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Clerk, Supreme Court of Appeals
Richmond, Va.

# Record No. 7218

## In the Supreme Court of Appeals of Virginia at Richmond

## RONALD LEE BUCHANAN, also known as Ronnie L. Buchanan

v.

## COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

### 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.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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**Record No. 7218**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 28th day of April, 1969.

RONALD LEE BUCHANAN, ALSO
KNOWN AS RONNIE L. BUCHANAN, Plaintiff in error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in error.

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From the Circuit Court of the City of Williamsburg
and County of James City
Robert T. Armistead, Judge

---

Upon the petition of Ronald Lee Buchanan, also known as Ronnie L. Buchanan, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Williamsburg and County of James City on the 9th day of December, 1968, in a prosecution by the Commonwealth against the said Ronald Lee Buchanan 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.

*FORMA PAUPERIS AFFIDAVIT*
*PURSUANT TO SECTION* 19.1-289
*CODE OF VIRGINIA,* 1950

I hereby declare that I am unable to pay or secure to be paid the costs of printing the record in this case. I further certify that my assets amount to a total of $.30.

Ronald L. Buchanan
Signature of Plaintiff in error

Ronald L. Buchanan

Southampton Correctional Farm
Address of Plaintiff in error
Capron, Va. 23829

State of Virginia
County of Southampton To-wit:

Ronald Lee Buchanan, also known as Ronnie L. Buchanan, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

Ronald L. Buchanan
Signature of Affiant

page 2 } SUBSCRIBED and SWORN to before me this 2nd day of May, 1969.

Helen F. Gillette
Notary Public

My commission expires: April 9, 1973.

CERTIFICATE

I hereby certify that I have investigated this matter and am of the opinion that the Plaintiff in error is unable to pay or secure to be paid the costs of printing the record in this case.

Robert T. Armistead, Judge
Circuit Court of the City of Williamsburg
and County of James City

* * * * *

Recd. 5-8-69.

HGT

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**RECORD**

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page 16 }

VIRGINIA: In the Circuit Court for the City of Williamsburg and County of James City. October 14, 1968

* * * * *

The accused not being represented by Counsel and it appearing to the Court that he is not able to employ Counsel the Court doth appoint Mr. John C. Stephens, Jr. a discreet and competent Attorney to represent the accused, and this case is continued to October 23, 1968.

/s/ Robert T. Armistead, Judge

* * * * *

page 30 }

* * * * *

In the Circuit Court of the City of Williamsburg and County of James City, December 9, 1968

This day came again the Attorney for the Commonwealth and Ronnie L. Buchanan who stands convicted of a felony, to-wit: robbery by presenting firearms and came also his attorney John C. Stephens, Jr. heretofore appointed.

And the Probation Officer of this Court, to whom this case has been referred for investigation, appeared in open Court with a written report, which report he presented to the Court in open Court in the presence of the defendant who was advised of the contents of the report and a copy of said report was also delivered to the Counsel for the accused.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

The Court, taking into consideration all of the evidence in the case, the report of the Probation Officer, and such additional facts as were presented by the defendant, the Court fixes his punishment at TWENTY (20) YEARS in the Penitentiary.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and

page 31 } nothing being offered or alleged in delay of judgment, the Court sentences the said Ronnie L. Buchanan to Twenty years in the Penitentiary, this sentence not to run concurrent with any other sentence.

The Court certifies that at all times during the trial of this case the defendant was personally present and his above named attorney was likewise personally present and capably represented the defendant and advised him of his right to appeal.

And the prisoner is returned to jail to await transfer to the Penitentiary.

It is ordered that an original and two copies of the transcript be prepared and filed with the papers in this case.

Committed to jail 6-7-68
Bonded 7-23-68
Recommitted to jail 10-2-68

s/Robert T. Armistead, Judge

* * * * *

page 33 }

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NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

The Defendant, RONALD LEE BUCHANAN, gives

Notice of Appeal from the Judgment of the Court rendered herein on December 9, 1968, and assigns the following error as required by Rule of Court 5:1, Section 4:

(1) The Court erred in admitting the testimony of Stanley R. Milton as to the question of identification of the Defendant, Ronald Lee Buchanan.

(2) The Court erred in refusing to suppress the testimony of Stanley R. Milton as to the question of identification of the Defendant, Ronald Lee Buchanan.

(3) The Court erred in refusing to strike the testimony of Mary Jane Clark.

(4) The Court erred in overruling the motion of the Defendant, Ronald Lee Buchanan, to strike the evidence as to such Defendant, made at the conclusion of the Commonwealth's evidence.

(5) The Court erred in overruling the motion of the Defendant to set aside the verdict as contrary to the law and evidence.

RONALD LEE BUCHANAN

By John C. Stephens, Jr.
Of Counsel

Filed 2/6/69.

J. C. Clothier, Clerk.

* * * * *

page 1 }

* * * * *

Stenographic report of all the testimony, together with all the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the trial of the case of *Commonwealth* v. *Ronald Lee Buchanan and Commonwealth* v. *Warren Milton Morrisette,* tried in the Circuit Court for the City of Williamsburg and County of James City, Virginia, on November 1, 1968, before the Honorable Robert T. Armistead, Judge of the said Court.

PRESENT:

Mr. William Person, Attorney for the Commonwealth.

Mr. John Stephens, Attorney for the Defendant, Buchanan.

Mr. Charles H. Rideout, Jr., Attorney for the Defendant, Morrisette.

* * * * *

page 3 } (The Court Reporter was duly sworn.)

Mr. Person: Commonwealth versus Morrisette and Commonwealth versus Buchanan.
Court: Is the Commonwealth ready?
Mr. Person: Yes, your Honor.
Court: Defense ready?
Mr. Stephens: On behalf of Mr. Buchanan, we are, your Honor.
Mr. Rideout: On behalf of Mr. Morrisette, we're ready for trial.
Court: All right, would you come forward.

(At this time the Defendants complied with the request of the Court.)

Court: Which of you is Warren Milton Morrisette?
Mr. W. M. Morrisette: I am.
Court: And you are Mr. Buchanan?
Mr. R. L. Buchanan: That's right.
Court: Do both of you understand that you are charged with robbery?
page 4 } Mr. W. M. Morrisette: Yes sir.
Court: Do you so understand?
Mr. R. L. Buchanan: Yes sir.
Court: Who is your attorney, Mr. Morrisette?
Mr. W. M. Morrisette: Charley Rideout.
Court: Mr. Rideout?
Mr. W. M. Morrisette: Yes sir.
Court: On how many occasions have you talked with him concerning this matter?
Mr. W. M. Morrisette: About—approximately four or five times.

Court: Who is your attorney, Mr. Buchanan?
Mr. R. L. Buchanan: Mr. Stephens.
Court: And how many times have you talked with him concerning this matter?
Mr. R. L. Buchanan: Five of six times.
Court: Do you, both of you understand that you have a choice of pleading guilty or not guilty?
Mr. R. L. Buchanan: Yes sir.
page 5 } Mr. W. M. Morrisette: Yes sir.
Court: Have you talked with your attorneys and been advised as to how you should plead?
Mr. W. M. Morrisette: Yes sir.
Mr. R. L. Buchanan: Yes sir.
Court: Do both of you understand that you have a right to have your case tried by the Court or by a jury?
Mr. W. M. Morrisette: Yes sir.
Court: Do you so understand?

(The Defendant, Buchanan, nodded in the affirmative.)

Court: Has your attorney advised you which you should do?
Mr. W. M. Morrisette: Yes sir.
Mr. R. L. Buchanan: Yes sir.
Court: How old are you, Mr. Morrisette?
Mr. .W M. Morrisette: Twenty-six.
Court: *Hold* old are you, Mr. Buchanan?
Mr. R. L. Buchanan: Twenty-two.
Court: Are any of your witnesses absent?
page 6 } Mr. W. M. Morrisette: No sir; no witnesses.
Court: Do you have any witnesses absent?
Mr. R. L. Buchanan: No sir.
Court: Have you requested your attorney to summons any witnesses?
Mr. W. M. Morrisette: No sir.
Court: Have you asked your attorney to summons any witnesses?
Mr. R. L. Buchanan: No sir.
Court: All right, has your lawyer failed to do anything you have asked him to do?
Mr. W. M. Morrisette: No sir.
Court: You?
Mr. R. L. Buchanan: No sir.
Court: Is there any complaint you wish to make concerning your attorney's preparation for trial?

Mr. W. M. Morrisette: No sir.

(The Defendant, Buchanan, nodded in the negative.)

Court: Do you know of any reasons why your
page 7 } cases should not now be tried?
Mr. W. M. Morrisette: No sir.

(The Defendant, Buchanan, nodded in the negative.)

Court: Is there any reason why these cases should not be tried together?
Mr. Rideout: No, your Honor.
Mr. Stephens: No sir.
Court: All right. Would you arraign Mr. Morrisette. You may be seated, Mr. Buchanan.

(The Defendant, Buchanan, complied with the request of the Court.)

Court: Mr. Morrisette, would you turn and face the Clerk.

(The Defendant, Morrisette complied with the request of the Court.)

Clerk: "The Grand Jurors of the City of Williamsburg and County of James City have found the following indictment against you: Virginia, in the Circuit Court
page 8 } for the City of Williamsburg and County of James City, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the said City and County, and now attending the Circuit Court for the said City and County, at its July, 1968 term, upon their oaths do present that Warren Milton Morrisette, on the 5th day of June, 1968, in the City of Williamsburg, he the said Warren Milton Morrisette, being then armed with a deadly weapon, to-wit: With a loaded pistol, in and upon one Stanley Milton, did make an assault and him the said Warren Milton Morrisette, feloniously did, by the threat of said firearm, and by the presenting of said firearm, and him, the said Stanley Milton, in serious bodily fear, feloniously did put, and U. S. currency in the amount of $481 of the goods and chattels of Kentucky Fried Chicken of Williamsburg, Inc. from the person and against the will of the said Stanley Milton, then and there, to-wit, on the day and year aforesaid, in the City aforesaid,

page 9 } feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth." Upon the testimony of Sergeant J. Altizer, witness sworn in open Court and sent before the Grand Jury to give evidence. Signed a true bill, Mary B. Strong, Foreman. What say you, guilty, or not guilty?

Mr. W. M. Morrisette: Not guilty.

Court: Do you desire to waive—do you desire to waive a jury? That is, do you wish your case tried by the Court or by a jury?

Mr. W. M. Morrisette: By the Court.

Court: Is that concurred in by the Commonwealth?

Mr. Person: Yes, it is, your Honor.

Court: All right, be seated by your attorney.

(The Defendant, Morrisette, complied with the request of the Court.)

page 10 } Court: Would *your* arraign Mr. Buchanan.

Clerk: "The Grand Jurors of the City of Williamsburg and County of James City have found the following indictment against you: Virginia, in the Circuit Court for the City of Williamsburg and County of James City, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the said City and County, and now attending the Circuit Court for the said City and County, at its July, 1968 term, upon their oaths do present that Ronnie L. Buchanan, on the 5th day of June, 1968, in the City of Williamsburg, he the said Ronnie L. Buchanan, being then armed with a deadly weapon, to-wit: With a loaded pistol, in and upon one Stanley Milton, did make an assault and him the said Ronnie L. Buchanan, feloniously did, by the threat of said firearm, and by the presenting of said firearm, and him, the said Stanley Milton, in serious bodily fear, feloniously did put, and U. S. currency in the amount of $481 of the goods and chattels of Kentucky Fried Chicken of Wil-
page 11 } liamsburg, Inc. from the person and against the will of the said Stanley Milton, then and there, to-wit, on the day and year aforesaid, in the City aforesaid, feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth."

Upon the testimony of Sergeant J. Altizer, witness sworn in open Court and sent before the Grand Jury to give evidence. Signed a true bill, Mary B. Strong, Foreman. What say you, guilty or not guilty?

Mr. R. L. Buchanan: Not guilty. Not guilty.
Court: Do you desire to waive a jury? That is, do you wish your case tried by the Court or by a jury?
Mr. R. L. Buchanan: By the Court.
Court: Is that concurred in by the Commonwealth?
Mr. Person: Yes it is, your Honor.
Court: You be seated there by your attorney.

page 12 }

(The Defendant, Buchanan, complied with the request of the Court.)

Court: Is there any motion to separate witnesses?
Mr. Stephens: I so move, your Honor.
Court: All the witnesses come forward and be sworn.

(At this time the witnesses for the Commonwealth were called and duly sworn.)

Court: Who is your first witness?
Mr. Person: Mr. Milton.
Court: The remaining witnesses step out of the hearing of the Court and the Sheriff will call you as you are needed.

(At this time the witnesses were excluded from the Courtroom.)

page 13 } STANLEY RAY MILTON, called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Person:
Q. Would you state your name, please?
A. Stanley Ray Milton.
Q. Mr. Milton, where do you live?
A. 1346 Richmond Road, Williamsburg, Virginia.
Q. Do you own the Kentucky Fried Chicken of Williamsburg, Incorporated?
A. Yes sir.
Q. And where is that located?
A. 1346 Richmond Road, Williamsburg, Virginia.

*Stanley Ray Milton*

Q. And were you working up there the night of June 5th, 1968?

A. I was.

Q. Tell us what happened that night, Mr. Milton?

A. At approximately quarter to ten that night, I had a colored man in, ordering a chicken dinner, and a young white man come in, clothed in a hat and coat and dark
page 14 } glasses, and—I waited on the colored man first, placed his order, and this young man was looking at the pictures on the wall and walking around in the place.

So, after the colored man got his order and left, this man come up and ordered a thrift box of chicken, and at that time, I had sent all my help, you know, from the packing table, back into the kitchen to clean up, and I was working the cash register and I'd go back and pack the chicken and come back to the cash register, and so, he ordered the thrift box. I went back to pack it. I packed it and I came back and I noticed that—I didn't see him at first, and then I noticed he was squatting down on the floor, and he raised up and put a brown paper bag with the top torn open up on the counter and told me to put my money in it, and I asked him what was he talking about.

He said, "Empty the cash register and put the money in the bag." I said, "Are you sure you know what you're doing?" and at that time he opened up his coat, similar to this (indicating), and had a revolver pointed right at me, so I figured he knew what he was doing and so I proceeded to put the money in the bag and—I did it as slow as I could, hoping that somebody would come in, but he was rushing me to get out, and it so happened that before I got it in there,
page 15 } another car came up and the boy came in, and as this man ran out, I told this boy that this other one had just robbed me, to follow him and he took off and chased after him, over to the motor court next door, and that's when I saw the white car leave and I called the Police.

Q. The man who pointed the gun at you, do you see him in the Courtroom?

A. Yes sir.

Q. Would you point him out for the Court?

A. This boy right there (indicating), with the red coat on.

Court: Let the record show he pointed towards Ronnie L. Buchanan.

*Stanley Ray Milton*

By Mr. Person:

Q. And how much money did he take from you?

A. $481.

Q. And that was your property and the property of Kentucky Fried Chicken of Williamsburg, Incorporated?

A. Yes sir.

Q. Did you ever recover this money?

A. Yes sir, I have insurance. Through insurance, is all.

Mr. Person: All right. Answer Mr. Stephens' questions.
page 16 }

CROSS EXAMINATION

By Mr. Stephens:

Q. Mr. Milton—

A. Yes sir.

Q. Have you previously identified the Defendant, Ronald Buchanan at a pre-trial Police line-up?

A. Yes.

Mr. Stephens: Your Honor, at this time I would move to suppress the Courtroom identification of Mr. Milton, on the grounds that the Commonwealth has not proved that the Defendant, Buchanan, was afforded his Constitutional rights, as to counsel, at a pre-trial Police line-up.

Court: I don't know the circumstances under which this was done. I would think if you have any such contention you would develop the circumstances. The Commonwealth just asked him did he see him now. I overrule the motion but I'll permit you to inquire into the circumstances under which he was first identified, when he was first seen, and so
page 17 } forth. Go ahead and tell us, when did you next see this person?

A. After the robbery?

Court: Yes.

A. In the Police line-up.

Court: Well, go ahead and tell us the circumstances; how you happened to get there and how many people were in the line-up, and so forth.

A. Well, Mr.—Sergeant Altizer called me and said that they had apprehended the suspect and they wanted me to come down and pick him out of the Police line-up, and at that

time it was one, two, three, four, five, I know, people in the line-up. I knew none of them. Never seen them, and he asked me to pick out this—man, that robbed me, so I looked at them and I told them to let me look at them several times so I would be positive, and I did this, and I am positive.

Court: Well, let me ask you this: How were these people dressed? Was there anything that would distinguish the accused dress from the rest of them?

A. No sir. Just normal dress like this (indica-
page 18 } ting); no coats or anything.

Court: Were all of them of the white race? All the people in the line-up of the white race?

A. Yes sir.

Court: Did you wish to ask him any questions?

Mr. Stephens: First sir, I did not note an exception.

Court: All right. Well, I now note your exception.

By Mr. Stephens:

Q. Can you describe the physical appearance, their height, the color of their eyes, and hair color?

A. Of what?

Q. Of the five persons participating in the line-up.

A. Can I identify them now? Well, I could if I would see them. I can't identify them just telling you about them, no, but if I saw them I would recognize them again.

Q. Who all was present besides the five men in the line-up? Where—where did the line-up take place?

A. In the Police Station.

page 19 } Q. Who was present?

A. Sergeant Altizer and—I don't know who else.

Q. All right, the five men—in the line-up?

A. Yes.

Q. Was there anybody else?

A. In the line-up?

Q. No sir, in the room when you—when you—

A. Sergeant Altizer was in the room.

Q. All right, and you say—describe the procedure they used? Were they brought in one at a time or were they all lined up; were they required to make any statements or put on any particular clothes?

Mr. Person: Well, I object to that question. It's a general question. He can ask specific questions on cross examination but I don't think that's proper, your Honor.

*Stanley Ray Milton*

Court: You are asking several questions all at the same time. Maybe it would be simpler if we confined it to one. The first question was: Were they all brought in one at the time, or were they all together?

page 20 } A. No sir. They were in the line-up when I saw them. All standing in the line-up.

Court: When you walked in the room, all five of them were in the line-up?

A. Yes sir.

Court: All right. Next question.

By Mr. Stephens:

Q. What was each of them wearing?

A. Clothes.

Q. I see. What was the Defendant wearing? What type clothes was Ronald Buchanan wearing?

A. He was wearing a shirt and a pair of pants.

Q. Tie?

A. No.

Q. No hat; no coat?

A. No hat; no coat.

Q. What were the other—what type of clothing were the other four wearing?

A. Similar type. Shirt and trousers. Some had open collars and one—one or two had a tie on. He just had a shirt on.

Q. Were they all the same general size?

page 21 } A. No, some big and some little. Some small, short and some were tall. It was two or three about the same size.

Court: Any other questions concerning this?

Mr. Stephens: No.

Court: Now, is there any evidence which you wish to present that his Constitutional rights were violated? If so, I would ask him to stand aside and I will now hear any evidence you care to present on this question alone.

Mr. Stephens: I would like to call first of all, Mr. Altizer.

Court: All right. Would you stand aside.

(The witness complied with the request of the Court.)

Mr. Person: Judge, do you want him in the room?

Court: Yes. I don't want to send him back with the other

witnesses. Just be seated there. We can't separate
page 22 } them but so many times.

SERGEANT J. ALTIZER, called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Stephens:

Q. Mr. Altizer, did you conduct a pre-trial Police line-up involving the Defendant, Ronald Buchanan?

A. Yes sir.

Q. When was this conducted?

A. On the 6th day of June, sir.

Q. Had the Defendant already been arrested?

A. Yes sir.

Q. Where was the line-up conducted?

A. At the Police Station.

Q. What time of day was the line-up conducted?

A. Approximately ten a. m. in the morning.

page 23 } Q. How many persons participated in the line-up?

A. Five.

Q. Do you know their names?

A. Yes sir.

Q. What—who were they?

A. Allen Seigler, Bill Molloy, Bill Forshman, Douglas Ratcliffe, and Ronnie Buchanan.

Q. What were the suspects, or the persons, the participants wearing at that time?

A. They was wearing different types of clothing; civilian clothes.

Q. What was the Defendant, Ronald Buchanan, wearing at that time?

A. He was wearing a—shirt and trousers.

Q. Was he required to change any clothing?

A. I changed jackets on all five of them.

Q. What kind of jacket?

A. This was a light colored, waist type zippered jacket.

Q. Why was he required to change jackets?

A. I moved the line-up around and changed, on four different occasions, and changed their positions and put the jacket on different members of the line-up.

*Sergeant J. Altizer*

Q. Who wore the jacket initially?
page 24 } A. The first one?
Q. Yes sir.
A. Sergeant Ratcliffe.

Court: Do I understand you then, that he viewed them at four different times and you changed the positions of the people in the line-up and the clothing?
A. Just the jacket, sir.
Court: The jacket was changed around from one person to another?
A. Yes sir.
Court: All right, sir.

By Mr. Stephens:
Q. Were any of the participants of the five participants, wearing any sort of Police clothing?
A. Police clothing? No sir.
Q. Did you go over and pick up the Defendant at the jail?
A. No sir.
Q. You did not?
A. No sir.
Q. Did you make any statements to the Defendant, Ronald Buchanan, before the line-up?
page 25 } A. Yes sir.
Q. What statements?
A. I was in civilian clothes and I identified myself to him as a Police Sergeant of the City of Williamsburg, and that he was brought to participate in a line-up for identification of a crime of which he was accused and he was informed of his rights and I explained the whole situation to him.
Q. Of what rights did you inform him, Mr. Altizer?

Court: I don't see how that has any bearing on the question now whether his Constitutional rights were violated in the line-up. The Commonwealth isn't introducing any statements.
Mr. Person: No sir.
Court: Do you intend to introduce any statements?
Mr. Person: No sir.
Court: All right, sir.
Mr. Stephens: I object to the Court's ruling on this grounds: I believe that in a pre-trial line-up conducted by

the Police, the Supreme Court has held that this
page 26 } is a crucial stage of the proceedings, at which the
Defendant has a right to counsel.

Court: All right. If you have the case, I'll be glad to see it.

(At this time a book was handed to the Court by Mr. Stephens.)

Mr. Stephens: I cite *United States versus Billy Joe Wade.*

Court: Well, isn't this a case in which he already had counsel and then, after he had secured counsel, they had a line-up without advising counsel that this was being done?

Mr. Stephens: In the particular facts in the Wade case, this was a post indictment line-up, where counsel had already been defending him; however, if you read through the case—my—my point is that if a pre-trial line-up is a crucial stage of the proceedings, then you can't defeat that by not appointing a counsel for him. He has a right to counsel and they
state in there that if no counsel is available, then
page 27 } substitute counsel ought to be appointed before
any such line-up is conducted.

Court: All right, I see your point and I don't doubt but what the Supreme Court, unless some changes are made, will adopt this as law sooner or later, but it has not been adopted as yet. I overrule your motion and note your exception.

Mr. Stephens: Yes sir.

Court: Is there any other evidence you wish to present concerning any violation of his Constitutional rights?

Mr. Stephens: If the Court deems it necessary, I would like the Defendant to also tell you that he was not advised.

Court: Certainly, you may.

Mr. Stephens: I would call the Defendant and limit his testimony strictly to what is before the Court.

Court: He's limited to the only issue before the Court, namely if his Constitutional rights were violated. All right,
Mr. Altizer, you may be seated there in the Court-
page 28 } room.

(The witness complied with the request of the Court.)

Mr. Stephens: Call Mr. Buchanan. Have you been sworn?

Court: No, I do not believe he was sworn. Would you swear the witness?

(At this time the Defendant, Buchanan, was duly sworn.)

RONNIE L. BUCHANAN, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Stephens:

Q. State your name, please.

A. Ronnie Buchanan.

Q. Are you one of the Defendants in this case?

page 29 } A. Yes.

Q. Mr. Buchanan, calling your attention to, I believe, June the 6th at a line-up conducted by the Williamsburg Police Force, were you, at any time, advised of any right to have an attorney present at this line-up?

A. No sir.

Mr. Stephens: I have no other questions.

Court: All right, you may be seated there by your attorney.

(The Defendant, Buchanan, complied with the request of the Court.)

Court: Was there any additional cross examination that you wanted to make concerning the first witness who testified?

Mr. Rideout: Your Honor, I would like to examine Mr. Milton.

Court: You wish to examine him? All right, you may. Come on back, sir.

page 30 } STANLEY RAY MILTON, recalled as a witness by the Commonwealth, having been previously duly sworn, testified as follows:

CROSS EXAMINATION

By Mr. Rideout:

Q. Mr. Milton, directing your attention back to the night of June the 5th, at which time this offense occurred, how many people were in your place of business at the Kentucky Fried Chicken at the time that the alleged offense occurred?

A. No one.

Court: He's already stated what people were there.
Mr. Rideout: I wanted to clarify one point, your Honor.
Court: You asked him a question when the alleged offense occurred; this is a matter of law—when.

By Mr. Rideout:
Q. On the night of June the 5th, when you were robbed, Mr. Milton, how many people were in the Kentucky Fried Chicken, besides yourself?
page 31 } A. In the building, or in the front?
Q. In the front of the building. In the business section of the building.
A. Ronnie Buchanan and myself.
Q. Were there any other people in the immediate area of the building?
A. There was some help in the kitchen.
Q. Any in the business area of the building; that is, out front where you transact your business?
A. None after the colored man left.

Mr. Rideout: I have no further questions.
Court: Any further need for this witness?
Mr. Person: No sir.
Court: You may be excused, Mr. Milton. Next witness.
Mr. Person: Mary Jane Clark.

MARY JANE CLARK, called as a witness by the Commonwealth, being duly sworn, testified as follows:

page 32 } DIRECT EXAMINATION

By Mr. Person:
Q. Will you state your name, please?
A. Mary Jane Clark.
Q. And where do you live, Mrs. Clark?
A. 866 Richard Court, Newport News.
Q. And how old are you, Mrs. Clark?
A. Twenty-one.

Court: Sheriff, would you turn that blower off? Would you try to speak up just a little louder.

*Mary Jane Clark*

By Mr. Person:

Q. Were you previously charged on a crime of robbery up here in Williamsburg?

A. Yes sir.

Q. And found not guilty—

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Q. All right. Now, do you know the Defendants?

A. Yes sir.

Q. Would you point them out to the Court, page 33 } please?

A. Ronnie Buchanan (indicating) and Warren Morrisette (indicating).

Court: Let the record show she pointed towards both accused.

By Mr. Person:

Q. Directing your attention to around six or 6:30 on June 5, 1968, were you at home?

A. Yes sir.

Q. And that's in the City of Newport News?

A. Yes sir.

Q. All right, and what happened approximately at that time, Mrs. Clark?

A. Warren was over at the house at the time and Ronnie came by, and we all went outside and was leaning against the car talking and then Warren and I came back in the house, and Ronnie was getting ready to leave.

As soon as we got back in the house, Ronnie comes up to the door and asked Warren to go back outside, that he had something to talk to him about. So, a few minutes later Warren comes back and said they were leaving and going somewhere, and I asked him where he was going, and Ronnie said he was going to pick up a TV set in Williamsburg and so I said, "I'm going too" and so we left and we rode around Shoney's.

page 34 } Q. Let me stop you. Was there any gun before you left?

A. Yes.

Q. Tell the Judge about the gun.

A. Ronnie Buchanan had a pistol. He took it out the glove compartment.

*Mary Jane Clark*

Q. Of his automobile?
A. Yes.
Q. And what did he do with it?
A. Well, he shot the gun in front of the house.
Q. Shot the gun in front of the house?
A. Yes.
Q. Where did he shoot it?
A. Right down at the ground.
Q. Whose gun was that?
A. Well, it was Warren's gun. He was selling it to Ronnie.
Q. And then what happened?
A. Then—we get in the car to go to Williamsburg.
Q. Where did they put the gun?
A. I don't know. The first time we was outside the car; the first time, Ronnie had the gun and then we went back in the house and came back outside and I didn't see the
page 35 } gun any more.
Q. You mean when you went back with Warren and came back?
A. Yes.
Q. And then what did you do?
A. Then we all got in the car to ride to Williamsburg.
Q. Where did you go?
A. To Williamsburg.
Q. Did you go to Shoney's first?
A. Yes sir.
Q. All right, and what did you do at Shoney's?
A. Just rode around.
Q. Then you came on to Williamsburg?
A. Yes sir.
Q. Was there any conversation about a car payment on the way up from Newport News?
A. Ronnie said he had to have a $300 car payment the next day, or he would lose his car.
Q. All right. What happened when you got to Williamsburg? Where did you go?
A. Well, Ronnie said he had to see the man around nine o'clock about the TV set and so we went and had some coffee at some little place, and—around nine, we went to
page 36 } this motel and parked in front of this motel.
Q. All right, and where is the motel?
A. Well, it's a little ways from the Kentucky Fried Chicken place.

Q. Did you point this motel out to Sergeant Altizer?
A. Yes sir.
Q. And who was driving the automobile?

Court: Now, if this is—I would ask all the witnesses who have testified—Sergeant Altizer, I think perhaps it would be better now if you would step out of the hearing of the Court and then the Sheriff will call you when you are needed.

(At this time Sergeant Altizer left the Courtroom.)

By Mr. Person:
Q. Who was driving the car, Mary? The automobile.
A. At what time? I mean, when?
Q. Up in Williamsburg.
A. Well, Ronnie was driving.
Q. And where was Warren sitting?
A. He was sitting up front.
page 37 } Q. And where were you sitting?
A. In the back.

Court: I think we never completed the question—did you point out the location of the motel near the Kentucky Fried Chicken to Sergeant Altizer?
A. Yes sir.

By Mr. Person:
Q. And, did Ronnie park the car up at the motel?
A. In front of the second cottage.
Q. All right, and could you see the Kentucky Fried Chicken from the motel?
A. No sir.
Q. And—what happened then, after he parked the car?
A. Well, both of them got out the car and I didn't see where they went.
Q. All right.
A. Ronnie said he would be back in a few minutes and I guess about—maybe ten or 15 minutes later, Warren gets back in the car about five minutes before Ronnie, and then Ronnie comes running up to the car saying somebody was after him, so—
page 38 } Q. Let's stop right there. Can I treat her as an adverse witness? Let me ask you this: Are

you—are you going to marry Warren Morrisette after this trial?

Mr. Stephens: Your Honor, I object to that question. I don't think it's relevant.

Court: Well, just—well, let me explain the rule to you. If she merely fails to testify to something you expected her to testify to, you cannot show an inconsistent statement. Now, if she says something which damages your case, within the discretion of the Court, I may permit you to do so.

Mr. Person: Can I argue that, your Honor?

Court: Argue what?

Mr. Person: Argue the damage.

Court: Yes, I wish you would. What I'm just trying to do is lay down the rule, because I don't know enough about the case to know whether her statements are particularly damaging, or not.

Mr. Person: All right. Do you want—do you want her in the room, or—

page 39 } Court: I will leave that to you. I just don't know.

Mr. Person: She, on a previous statement to Sergeant Altizer—

Court: Oh no, you misunderstood me. You may ask her a question and if I feel, if it's shown to me that what she has said, is damaging to your case, one: you are taken by surprise, then in my discretion, it can be admitted in evidence only for the purpose of discrediting her testimony and not as substantive evidence against either of the accused. So, if you will ask the question, I will then rule on it.

Mr. Person: All right.

By Mr. Person:

Q. Do you remember talking to Sergeant Altizer and myself in my office?

A. Yes sir.

Q. When I asked you to give a statement to us—

A. Yes sir.

Q. And you said you would?

A. Yes sir.

page 40 } Q. Did you give a statement?

A. Yes, I gave a statement.

Q. Did you make this statement to us: "That—they both came back at the same time and jumped in the car, running,

and Warren said, 'Shut up. Somebody is after us.' " Did you tell us that?

A. I misunderstood the question because Sergeant Altizer asked me who was in front of who.

Q. Do you remember the question—

A. He said who.

Q. "They didn't have anything in their hands?" and then your answer—

Mr. Stephens: Your Honor, I'm going to object.

Court: Well now, she hasn't testified on this phase of it. You haven't asked her now about that.

Mr. Person: But this is the answer—

Court: Well, let me see what the answer is.

By Mr. Person:

Q. And do you remember your answer: "No, Ronnie was driving and he takes off real fast, headed back towards the center of town, Williamsburg. I asked them both page 41 } what was wrong and Warren said, 'Shut up, somebody is after us."

Court: But I don't see where that contradicts her in any way, what she has said here today. In what respect does that contradict what she has said here today?

Mr. Person: Well—

Court: To me, they both are entirely consistent.

By Mr. Person:

Q. Do you remember this—

Mr. Stephens: Your Honor, he's sitting here reading a statement and he hasn't laid any grounds—

Mr. Person: All right.

Court: I wholeheartedly agree with you. I thought I had sustained your objection without you even making the objection, but—obviously, this does not contradict the witness. Now, if she has made a particular statement which you wish to contradict, and this statement is detrimental and not merely a failure of the witness to come up to your page 42 } expectations, then it's admissible, as I say, for one purpose only.

*Mary Jane Clark*

By Mr. Person:
Q. Who came running back to the car?
A. Ronnie.
Q. All right, and how long had Warren been there?
A. About five minutes.
Q. About five minutes?
A. Yes.
Q. All right. Did you then ask them what was wrong?
A. Not until Ronnie came out to the car, running.
Q. Did Warren say to you, "Shut up, somebody is after us"?
A. No.

Mr. Stephens: Your Honor, I'm also going to object on the leading.
Court: That was a leading question. Just ask her did Ronnie say anything.

By Mr. Person:
Q. Did Warren say anything to you?
A. No sir.
page 43 } Q. Do you remember telling Sergeant Altizer and myself that Warren said, "Shut up, somebody is after us."

Mr. Stephens: Your Honor, I object to that.
Court: Well, obviously this is an instance where the witness is failing to measure up to your expectations and not a question of damaging statement, so I would sustain the objection.
Mr. Person: Then, so far I cannot treat her as an adverse witness, is that correct?
Court: Well, I think it is really a question of whether she's a hostile witness, to be technical. That isn't—it doesn't really make any difference. The rule is this: That if her testimony is merely negative; in other words, if she fails to identify somebody, you cannot then contradict her. If she were to make a statement that is detrimental and damaging or tore down some other part of your case, you may con-
page 44 } tradict her in the discretion of the Court.
Mr. Person: All right.
Court: The rule is simple. The application of it is sometimes a little difficult.

*Mary Jane Clark*

By Mr. Person:

Q. All right. Then, who took over the driver's seat?

A. Ronnie drove.

Q. Ronnie drove?

A. Yes.

Q. And where did you get?

A. I was still in the front seat.

Q. All right. When had you moved from the back to the front?

A. While they was out of the car.

Q. All right, and were you under the wheel or in the passenger side?

A. Passenger side.

Q. All right, and—where did Warren get?

A. In the back.

Mr. Stephens: Your Honor, he's consistently
page 45 } leading the witness.

Court: I don't think—

Mr. Stephens: Step by step.

Court: I don't think that's a leading question: "Where did Warren get" is not leading. I mean, all questions have to be, to some extent, leading, but I think it's a perfectly proper question. The answer was: "In the back seat"?

A. Yes sir.

By Mr. Person:

Q. And what did he do in the back?

A. He was laying down.

Q. Laying down in the back?

(The witness nodded in the affirmative.)

By Mr. Person:

Q. All right, and where was he before he got in the back?

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

Q. I thought you said you saw him; that he came back to the car about five minutes before.

A. He got in the car five minutes before Ronnie came back running to the car.

page 46 } Q. Where did he get in the car?

A. In the back seat.

Q. Did he lay down at that time, or later?

*Mary Jane Clark*

A. At that time, yes.
Q. At that time?

(The witness nodded in the affirmative.)

By Mr. Person:
Q. Then what happened?
A. Then Ronnie comes back to the car and he starts driving—I asked him, what was wrong and he said, somebody was after him.
Q. And then what happened?
A. So he takes off driving real fast and goes down Wythe Avenue and Lafayette Street.
Q. Did you show Sergeant Altizer the route you all took?
A. Yes sir.
Q. All right.

Court: You say "he took off driving real fast"?
A. Yes sir.

By Mr. Person:
Q. Who?
page 47 } A. Ronnie Buchanan.
Q. All right, and then what happened?
A. He stops on Wythe Avenue and Lafayette Street, and gets out of the car and opens the trunk and comes back and says he's leaving the car—he's leaving.
Q. All right. What did he do then?
A. So he left.
Q. All right. Did he change his clothes, or anything?
A. Well, he had two different jackets.

Mr. Person: All right.

Court: When you said he had two different jackets—
A. With him at the time.
Court: To whom do you refer?
A. Ronnie Buchanan.

By Mr. Person:
Q. What was Warren doing at this time?
A. He was still laying in the back seat.
Q. And then what happened?

*Mary Jane Clark*

A. Warren tells me to drive the car because he didn't have no driver's licence.

Q. All right. So you moved over to drive the
page 48 } car?

A. Right.

Q. And where was Warren?

A. He's in the back.

Q. Still laying down?

A. Right.

Q. All right, and then what happened?

A. So I drive on up to Route 60.

Q. All right.

A. And I stop. Warren wants to get out. He got out at the railroad tracks.

Q. Did he tell you to stop the car?

A. Yes.

Q. And what did he do?

A. He said he was getting out.

Q. All right, and what did he do then? Did he get out?

A. Yes sir.

Q. And what did he do?

A. He started walking down the road. He said he was going home.

Q. All right. Then after—after this night, when is the next time you saw Warren Morrisette?

A. A couple weeks later.

Q. All right. Did you talk to him?

A. Yes.

page 49 } Q. Did he say anything about being in Williamsburg?

A. He said he was with me.

Q. What else did he say?

A. He just said they couldn't get him involved because he wasn't in it.

Q. Did he say he wanted—did he ask you—he wanted to know if the cops were after him?

A. Yes, he asked me that.

Q. Did he say, "They can't get me"?

A. Because he was innocent.

Q. You didn't tell me that when you gave the statement, did you?

A. It's on there that "they can't get me."

Q. Right, but you added the other, didn't you?

*Mary Jane Clark*

Mr. Stephens: I object, your Honor. He's trying to contradict his own witness.

Court: No, this is a question now, she—she has introduced something. This—this is not a question of merely failing to come up to his expectations. She's now introducing something detrimental and he has a right then to show
page 50 } that—a prior inconsistent statement.

By Mr. Person:

Q. You just told Sergeant Altizer and myself that he said, "They can't get me" is that correct?

A. True.

Q. Did he want you—did he tell you he wanted you to testify "he wasn't with us," and that he would marry you?

Mr. Stephens: Your Honor, that's leading. He's putting words in her mouth.

Court: Just ask her the question: Did he come to you and say anything?

By Mr. Person:

Q. Did he come to you and say anything?

A. No sir.

Court: Did he ever ask you anything about testifying or not testifying in this case?

A. Well, before they picked him up, he asked me not—he didn't want me to testify.

By Mr. Person:

Q. And did he tell you what he would do, if you didn't testify?

page 51 } A. No sir.

Q. He didn't say anything about marrying you?

A. Well, a long time ago. I've been engaged to him quite awhile.

Q. Let me ask you this: Do you remember telling Sergeant Altizer quote: "He wanted me to testify that he wasn't with us and that he would marry me. I have a little girl four years old and losing her in this wasn't worth it, not losing her." Do you remember telling us that?

A. I remember saying that about my daughter.

Q. Do you remember saying that about Morrisette?

A. No sir.
Q. You don't deny saying it? You just don't remember?
A. I don't remember saying that.
Q. Was that what happened? Is that what he said to you?
A. Is what, what he said to me?
Q. Just what I said.

Mr. Stephens: She already said she couldn't remember, your Honor.

page 52 } Mr. Person: She said she couldn't remember making the statement.

Court: She has only said she does not remember making the statement; she has not said the statement is true or untrue or incorrect.

By Mr. Person:
Q. Is it true that he came to you and said that if you wouldn't testify against him, he would later marry you?
A. No sir.
Q. That is not true?
A. Untrue.

Court: This is a case of the witness failing to live up to your expectations and you may not contradict her.

By Mr. Person:
Q. Have you talked to him since?
A. Yes sir.
Q. That time.

(The witness nodded in the affirmative.)

page 53 } By Mr. Person:
Q. Are you all going to get married, or what?
A. I don't know.

Mr. Person: Could I just have a second, your Honor?

Court: Yes, certainly. Also I have found here this section in the Code dealing with inconsistent statements, you would like to look at it. Don't bother taking this down. Oh, you might—it's Section 8-292.

*Mary Jane Clark*

By Mr. Person:

Q. When you stopped on Wythe Avenue, did Ronnie say anything?

A. He said he was leaving.

Q. Did he say, "Let's split up"?

A. I don't remember that.

Q. Did Ronnie say anything about the taillights when you stopped on Wythe Avenue?

A. No sir.

Q. What did Warren tell you when you stopped at Andy's Drive-In?

A. He said that he was going home.

Q. Didn't he tell you to go home?

page 54 } Mr. Rideout: I object, your Honor, that's a leading question.

Court: Well, I'm—I'm going to permit certain leading questions. Quite obviously the witness is hostile. I've *overrule* the objection. I'll permit the questions to be leading.

Mr. Stephens: Your Honor, I would like to object because here again, he's trying to contradict his own witness.

Court: At this particular stage, I disagree with you. I overrule the objection. All right, you may ask her the question.

By Mr. Person:

Q. Didn't he tell you to go home?

A. Yes.

Q. He didn't say anything about going home himself, did he?

A. Yes, he did.

Q. Did he tell you why he wanted you to go home and he wasn't going home with you?

A. He said he knew something had happened and he didn't want to get involved.

page 55 } Q. How many times have you talked with Warren since this thing happened?

A. A couple of times.

Q. Couple of times?

(The witness nodded in the affirmative.)

*Mary Jane Clark*

By Mr. Person:
Q. You've just seen him a couple of times since June 5th?
A. Right.
Q. Two times, is that about right?
A. Right.

Mr. Person: That's all the questions I have.
Court: Did you wish to cross examine?
Mr. Stephens: I would like to move to strike this witness' testimony. I think the Commonwealth Attorney has done a very good job of impeaching it and making it incredible.
Court: I overrule the objection.
Mr. Stephens: Note my exception.
page 56 } Court: Do you wish to cross examine?
Mr. Rideout: I do, your Honor.

CROSS EXAMINATION

By Mr. Rideout:
Q. Mrs. Clark, on the night in question, June the 5th, when you and Mr. Morrisette and Mr. Buchanan were en route to Williamsburg, was there any discussion concerning the *commision* of a crime?
A. No.
Q. Was there any discussion about robbing the Kentucky Fried Chicken?
A. No.
Q. Now, once you arrived at Williamsburg, and went to the motel which has been identified as the Princess Anne, what purpose was stated for your—

Court: I don't know that it has been identified as the Princess Anne. It's far better if you would ask questions and not make statements of fact.

By Mr. Rideout:
page 57 } Q. Did you go, on that night, to the Princess Anne Motel?
A. Yes sir.

Court: Now Princess Anne is the one that would be on the other side; that is west or north side of the Kentucky Fried Chicken, is that right? It would be farther up the—Richmond road?

A. Right.

By Mr. Rideout:

Q. Now when Mr. Buchanan left the automobile, what did he state as his reason for leaving?

A. He didn't.

Q. Did he mention getting a TV?

A. When we were going to the motel, that's what he was going to the motel for.

Q. Now, when they left the car, did Mr. Morrisette come back to the car first?

A. Yes sir.

Q. Was he running?

A. No sir.

Q. And what position did he take in the car? When he got in the car, where did he sit?

A. In the back.

page 58 } Q. Now, once you left the motel, was there any discussion about a crime being committed, a robbery?

A. No sir.

Q. Did you, at any time, know that a robbery had been committed?

A. No.

Q. Approximately how long did—did Morrisette enter the car before Mr. Buchanan came back to the car?

A. Five minutes.

Q. Now, did he, at that time, make any discussion or conversation with you concerning a crime?

A. No sir.

Mr. Rideout: No further questions, your Honor.

Court: Did you wish to recross?

## REDIRECT EXAMINATION

By Mr. Person:

Q. What did he say—what did he say to you when he came back?

A. Warren?

page 59 } Q. Warren.

A. He didn't say nothing; just cut the radio on.

Q. He cut the radio on?

*Mary Jane Clark*

A. Yes.
Q. I thought he got in the back seat and laid down?
A. He did get in the back seat, but he cut the radio on.
Q. Was the radio in the back seat?
A. When he got in the car, he reached over and cut the radio on, and then he got in the back seat and laid down.

Mr. Person: That's all the questions I have, your Honor.

Court: You say that some—some five minutes intervened from the time he came in until Buchanan arrived?
A. I would say around five minutes.
Court: Did you have any way of checking?
A. I didn't have no watch.
Court: This was just an estimate of time on your part?
A. Yes.
page 60 } Court: You were sitting there doing nothing?
A. Yes sir.
Court: Just waiting?
A. Yes.
Court: And when Buchanan arrived, was he walking or running?
A. Running.
Court: He was running?
A. Yes sir.
Court: And he got into the driver's seat?
A. Yes sir.
Court: And, did he drive off slowly or—fast?
A. Fast. Real fast.
Court: Rapidly. Then what?
A. He said somebody was after him.
Court. He said someone was after him?
A. Yes sir.
Court: All right, and then where did you drive? Where did you go in the car?
page 61 } A. Wythe Avenue and Lafayette Street.
Court: All right. At that point, what did you do? What happened at Wythe Avenue and Lafayette Street?
A. Ronnie got out of the car and went to the trunk.
Court: All right.
A. And then he said he was leaving.
Court: He was leaving?
A. Yes sir.
Court: All right. Did he leave?

*Mary Jane Clark*

A. Yes sir.
Court: When did you next see him?
A. I didn't see him any more.
Court: Well, surely you've seen him sometime since then.
A. Well, in Court.
Court: And you didn't see him any more until in Court?
A. No sir.
Court: Now, after he left, who drove the car?
A. I did.
page 62 } Court: Did anyone tell you to drive the car?
A. Warren did.
Court: When you say "Warren"—
A. Morrisette.
Court: Warren Morrisette.
A. Yes.
Court: He told you to drive the car?
A. Yes sir.
Court: And where did he tell you to drive the car?
A. Well, he didn't say where to drive it.
Court: Well, where did you drive it?
A. On up Route 60.
Court: Route 60, in which direction? Newport News or Richmond?
A. Newport News.
Court: How did you—no one told you to do this?
A. No sir.
Court: He just told you to drive on?
page 63 } A. Yes sir.
Court: But you selected the route?
A. Well, I was going home.
Court: You were going home. Did you see the pistol again?
A. No sir.
Court: Did I understand you to say that Buchanan was purchasing the pistol from Morrisette?
A. He was buying the pistol from him.
Court: During the time that you drove on then, did Morrisette continue to lie in the back seat?
A. Yes sir.
Court: When did he first get out of the back seat, and rise up, sit up in the seat?
A. When we got to the railroad tracks.
Court: When you got to what railroad tracks?

*Mary Jane Clark*

A. It's right across from Andy's Drive-In. I don't know exactly.

Court: Across from Andy's Drive-In?

page 64 } A. Yes.

Court: Oh, just below town. Two or three miles below town, Beale's crossing and Black's crossing?

A. Yes sir.

Court: Where the stop light is now?

A. Yes sir.

Court: At that point he got up?

A. Yes sir.

Court: Did he sit in the back seat then or the front seat?

A. He said he was getting out.

Court: He got out?

A. Yes sir.

Court: And did you stop and let him out?

A. Yes sir.

Court: And exactly where did you stop? Were you on 60 then or on 143?

A. 143.

Court: Used to be 168. The four lane road?

page 65 } A. Yes.

Court: Is that what you're referring to?

A. Yes sir.

Court: And exactly where on 143 did you let him out of the car?

A. As soon as I went over the railroad tracks.

Court: Did you cross from 60 over to 143 and let him out there at the stop sign?

A. Yes sir. Yes sir.

Court: And the statement he made to you was that something had happened and he didn't want to get involved in it. Is that what you said?

A. Yes sir.

Court: All right.

Mr. Person: I don't have any further questions.

Mr. Stephens: No questions.

Mr. Rideout: No further questions.

Court: One other thing. After you left and let

page 66 } him out, when did you next see Morrisette?

A. Around two weeks later.

Court: It was two weeks later before you saw him?
A. Yes sir.
Court: Where did you see him then?
A. My house.

Court: Anything else?
Mr. Person: That's all the questions I have, your Honor.
Court: All right, you may be excused.
Mr. Person: Mr. Altizer.
Court: I believe we've identified the motel now, if that's the question.
Mr. Person: I was going to identify it in relationship to the Kentucky Fried Chicken place.

SERGEANT J. ALTIZER, called as a witness by the Commonwealth, having been previously duly sworn, page 67 } testified as follows:

DIRECT EXAMINATION

By Mr. Person:
Q. Did Mrs. Clark point out the motel she stopped at to you?
A. Yes sir.
Q. And what motel is that?
A. Princess Anne, located on Richmond Road.
Q. And, how close is that to the Kentucky Fried Chicken place?
A. It's adjacent to the Kentucky Fried Chicken or next door to it.
Q. Can you point something out in this room?
A. Sir?
Q. Could you point something out in the room as to the approximate distance?
A. From the motel office, it's the distance of the Courtroom, or might be just a few feet more.
Q. And is that from where she said they parked?
A. Yes.

Court: The length of the Courtroom is some-
page 68 } where around 40 to 50 feet.
Mr. Person: That's all the questions I have, your Honor.

*Sergeant J. Altizer*

CROSS EXAMINATION

By Mr. Rideout:

Q. Mr. Altizer, from the—did Mary Clark point out the position that they stopped the car to you, in the daytime or nighttime?

A. In the nighttime.

Q. Nighttime, and from the position that the car was stopped, *where* you able to see the Kentucky Fried Chicken?

A. You could see back to the—well, you might say you could see part of the front of it.

Q. And what position, in reference to the buildings at the Princess Anne Motel, did she point out as to where the car stopped?

A. It was inside the driveway, I would estimate maybe 75 feet, headed in a westerly direction, which would put the car a little past the motel, side by side (indicating).

Q. Is there any open field between the cottages, or buildings located there at the motel, and the Kentucky Fried

page 69 } Chicken?

A. Yes sir, there's a median strip there, about 50 or 60 foot wide—maybe.

Q. Now Mr. Altizer, are you certain that it's merely 40 or 50 feet distance from the car to the Kentucky Fried Chicken? How about the distance of the lot of the Kentucky Fried Chicken and the space taken up by the building? Would it not be farther than 50 or 60 feet, from the car's location to the business area of the Kentucky Fried Chicken?

A. It could be. It would be from the—probably maybe 20 feet from the edge of the grass—to the asphalt driveway to the side of the building.

Q. Now, are there bushes located around the buildings there at the cottages of the Princess Anne Motel?

A. Yes sir.

Q. And—with reference to the second building where the car was parked, as Mrs. Clark testified, did she point out the car being pointed—being parked in the center of the building or at one or the other ends?

A. Well—ask that question again.

Q. When Mrs. Clark was pointing out where the automobile was parked, in reference to the second cottage at the Princess Anne Motel, was the car parked middle way of that building, or at either end? Was it the end near

page 70 } the road or the end farther away?

*Sergeant J. Altizer*

A. Well, the driveway makes a horseshoe; it would be farther around—in front of the building (indicating). It would be from the back of the car back to the street (indicating).

Q. Do I understand you correctly then that the car was parked halfway, or more down past the second building?

A. Approximately halfway.

Q. Are you sure, Officer Altizer in that position that the car was parked, it was possible to see the Kentucky Fried Chicken in darkness?

A. Well, she only pointed out the approximate position of the car. She didn't say it was sitting exactly here, so I couldn't answer whether—

Q. Did you observe the Kentucky Fried Chicken from that position?

A. I did.

Q. What portion of the building did you observe?

A. Where she said the car was parked here (indicating), you could turn around and see the front of the Kentucky Fried Chicken, or the—driveway.

Q. The front of the driveway?

A. Yes sir.

page 71 } Q. Could you see the building section of the Kentucky Fried Chicken?

A. You could see part of it.

Mr. Rideout: No further questions.

Mr. Person: I don't have any further questions.

Court: All right, you may be excused.

Mr. Person: That's the case, your Honor.

Mr. Stephens: On behalf of the Defendant, Buchanan, your Honor, I move to strike the Commonwealth's evidence as insufficient in law to sustain a conviction.

Court: Overrule the motion.

Mr. Stephens: I respectfully except, sir.

Court: All right.

Mr. Rideout: On behalf of Mr. Morrisette, I would like to also move to strike the Commonwealth's evidence, based upon the fact that Mr. Morrisette has been charged with a felony as read in the indictment of robbery; robbing the

page 72 } Kentucky Fried Chicken with a pistol and taking $481 and there's been no testimony here that in anyways indicates that Mr. Morrisette was involved in the

crime. He has not been identified by Mr. Milton as being in or near the Kentucky Fried Chicken at the time and there's been testimony by the Commonwealth's witness that there was no previous conversation concerning the commission of a crime, and that once the Defendant and Mary Clark left the Princess Anne Motel, there was still no conversation concerning the commission of a crime. He had no knowledge a crime had been committed and based upon that, your Honor, I would move to strike.

Mr. Person: Well, your Honor, in regard to Morrisette, where we have Morrisette was at Mrs. Clark's home in Newport News and Buchanan comes over to the house and they go outside and have some type of conversation, not in the presence of Mrs. Clark and later on, they come
page 73 } back in and say they're going to go out and Mrs. Clark says she's going with them. This is after a gun has been produced and we don't know whether the gun —whether it was owned—she's testified that it was owned by Mr. Morrisette and that Mr. Buchanan was buying it. Then they start up and say they're going to get a TV and on the way up here she doesn't remember any conversation except Mr. Buchanan telling Mr. Morrisette that he had to have $300 by the next day or lose his car. So they drive up to the Kentucky Fried Chicken Place and at a motel in close proximity.

(Mr. Person continued his argument in opposition to the motion, after which Mr. Rideout replied.)

Court: Well, I think it's fairly close. There's no doubt in my mind but what he had some part in it. Whether
page 74 } it's been proved beyond a reasonable doubt is—I think it's a fairly close matter. I would like to think about it a few minutes before I make my decision.

(At this time the Court declared a recess after which the Court reconvened.)

(Following the recess both Defendants were present in the Courtroom seated by their attorneys.)

Court: I'm afraid that the evidence is not conclusive enough to show that Morrisette actually participated as a lookout or some other means in the crime. I feel confident that he did, but I think the evidence may fall short. I do think it's sufficient to show he was guilty of being an accessory after the fact. I would overrule the motion.

Mr. Rideout: If your Honor please, I think the
page 75 } cases are clear in this matter that presence alone is not enough to be an accessory after the fact and the Commonwealth has not shown anything more than actual presence within a reasonable proximity of the crime.

Court: I disagree. I feel lying down on the back seat and fleeing and the statements he made, all shows—I feel it shows that probably he was acting as a lookout but resolving all doubts in his favor—and he gave aid and comfort to someone he had every reason to believe had committed a crime.

Mr. Rideout: I respectfully note an exception, your Honor.

Court: All right. Who is your first witness?

Mr. Stephens: We have no evidence to present.

Mr. Rideout: No evidence for Mr. Morrisette, your Honor.

Court: The accessory statute—that's a misdemeanor, is it not?

Mr. Rideout: Yes sir, your Honor. That's the section right there.

page 76 } (At this time a book was handed to Mr. Person by Mr. Rideout.)

Mr. Person: Not more than one year and not exceeding $1000.00.

Court: All right. In the Morrisette case, did you wish the matter referred or do you wish me to pass on it without knowing his record?

Mr. Rideout: I don't think it's necessary to refer it, your Honor.

Court: You understand I would not suspend his sentence without it being referred?

Mr. Rideout: Yes, your Honor.

Court: What is the fine prescribed by statute?

Mr. Person: Not over $1000.00, your Honor. I would like to check this, your Honor, if I could—the amendments, just to make sure it hasn't been changed.

Court: I doubt that it has.

Mr. Person: All right.

Court: Now, you understand that in the case of
page 77 } Morrisette that since this is now a misdemeanor, the state would not have to pay the costs of a transcript on appeal; however, he is entitled to appeal and if he's able to make bond for appeal, I would do so at this time.

Mr. Rideout: Yes sir, your Honor, we request that the bond be set at this time, sir.

Court: Now, is there anything you want to say concerning Ronnie Buchanan?

Mr. Stephens: Not at this time. I assume a verdict of guilty has been found?

Court: I think you may assume I will find one, in view of the fact that I overruled the motion at the conclusion of the Commonwealth's case, and you produced no evidence. Did you wish the matter referred or did you wish me to pass on it without knowing his record?

page 78 } Mr. Stephens: I wish the matter referred, your Honor.

Court: All right. Let's see, is December 9th—

Mr. Person: Yes sir.

Court: Agreeable?

Mr. Person: Yes sir.

Mr. Stephens: Yes sir.

Court: All right. Ronnie Buchanan, you may stand.

(The Defendant complied with the request of the Court.)

Court: The Court finds you *quilty* of robbery but presenting a fire arm. I do not fix your punishment at this time, but I refer the matter to the Probation Officer for report on December 9th and you are remanded to jail until that date.

Mr. Stephens: I move to set aside the verdict as contrary to the law and evidence.

Court: Overrule the motion and note your exception.

page 79 } Mr. Stephens: Yes sir, exception.

Court: All right. In the matter of Warren Morrisette, the Court finds you not guilty of robbery as charged in the indictment but I do find you guilty of being an accessory after the fact. I fix your punishment at confinement in jail for a term of 12 months and fine of $500.00 and direct that this time be served on the State convict road force or on the State Farm.

Mr. Rideout: Your Honor, if I may—will the time Mr. Morrisette previously spent in jail be applied?

Court: Of course. Anything further? Oh, the bond. We have to fix the bond for Morrisette. How much do you recommend?

Mr. Person: On which one?

Court: Morrisette. I'm going to grant bond on Morrisette if he decides to appeal.

Mr. Person: $2,500.00?

Court: That seems to be reasonable. All right, did you wish

to bond him? I would require—what bond is he
page 80 } under?

Mr. Rideout: He's under a bond now of $10,000, your Honor.

Court: Who is on his bond?

Mr. Rideout: His parents, your Honor.

Court: Are they prepared to go his bond? I require that a new bond be given. This way at least the people come in and have knowledge of the fact that they understand that the matter is still pending; sometimes there have been misunderstandings. Are his parents present or available?

Mr. Rideout: His mother is here, your Honor.

Court: How about his father? He will have to appear to go on this bond. I would not—now, I will fix his bond at $2500, to appear on—let's say February 10th. Of course, if his appeal is being perfected, I will extend the time from time to time until the Supreme Court eventually passed upon the matter, so I will remand him now to jail, but he
page 81 } may be released upon entering into bond in the sum of $2500 for his appearance back here on February 10th and then at such further times as the matter may be continued.

Mr. Rideout: Yes, your Honor.

Court: And, of course, if he has not presented the transcript and so forth by February 10th, he will then have to start serving the time that day.

(The cases were then concluded.)

page 82 }

VIRGINIA: In the Circuit Court for the City of Williamsburg and County of James City

COMMONWEALTH
*versus*
RONALD LEE BUCHANAN

Stenographic report of all the testimony, together with all the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the trial of the case of *Commonwealth* v. *Ronald Lee Buchanan,* tried in the Circuit Court for the City of Williamsburg and County of James City, Virginia, on December 9, 1968, before the Honorable Robert T. Armistead, Judge of the said Court.

PRESENT:

Mr. William Person, Attorney for the Commonwealth.

Mr. John Stephens, Attorney for the Defendant.

Schneider Reporting Co.
227-27th Street
Newport News, Virginia.

page 83 } (The Court Reporter was duly sworn.)

Court: All right.

Mr. Person: *Commonwealth versus Ronald Lee Buchanan.*
Court: All right. Ronald Lee Buchanan.
Mr. James Williams (Probation Officer): Your Honor, I think the mother of this boy and children are outside. You excluded her until the trial.
Court: You say the mother is not outside? If I recall, she had a small child and I asked her to step outside and we would advise her when the case was to be tried. Would you ask Mr. Dutton to go downstairs and see if he can locate her downstairs.

(At this time Officer Dutton left the Courtroom.)

Court: She's merely a spectator but—if she desires to be present, I would like to give her that opportunity. All right, has he read the report of the Probation Officer?
page 84 } Mr. Stephens: He has, your Honor.
Court: Do you desire to ask the Probation Officer any questions?
Mr. Stephens: I do, your Honor.
Court: All right, Mr. Williams, could you come around and be sworn, please.

JAMES E. WILLIAMS, called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Stephens:
Q. Mr. Williams, I note in your report, you state that you

have known the Defendant prior to this incident at the Boy's Club?

A. Yes sir, I have had association with him, principally at the Boy's Club. I knew Ronald and watched
page 85 } him grow up.

Q. How long have you known him?

A. I couldn't say right offhand, Mr. Stephens; several years—eight or nine, I would imagine.

Q. Would you say that he was an aggressive, belligerent individual?

A. Not at the time I knew him, and not around the Boy's Club.

Q. Would you say he was a leader or a follower?

A. I would say he was a follower around the Club, in his earlier days.

Mr. Stephens: I don't have any further questions, your Honor.

CROSS EXAMINATION

By Mr. Person:

Q. You knew him during all this period of these convictions?

A. No, not in the last three or four years, Mr. Person. Let's put it this way: I have known him for several years, but I lost contact over the last three or four years, with him.

Court: Any further questions?

Mr. Stephens: No sir.

page 86 } Court: Are there any additional facts you wish to present, bearing on the matter?

Mr. Stephens: There are none, your Honor.

Mr. Person: I would point out, for the record, your Honor, a correction, I think on page two.

Court: All right.

Mr. Person: Mr. Stephens might be able to help me with this. About the seventh line—eighth line, "When Mr. Milton returned from the kitchen, he observed the subject taking money from the cash register." That's not correct, I don't think.

Court: No, that's not at all correct, "When Mr. Milton returned from the kitchen, he observed the subject"—as I re-

call, he said he was looking at the list of articles for sale, isn't that right?

Mr. Person: The money was turned over only when he produced a gun.

Court: Yes, but I'm trying to think—he did men-
page 87 } tion that when he came back, I believe he said there was a Negro male still in there buying something, and this man was off to the side, looking at—or didn't he ask for the economy package, or something of this kind?

Mr. Person: He ordered and Mr. Milton went back.

Court: Oh yes, the subject then put in an order for fried chicken. That's right. Well, I'll—"When Mr. Milton returned" —I'll strike out everything starting at "he observed the subject taking money from the cash register and it was at this point"—so that it will now read, "When Mr. Milton returned from the kitchen, Buchanan opened his coat and pointed a revolver." This is correct? Is this correct?

Mr. Stephens: Yes sir.

Court: Then I shall so correct the report. Were you able to locate his mother?

page 88 } Officer Dutton: No.

Court: You were not able to do so. Well, if she's not here, I suppose we have to continue. Was there anything you wish to say about the matter?

Mr. Person: No sir, I would submit it, based on his prior record. It almost uses up a page and on the seriousness of the crime and I feel that substantial time in the State Penitentiary should be given to the Defendant.

Court: Mr. Stephens, anything you wish to say?

(At this time counsel for both sides presented their closing arguments to the Court.)

Court: Is there anything further before I pass sentence on him?

Mr. Stephens: No, your Honor.

Court: All right, you may stand.

(The Defendant complied with the request of the Court.)

Court: The Court found you guilty of robbery
page 89 } by presenting a firearm, and I now fix your punishment at confinement in the Penitentiary for a term of 20 years. The judgment of the Court is that you be taken from here to the jail and from there to the Penitentiary,

and there to remain for a term of 20 years, unless sooner discharged according to law. You may be seated.

(The Defendant complied with the request of the Court.)

Court: Now, will you advise him that he has a right to appeal; that if he is unable to employ counsel, the Court will appoint counsel for him, and if he is unable to pay for a transcript of the record, same will be prepared without prepayment of costs, and this transcript has to be prepared within sixty days, so his decision should be made promptly.

(At this time Mr. Stephens conferred with his client.)

page 90 } Mr. Stephens: I have so advised him, your Honor.

Court: All right.

(The case was then concluded.)

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

## INDEX TO RECORD


| | Page |
|---|---|
| Writ of Error and *Supersedeas* | 1 |
| Affidavit of Poverty | 2 |
| Certificate of Judge | 2 |
| Record | 3 |
| Order—October 14, 1968 | 3 |
| Judgment—December 9, 1968 | 3 |
| Notice of Appeal and Assignments of Error | 4 |
| Proceedings | 6, 39, 44, 45 |
| Witnesses: | |
| Stanley Ray Milton | 10, 18 |
| Sergeant J. Altizer | 15, 37 |
| Ronnie L. Buchanan | 18 |
| Mary Jane Clark | 19 |
| James E. Williams | 44 |