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Record No. 7213

In the Supreme Court of Appeals of Virginia at Richmond

ALVIN HALL

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7213

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 24th day of April, 1969.

ALVIN HALL, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond
W. Moscoe Huntley, Judge

Upon the petition of Alvin Hall a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 21st day of May, 1968, in a prosecution by the Commonwealth against the said Alvin Hall for a misdemeanor; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

page 2 }

* * * * *

Pleas at the Courthouse of the City of Richmond, before the Hustings Court of the said City, on the 16th day of July, 1968.

Be it remembered that heretofore, to-wit: on the 21st day of May, 1968, the following order was entered:

Judge Huntley

* * * * *

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City. And being arraigned he pleaded not guilty to assembling without the authority of law and for the purpose of disturbing the peace or exciting public alarm or disorder, as charged in the amended warrant and he requested a trial by jury. And thereupon a jury, to-wit: Ralph Kaminsky, Claude D. Parks, Theo Kelley, Dorothy B. Jenkins and Thomas Farmer were sworn the truth of and upon the premises to speak. And the jurors having heard the evidence for the Commonwealth, the said defendant moved the Court to strike the evidence of the Commonwealth as being insufficient for the finding of a verdict of guilty, which motion the Court doth overrule and the defendant notes an exception. And the jurors having heard all of the evidence and arguments of counsel retired to their room in the custody of the Sergeant of this City to deliberate upon a verdict. And after some time they returned into Court and presented a verdict in the following words and figures, to-wit:

"We, the jury, find the accused guilty as charged in the warrant and fix his punishment at 12 months in Jail and $200.00 fine."

Thomas Farmer, Foreman

And thereupon the said defendant moved the Court to set aside the verdict of the jury as being contrary to the law and to the evidence and for other grounds stated in the record of this case and grant him a new trial, which motion the Court doth overrule and to which action of the Court in overruling

his said motion, the said defendant notes an exception and time is allowed him not to exceed sixty days in which to file his bills of exceptions.

Whereupon it is considered by the Court that the said Alvin Hall pay and satisfy a fine of two hundred dollars and costs and be confined in the City Jail for a term of twelve months.

The said defendant then moved the Court to suspend the execution of the said sentence to allow him to appeal his case to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas*, which motion the Court doth grant and the execution of the said sentence is suspended to July 22, 1968, and his bond is set at one thousand dollars.

Thereupon the said defendant entered into a recognizance in the sum of one thousand dollars with Frank and Gladys W. Hall, as surety therein, conditioned that if the said defendant shall abide by and perform the judgment of this Court in the event the Supreme Court of Appeals of Virginia *sahll* refuse to grant him a writ of error and page 3 } *supersedeas*, or if grant it be later dismissed and appear before this Court on July 22, 1968, and in the meantime shall keep the peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue. And thereupon the said defendant is released.

* * * * *

page 6 } INSTRUCTION NO. 1

The Court instructs the jury that the law presumes every person charged with crime to be innocent until his guilt is established by the Commonwealth beyond all reasonable doubt, and this presumption of innocence goes with the accused through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the warrant, it is their duty to give the accused the benefit of the doubt, and find him not guilty.

5/21/68 W.M.H.

page 7 } INSTRUCTION NO. 2

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

5/21/68 W.M.H.

page 8 } INSTRUCTION NO. 3

The court instructs the jury that even though you may believe that the defendant, Alvin Hall was present at the time and place of an unlawful assembly, nevertheless, before you can convict him you must further believe beyond a reasonable doubt that he knew the assembly was unlawful and that he intentionally joined and participated in the assembly and in its unlawful purpose.

And if you have a reasonable doubt as to whether he had such intent, you shall find him not guilty.

5/21/68 W.M.H.

INSTRUCTION NO. 4

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury, and in determining the weight to be given to the testimony of the different witnesses in this case, they are authorized to consider the relationship of the witnesses to the parties, if the same is proven; their interest, if any, in the result of the trial; their temper, feeling or bias, if any has been shown; their demeanor while testifying; their apparent intelligence; and their means

of information; and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled to.

5/21/68 W.M.H.

page 9 } INSTRUCTION NO. 5

The Court instructs the jury that the burden is on the Commonwealth to prove beyond all reasonable doubt that the defendant Alvin Hall had a purpose of committing or joining in the commission of some act which was:

1. Reasonable calculated to disturb the peace,
   and;
2. Specifically forbidden by law.

If from the evidence you find that the Commonwealth has not met the burden, then you shall find Alvin Hall not guilty.

5/21/68 W.M.H.

page 10 } INSTRUCTION NO. 6

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the defendant with two or more persons had assembled without the authority of law and for the purpose of disturbing the peace or exciting public alarm or disorder then you should find the defendant guilty of participating in an unlawful assembly and fix his punishment at confinement in jail for a term not to exceed twelve months or a fine not to exceed $500.00, either or both.

The Court further instructs the jury that the form of verdicts in this case are as follows:

1. NOT GUILTY

We, the jury, find the accused not guilty.

Foreman

2. GUILTY

We, the jury, find the accused guilty as charged in the warrant and fix his punishment at 12 months in Jail and $200.00 fine.

Thomas Farmer
Foreman

5/21/68 W.M.H.

page 11 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The defendant gives notice that he will apply to the Supreme Court of Appeals of Virginia for a writ of error to the order entered May 21, 1968 in the above captioned action, whereby he was convicted of participating in an unlawful assembly, in accordance with the verdict of a jury, and punishment was fixed at twelve months in jail and a fine of two hundred dollars.

The Assignments of error are:

I

On the motions to strike the evidence and on the motion to set aside the verdict, the Court erred in ruling that there was a showing that the defendant was not walking southwardly on Second Street toward its intersection with Broad at the time when the alleged unlawful assembly, proceeding eastwardly on Broad Street, was crossing Second Street.

II

On the motion to strike the evidence and again in granting Instruction No. 6, the court erred in ruling that First and Fourteenth Amendment rights are not violated by so much of Code Section 18.1-254.1 as proscribes an assembly of three or more persons without authority of law and for the purpose of disturbing the peace or exciting public alarm or disorder.

page 12 }

III

There having been no material conflict in the evidence, the court erred in instructing the jury that they were the judges of the credibility of the witnesses; and thereby the defendant was denied due process of law in violation of the Fourteenth Amendment.

S. W. Tucker
Of Counsel

Received & Filed Jul 19 1968 Hustings Court Clerk's Office.

* * * * *

page 3 } Hearing on May 21, 1968, before the Honorable W. Moscoe Huntley, Judge.

PRESENT: J. B. Wilkinson, Esq., Attorney for the Commonwealth

Harold M. Marsh, Esq., S. W. Tucker, Esq. Attorneys for the Defendant

Alvin Hall, the defendant, in person and by counsel.

The Clerk: *Commonwealth* v. *Alvin Hall,* this 21st day of May, 1968, in the Hustings Court, Richmond, Virginia. The defendant is represented by Attorney S. W. Tucker, Mr. Tucker, are you prepared to proceed?

Mr. Tucker: We are prepared to proceed, Mr. Marsh is also representing, Mr. Harold Marsh.

The Clerk: And Mr. Harold Marsh also represents the defendant, counsel is prepared to proceed. Mr.
page 4 } J. B. Wilkinson for the Commonwealth, are you prepared to proceed?

Mr. Wilkinson: Yes, sir.

The Clerk: Alvin Hall, you stand charged in this warrant that on the 8th day of April, 1968, you did unlawfully assemble without authority of law and for the purpose of disturbing the peace or exciting public alarm or disorder, how do you plead to this charge?

The Defendant: Not guilty.

The Clerk: Do you wish to be tried by His Honor the Judge, or by a Jury?

The Defendant: By a jury.

NOTE: At this time, a Jury was empanelled and sworn, and admonished by the Court, and upon motion of counsel and by leave of Court, the witnesses were excluded, after being admonished by the Court. Counsel then made opening statements to the Jury.

page 5 } H. A. CONNER, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

H. A. Conner

DIRECT EXAMINATION

By Mr. Wilkinson:

Q. Please state your name and occupation to the Court and Lady and Gentlemen of the Jury?

A. Sergeant H. A. Conner, Richmond Bureau of Police.

Q. How long have you been a police officer, Sergeant?

A. Nineteen years.

Q. Were you on duty on April the 8th, 1968?

A. Yes, I was.

Q. And what type of duty was this, sir?

A. We were on special duty due to a disturbance of a *riotious* nature.

Q. And what time did you come on duty at that day?

A. This particular day I came on duty at 8 p. m.

Q. And were you in charge of any particular
page 6 } group or section of officers?

A. Yes, I was.

Q. Tell the Lady and Gentlemen of the Jury what group or how it was broken down and so forth and so on.

A. We had a school bus, one of the larger yellow school buses, we had two squads of men consisting of about eighteen officers and two sergeants at the—we were at the substation at Ninth and Marshall Streets gassing the bus when we received a call to investigate a group of disorderly person—

Mr. Tucker: If Your Honor please, I object to what was received in the call.

The Court: Very well.

Q. Pursuant to the call, what did you do?

A. We left the lot after gassing and proceeded west on Broad Street and as we were approaching Third and Broad, I was at the front of the bus, and I could see this group of persons coming east on Broad Street on the west side, they were on the sidewalk approaching Second and Broad Street.

Q. Now, which side of the street were they on?

page 7 } A. They were on the north side of Broad Street heading east.

Q. All right?

A. and we pulled the bus over in the two hundred block—it's a bus stop in the two hundred block of east Broad Street, this bus stop is on the east end of the block and as we pulled

in, I could hear loud noises, shouting and so forth. We stayed on the bus until this group had crossed Broad Street—

Q. At this point, let me ask you a question, did you see any persons between the bus and the crowd that was moving east on Broad Street?

A. No, I did not.

Q. All right, what happened then?

A. As the group crossed Second Street, after they completed the crossing of the street, we disboarded the bus, I was the first one off the bus and I could hear loud cursing, screaming, people darting in and out between the automobiles and parking meters, this group consisted of thirty-one people, they took the entire sidewalk, there was profanity, such as "mother-fucker", "fuck you", loud screaming at the top of their voice, such as rebel yells, it's hard to describe the behavior, it reminded me of something, maybe, of a lynch mob,

page 8 } and as they proceeded on down, I was the first one, we had one squad that took one side—

Q. How many people—how many Police Officers composed a squad, Officer?

A. We had eighteen Officers and two Sergeants on the party.

Q. All right.

A. My squad took the front of the group and ordered them to halt, we had our clubs in front of us, riot sticks, we held them like this, the other squad went to the rear and at this time, we had State Troopers, Detectives and a number of reinforcements to appear, and we surrounded this group and summonsed patrol wagons, which we got two, then we took—opened up a lane of two Officers, two lanes, and loaded these people on the patrol wagon and we had about five left over which we put on the bus with us and we took them to Police Headquarters. Now, while we had these people surrounded, I heard objects dropping and after they were cleared away and placed on the wagon, we saw several brickbats, a couple of bottles, a Pepsi-Cola bottle and some other type bottle, a couple of sticks and two knives were picked up where these people were arrested.

Q. Now, what was the purpose, Officer, of surrounding the group?

page 9 } A. The purpose of surrounding this group was to see that nobody entered or left this group, however, when we had the—when we surrounded them,

one party managed to slip between the Officer's legs and he escaped. The remaining thirty were placed under arrest.

Q. Do you know how this defendant here was transported to the lockup?

A. No, I do not recall how he was transported to the lockup.

Q. When you got to the lockup, what procedure was used there?

A. All of the defendants that we arrested were placed in what we call a bullpen, a receiving cell. Officer Crane, Burley and myself went to Headquarters with the group and we helped to process them, and Officer Burley and Officer Crane wrote the arrest sheets on all of these parties that were arrested.

Q. Was anyone else in the receiving cell when the group of thirty were put in there?

A. No, sir.

Q. Was it—were they, this group or not, always separated from any other persons?

A. I didn't understand that.

Q. Was this group always separated from other prisoners that might have been in—

page 10 } A. They were separated until they were booked and processed, yes, sir.

Q. All right, I hand you a—can you identify that, sir?

A. Yes, I can, this is the north side of Broad Street two hundred block East Broad.

Mr. Wilkinson: Your Honor, may he approach the Jury to point out where the bus stop (counsel's voice becomes inaudible).

Q. Could you take that photograph please, Sergeant (pause) and would you show the Lady and Gentlemen of the Jury and His Honor where you stopped, where the bus stopped that night?

A. This is approximately the end of the bus stop, that's about how we pulled up to the bus stop, there was nothing else in the bus stop so we went as far in the bus stop as we could. When we first noticed the group, they were crossing Broad—Second Street rather, and after they completed crossing Second Street is when we got off the bus and they were stopped right in front of this door, it's a Surplus Store on Broad Street.

H. A. Conner

Q. And was that where they were arrested?

A. That is where they were arrested and the
page 11 } wagon pulled up, one wagon came this way and
then the other wagon came the wrong way on—on Broad Street and they were loaded directly in front of this —this store.

Q. Now, let me ask you this, I believe you testified earlier that you were in front of the bus?

A. Yes, sir, I was in front of the bus.

Q. Was your vision in any way obscured by seeing what was in front of the bus, off the side of the bus?

A. No, sir.

Q. Now, especially as to this part of Broad Street right here on up to Second Street, did you see any other persons on there other than the group?

A. I didn't see any other person other than Police Officers, State Troopers were—of course, not between us and the group, but State Troopers were more or less following the group and some were on the other corner of Second and Broad Street.

Q. All right, sir.

Mr. Wilkinson: Your Honor, we'd like to introduce this in evidence as Commonwealth's Exhibit No. 1.

Q. At the time that the bus pulled up I believe you testified
the crowd was crossing Second Street?

page 12 } A. Yes, sir, they were approaching Second
Street when the bus pulled up, we allowed them time to cross Second Street.

Q. Had they actually crossed Second Street at the time you all pulled up or were they on the west side of Second Street?

A. They were on the west side, in fact, the whole group walked through a "don't walk" light.

Q. Could you or could you not hear the noise from the crowd at that time?

A. Yes, I could.

Q. Could you describe what you heard to the Lady and Gentlemen of the Jury?

A. Well, we heard, as I testified before, heard loud screaming, whooping, remarks such as "mother fucker, "fuck you"—

Q. Could you distinguish these remarks in this screaming and yelling from that distance, Sergeant?

H. A. Conner

A. Yes, I could.

Q. Did the noise continue as the crowd came down Broad Street?

A. The noise continued until we surrounded them.

page 13

Q. After the surrounding, after they were surrounded by the Police what, if anything, happened then?

A. Sir?

Q. Did the noise continue after you surrounded them?

A. No, only one person had a big mouth, he kept running his mouth, but the rest of them were quiet, they quieted down.

Q. In other words, it would be fair to say after they were surrounded the crowd became subdued and quiet?

A. Yes, sir.

Q. All right, sir, answer—this did take place in the City of Richmond, did it not?

A. Yes, it did.

Q. All right, answer Mr. Tucker's questions, please.

CROSS EXAMINATION

By Mr. Tucker:

Q. Do I understand, Sergeant, that the two Police Sergeants and eighteen Officers were in this one bus?

A. Yes, sir.

page 14

Q. And one Sergeant took a detail to move in from the east and one took a detail to move in from the west—

A. No, sir, I don't—if I said that, I was wrong, I don't—I am not positive whether the other Sergeant got off the bus with the—with his group or not, I am not certain, I know I was the first one off the bus

Q. You and—

A. and the other—

Q. You and nine Police Officers got off the bus?

A. No, all the Police Officers got off the bus—what, if I can explain, I was in charge of nine men, in other words, I had a squad, I was the first Officer off.

Q. Well, all right, what—you and your squad approached this group, you met the group, did you not?

A. Yes, sir, that is right.

Q. So you didn't get up as far as Second Street,

A. No, I did not.

Q. and so your—you and your nine men were

C. W. Burley

page 15 } moving in the direction of Second Street from the direction of Third Street?

A. Yes, sir, that's right.

Q. No further questions.

REDIRECT EXAMINATION

By Mr. Wilkinson:

Q. Was it only one bus there?

A. Only one bus at that time, yes, sir.

Q. All right, sir, that's all.

Witness stood aside.

C. W. BURLEY, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Wilkinson:

Q. Please state your name and occupation to

page 16 } the Court and Lady and Gentlemen of the Jury?

A. Officer Glenwood W. Burley, I'm with the Richmond Bureau of Police, Patrolman.

Q. How long have you been a Police Officer?

A. Four years the 9th of November.

Q. Were you on duty on April the 8th, 1968?

A. Yes, sir, I was.

Q. And who was your immediate Supervisor on that day?

A. Sergeant H. A. Conner.

Q. And were you all on special duty?

A. Yes, sir, we were.

Q. Were you on the bus with Sergeant Conner?

A. Yes, sir, I was.

Q. When you arrived, where did the bus go about 8:50, I believe, p. m.?

A. Where did the bus go?

Q. Uh, huh?

A. The bus went down on Broad and we stopped in the two hundred block of East Broad at the supervision of the Sergeant.

page 17 } Q. And what—where were you sitting on the bus, Officer?

C. W. Burley

A. I was in the second seat on the left side, the right side of the bus.

Q. Was that in the front of the bus?

A. Yes, sir.

Q. As you came up and stopped, what were your observations, if any?

A. Well, just prior to stopping the bus, we saw a group—I saw a group—of personnel coming down Broad Street on the north side, taking the entire distance or width of the sidewalk, and this group was screaming, yelling and using profanity. At that time, the bus stopped, at the supervision of one of the Sergeants, there were two Sergeants on the bus, two squads, and at that time the bus stopped in front of—in the bus stop in front of 208 East Broad, and further orders of the two Sergeants, the two squads dismounted the bus in a military squad-type formation, one squad—Sergeant Conner's squad—crossed the sidewalk in a lateral or a line-type formation and confronted with the group that was eastbound which were arriving right at this point.

Q. What do you mean, were the officers one abreast—

A. One behind the other and then we made a
page 18 } left face and faced the group, we marched off the
bus directly across the sidewalk and then he gave us an order to make a left face, which put us shoulder to shoulder facing the group as they walked up to us,

Q. Uh, huh?

A. and then the second squad surrounded the group of personnel that I mentioned, behind them. We completely surrounded the group. Now, as I exited the bus, this group was still continuing to yell and there was cussing and they were making *remards* about us stopping them and the wagons were summonsed and they continued to use profanity to the effect of locking them up, of this type. We remained in a squad-type formation until the wagons came, which was approximately two minutes later and we opened up during this two minutes, additional State Troopers came into this area in cars, Detectives came into this area in cars and they reinforced our circle around this group, and upon the arrival of the wagons which we had summonsed, we opened up a opening approximately two and a half or three feet wide in order to let each individual go to the rear of the wagon and they were placed in same. After these individuals, the thirty that were arrested, were placed in the wagons, I assisted in picking up

C. W. Burley

the mer—the evidence or the material that was
page 19 } left on the street that I had heard being dropped
from personnel in this group from any individual, I do not know who from, and then I went to the lockup section where I made the—I, myself, made the arrest sheet on the defendant present here today.

Q. Was this defendant in that group?

A. Yes, sir, he was.

Q. Was any permits or parade or anything shown to you all at the scene?

A. Not to me, no, sir.

Q. To any of the officers, that you know of?

A. Not that I saw, no, sir.

Q. All right, answer Mr. Tucker's questions.

CROSS EXAMINATION

By Mr. Tucker:

Q. You saw the defendant when you booked him?

A. Directly, yes, sir.

Q. You saw him when you booked him?

A. Yes, sir.

Q. And before that time, he was just one of a
page 20 } group that you had surrounded?
A. Yes, sir.

Q. Now, you were not in Sergeant Conner's squad?

A. Yes, sir, I was.

Q. So that you approached this group from the east?

A. The east side.

Q. Going—you were on the north side of Broad Street?

A. The east side of the group.

Q. Yea, you were approaching from the direction of Third Street going westwardly to Second, towards Second?

A. Yes, sir.

Q. All right. I have no further questions.

REDIRECT EXAMINATION

By Mr. Wilkinson:

Q. How far is where they were arrested from the intersection of Second and Broad Street, approximately in feet?

A. Well, they were completely surrounded by
page 21 } the—by the squads of policemen in a group, I

Joseph F. Crane

would say would have been a circle of fifteen to twenty feet. We closed in rather tight on them to prevent anyone from escaping and this was right in front of 208 East Broad. Now, 208 East Broad would be four buildings from the corner of Second and Broad Street, four doors down from the intersection.

Q. Did you see anyone leave the group or come into the group after—

A. One man—his name I do not know—got down and went between a policeman's legs, immediately after they were surrounded and then after getting between the policeman's legs he ran westbound on the sidewalk, up Broad Street, and turned the corner at Second and nobody took off after him because we was instructed—we was operating in a squad formation and nobody took off after the party.

Mr. Tucker: Objection.
The Court: Objection sustained.

Q. Did you see anyone come into the group after it was surrounded?
A. No, sir.
Q. That's all the questions I have.

Mr. Tucker: No further questions.

Witness stood aside.

page 22 } JOSEPH F. CRANE, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Wilkinson:
Q. Please state your name and occupation to the Court and Lady and Gentlemen of the Jury?
A. Patrolman Joseph F. Crane, Patrolman, City of Richmond, Bureau of Police.
Q. How long have you been a Police Officer?
A. Four years, sir.
Q. Four years, were you on duty on April the 8th, 1968?
A. Yes, sir, I was.

Joseph F. Crane

Q. Who was your immediate Supervisor on that day?
A. Sergeant Conner.
Q. Were you on the bus, on a bus with Sergeant *Conners?*
A. Yes, sir, I was.
Q. Directing your attention to around 8:50 p. m., of that evening, where did the bus go?
page 23 } A. We received information that a large group of disorderly people were eastbound on Broad on the north side of the street from Adams. We went west on Broad and met this group just as it was crossing Second Street at Broad.
Q. Were you still on the bus at that time or not?
A. Yes, sir, we was on the bus.
Q. All right, where did the bus stop?
A. Approximately in front of 208 East Broad.
Q. And there what happened, what did you do then?
A. We dismounted the bus, one squad got to the front of the mob and the second squad got to the rear of it, completely surrounding them.
Q. Were you on the east or west side of the crowd?
A. I was on the east side.
Q. And what participation did you take in it, sir?
A. We held the group with the nightsticks until wagons could be summoned.
Q. Could you tell whether or not the group was
page 24 } completely surrounded?
A. Yes, sir, from where I was standing at.
Q. And what was the approximately diameter of the circle or surrounding of the group?
A. Well, we bunched them up right close, it went all the way from the windows of the store to the curb, which is approximately seventeen feet.
Q. Sorry, I can't understand you, sir?
A. Approximately seventeen feet from the store front to the curb.
Q. Did you all have them all within that group?
A. Yes, sir, we did.
Q. Did you see anyone leave or enter this group after they were surrounded?
A. One colored male crawled through several Police Offiers' legs and got away.
Q. Which direction did he go, did you see?
A. West, sir.

Joseph F. Crane

Q. All right, after the—what place did you occupy on the bus, Officer?

A. I was to the right center of the bus.

page 25 } Q. As you drove up, could you or could you not hear any noise when you drove up?

A. Yes, sir, definitely.

Q. Could you describe to the Lady and Gentlemen of the Jury the type of noise, not necessarily exactly, but the type of noise that you heard?

A. Heard this crowd screaming and hollering, using profane language, different type of slogans, general disorder, sorta reminds you of a lynch mob you see on an old western—

The Court: Speak up please, sir.

A. Reminds you of a lynch mob that you see on an old western movie, just general disorder.

Q. Was this loud?

A. Very loud, sir.

Q. All right, after the surrounding arrests were made, what did you do, did you go to the lockup with them or—

A. Yes, sir, I did.

Q. Did you assist Officer Burley in making out the arrest sheets?

A. Yes, sir, I did.

Q. How was the crowd taken out from the group and put onto the patrol wagons?

page 26 } A. A small opening was made just big enough for one person at a time to be taken out of this group and two officers would escort each person to the rear of the patrol wagon. Of course, after we loaded the two wagons we had five people which we transported to the Detention Section on the bus.

Q. Did you see this particular defendant that night?

A. In the lockup, sir, I don't recall seeing him on the street.

Q. When they were put in the receiving cell at the lockup, was that empty at the time this group was put in there?

A. Yes, sir, it was.

Q. All right, answer Mr. Tucker's questions.

CROSS EXAMINATION

By Mr. Tucker:

Q. The subject who crawled through the Police Officers' legs and went west on Broad Street crawled through one of the Officers who was closer to Second Street than you were?

Joseph F. Crane

A. Yes, sir, I was on the east side of the group
page 27 } Q. You were on the east—
A. next to the store window,
Q. Uh, huh?
A. and he went through the Officer's legs just on the west side of the group.
Q. Well, you could see—
A. on the sidewalk.
Q. And as tightly as you had these people packed in there, you could see this man get down and crawl through the Officers' legs?
A. I had seen the Officers jump, sorta jump aside like, and then the man raised from behind the Officers and then ran very swiftly—
Q. Well, you really didn't see that man crawl through—between the Officers' legs, did you?
A. He didn't go through the—
Q. I mean between?
A. around the Officers—
Q. You didn't see the man—
A. I didn't actually see him go right underneath which Officer's legs and all that part.
Q. Did you actually see a man down on the ground moving towards westwardly?
page 28 } A. After—I saw the man on—get up from the ground and run westerly after the disturbance in the Officer—I mean the movement of the Officers,
Q. But you did—
A. I didn't actually see him go between their legs.
Q. You did not see that?
A. No, sir, but that's the only way he could have gotten out.
Q. Or did some—somebody tell you that he had crawled between the Officers' legs?
A. Well, from what I saw that was—
Q. You just saw a man get up and run?
A. After the movement of the Officers.
Q. Of the Officers—you saw a movement of the Officers and then you saw a man run?
A. Raise on the sidewalk—
Q. Raise on the sidewalk and run,
A. Right.
Q. but so far as you talking about the man crawling be-

Joseph F. Crane

tween the Officers' legs, you didn't see any such thing, did you?

A. I didn't actually see the man crawl.

Q. Of course not, you didn't see that. I have no
page 29 } further questions.

Mr. Wilkinson: That's all, Officer Crane.

Witness stood aside.

Mr. Wilkinson: We'd like to call Sergeant Conners.

The Court: Do you have any objection?

Mr. Tucker: I thought Sergeant Conners—

The Court: Sir?

Mr. Tucker: I say I thought Sergeant Conners was under the rule—

The Court: He is—

Mr. Tucker: And I don't want him to testify if he has heard the other witnesses testify or did he leave the Courtroom?

page 30 } Mr. Wilkinson: No, he's sitting right here.

The Court: Sir?

Mr. Tucker: If he did not leave the Courtroom, I don't think it's proper for him to testify—

The Court: If you object to it, I'll sustain your objection.

Mr. Tucker: Beg your pardon?

The Court: If you object to it, I'll sustain your objection.

Mr. Tucker: I do object, Your Honor.

The Court: Very well.

Mr. Wilkinson: Judge, we'd ask for a recess at this time, sir, about five minutes.

The Court: Take a five minute recess.

NOTE: At this time, a short recess was had, after which:

page 31 } Mr. Wilkinson: Your Honor please, the Commonwealth would rest.

The Court: Very well.

Mr. Tucker: While the Jury's out, Your Honor, would the Court entertain a motion?

The Court: Yes, sir.

Mr. Tucker: I want to predicate my motion on two grounds, Your Honor, first the *insufficientcy* of the evidence and the other that the unconstitutionality of the statute or the parts of the statute to which the prosecution has elected to proceed as applied to the facts shown in this case.

First on the question of sufficiency of the evidence: The—there is nothing in the evidence except that the Police Officers herded up a crowd of people, a significant—we have been told by—the Officers who testified all approached this crowd from the east, and there is nobody who has testified who approached from the west or who sealed off the possibility of an entrance of a pedestrian coming down Second Street and turning the corner at just about the same time
page 32 } the crowd came by. We think the burden is on the State to prove the—to prove its case beyond any reasonable hypothesis of innocence, and that's the most reasonable hypothesis, that—so far as what evidence we have here. Now, the State had opportunity to show by Officers who did that how, if at all, they prevented a person coming down—going south on Second Street and turning a corner and becoming involved in this crowd. The Officers who are supposed to have done that did not come up here to testify, because His Honor will distinctly recall that I distinctly asked each Officer was he in the group that proceeded from the east to the west and that's where the Officers were, but they brought no one here who could testify to exclude the hypothesis of the defendant having (word not clear) joined the crowd by proceeding south on,—having proceeded south on Second Street and turned the corner. The Constitutional objection is more serious, I think, because we have been advised that the witness the defendants are charged with having—the defendant is charged with having without authority assembled, creating unlawful assembly. I read the
page 33 } charge as being or tending to be that he participated in an unlawful assembly, because the Act of Assembly under which we have—we are proceeding has a part, eighteen point—which will be eighteen—Code Section eighteen, point one two to four point one C, which would say that whenever three or more persons assemble without authority of law, and for the purpose of disturbing the peace or exciting public alarm such as something that is unlawful assembly, and it is obvious one person cannot be an assembly. There is another section, eighteen point one dash two, four point four, which says that every person who participates in any unlawful assembly shall be guilty of a misdemeanor and that's what I assume that the charge intended to be, that he did participate in an unlawful assembly or in that the assembly which—was assembled, we'll say, for the purpose of disturbing the peace or exciting public alarm. Now, we think that such a statute, however, does violate the *Constitutuional*

requirements of definiteness and specificness in
page 34 } the area pertaining to First Amendment rights.

I read the statute with the Constitution in mind and I get this: So far as where three or four persons assemble quote without authority of law end quote—I did look though, I can't perceive of what that can mean inasmuch as governments are forbidden by the First Amendment to make any law respecting the rights of people to assemble, so that I'm trying to narrow the statue down to the point that we can look at what might be left and see whether there is anything there, so I again read the statute where three or more persons assemble for the purpose of disturbing the peace or exciting public alarm, then when I get to that part "or exciting public alarm", I refer to the cases of *Edwards* v. *South Carolina* and *Terminiello* v. *Chicago,* where the Court pointed out that you can't make criminal reaching somebody else's boiling point, that you can't make criminal activity or speech or assembly or something that excites others, that if the State wants to regulate conduct that impinges on persons in that area, they have to specifically set out what it is that is
forbidden, there has to be some law broken that
page 35 } they specifically have edicted thou shalt not.

Now, we get back to—for the purpose of disturbing the peace and I find it difficult to (word unintelligible) there because I think of the case of *Cantwell* v. *Connecticut* and the most recent—most recent thing on—in this area is probably *Ashton* v. *Kentucky,* reported in 384, U. S. 195, cited in 1966, in which Justice Douglas—he was reviewing the case, the conviction out in Kentucky having to do with the common law on criminal libel concept, a conviction under that, and the Court pointed out that as they had indicated in *Shuttlesworth* v. *Birmingham* that where accused is tried and convicted under a—he was tried and convicted under a broad construction of an act and it went up—the Kentucky Court of Appeals narrowed the construction which would have excluded the conduct for which this appellant was convicted, but did not, and the Court pointed out that we
agree with the dissenters in the Court of Appeals
page 36 } who stated that since the English common law of
criminal libel is inconsistent with Constitutional provisions and since no Kentucky cases redefined the crime in understandable terms, and since the law must be made on a case to case basis the elements of the crime are so indefinite and uncertain that it should not be enforced as a penal offense in Kentucky. . . . . that line of reasoning we are saying

that when the Legislature impinges upon First Amendment rights with something as vague and indefinite as quote for the purpose of disturbing the peace, that all the old common law concepts of breaches of the peace where they involve First Amendment rights went by the board, say in *Edwards* v. *South Carolina,* where the Court pointed out that you cannot make a crime, action that might incite somebody else to violate a crime, to violate the law.

Now, so that—I assume the State's theory is that the noise these people were making was a disturbance of the peace, that's what I glean from the evidence that we are page 37 } hearing, that since they were making noise that they were assembled for the purpose of making noise, probably there were some assembled for the purpose of making noise, but we have a clear statute which prohibits the making of noise, the only thing in our law that makes noise making unlawful. If there is nothing in our statute that makes noise making unlawful, then certainly the fact of making noise cannot be making it—converted it into a crime in violation of the First Amendment concepts. So that we say the application of the statute, the statute on its face, it seems to me, to be unconstitutional, that is this part of it, and this is the only part of it that is so patently unconstitutional, and unquestionably the application of the—in this case where all we see is the making of noise, which, in itself, is not violation of any law, then if it is not in itself violation of the law, are we to leave the discretion to police officers or to the jurors or to whom as to whether or not *ad hoc* basis in one case to another this shall be considered unlawful and page 38 } something else shall not—shall not be considered unlawful particularly here where First Amendment freedoms are concerned, so that we say here are twofold, that first there is no evidence inconsistent with the grave possibility that this defendant walked south on Second Street at a time when the crowd was crossing Second Street and turned the corner, as he had a right to do, and was caught by Police Officers. The State had an opportunity to disprove that by calling not the officers who approached from the east but the Officers who approached from the west would have had an opportunity to have known whether or not this defendant did in fact turn that corner or whether or not their cordon had been sufficiently efficient so as to preclude the inclusion of someone who had just turned the corner. That the State has not—has failed in its burden there to even connect the defendant with any unlawful purpose of the assembly,

you can't just make it wrong to be somewhere where disorder is going on, and, secondly, we think that even assuming that he were a part of the assembly that then we reach
page 39 } the Constitutional questions as to whether this was an unwarranted invasion or impingement upon Constitutional freedoms.

Mr. Wilkinson: Your Honor please, this *prosectuion* is under the Virginia new anti-riot law, I believe, and also under the heading disorderly conduct.

Now, as to the sufficiency of the evidence, I think the evidence is clear, uncontradicted at this point, the group was surrounded by Police Officers that were there, they were kept separated from other persons all during the time from the time that they were arrested and put in the wagon and taken from the wagon (constant coughing by someone obliterates) at that time when the arrest sheets and warrants were issued, so quite frankly, Your Honor, I think that this particular stage there is no question the Commonwealth has carried the burden of proof.

Now, I know of no Constitutional right, perhaps there are some or some that we have not discovered yet, that give a group of people the right to walk down the side-
page 40 } walk at 8:50 p. m. at night taking up the whole sidewalk, walking against the traffic signs, certainly would be leading towards a breach of the peace and the testimony runs they walked across Second Street which they did walk, they walked across there yelling and shouting where it could be heard a block away, also the language that was used is uncontradicted at this point, and I will not repeat at this time but the Court understood and heard the Officers testify to it, and I know of no Constitutional right to give an individual or a group of individuals to do that. The statute says when three or more persons assemble without the authority of law, there's no evidence here of the authority of law, in fact, they had no permit, I don't believe they give you a permit to use this type of language in public, and for the purpose of disturbing the peace. Now, the disturbing the peace statute goes way back to the common law when it used to be called a breach of the peace, come over to this country, they then enacted the disturbing the
page 41 } peace statute which the General Assembly repealed actually when they passed this law, but said for the purposes of disturbing the peace or exciting public alarm or disorder. I submit here the crime is specific, Your Honor, it's no admission here of the lack of assembly, the

right to talk, the right to give speeches, but the State has a right that it can, in the exercise of its powers, have *to* right to a unlawful assembly where the assembly is for the purpose of exciting public alarm or disorder or disturbing the peace, and I think that the evidence is clear here, Your Honor, beyond all doubt that this assemblage of thirty-one persons or thirty persons, which is three or more, which under the evidence this defendant was a member of, was certainly disturbing the peace and good order of the locality. Of course, I believe Your Honor is familiar with the case of *Tinsley* v. *Commonwealth,* which was under our (unintelligible) ordinance, a City ordinance, I believe Your Honor tried that case, where the same situation existed and the lady was told to move on, and she did not move on, she was told
page 42 } three times by the Officer, and when she did not move on, she was arrested and the case went to the Court of Appeals of Virginia and the Virginia Supreme Court of Appeals said that was a proper exercise of municipal authority under those given set of facts. It was also appealed to the Supreme Court of the United States where the *certiorari* was denied, *certiorari* denied does not mean that was the law, so that's the only thing we can rely on, the highest Court of this State has held that that particular prosecution was lawful, and I say here the statute is presumed to be Constitutional, under the evidence here every facet and every element of the statute has been proven beyond any doubt, it's uncontradicted and I submit to the Court that the State would have a right in the protection of persons and property to make certain assemblages unlawful which would not abridge the right under the First Amendment. We have parades, you have to have a permit to parade. Now, had these people assembled orderly and walked down Broad Street, we might have an entirely different question, but
page 43 } the evidence is here and every criminal law is a matter of evidence, it's not discretionary with the Officers so much as a matter of evidence, the evidence here that this assembly was certainly disturbing the peace. In fact, it had been going on for such time to excite public alarm that the police had broken down into squads, to ride in buses, to assist and to protect the law abiding citizens.

So I submit to you, Your Honor, here that under the evidence in this case the statute is Constitutional and the Commonwealth has proved beyond any reasonable doubt that this defendant participated in an unlawful assembly which is a misdemeanor in this State.

The Court: The Court will overrule your motion.
Mr. Tucker: We save exception, please, sir.
The Court: Very well, Return the Jury—any further motions?
Mr. Tucker: That will be all, sir.
page 44 } The Court: Return the Jury, please.

NOTE: At this time, the Jury returned into the Courtroom.

The Court: Gentlemen, you waive the poll of the Jury?
Mr. Wilkinson: The Commonwealth does.
The Court: Very well.
Mr. Tucker: We do.

ALVIN HALL, the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Tucker:
Q. Mr. Hall, would you state your name, age
page 45 } and address, please?
A. Alvin Hall, twenty-five, address is 1900 North 29th Street, Richmond, Virginia.

The Court: Excuse me, you are speaking into a recording device, that's not an amplifier, just talk loud so the Jury can hear.

A. Alvin Hall, twenty-five, 1900 North 29th Street, Richmond, Virginia.
Q. Mr. Hall, do you recall the events of April the 8th, 1968?
A. Yes, I do.
Q. Would you tell the Court what were you doing approximately 8:50 on that night?
A. Well, I were uptown, I was on Second Street at the time, and I come around the corner by the Planters Bank, I mean Planters Peanut Store, and soon as I come around the corner, there was a crowd of people on the same side of the street that I were on and a busload of policeman came on the corner and jumped out and started telling everybody to move back

to Second Street and the State Trooper was on the corner of Second, and they came down and push everybody back to Third and they gathered me up in it and somebody say, "Lock them all up", and so that's what happen, they lock
page 46 } me up with a bunch of people I didn't know anything about, and I had nothing to do with any of them, yelling or saying whatever they said, I was just minding my own business, I was planning to go home, catch the bus there and go home.

Q. All right, would you answer Mr. Wilkinson's questions.

CROSS EXAMINATION

By Mr. Wilkinson:

Q. Did you see the crowd?

A. Yes, I saw the crowd when I was on Second Street.

Q. Whereabouts were you on Second Street when you saw the crowd?

A. I was about—I say about two or three doors from the corner of Broad.

Q. Well, could you give us any distance of what those two or three doors would be?

A. I'd say about forty feet.

Q. Now, where was the crowd at that time?

A. It was about middle way—it was crossing Second Street on Broad going to Third.

page 47 } Q. Was it making a lot of noise?

A. They were singing, yes.

Q. Were they cursing?

A. I don't recall whether they was cussing or not, or anything like that, I know they was singing. I wasn't paying too much attention at the time.

Q. Were they singing loud?

A. Well, they was singing so you could hear them, but—

Q. Are you telling the Jury and His Honor that you saw these people walking down the street, you didn't pay much attention to them?

A. Well, see, I had just left a boy up on the corner and—

Q. On the corner where?

A. Marshall—

Q. Second and Marshall?

A. Yes, sir.

Q. And who was that boy?

Alvin Hall

A. His name is Sonny, I don't know his last name.
Q. Friend of yours?
A. Yes.

page 48 } Q. You know who he is, where he lives and so forth?

A. Yes, he lives on Twenty—on Peter Paul Boulevard.

Q. And how long had you left this man, the person you were with before you got up to Second and Broad?
A. I had just left him.
Q. Just left him?
A. Yes.
Q. You mean you just left him as a matter of seconds or matter of minutes or—
A. Matter of seconds.
Q. Matter of seconds. Where does he live?
A. I don't know the exact address, I think it's in the twenty-five hundred block of Peter Paul Boulevard.
Q. Is that in the East End?
A. Yes, sir.
Q. Is that close to where you live?
A. Yes.
Q. And you had just left him and you saw this crowd coming across Second Street?

page 49 } A. Yes.
Q. At Broad, you were about forty feet north on Second Street?

A. About forty to fifty feet.
Q. Uh, huh, did you stop at that time?
A. No, I did not.
Q. Did you keep on coming?
A. Yes.
Q. Did you get in the crowd?
A. No, I did not mingle with the crowd.
Q. All right, when you said a policeman took you down to the crowd—
A. No, I did not.
Q. Well, how did you—tell us again what happened there, you were—did you come all the way up to Broad Street?
A. When I came up to Broad I turn left going east and I pass some State Troopers that were on the corner and at that time, the crowd that was up on—that was crossing Second had done gone two or three doors down the street and

they in front of me and so at that same particular time, this busload of police came up and jumped off and order everybody back the other way, pushing them back toward me and then the State Troopers on the corner came up and pushed me back toward Third, pushed everyone else, and page 50 } at that time, somebody hollered out, "Lock them all up", and that's what happened, put me on the bus and carried me down to jail.

Q. How far did the State Trooper push you?

A. Push me right on back to—Police was coming this way, was pushing people this way, and the State Trooper was pushing them to Third.

Q. Well, the Police didn't push them back down the street west, did they?

A. The Police pushed them west.

Q. How far did they push them?

A. They didn't push no more than about ten or fifteen feet and the State Troopers push me about ten feet, pushed us all together.

Q. Weren't you arrested in front of the Surplus Store?

A. I don't know exactly what store it was.

Q. I show you Commonwealth's Exhibit No. 1 which is a picture of the north side of Broad Street between Second and Third—

A. Yea, I came from around there and I imagine I got about—

Q. Well, where were you arrested?

page 51 } A. Well, I came around this corner, State Trooper was standing there, right here. Soon as I walk to about—this is—yea, I went to about this store here. Rollins—O. K., well, right up in here—I had gotten to about right here, to Rollins at the turn when the State Trooper was coming, had turned around the corner and stopped and the people were right along in here at Rollins, I mean at Mortons, and this is where they started to pushing them this-a-way, and at the same time, these State Troopers were coming around—came down here and merged me on with the rest, I say we got locked up about right along in there at Rollins, somewhere along in there.

Q. You got locked up right here—was the whole crowd there in front of Rollins?

A. Well, see, they were up here first—

Alvin Hall

Q. I mean when they were arrested and locked up?

A. Oh, locked up? Yea, we all were locked up right along—maybe a little bit past Rollins, I mean at the corner of Rollins Store.

Q. Right there at the corner?

A. Yea.

Q. And you weren't in the group with the—in front of the Surplus Store?

page 52 } A. I don't know whether it was that far down—then, again, I wasn't paying that much attention to where I got caught at, see, they stopped me right along there somewhere, I don't know exactly where. See, if I was looking for something like this probably woulda knew, I wasn't looking for it, I wasn't trying to get locked up or anything.

Q. In other words, when you saw you were surrounded by Police Officers, you didn't get very concerned about it?

A. I wasn't looking to see whether it was stopped or not, I was concerned what was going on, why were they pushing me, but at the particular moment I was excited it had happened and no way in the world I coulda knowed where I was locked up at in the block, I mean no address or nothing like that.

Q. Well, let me ask you this, now, you know where the Planters Peanut Store is on Second Street?

A. Yes.

Q. Were you north of that when the crowd was going across Broad Street?

A. I was around this corner around there.

Q. I mean down on Second Street,

A. Yea.

Q. down there?

page 53 } A. Yes.

Q. And were you in front of any other places, do you recall in your mind how far you were north there on Second Street?

A. I had came up from Marshall Street corner where I was standing and talking, I had just left a boy, he was going down to the poolroom and I told him I didn't feel too well, I was going back home, I was going to catch the bus.

Q. Where were you going to catch the bus—

A. I was going over to Third Street and catch the—I mean going across the other side the street and catch the bus.

Alvin Hall

Q. Pardon?
A. I was going down to Third and catch the bus on the other side of the street.
Q. Were you going to the East End?
A. Yes.
Q. Going home?
A. Yes, I was.
Q. And you live in the East End?
A. Yes.
Q. So you came up to Second and Broad, where
page 54 } were you going to catch the bus?
A. I was going to catch the bus right along at Third and Broad.
Q. So you didn't cross the street at Second and Broad, then, did you?
A. What you mean cross?
Q. To catch the bus?
A. I didn't get a chance to cross the street.
Q. Well, if I understand you correctly, the crowd had gone on by?
A. Yes.
Q. And then you were all by yourself, you sorta stayed—
A. I was about—I was about twenty feet behind.
Q. You knew there had been disorders in Richmond, did you not?
A. Sure.
Q. And you didn't go on across Broad Street at Second?
A. Sir?
Q. You didn't go across Broad at Second?
A. I didn't cross Broad Street at all.
page 55 } Q. You could have gone that way, could you not?
A. Yes, I coulda went down Marshall Street.
Q. Now, the boy you referred to, you just talked to, were talking to right before your arrest, is he here today?
A. No, he is not, I couldn't locate him at the time, I called his house and everything yesterday and today and couldn't get him.
Q. You started calling him yesterday?
A. Well, I had told him earlier that I might need him, but I didn't say when, but I think I told him what date, but it probably slipped his mind, you know, he wasn't in trouble, I was, you know.

Alvin Hall

Q. You didn't summons him to be here today?

A. No.

Q. Uh, huh, were you in the group of about thirty people or twenty-nine other people that were arrested?

A. I don't know how many it was, it was a right large crowd of people. See, I was sick, ain't no way in the world I could have been *participating* nothing like that,
page 56 } 'cause I had just left the hospital that day for a check-up, I wanted to be put in, but they wouldn't put me in, told me to go see my family physician first and if he say it's so that they would put me in, over at McGuire Hospital.

Q. You were sick?

A. Yes.

Q. Well, you were a right good distance from home, weren't you?

A. (No response is heard)

Q. Weren't you a right good distance from home over on Second Street,

A. Yes, I was.

Q. you live over on 29th Street?

A. Yes, I was.

Q. You were sick, but you came out that night anyway?

A. See, I was over my mother's house, I made a phone call from over there for the doctor and the doctor told me he would make a 'pointment for me tomorrow.

Q. Where does your mother live?

A. She live about two blocks from me.

Q. Two blocks from you?

A. Yea.

Q. She lives on New Bern, too?
page 57 } A. Huh?
Q. She lives in the East End also?

A. Yes.

Q. Where does she live, what's her address?

A. 2700 New Bern.

Q. And that's about two blocks from where you live?

A. I say three.

Q. And what time did you make the phone call from your mother's?

A. It was about, oh, close to eight o'clock.

Q. Well, you in the East End at eight o'clock, though, is that correct?

Alvin Hall

A. Yes, sir.

Q. And where did you go—who did you call?

A. I call Dr. *Forrester* and made a 'pointment for the next day, they told me to come in the next day about five—five-forty, I believe, and I left her house, I went back to my house, then I decide I was going uptown, see, I didn't have any money, I say I was going to go uptown, see if I could get some money from my cousin, so that when I met this

page 58 } other fellow and I started to getting sick, and I said well, I'm going on back home, like this.

Q. Did you see your cousin?

A. No, I didn't quite make it all over to his house,

Q. Where is his house?

A. I didn't never transfer to the bus.

Q. Pardon?

A. I was going to transfer over to the other bus, but I got sick after I had seen that boy and was talking with him a while and I told him, I said I were going back home.

Q. Where does your cousin live?

A. He lives on Project—Gilpin Court.

Q. Approximately where is that?

A. It's Chamberlayne Avenue and—it's the bridge at Chamberlayne Avenue, you cross over the bridge, Gilpin Court, it's a project, redevelopment.

Q. Well, how did you happen to get off downtown?

A. Well, that's the only way you could get over there, see, you had to transfer busses to get over there.

page 59 } Q. Well, don't you transfer there at Adams and Broad?

A. I transferred at Adams and Broad, then I walked over to Marshall with this fellow.

Q. Well, I mean if you are going out Chamberlayne Avenue, you catch the bus there at Adams and Broad, don't you?

A. Huh?

Q. Catch the bus there at Adams and Broad?

A. No, you don't catch it there.

Q. Where do you catch it?

A. You catch it back there at Second.

Q. Second?

A. Uh, huh.

Q. Well, did you wait there at Second and Broad for the bus?

A. No, I did not, see, I went up to Adams and Broad.

Alvin Hall

Q. So you went up to Adams and Broad?

A. Yes, I went up on the bus and I was going to walk back over to Chamberlayne, see, and the boy, we walked down to Marshall, he was going down to the poolroom, then I decided I would change my mind, so I'm going down to

page 60 } catch this other bus.

Q. Well, wait a minute now, you got up to Adams and Broad, what time did you get up to Adams and Broad?

A. I don't know the exact time, but it was—it was after eight. It was about eight-thirty, now, see, my cousin, he usually be up there in this restaurant, so I said I stop up there first to see if he's in there instead of going all the way to his house and, O. K., when I got off the bus and I looked, the place was closed and he wasn't there, so me and this other boy, we walked—that I had seen—up at—

Q. Is this other boy you talking about the same boy you were on Second Street with?

A. Yes.

Q. And so you all got together shortly after eight o'clock at Adams and Broad Street?

A. Yes, we got together about—about eight-thirty.

Q. All right, did you all walk down Broad Street to catch the bus?

A. Yes, we walked down—I didn't go to catch the bus then, I was going to walk with him down to the poolroom, then I change my mind, I say I'm not going down there.

page 61 } Q. Now, where is the poolroom?

A. It's on Second Street, up there at Second and —Second and Clay. So I walked—I walked—

Q. Did you make it to the poolroom, excuse me, did you get to the poolroom?

A. No, I did not, I walked to Marshall and that's when I changed my mind.

Q. How did you all get from Adams and Broad to Second and Marshall?

A. We walked.

Q. I mean what route did you take?

A. Well, we went down Broad, then we turn over on Second and when I cross on the side the poolroom be on, then I change my mind at Marshall, and I told him I see him later 'cause I don't feel too well, that I go back home, so at that time I came right on back up Second and that's when I seen the crowd of people crossing the street.

Gladys Hall

Q. I believe you testified you didn't have any money?
A. No.
Q. Pardon?
A. I didn't have any money.
Q. Didn't have any money, all right, that's all.

page 62 } Witness stood aside.

GLADYS HALL, introduced on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Marsh:
Q. Mrs. Hall, would you state your name and address, please?
A. Gladys Hall, 2700 New Bern Street.
Q. Are you related to the defendant, Alvin Hall?
A. His mother.
Q. Do you recall seeing Alvin Hall on April the 8th, 1968?
A. Yes, I do, he came by my home with his dog about quarter past nine and I was in back with my husband,
page 63 } talking to him, and he stayed there a while—
Q. Wait a minute, are you sure about that time?
A. I say about—it was about quarter past nine or a little after or between quarter past nine and nine-thirty—anyhow, he hadn't been gone no time before I got a telephone call, but I thought *i* was my other son.
Q. What telephone call did you get?
A. A call from Alvin saying that he had been arrested, he said he was walking down Second Street and—Second and Broad—

Mr. Wilkinson: Your Honor, we object to what he told her.
The Court: Objection sustained.

Q. Don't tell us what was said.
Q. What you want me to say, or answer?
Q. You have said enough. Answer Mr. Wilkinson's questions.

Mr. Wilkinson: I have no question.

Witness stood aside.

page 64 } Mr. Marsh: That's our case, Your Honor.
The Court: Very well.
The Court: No further evidence.
Mr. Wilkinson: No, sir.

NOTE: At this time, the Jury retired from the Courtroom.

Mr. Tucker: If Your Honor please, I'd like to renew my motion to strike the evidence (counsel mumbles)
The Court: I can't quite understand you—
Mr. Tucker: . . . . at this point in the matter of the sufficiency of the evidence.
The Court: Yes, sir.
Mr. Tucker: I pointed out before that the State had not negated the possibility that the defendant had
page 65 } done just what the defendant testified to and that was he turned that corner at Second Street and Broad Street. Your Honor ruled at that time that the state of the evidence that we should go forth, we have gone forth. We say now from all the evidence and the opportunity of the State to have repeated the testimony of the defendant that he had just turned the corner at Second Street, that still being unrefuted, that we say from all the evidence, the Court should strike the State's evidence and direct the Jury that there is no evidence upon which they can find a conviction.
The Court: I think that's a question for the Jury to resolve, Mr. Tucker, the Court will overrule your motion.
Mr. Tucker: We save exception.
The Court: Now, would you Gentlemen mind getting together and see if you can't agree on your instructions, if you can't, I'll take up those that you disagree on and we will probably save a little time.
Mr. Tucker: If Your Honor please, we object to
page 66 } the granting of Instruction No. 4 having to do with credibility of witnesses. In the abstract, we don't criticize the instruction, we criticize it's being given in this case because there is no material (counsel mumbles)—
The Court: Speak a little louder, please, sir.
Mr. Tucker: Because there is no material conflict in the evidence and that the—as I pointed out before the State has proved nothing that disputes the contention of the defendant that he had just arrived on the scene around Second Street, so that with no material—no material conflict in the evidence, the effect of giving such an instruction is to tell the Jury that it may disregard part of the evidence, and I think on the con-

trary the Jury should be instructed that they may not disregard any evidence that is uncontradicted and I think that in this case to give the credibility of witness instruction is to invite the Jury to disregard the testimony of the defendant for any reason that they may want to disregard it so that we object to its being given in this case at all.

page 67 } The Court: Mr. Wilkinson?

Mr. Wilkinson: Well, Judge, I think the Jury has the right to—are the sole judges of the credibility of the testimony. We certainly take the position there's a conflict in the evidence here. Now, what the defendant has said and what the Officers have said, the place he was arrested, he's got it down the street two stores, they put him at another place and the group he was in at that time and certainly that's a matter of credibility for the Jury to—of the witnesses, for the jury to decide, and we feel that the instruction is—without it the Jury would not be guided as to what their function is. It's an instruction, I believe, that we give in every case where there's any conflict. They would have the right to disbelieve the Police Officers' testimony if there was any conflict, and someone would have to tell them what their prerogatives are or are not, but we submit there is a conflict in the evidence.

The Court: The Court feels the instruction is a

page 68 } proper one. Had you rested your case—

Mr. Tucker: No, I have another—

The Court: Yes, I know, but had you rested your case and not put on any evidence, of course, then the instruction would not have been a proper instruction, but here the evidence has been *introducted* by both sides and the Court feels it is a proper instruction and will allow it.

Mr. Tucker: We save the exception in that we say that there was no material conflict.

The Court: Very well.

Mr. Tucker: in the evidence.

Now, with reference to Instruction No. 6, we object first to the words appearing on the third line "without the authority of law". I am aware that the words are in the statute, but I say that the insertion of the words in the statute in the light of the First Amendment freedoms is meaningless because the matter of regulating, making laws regulating First Amendment rights are without the purview of the legis-

page 69 } lature. The effect of the words in the instruction to the Jury is to have the Court to suggest to the Jury that persons, to have an assembly, must have some

special permit, and there is no—whereas I heard the Commonwealth's Attorney allude to a parade permit, there is no—nothing before this Court to show that there is any requirement of a parade permit or that the Act of the Assembly itself was forbidden by any law and I think that to leave the words "without authority of law" in this instruction is to suggest to the Jury that the defendant and—or that some other defendant or the other persons have the burden of showing that they had a right to be where they were, that there is some positive law or permit or authority given them by Government to say that they could have been there at that time and place. And then I—on the part of the instruction that I must move to exciting public alarm or disorder and I suggest again as I suggested on the motion to strike that the possibility that a person's act might excite this lawlessness on the part of another person or some other

page 70 } persons cannot be made a crime under—and for that we suggest to the Court the case of *Edwards* v. *South Carolina* and the case of *Terniniello* v. *Chicago,* and then moving back to the pur—for the purpose of disturbing the peace, and again we say that there is no independent statute or violable rule of law that defines with precision what disturbing the peace for punishes, disturbing the peace. I've heard the allusion to the now repealed disorderly conduct statute and certainly if the disorderly conduct statute had been repealed at the time of these incidences, as it had been, that we could not rely upon that as proscribing a disturbance of the peace. We think of the cases that were *deicded* even under the disorderly conduct statute where our Court of Appeals made clear disorderly conduct was not a crime at common law, that our State did not have the common law offenses of disturbing the peace and so forth, and when we look at the Supreme Court cases that have dealt with that area, and again we point to *Edwards* v. *South Carolina,* that—and the case of *Ashton* v. *Kentucky,* which

page 71 } we referred to this morning, so that those cases we find that the Court has held that where First Amendment rights particularly involved—are involved, that expressions like disturbing the peace being the basis for criminal prosecution are too vague and indefinite to withstand the Constitutional test of due process. As is pointed out in the *Ashton* case that vagueness is detrimental to any criminal law subject and when First Amendments freedoms are concerned, they are particularly detrimental, but where we don't have any narrowly borne precise statute regulating

or affecting this question or to which we can point as to what the law means that provide the purpose of disturbing the peace, we say that the—that language should not be included in instructions of the Jury. In other words, if the Legislature has not made clear what conduct it considers the law, because it disturbs the peace it should not pass on to the Jury and the Court should not pass on the Jury whether or not certain conduct disturbs the peace or was entered into for a purpose of disturbing the peace. We further page 72 } object to the instruction because there is no evidence to hold that the defendant himself had any purpose of disturbing the peace or doing anything that was untoward except going home.

The Court: Well, Mr. Tucker, the instruction reads without the authority of the law and for the purpose of disturbing the peace, that's coupled with—with the statement for the purpose of disturbing the peace or exciting public alarm and disorder. This follows the statute, I am quite sure, and it's a question for the Jury to decide whether or not they assembled without the authority of law and for the purpose of disturbing the peace, exciting public alarm and disorder. I think that's a question that falls into the lap of the Jury.

Mr. Tucker: May I inject this remark, if Your Honor please?

The Court: Yes, sir.

Mr. Tucker: It occurs to me, and if we look at the thing—that—at the instruction, are we suggesting that there could be authority of law to disturb the peace, to have a page 73 } purpose of disturbing the peace or exciting public alarm and disorder? I'm suggesting that they—I mean when we look at it, turn it around we certainly wouldn't say that there ever would be authority of law to do so, but to fit the words without the authority of law are carrying to that Jury an impression that the defendant has more of a burden than he has. He has the burden of doing the impossible, getting a point of law which we all know would never been given, authority of law, to do something for the purpose of disturbing the peace. I think it doesn't belong in there because it's forbidden by the First Amendment and certainly that it carries to the Jury the notion that the defendant must show that he had some authority from somebody to be out there on the street to exercise the common right that everybody has to be out there on the street.

Mr. Wilkinson: Well, Your Honor, there is some authority, I don't know about the authority to disturb the peace, but

there's some authority that if you want to parade that you get out there with parade permit and you can then march, if you want to, and the evidence here there was
page 74 } no permit so the statute—the instruction is taken right out of the wording of the statute, which is 18.1-254.1c, and the latter part of it says whenever three or more persons assemble without the authority of law and for the purpose of disturbing the peace by inciting public alarm or disorder such assembly shall be unlawful. Now, I think what the Legislature was saying there, Judge, I could have a lawful assembly and during the course of that I didn't participate in it, but it became disorderly like an (unintelligible), certainly any sports event you can—authority of law, you have the authority of law to meet there and you meet there. Suppose that becomes disorderly, then this statute's not to cover that situation but where there is no color of law here for this type of action is what the statute is talking about when it says without the authority of the law they could do certain things, get together and not disturb the peace and cause public alarm or disorder.

The Court: The Court will allow the instruction.

page 75 } Mr. Tucker: We save exception to the allowance of both instructions.

The Court: Sir?

Mr. Tucker: We save our exception to the allowance of both instructions.

The Court: Very well, return the Jury, please, sir.

NOTE: At this time, the Jury returned into the Courtroom, and the Court read instructions to the Jury, after which counsel made closing arguments to the Jury, and after which the Jury retired to consider of its verdict, and after sometime returned into the Court and the hearing continued:

The Court: Gentlemen, you waive the poll of the Jury?

Mr. Wilkinson: Yes, sir.

page 76 } Mr. Tucker: Waive the poll.

The Court: Lady and Gentlemen, have you reached a verdict?

A Voice: We have, Your Honor.

The Clerk: The verdict of the Jury reads as follows: We, the Jury, find the accused guilty as charged in the warrant and fix his punishment at twelve months and two hundred dollars fine.

NOTE: At this time, the verdict was amended:

The Clerk: I will re-read it as amended: We, the Jury, find the accused guilty as charged in the warrant and fix his punishment at twelve months in jail and a two hundred dollar fine.

NOTE: At this time, the Jury was excused from further consideration of the case.

page 77 } The Court: All right.

Mr. Tucker: If Your Honor please, there's a motion.

The Court: Very well.

Mr. Tucker: I'd like to move—I move that the verdict of the Jury be set aside as being contrary to the law and the evidence and that the defendant be given a new trial for the ruling of the Court on the motion to strike on the instructions, on the motion to strike as renewed, and, specifically, I move that the—further, I move that the prosecution be dismissed upon the unconstitutionality of the statute as applied in this case part of the statute . . . . violated the Fourteenth Amendment of the Constitution of the United States as it embraces the First Amendment and, of course, I just mentioned the exceptions previously taken to the several rulings of the Court.

The Court: The Court will overrule your various motions.

Mr. Tucker: We note exception—

page 78 } The Court: In accordance with the verdict of the Jury, the Court finds you guilty as charged in the warrant and fixes your punishment at twelve months in jail and two hundred dollar fine.

Mr. Tucker: If Your Honor please, we would like to move—make a motion that the execution of the sentence be suspended to permit application to the Supreme Court of Appeals of Virginia for writ of error.

The Court: Very well, sir, 22nd of July, one thousand dollar bond.

Hearing concluded.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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