the car.
Q. Did Arlo drink any?
A. No.
Q. Are you positive?
A. Yes.
Q. That's certain?
A. Yes.
Q. Did you see Arlo drinking anything?
A. No.
Q. You got together at what time?
A. 5:30 or 6:00.
Q. Was he in your sight from then until 1 o'clock in the morning?
A. When I first went to Barbara's, I was not with him the whole time there.
Q. At her house?
A. Yes.
Q. You were there for a couple of minutes?
A. 10-15-20 minutes.
Q. Did you have anything to drink there?
A. There was some beer in the car—I drank one and there was a couple left in the car.

Floyd David Smith

Q. There was not any other beer there?
A. No.
page 96 } Q. You did not see Arlo drink any beer there?
A. No sir.
Q. As you were coming through McGaheysville you indicated Lam was passing back and forth. The last time when Lam stopped at the store and you went by, how fast were you going?
A. Driving about the speed limit—55.
Q. He was completely stopped and out of the car?
A. He was not out of the car.
Q. You are sure about that?
A. Sure.
Q. How far did you travel before he caught up with you again?
A. Just about to the school house, that's where he passed on that solid line.
Q. He passed and went around?
A. Right.
Q. How much distance would you say that would be?
A. I don't know, 300 or 400 yards, maybe further.
Q. Did he get out of your sight again or did you see him pull over and park?
A. He had been in sight the whole time.
Q. As you cross that hill, you go into a dip, don't you?
A. Yes but he was in sight when he went down the dip and we come in behind him and he was pulling over.
Q. Who was driving your car at the time?
A. Joyce.
page 97 } Q. You all finally stopped, did you not?
A. Yes.
Q. Where did you stop with reference to Lam's car?
A. My front bumper was probably about his back bumper, roughly.
Q. You were not directly behind him?
A. Not directly.
Q. You were still on the hard surface?
A. Yes.
Q. Not completely beside him?
A. No.
Q. Your car only had one headlight?
A. Yes.
Q. One was smashed out?
A. No, I got a short or something.

Floyd David Smith

Q. Larry Lam's lights were off?
A. Yes; he might have had the parking lights on.
Q. As he got there you say he came to the right side first and then the left?
A. He was standing out of his car and he walked to the right side of my car first.
Q. Then he came to the left side?
A. Yes.
Q. That's when you got out and you and he started to fight?
A. Yes.
Q. How tall are you?
A. About 5'5".
page 98 } Q. How much do you weigh?
A. About 140.
Q. When you got out of the car did you get out with any object in your hands?
A. No.
Q. You went around back of the car and started scuffling?
A. I got out on the right side and we met at the back bumper of my car.
Q. You got out of the car for the purpose of fighting?
A. Yes, because he called me them names.
Q. If you got out for the purpose of fighting, how come you let him get the first lick?
A. He caught me unexpected.
Q. How did he catch you unexpected?
A. The lights blinded me there.
Q. What lights?
A. My car lights.
Q. I thought you were back of your car?
A. We was, but he could see better than I could.
Q. Just from the tail lights?
A. Yes.
Q. How big was he?
A. I don't know because I didn't know him.
Q. You scuffled all around the area?
A. Yes.
Q. Do you know how far the railroad tracks were from the car?
page 99 } A. No.
Q. Have you been back there to measure?
A. I been back there.
Q. Are they 30 yards, 30 feet or 3 feet.

Floyd David Smith

A. Not 30 yards.
Q. 30 feet?
A. A little better.
Q. It was bushy, briars and rocks?
A. Yes.
Q. You all fought for several minutes, really went at it—you were rolling on the ground on several occasions?
A. Quite a few times.
Q. Was the blood from your nose and chin flying around?
A. There was blood all over my clothes.
Q. I believe your shirt was torn?
A. Yes.
Q. Your trousers had blood all over them?
A. Yes.
Q. Were your trousers torn too?
A. I don't remember.
Q. What did you have on that night?
A. I believe blue britches.
Q. What kind of shirt?
A. Really I don't know.
Q. Have you even seen this shirt before?

A. Yes sir, I wear one all the time in the win-
page 100 } ter.

Q. Is that your shirt?
A. Yes.
Q. The one you had one?
A. I had on one like that.
Q. Would you point out the blood spots on the shirt? Do you see any blood?
A. Yes.
Q. Where?
A. Its blood all over it there.
Q. Is that what you call blood all over it?
A. I would think so.
Q. Any tears?
A. No.
Q. Any rips?
A. No.

Mr. Julias: I would like to offer this as Commonwealth's Exhibit 19.

Q. Are these your trousers?
A. I reckon.

Floyd David Smith

Q. The same trousers you had on that night?
A. It looks like it.
Q. Do you see any tears?
A. I don't see any tears.
Q. Do you see any blood?
A. I don't see any blood.
Q. You said there was blood over your shirt
page 101 } and trousers. Do you see any blood on those?
A. No.

Mr. Julias: I offer these as Commonwealth's Exhibit 20.

Q. You say that you are 5'5" and weigh 140 pounds?
A. Yes sir.
Q. You say you got on top of this boy and he said he had enough and you got up?
A. After a while.
Q. Did you stay in the rear of your car at this time?
A. When I got up I was a ways over in the bush.
Q. How far from the car?
A. About half way between the tracks and my car; I would say 10 or 15 feet.
Q. Did you see Lam go over to his car?
A. He got up and I presumed he went to the car.
Q. You testified the next thing you heard some shots?
A. Yes.
Q. And you don't know who shot?
A. No.
Q. You don't know if Arlo had any part in it or not?
A. No sir, I don't know.
Q. Did you go to see what happened?
A. Yes, the girls started screaming and carrying on and we got them in the car and everybody was scared and we left.
Q. Where did you go?
page 102 } A. We went up to the cross roads at Cross Keys and went through Keezletown.
Q. And went home?
A. Yes.
Q. I believe you came into the Rockingham County jail with Arlo?
A. Yes.
Q. Do you recall making a statement at the County jail?
A. Yes.

Floyd David Smith

Q. I believe you made it of your own accord. You did make a statement at the Rockingham County jail?

A. Yes sir.

Q. You made it in writing?

A. Yes.

Q. You signed it?

A. Yes.

Q. In that statement you said that Arlo Dean fired the shots at Larry Lam, did you not?

A. He owned up to doing it so I presumed he done it; he owned up to doing it.

Q. You made the statement because he owned up to it?

A. Naturally I knowed I hadn't done it.

Q. Why did you testify today you did not know anything about it?

A. He said he done it. Was I supposed to say he hadn't.

Q. You all talked about this thing all night, didn't you?

A. No sir, it was not mentioned.

page 103 } Q. It was not mentioned again after the shots were fired?

A. No sir.

Q. I show you this statement that has some red pencil marks on it. Is that your signature?

A. Yes sir, that's my signature.

Q. I will read this to the jury and ask you if you made this statement.

"We were going through McGaheysville, Joyce was driving; I was sitting next to her, Barbara Shifflett was next to me and Arlo was next to the right door. When he turned around and passed us in McGaheysville he went on ahead. He got to a house just past the bridge and pulled off. We went by and he followed, passed us on a solid line at the school and went on up the road and pulled over. He got out and looked like he wanted us to stop so we pulled up beside him. He come to the right side and wanted to race and I said when I put a bigger motor in I would. He come to the left side and I started to get out and Joyce would not let me out. I got out the other side and we started fighting behind his car. He knocked me down and I choked him and in a while he said he had enough and he got up and ran to his car and come out with a gun. I was behind the car and heard the shots fired and then we left. Arlo fired the shots. We went through Keezletown, across the mountain up 340

and got home at 2 A.M. I have had my statement read to me and it is true." Did you sign that?

page 104 } A. Yes.

Q. I believe you go with Joyce Monger, do you not?

A. Yes sir.

Q. She is Arlo's sister?

A. Yes.

Q. Are you married?

A. Yes sir.

Q. Is she married?

A. Yes sir.

Q. You are not married to each other?

A. No sir.

RE-DIRECT

By Mr. Lucas:

Q. This beer, you said you had three beers—in what County was that beer purchased?

A. Rockingham County.

Q. The rural part of Rockingham County?

A. Yes.

Q. What test beer is that?

A. Low test, the lowest you can get when you are 18.

Q. Not as high test as what you get in Harrisonburg?

A. No sir.

Q. Did you hear any conversation between Barbara Shifflett and the accused with reference to who shot this man?

Mr. Sipe: Objection. That would be hearsay.

Q. Did you at any time hear Arlo say he would take the blame for this killing for Barbara?

page 105 } A. No sir.

Q. Do you know whose gun this is I have in my hand?

A. It is Barbara Shifflett's gun.

Q. Do you know that of your own knowledge?

A. It looks like it.

Joyce Monger

WITNESS: Joyce Monger

DIRECT EXAMINATION

By Mr. Lucas:

Q. Will you give us your name?

A. Joyce Monger.

Q. I believe you are the sister of the accused, Arlo Dean?

A. Yes sir.

Q. How old are you?

A. 21.

Q. Were you in company with Mr. Smith and your brother and Barbara Shifflett on the night this tragedy occurred?

A. Yes sir.

Q. Were you acquainted with the deceased before this night?

A. No sir.

Q. Do you even recall seeing him?

A. No sir.

Q. When did you first see him on this night in question?

A. Right above McGaheysville, in front of a service station.

Q. Was he in or out of the car?

A. He pulled up beside us in his car.

Q. Did you notice anyone else with him?

A. He was by himself.

page 106 } Q. About what time was that?

A. Around one o'clock or maybe a little after.

Q. What did he do, if anything, unusual or otherwise when you saw him at McGaheysville?

A. He just pulled up like he was going around but he rode beside us and looked over at us.

Q. Was or was not his attitude of a taunting nature, indicating he was trying to have trouble?

Mr. Sipe: Objection.

Q. What did he do? How far did he drive double with you?

A. Just a little ways, not too far.

Q. What did he do then, pull in front?

A. He went around us.

Q. When did you see him again?

Joyce Monger

A. He pulled over on the right side in front of a house below Montevideo High School.

Q. On the side toward Elkton or Harrisonburg?

A. Toward Harrisonburg.

Q. East of Montevideo High School or west of Montevideo High School?

A. I don't know if it was east or west.

Q. Toward Elkton or toward Harrisonburg?

A. Harrisonburg.

Q. On the Harrisonburg side of the High School?

A. It was before you got to the High School.

Q. Coming from Elkton?

page 107 } A. Yes sir.

Q. Then what happened?

A. We just went on up the road and was going up the hill almost to the High School and he came around again and went on—he was speeding.

Q. He had to be going faster than you to get by you.

A. Not too fast, I was not driving fast.

Q. Then what?

A. He went around us.

Q. When did you see him again?

A. Where the dual lane highway had just begun then, we had just started on it, he pulled over to the side of the road.

Q. What did he do?

A. He was getting out of his car.

Q. Then what happened?

A. He was getting out of his car so I pulled up and just stopped.

Q. Then what?

A. He comes back to the car and said something about a race and Floyd told him his car wasn't nothing to run with his and he acted real nice at first and after Floyd would not race he started to get mad and saying vulgar words.

Q. We have heard the vulgar words, I will not ask you them. What happened when he was using these vulgar words?

A. He asked him why not again.

Q. This is a conversation between Floyd Smith and the deceased?

page 108 } A. Yes sir.

Q. He was saying why not?

A. Yes, and Floyd told him his car was not anything to compare with his.

Q. Then what happened?

Joyce Monger

A. He said a few more words which I don't remember and he come around the front of our car on over to my side and said he dared him to fight and asked why he wouldn't fight and said some vulgar words there and I did not want Floyd to get out and fight and he said "You are like all those yellow SOBs from Elkton." I still would not let Floyd get out and I told the boy to go on, we didn't want any trouble and then Floyd was getting out the other side.

Q. What happened when Floyd got out?

A. They started to fight.

Q. During the fight did you notice whether they did or did not get on the edge of the railroad.

A. They was over in there somewhere. I could not see that good. It started behind the car but it ended up off the highway.

Q. Have you looked at that area there since?

A. Yes sir.

Q. What is the *codition* of the surface of the earth around the railroad, are there any rocks?

A. Yes, it is rocks and stubble; it's not very smooth at all.

Q. Do you know how long they fought?

page 109 } A. It might have been a few minutes, I don't remember exactly.

Q. Do you know why it stopped?

A. Yes, the Lam boy said he had enough so he got up and that was the end of the fight.

Q. Then what happened?

A. He went to his car, set down like he was getting in, he did not get in all the way, I know he had one leg out and he was fooling with something. I thought he was fixing to leave. While he was fooling around the next thing he was out of the car again and he come out with a gun and said "I will kill you SOBs." It scared me and I heard shots and I screamed, I did not know whether he shot my brother or Barbara or what. The next thing I heard more gun fire and Barbara had shot him.

Q. Did you see Barbara shoot him?

A. I saw the gun in her hand.

Q. Did you hear, at any time, a conversation between Barbara and the accused as to who was going to take the blame for killing him, after this happened?

Q. Did you hear this conversation on the morning after the shooting?

A. Yes sir.

Q. Where did you hear it?
A. At the police station.
Q. You heard it at the police station?
page 110 } A. Yes.
Q. When was that?
A. When the officers brought Floyd and Arlo to the police station.
Q. In what room was it that you heard Barbara and the accused discuss this?
A. The office I guess.
Q. What did you hear them say?
A. Arlo said that he wanted to take it because of Barbara's children. He said it would be hard on them to find out their mother done something like that and so it was decided then that he would take it.
Q. Was that or was it not after Arlo had been in the other room?
A. Yes, he had done been over there.
Q. I will ask you whether you know who owns this gun?
A. That I couldn't truthfully say because I don't remember what the gun looked like.
Q. Did Barbara Shifflett have a gun that night?
A. Yes she did.
Q. I believe you said you saw her fire or shoot it?
A. There was a couple of shots fired and she had the gun so she had to shoot him.
Q. You don't know whether this is or is not the gun?
A. It looks like the one she had.
Q. Did you notice anything about Lam's appearance when he came on the side of the car where you were sitting?
page 111 } A. Do you mean the way he walked?
Q. Did you notice anything at all?
A. He came around there and acted biggity.
Q. Do you remember the condition of his hair?
A. It was hanging down in his face.
Q. Was that before or after the fight?
A. Before the fight.
Q. Could you tell whether he appeared to be intoxicated?
A. He acted like a person who had a few beers.
Q. Did you actually see the shooting of the deceased by Barbara Shifflett?
A. Yes I saw her shoot him.

Joyce Monger

CROSS EXAMINATION

By Mr. Julius:

Q. Mrs. Monger is it?

A. Yes.

Q. You stated I believe when Lam first came to the car he was real nice?

A. He was.

Q. Just about two minutes, in response to Mr. Lucas' question, you said he was biggity.

A. I said when he came on my side; he was real nice when he was on the other side.

Q. Were you driving?

A. Yes.

Q. What speed were you driving when you passed the store?

A. I don't believe I was even driving the speed limit.

page 112 }

Q. Lam did not have any trouble catching up?

A. No he did not have any trouble.

Q. He went to the beginning of the dual highway and stopped?

A. Yes.

Q. Was he out of his car?

A. Almost out.

Q. Were his lights on or off?

A. I don't remember.

Q. Where did you stop your car?

A. Almost in back of his, not off the hard surface.

Q. On the hard surface?

A. Yes.

Q. You say there were some derogatory remarks passed and Smith got out of the car and the fight took place?

A. Yes.

Q. Did you get out of the car at that time?

A. I set in the car maybe a second and then I got out.

Q. To watch the fight?

A. I was standing behind the car and watching over there.

Q. Was Barbara standing out there too?

A. She was sitting in the car as I remember.

Q. Where was Arlo?

A. Standing beside the fender.

Q. Give us some idea as to what area Smith and the deceased fought over.

Joyce Monger

A. From what I could see it was an area
page 113 } about as far maybe as to the back of the girl over there.

Q. No further than that?
A. To the door behind her.
Q. Did you have any trouble seeing them?
A. You could see figures.
Q. Could you make out who was who?
A. That was easy because Floyd is small.
Q. The boy he was fighting was rather large?
A. Right large.
Q. Could you tell who was getting the best of who?
A. They was up and down, I couldn't see.
Q. Scuffling in the bushes and rolling around?
A. Like I said, up and down.
Q. You have indicated that this Lam boy looked like a man who had a couple of beers. You all had a few yourselves, didn't you?
A. No sir, I don't drink.
Q. Had Smith had any?
A. He had a few earlier I think.
A. Had Arlo had any?
A. Not as I know of.
Q. Had Barbara had any?
A. No sir.
Q. Who drank the six pack you purchased at the truck stop?
A. I didn't even know there was any beer purchased.

Q. You don't remember?
page 114 } A. I don't remember whether it was or not.

Q. Did you ever get back in the car while they were fighting?
A. No, I stood back of the car on the driver's side.
Q. And you heard Lam say he had enough?
A. Right.
Q. And he went to his car?
A. Yes.
Q. Where was Smith at this time?
A. Still standing where they quit fighting; he looked like he was fooling with his nose.
Q. Weren't you concerned over him? Didn't you go back to him?
A. No I waited for him to come to the car.
Q. Were you looking at him?

Joyce Monger

A. I looked there, yes.
Q. Where was Arlo at this time?
A. Standing at the side of the car.
Q. Do you know whether he had any object in his hands?
A. Just his hands hanging down.
Q. You saw Lam get out of the car and you could see he had a gun?
A. Yes sir.
Q. Did you have any trouble seeing it?
A. No, our car lights reflected on him.
Q. You only had one headlight working, didn't you?
A. We had four working.
Q. You did not have a bum headlight?
page 115 } A. I had them on bright.
Q. You had no trouble with your headlight going off and on?
A. I never noticed it.
Q. You say you heard a shot?
A. Yes sir, the Lam boy fired a shot.
Q. You are sure of that?
A. Positive.
Q. Who did he fire it at?
A. I don't know.
Q. Where was Smith at this time?
A. Still in back of the car; I don't know whether he started up or not.
Q. Your testimony is that the altercation took place between Smith and the deceased, but you are saying now that he shot at someone other than Smith?
A. I do not know who he shot at.
Q. Where was Smith?
A. In back of the cars.
Q. He was not in a position to be shot at?
A. I don't know whether he could have been or not.
Q. Where was Barbara Shifflett at the time?
A. Setting in the car.
Q. Did she have her feet outside or inside the car?
A. I don't know, I know she was sitting in the car.
Q. Did you see her take the gun and kill Larry Lam?
A. I seen her get out of the car when he come
page 116 } out and she was shooting.
Q. Did you hear any statement by her telling Lam to get back?
A. No.

Joyce Monger

Q. She just started shooting?
A. Yes.
Q. Where was Arlo?
A. Standing beside the car.
Q. Was he standing next to the door?
A. Not exactly at the door, at the back fender.
Q. Did you or Smith or Arlo or anyone make any effort to stop Barbara?
A. No, it happened so fast; I think my brother did.
Q. Did what?
A. Tried to stop her.
Q. You knew this gun was in the car?
A. Yes.
Q. How long had it been in there?
A. Just that evening.
Q. What was it put in there for?
A. Because the night before we had trouble with Barbara's husband. He fired a shot at us and she wanted to take it, so it was up to her.
Q. You knew she had a gun?
A. Yes sir.
Q. I believe after the shooting you all got in the car and left?

page 117 } A. They put me in the car.
Q. You were screaming?

A. Yes.
Q. And Smith drove off?
A. Yes.
Q. And you all went home?
A. Yes.
Q. Did you all discuss this while you were driving home?
A. No sir.
Q. Why not?
A. I was not in shape to discuss anything.
Q. You were thinking about it?
A. To tell the truth I don't know what I was thinking about.
Q. Why did you not go to the police?
A. We was scared.
Q. Do you remember when the police came to the house?
A. Yes.
Q. Whose home was it?
A. Barbara Shifflett's.
Q. All four of you were there?

Joyce Monger

A. Yes sir.

Q. I believe the police took Floyd and Arlo back to the County jail?

A. Yes sir.

Q. And you and Barbara drove in in the car?

A. Yes sir.

page 118 } Q. At the County jail, did you and Barbara talk to Arlo again?

A. Yes sir.

Q. Did you and Barbara talk to Floyd at the jail?

A. No sir.

Q. Just to Arlo?

A. Yes.

Q. At that time you discussed this incident, did you not?

A. When he requested to talk to us.

Q. And you talked for 5 or 10 minutes?

A. It was not long.

Q. The thing you talked about was who was going to take the blame?

A. Arlo said he was going to take it because of Barbara's children.

Q. The truth of the matter is that you all went there and said you were not going to say anything and let the chips fall where they might, isn't that true?

A. Sir?

Q. Is that all you discussed?

A. Yes.

Q. Did his age play any factor in this?

A. No.

Q. You made a statement at the jail, did you not?

A. Yes.

Q. Do you recall in that statement that you indicated you did you know who did the shooting?

page 119 } A. I don't remember what I said.

Q. If I read from your statement—you said you started screaming and crying when I heard the shots and went hysterical.

A. Yes I did scream when I heard the first shot.

Q. Is that your signature?

A. Yes sir.

Q. At the time that you made this statement you did not make any mention as to who committed the crime?

A. Right.

Joyce Monger

Q. If you had just determined that Arlo was going to take the blame why didn't you put that in black and white?

A. Because I did not want to lie on my brother, saying he did it when he didn't.

RE-DIRECT

By Mr. Lucas:

Q. I would like to ask you as to whether you and your brother had an argument at any time prior to this occurrence?

A. Yes sir.

Q. What were you arguing about?

A. He misunderstood something I said. He thought I said something about our mother and I hadn't, and he thinks the world of Mom.

Q. What did he do?

A. He got out of the car and I went after him and apologized and said I did not mean it about her. He jerked away from me and hit a sign and I tried to apologize
page 120 } again and he hit a fence the next time.

Q. Was there or not a car parked there at the time?

A. Yes sir, a 1959 Olds, either blue or grey.

Q. Has an effort been made by you to determine the identity of the person in that car?

A. Yes sir it has.

Q. What has been done to ascertain the identity of that woman?

A. Barbara went and talked to the woman.

Q. Who is the woman?

A. Clara Comer.

Q. And what did Clara Comer say?

Mr. Julias: Objection.

Q. Did you do everything you could to have this woman here in Court?

A. Yes sir.

RE-CROSS

By Mr. Julius:

Q. You say you and your brother had an argument about your mother because he is so fond of his mother?

A. Yes.

Barbara Shifflett

Q. And what did your brother do?
A. When I tried to talk to him he was mad and he hit a sign at the Post Office and I tried to talk to him again he jerked away and hit a fence.
Q. Which hand did he use?
A. I think it was his left hand, I'm not sure.
Q. Is he left or right handed?
page 121 } A. He's right handed but he uses his left hand a lot too.
Q. He only used one hand as far as you know?
A. I don't remember.
Q. After this did he calm down?
A. We got him back in the car and tried to talk to him. We stopped at the truck stop then and he finally realized I did not mean anything about Mom.
Q. And you all went on?
A. Yes sir.

Witness: Barbara Shifflett

DIRECT EXAMINATION

By Mr. Litten:
Q. Give us your name.
A. Barbara Shifflett.
Q. What is your age?
A. 26.
Q. Miss or Mrs.?
A. Mrs.
Q. You are married?
A. Yes sir.
Q. Do you live with your husband?
A. No sir.
Q. I believe a divorce suit is pending?
A. Yes sir.
Q. On the night of February 19, 1966, were you in the company of Arlo Dean?
A. Yes sir.
page 122 } Q. You and Arlo had been going together before that?
A. Yes sir.
Q. Where did you get with Arlo that evening?
A. At my house.
Q. About what time?

Barbara Shifflett

A. Around 6 o'clock I think.
Q. At your house?
A. Yes sir.
Q. Who else was in your company?
A. Joyce Monger and Floyd Smith.
Q. Four of you?
A. Yes sir.
Q. What did you do?
A. Rode around.
Q. In whose car?
A. Floyd's.
Q. Where did you go in the course of the evening?
A. We were in Waynesboro, Staunton, Charlottesville and Zion Cross Roads and back to Ruckersville, Elkton and Shenandoah.
Q. You rode around a good many places?
A. Yes sir.
Q. Who was doing the driving?
A. Joyce.
Q. Where was Floyd sitting?
A. Next to Joyce.
Q. Where were you sitting?
page 123 } A. Next to Floyd.
Q. And Arlo next to you?
A. Yes.
Q. All four of you in front?
A. Yes sir.
Q. Does that car have more than one seat?
A. Two bucket seats.
Q. No seats in the rear?
A. No sir.
Q. What kind of glove compartment does it have?
A. A little hole with a handle, hand rail.
Q. Is there a lid to the compartment?
A. No sir.
Q. Did you take any weapons with you that evening?
A. Yes sir, a pistol.
A. What kind?
A. A 22.
Q. Does this appear to be the gun?
A. Yes sir.
Q. Were the handles loose on the gun?
A. I don't remember.
Q. Why did you take a gun with you?

Barbara Shifflett

A. The night before I was out with Floyd and Joyce and my husband had come back into town and told me to go home. I didn't want to go and he pulled a pistol out and shot over the car. I figured he might do something like that again.

page 124 } Q. Your husband was kind of upset over your separation?

A. At that time, yes sir.

Q. You had how many children?

A. Five.

Q. Was this your gun?

A. Yes sir.

Q. Where did you purchase this gun?

A. From Ted Morris across the mountain.

Q. Do you know where he lives?

A. Next to Dyke.

Q. When did you purchase the gun?

A. In August.

Q. Of 1965?

A. Yes.

Q. Did you go over to Dyke to buy the gun?

A. Yes sir.

Q. Was the gun loaded?

A. Yes sir.

Q. Where did you put it?

A. In the little hole in the dash.

Q. You say you all rode around to various places, Waynesboro, Charlottesville, Staunton, Zions Cross Roads?

A. Yes sir.

Q. What was the purpose in all of this?

A. When we left Charlottesville we were going to Richmond but we got tired at Zions Cross Roads and came back.

page 125 } Q. Did you have any established destination in mind, were you going to any particular place or were you just riding?

A. Just riding around.

Q. Did you know Larry Lam?

A. No sir.

Q. When is the first time you saw him, that you are sure of?

A. That night.

Q. About what time?

A. One o'clock or so.

Barbara Shifflett

Q. Where was it?
A. In McGaheysville when he passed us.
Q. Would you tell the jury what happened?
A. We were on our way to Harrisonburg and right after we got through McGaheysville he passed us. At first I thought it was my husband because it was a new car. After he got around I knew it wasn't. He went on up the road and stopped and we went by and he passed us again and after we passed the school house he went around us on the hill and when we got to the dual lanes he stopped and was getting out of his car and had his hand raised so we thought he wanted us to stop.
Q. Who was driving?
A. Joyce.
Q. You were seated as previously stated?
A. Yes sir.
Q. Joyce was driving, Floyd next, you next
page 126 } and Arlo on the outside?
A. Yes sir.
Q. You say he stopped his car?
A. Yes.
Q. And got out?
A. Yes sir.
Q. Then what occurred?
A. We stopped and Arlo rolled the window down and he asked Floyd to race and Floyd said his car was not running right and he would not race. He got all mad about that and started fussing with Floyd.
Q. Without relating the conversation, was there any vulgarity used?
A. Yes sir.
Q. On whose part?
A. Lam.
Q. At that time where was Lam?
A. On the right hand side and then he went around on the other side and was talking to Floyd and telling him to get out and fight.
Q. What occurred next?
A. It all happened so fast—Arlo opened the door and he got out.
Q. Did Floyd get out on the left or right?
A. On the right.
Q. Why didn't he get out on the left?
page 127 } A. Joyce wouldn't let him out.

Barbara Shifflett

Q. So he got out on the right side, which means he went over Arlo and you?

A. Arlo was getting out and pulling me and he sort of climbed over me.

Q. Did Arlo get out then?

A. Yes sir.

Q. Where did Arlo go?

A. He was standing at the back fender?

Q. Where were you?

A. I sat back down.

Q. Was the right hand door of the car open?

A. Yes sir.

Q. Were your feet inside or outside the car?

A. Outside I think.

Q. Was Joyce still in the car?

A. At that time, yes.

Q. Did she later get out?

A. Yes.

Q. Which side did she get out on?

A. The left.

Q. Where did she go?

A. Around at the back of the car.

Q. And Arlo was also at the back and you were still in the car with the door open on the right side and your feet on the ground?

page 128 } A. Yes sir.

Q. What happened between Smith and Lam?

A. They started fighting.

Q. Where did the fight start?

A. At the back of the car.

Q. What happened the first part of the fight, if you remember?

A. I don't really know, they just started fighting.

Q. Was one of them winning at the beginning?

A. They were both up and down.

Q. Were they wrestling as well as fighting with their fists?

A. Yes sir, I guess they were, they were all over the ground.

Q. Describe the area where they fought.

A. From the cars over to the side of the road and over to the railroad tracks, back in there.

Q. The railroad track is near the highway at that point?

A. Yes sir.

Q. I believe you said they were up and down?

Barbara Shifflett

A. Yes sir.
Q. Could you see the fight very well?
A. Not really.
Q. It was dark that night?
A. Yes sir.
Q. What lighting did you have there?
A. The headlights on Floyd's car.
Q. Where was Floyd's car with reference to Lam's car?
A. We pulled up and our front bumper was at his back bumper.

page 129 } Q. Tell the jury in your own words what occurred next. We are at the point where Smith and Lam are fighting, Arlo is at the back of the car and you are sitting in the car with the door open.

A. Somebody said they had enough, I am not sure which one, I was not paying that much attention because a car went by and I was talking to Arlo. The boy came back and sat in his car with his feet out and leaned over and came back and when he got back out he had this gun.

Q. Which side of the car was he on?
A. The left side.
Q. Next to the highway?
A. Yes.
Q. Did you see that he had a gun?
A. Yes.
Q. How could you see the gun?
A. The headlights were on.
Q. Can you tell us what kind of gun it was?
A. No sir.
Q. What happened next?
A. He said "I will kill all of you SOBs and he shot and when he shot I just grabbed the gun and started shooting.
Q. You grabbed the gun from the glove compartment?
A. Yes sir.
Q. And you shot at him?
A. Yes.

page 130 } Q. Where was Arlo at that time?
A. I guess he was still at the fender.

Q. How many times did you shoot?
A. Four, they told me later—I did not know at the time.
Q. What happened to Lam as you fired?
A. He fell.
Q. What position was he in when you fired the first shot?

Barbara Shifflett

A. He was standing sort of leaning over with the gun in his hand.

Q. Did Arlo at any time fight with Lam?

A. No sir.

Q. What happened after you fired these four shots?

A. Arlo grabbed my arm and I was sort of hysterical I guess, crying, and he sat me back in the car and went and helped get Joyce in the car and we just left.

Q. Arlo grabbed your arm and got you in the car. Where had Floyd been?

A. Over there where they were fighting.

Q. He came to the car then?

A. Yes sir.

Q. What was Joyce's condition?

A. She was crying.

Q. What did you do next?

A. We just left and went back home.

Q. Back to your home?

A. Yes sir.

page 131 } Q. Did you and Arlo talk privately during the early morning after you got home?

A. Yes sir.

Q. Was anything discussed with reference to his taking the blame for this shooting?

A. Yes sir.

Q. Why did he do it, take the blame?

A. Because of the kids I guess was really the reason, we didn't want to hurt them.

Q. Was any agreement reached at the house that he would take the blame?

A. We just talked about it.

Q. Did you want him to?

A. In a way, I was scared.

Q. I believe the police came around 7?

A. Yes.

Q. And Arlo and Floyd were brought to the jail and you and Joyce followed in another car?

A. Yes sir.

Q. Did you have any conversation with Arlo Dean at the jail that morning?

A. Yes.

Q. Tell the jury what that was.

A. He asked to speak to his sister and me and we went in

Barbara Shifflett

and talked and he told me he was going to take the blame and for us to agree.

page 132 } Q. Did you on that date tell anyone other than the people you were with, did you tell anyone that Arlo Dean was not the person who killed Lam but that you were?

A. Yes sir.

Q. Who did you tell?

A. I told my husband.

Q. At what time?

A. It was around 9:30 that he came to the jail. He had gone to the house to see the kids and he asked what happened and he came to the jail.

Q. You all were separated?

A. Yes.

Q. And he came to see the children?

A. Yes.

Q. At that time you had custody of the chidren?

A. Yes.

Q. He inquired what happened and was told?

A. He heard something happened, not exactly what.

Q. And you told him you were the one who killed him?

A. Yes.

Q. That was after you got back from the jail?

A. It was while we were in the jail; he came to the jail.

Q. And Arlo Dean later repudiated the statement that he gave to the police in which he said that he was the guilty person? I believe that was in April?

A. Yes sir.

page 133 } Q. Can you give the jury the sequence of events that led up to this repudiation? First, at the time he repudiated his confession to the police, did you also make another statement to the police?

A. Yes sir.

Q. Did you tell the police at that time you were the one that had shot and killed Lam?

A. Yes sir.

Q. That was in April?

A. Yes sir.

Q. Had anything occurred between the time of the shooting and the time in April when the two statements were repudiated, with reference to your family situation?

A. Yes, my husband had taken the kids to his mother's.

Q. You no longer had the children?

Barbara Shifflett

A. And I had a guilty conscience too.

Q. Who did you tell first—I am not talking about the people with you and your husband—who did you tell that you were the one that killed Larry Lam after that?

A. Mr. Lucas.

Q. Do you remember when that was?

A. Not exactly.

Q. Do you remember what day of the week it was?

A. I think it was Wednesday.

Q. Did you find him at his office or at home?

A. At his office.

page 134 } Q. It has been the testimony here today in this case, and it is admitted that Arlo Dean had his knuckles skinned when the police got there that morning. Tell the jury what you know about that.

A. Joyce had made a statement about the family and about his mother and he took it the wrong way. We stopped at a stop sign and he got out of the car and went down the street. Joyce jumped out and talked to him and he hit a sign and then he hit a fence.

Q. With his hands?

A. Yes sir.

Q. This is extremely important. You are telling the jury that you are the person that killed Larry Lam, is that right?

A. Yes sir.

Q. And that Arlo Dean had nothing to do with it?

A. No.

Q. Did he know you were getting the gun?

A. No.

Q. Did he encourage, aid, help you in any way?

A. No sir.

CROSS EXAMINATION

By Mr. Sipe:

Q. I believe you stated that you have been going with Arlo for some time?

A. Yes sir.

Q. When did you start going with him?

page 135 } A. Last October, in 1965.

Q. That would be October prior to the February when the shooting occurred?

A. Yes.

Barbara Shifflett

Q. Were you still living with your husband at that time?
A. Yes.
Q. When did your husband move out?
A. February 14 or 15.
Q. And you stayed there?
A. Yes sir.
Q. Did Arlo move in at that time?
A. He did not move in.
Q. Did he live there?
A. He stayed there once in a while.
Q. Then that's where he was living, isn't that right?
A. Not exactly—he was living at home but he stayed there once in a while.
Q. You were going with him and still are?
A. Yes sir.
Q. Going back to the evening of February 19 of last year, where did the four of you get together?
A. At my house.
Q. Had Arlo been there earlier that day?
A. Yes sir.
Q. None of you were working at that time?
A. No sir.

page 136 } Q. What time had Arlo come there that day, or had he been there the night before?

A. He was in and out a couple of times the night before and he was there early that morning.
Q. The four of you left the house together at what time?
A. Around 6.
Q. Had any of you been drinking anything alcoholic at the time you left?
A. Not that I know of; I had not.
Q. Had Arlo had anything to drink?
A. He said a couple of beers.
Q. Had Floyd had anything to drink?
A. I don't know.
Q. Where did you first go when you left home?
A. We went down to Mrs. Dean's Arlo's mother. Joyce wanted to leave her baby there.
Q. She has a child also?
A. Yes sir.
Q. Where did you pick the child up?
A. At the house.
Q. And left it with Mrs. Dean?
A. Yes.

Barbara Shifflett

Q. From there where did you go?
A. Elkton.
Q. What did you do in Elkton?
A. That is when he got out at the Post Office
page 137 } and then we went to the truck stop.
Q. Was it still daylight at that time?
A. I don't remember.
Q. You said you left your home around 6 and then went to Mrs. Dean's and then to Elkton and stopped and Arlo got out?
A. Yes sir.
Q. And you say that he hit a sign?
A. Yes sir.
Q. And hit a fence?
A. Yes.
Q. Had you tried to get him back in the car?
A. Joyce had.
Q. How did he hit the sign and fence?
A. With his fist.
Q. Which one?
A. He hit one with one and one with the other.
Q. Then what happened?
A. We all got back in the car—they got back in the car and I slipped over.
Q. Had you been out?
A. They had been. I drove from the stop sign to where he was and they got in and we went to the truck stop.
Q. What did you do there?
A. Arlo went in and washed his hands and I think Floyd bought some beer.
Q. What did he do with the beer he bought?
page 138 } A. Put it in the car.
Q. Who drank that beer?
A. He drank one or two.
Q. Did Arlo drink any of them?
A. No he didn't.
Q. You say Floyd went in and bought beer and brought it to the car and drank a couple as you were driving around?
A. Yes.
Q. Joyce would have had an opportunity to see this with Floyd sitting next to her, wouldn't she?
A. Yes.
Q. He brought the beer out and put it in the car and drank a couple as you were driving along, is that right?

Barbara Shifflett

A. Some time or other.
Q. I believe you testified you went different places?
A. Yes.
Q. And came back through McGaheysville at approximately 12:30 or 1:00 in the morning of February 20?
A. Yes sir.
Q. You testified about seeing this car that Lam was in?
A. Yes sir.
Q. And you finally pulled up on the road and stopped and Lam was parked?
A. Yes sir.
Q. Then Lam got out of his automobile and this led to the fight between Floyd Smith and the deceased
page 139 } boy Larry Lam?
A. Yes sir.
Q. You did not get out?
A. I stood up and was getting back in when he got out to fight.
Q. You stayed in the car the whole time it was going on?
A. Yes sir.
Q. They were fighting behind the car and over in the weeds?
A. Yes sir.
Q. You couldn't see much about what was going on, could you?
A. All I could see was two people.
Q. It was dark?
A. Yes sir.
Q. The next thing you saw was Lam come back to his automobile?
A. Yes.
Q. You saw him get out—when he got out of the car where were Smith, Joyce and Arlo? Was Smith still in the field?
A. Yes.
Q. And Joyce was where?
A. At the time I didn't really know; I was told later.
Q. You did not see her?
A. I was not looking for her.
Q. Arlo was at the car next to you?
A. Yes sir.
Q. You testified that at that time you got the gun and fired four shots at this boy?
A. Yes sir.

Barbara Shifflett

Q. And that after this was done he fell down
page 140 } and you jumped in the car and drove off and
went home?

A. We got in the car and went home.

Q. You did not contact anybody, a doctor, the Rescue Squad or the police?

A. No sir.

Q. You went home and stayed there until the police came the next day and you still had not contacted anybody?

A. No.

Q. Who stayed there that night?

A. All four of us.

Q. Anybody else?

A. No.

Q. Were the children there?

A. No, they stayed with a next door neighbor I paid to keep them all night.

Q. Nobody contacted anyone until the police arrived there, is that right?

A. Yes.

Q. At that time did the officers ask you any questions about whether you knew what happened?

A. Not me, no.

Q. Did they ask anyone there in your presence?

A. Not in my presence.

Q. Did you hear them ask either of the boys?

A. They took them outside.

Q. They took them to the jail, did they not?
page 141 } A. Yes.

Q. And you and Joyce came along behind them?

A. Yes sir.

Q. While you were at the jail you did make a statement there?

A. Yes sir.

Q. It was different from what you are testifying here today?

A. Yes sir.

Q. At that time did you not state that "Arlo reached in the car and I heard a shot. We started screaming and I heard several shots and saw the other boy fall. He fell to his knees between our cars and rolled over. Arlo and Floyd got in the car and told us to shut up and then we went home." Is that the statement you made?

Barbara Shifflett

A. It sounds like it.
Q. This is your signature?
A. Yes.
Q. So that was the statement you made?
A. Yes.
Q. Did you subsequent to that time go back home in the company of Sheriff Strawderman and a Deputy?
A. Yes sir.
Q. Did you not tell them on the way home that Arlo was the one that had done the shooting?
A. Yes.
Q. Didn't you take them to your home and get a gun and tell them "This is the gun Arlo used"?
page 142 } A. Yes sir.
Q. You say this gun was in the automobile and was loaded and the reason you gave was that your husband shot over the car the night before?
A. Yes sir.
Q. Had you reported this to the police or taken any steps?
A. No sir, he had done it before.
Q. And you didn't do anything about it?
A. I was scared of him.
Q. You had never gotten a warrant out for him?
A. No sir.
Q. I believe it was brought out on direct that later, on April 29, you changed your story and said you had done the shooting?
A. Yes sir.
Q. The reason was at that time you had given your children to your husband or they had been taken from you?
A. They had not been taken from me exactly. He had been in a car wreck and was staying with his mother and he asked if they could stay a while with them and then he wouldn't let me have them back.
Q. You let him keep the children, you did not fight for them?
A. Yes.
Q. And that changed your mind?
A. Yes.
Q. When were the children taken from your
page 143 } home?
A. In April, but I don't remember the date.
Q. Would April 8 be about right?
A. I don't remember.

Q. You did not change your story for several weeks after that, did you?

A. I think it was a week or maybe longer.

Q. I believe after you changed your story you were charged with this offense?

A. Yes.

Q. Did you not, in this Court, plead not guilty to that offense?.

A. I pleaded not guilty to murder, yes sir.

RE-DIRECT

By Mr. Litten:

Q. You have never testified under oath in any proceeding in connection with this case until now, isn't that right?

A. Right.

Q. You did not take the stand at your trial?

A. No.

Q. Mr. Sipe says the statement you gave was given on April 29. You had actually told Mr. Lucas about who was responsible for the death some time before that, hadn't you?

A. Yes sir.

Q. And Mr. Lucas advised you to consult with counsel and that you ought to tell the truth?

A. Yes sir.

page 144 } Q. And it was some time after you told Mr. Lucas that the prosecuting attorney talked to you?

A. Yes sir, a week or two.

Witness: Theodore Morris

DIRECT EXAMINATION

By Mr. Litten:

Q. What is your name?

A. Theodore Morris.

Q. Do you have a nickname?

A. Ted.

Q. Where do you live?

A. Gordonsville.

Q. Is that near Dyke.

A. 13 miles this side of Charlottesville.

Q. Is Dyke near there?

Theodore Morris

A. This side of it.
Q. I believe you have been here two days waiting to testify?
A. Yes sir.
Q. You are not too happy about it?
A. No sir.
Q. Do you know Barbara Shifflett?
A. Yes sir.
Q. Did you ever sell her a gun?
A. Yes sir.
Q. I want you to look at this gun and see if this is the gun you sold her.
A. Yes sir.
Q. Do you remember about when you sold it
page 145 } to her?
A. It has been over a year but I can't tell you the date.
Q. Where did she make the purchase?
A. At my house.
Q. She came to see you?
A. Yes.
Q. Do you remember what she paid for it?
A. $20.00.
Q. Was she supposed to pay more?
A. She was supposed to pay me $10 more; she left owing me $10.00.
Q. And she still owes you $10?
A. That's right.

CROSS EXAMINATION

By Mr. Sipe:
Q. Was anyone else with her?
A. My brother and Roger Shifflett.
Q. Who is your brother?
A. Landon Morris.
Q. And another girl?
A. Yes.
Q. And Roger Shifflett?
A. Yes.

RE-DIRECT

By Mr. Litten:
Q. This boy (Dean) was not along with her?

Claude C. Shifflett

A. No sir.

Witness: Claude Shifflett

DIRECT EXAMINATION

By Mr. Litten:

page 146 } Q. State your name please.

A. Claude C. Shifflett.

Q. What is your age?

A. 30.

Q. Are you the husband of Barbara Shifflett?

A. That's right.

Q. Are you and your wife separated?

A. Yes sir.

Q. How long have you been separated?

A. Over a year.

Q. I believe a divorce suit is pending?

A. Yes sir.

Q. I think you brought the suit?

A. Right.

Q. Where do you work?

A. I am employed by the U. S. Department of Agriculture and assigned to Chambersburg, Penna.

Q. Are you residing in Pennsylvania?

A. During work days; I commute on weekends.

Q. You were most reluctant to come here today, were you not?

A. Very much so.

Q. Were you and your wife separated on February 19, 1966?

A. Yes sir.

Q. Was she going with Arlo Dean then?

A. Yes sir.

Q. Is that what caused the trouble?

page 147 } A. Mainly, yes.

Q. You were not at home or with her on the night of February 19?

A. No sir.

Q. You remember the events of course?

A. Yes sir.

Q. Where had you spent the night?

A. At the hotel here in Harrisonburg.

Q. Did you come back to your home the next morning, Sunday, February 20?

A. Correct.

Claude C. Shifflett

Q. What was your purpose in coming back?
A. She was keeping the children at that time and I went down on Sunday to get the children for the day.
Q. Did you find her at home?
A. No.
Q. Where were the *chilren?*
A. Two of my sons were at my mother's and my daughters were across the road at a neighbor's house.
Q. Did you inquire as to where your wife was?
A. Right.
Q. Where was she?
A. They informed me she was at the County jail.
Q. What did you do then?
A. I came to the jail.
Q. About what time did you get to the jail?
page 148 } A. I would assume it was about mid-morning, I am not sure.
Q. Did you see your wife?
A. Yes.
Q. Did you talk with her privately?
A. Yes.
Q. Where in the jail did you talk to her?
A. I guess you would call it the lobby area, where the Coke machine is located.
Q. Off in a corner alone?
A. Yes.
Q. Did you ask her what was going on?
A. Yes.
Q. What did she tell you?
A. She said he didn't do it.
Q. Who was she talking about?
A. Arlo.
Q. Did she say who had done it?
A. She said she did.
Q. What was she talking about "she did it"?
A. The shooting.
Q. You mean to say she told you at that time that she killed Larry Lam?
A. Yes sir.

CROSS EXAMINATION

By Mr. Sipe:
Q. I believe you stated your mother was keeping the boys?
A. Yes.

page 149 } Q. Did she continue to keep them?
A. Yes.

Q. Your wife never did have the boys in her custody after February 19?

A. No sir.

Q. How long had your mother had them?

A. Mother lived close by and they had been there I think for several weeks, since I had been away.

Q. They had been there since around the 1st of February?

A. Yes.

Q. Do you have two or three boys?

A. Two.

Q. What about the other three children, your mother has them now also?

A. Yes.

Q. When did she take the girls?

A. When I was granted custody I took them and of *corse* we reside with my mother while I am working.

Q. I believe you stated you had moved out prior to this occurrence?

A. True.

Q. Had Arlo moved in?

A. Yes I think so.

RE-DIRECT

By Mr. Litten:

Q. Is there any love between you and your wife at this time?

A. No sir.

page 150 } Q. As a matter of fact, you just got through having an argument with her out in the hall, didn't you?

A. Sort of, yes.

Q. Do you have any reason to come in here and—why are you here?

A. Because I was summoned.

Q. Did you expect to be summoned?

A. No sir.

Entered this 9th day of June, 1967.

HAMILTON HAAS, Judge

Signed this 16th day of June, 1967.

HAMILTON HAAS, Judge

Received this 16th day of June, 1967.

GEORGE W. KEMPER
Clerk of the Circuit Court
of Rockingham County, Va.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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