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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 730628

CLAUDE WILFORD PERKINS,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX TO APPELLANT'S BRIEF

J. Robert Neal, Jr.
205 E. High Street
Charlottesville, Virginia

Counsel for Appellant

TABLE OF CONTENTS

	PAGE
Indictment and Arraignment	1
Judgment Order	2
Assignment of Error	3
Testimony of Dr. Russell C. Henry	4--9
Testimony of Sheriff Henry A. Kennon	9-16
Testimony of Capt. John Williams	16-19
Testimony of Etta Taliaferro	20-26
Testimony of Mrs. Bertha Brown	26-30
Testimony of Cora Taliaferro	31-36
Testimony of Claude Wilford Perkins	37-50
Testimony of Mr. Earl Price	50-55
Motion of Defendant	56

INDICTMENT AND ARRAIGNMENT

January 11, 1973

Court convened at 9:30 a.m.

COURT: Let the record show that Mr. Perkins is present together with Mr. Neal, his retained counsel. Mr. Neal, are you ready for the accused to be arraigned?

NEAL: Yes, Your Honor.

COURT: All right.

CLERK: A special grand jury in and for the body of the County of Louisa, has found the following indictment against you. Virginia, in the Circuit Court in the County of Louisa, January 8, 1973: The grand jury charges that on or about the 7th day of November, 1972, in the County of Louisa, aforesaid, Claude Wilford Perkins, did feloniously kill and murder one, Raymond Lewis Taliaferro. What say you, are you guilty or not guilty?

A Not guilty.

COURT: All right, do you wish a jury trial, Mr. Neal?

NEAL: Please Your Honor.

JUDGMENT ORDER

LAW BOOK 21 PAGE 109

VIRGINIA:

IN THE CIRCUIT COURT OF LOUISA COUNTY--APRIL 3, 1973

COMMONWEALTH OF VIRGINIA

V. FELONY--CASE NO. 243
CO. CT. NO. A2284

CLAUDE WILFORD PERKINS

This day came the Attorney for the Commonwealth, and Claude Wilford Perkins, who stands indicted for a felony, to-wit: Murder, this day personally appeared in open Court in accordance with the terms of his recognizance. And came also Robert P. Neal, Jr., a discreet and competent attorney at law, who had been retained by the accused to represent him in this proceeding.

Whereupon the accused, who had upon his arraignment on the 11th day of January, 1973, entered in person, after conferring with his counsel, a plea of not guilty to the charge as contained in the indictment returned against him by a lawfully empaneled grand jury in and for the County of Louisa on the 8th day of January, 1973, this day, after conferring with his attorney, announced that he was ready for trial and desired to be tried on this day.

The Court then empaneled twenty qualified jurors, free from exception for the trial of the accused, in the manner provided by law. Whereupon the Attorney for the Commonwealth and the attorney for the accused exercised their rights to strike names from the panel, as provided by

law, and the remaining twelve jurors, to-wit: William George Collins, Charles P. Mitchell, John D. Miller, Julian Smith, Richard Hall, Clayborn W. Strickland, Bradley T. Pleasants, Phyllis L. Bailey, Mrs. Louise E. Perkins, Donald Lee Seay, Charles H. Brooks and Thomas L. Guisto, constituting the jury for the trial of the accused, were duly sworn.

After opening statements, the Court and the jury heard the evidence presented by the Commonwealth and thereupon the attorney for the accused moved the Court to strike the evidence introduced by the Commonwealth for the following reasons: That it was contrary to the law and the evidence;
which said motion was, after due deliberation, refused by the Court, and the attorney for the accused noted his exception thereto.

Whereupon the evidence of the defendant was presented to the Court and the jury, and after hearing this evidence the attorney for the accused again moved the Court to strike the evidence of the Commonwealth for the same reasons heretofore expressed by him. Which said motion was likewise denied by the Court and to said action the attorney for the accused noted his exception thereto.

After hearing all of the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict.

They subsequently returned their verdict in open court, reading: "We the jury find the accused guilty of murder in second degree, as charged in the indictment, and fix his punishment at 20 years in the penitentiary.

/s/ Thomas L. Guisto, Foreman".

Thereupon, the attorney for the accused moved the Court to set aside the verdict on the following grounds:

Which said motion was denied by the Court, and to which action by the Court the attorney duly excepted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the Court finds the defendant guilty, in accordance with the verdict of the jury, of murder in the second degree, as charged in the indictment and sentences him to confinement in the penitentiary of this Commonwealth for the term of twenty (20) years.

After pronouncing sentence, the court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia.

Thereupon, the attorney for the defendant advised the court that an appeal to the Court of Appeals would be filed on behalf of the defendant.

Thereupon the attorney for the defendant moved the Court to suspend the execution of the sentence to permit him to petition the Supreme Court of Appeals of

Virginia for a writ of error. Which said motion was sustained and bond for the defendant was set at $50,000.00

The Court certifies that at all times during the trial of this case the accused was personally present and capably represented the accused.

The Court orders that the accused be allowed ____ days credit for the time spent in jail awaiting trial.

It is adjudged that the Commonwealth recover from the accused the sum of $_____, the costs assessed in this proceeding.

And the defendant is remanded to jail.

/s/ Harold H. Purcell Judge

A Copy Teste

/s/ L. A. Keller, Jr. Clerk

ASSIGNMENT OF ERROR

The writ of error is limited to the consideration of assignment of error no. 2 which reads as follows:

"The Court erred in overruling the defendant's motion to strike the evidence and the defendant's motion to set aside the verdict as being contrary to the law and evidence. The evidence was not sufficient to prove the criminal violence of the defendant, and the necessary element of malice for murder in the second degree."

TESTIMONY OF DOCTOR RUSSELL C. HENRY:

DIRECT EXAMINATION

A Doctor Russell C. Henry. I'm a forensic pathologist, associated with the Chief Medical Examiner's Office in Richmond, as a consultant. I'm a medical examiner for the City of Richmond, Chesterfield and Henrico County. My residence is 3600 Garden Road in Richmond.

Q And as such what are your duties and what is your training in such work?

A My duties are to investigate the deaths coming under the statutory jurisdiction of the medical examiner, perform autopsy as indicated, both on my own cases and on other cases, which are sent in by other medical examiners. My training consists of a doctor of science degree at the University of Oklahoma, 1934. A doctor of medicine degree, University of Oklahoma, 1940. I served a regular rotating 12 months internship in Washington, D.C. at Emergency Hospital. I went into general practice, general medical practice in Oklahoma for about four years, then entered the special field of legal medicine and forensic pathology. I fellowshipped in legal medicine at Harvard University in Boston and I completed the required residency or hospital supervised training for certification in pathology and in forensic pathology by the American Board of Pathologist. I have been in this field of work since 1945.

A Well, upon notification of a case, apparently

coming under the medical examiner's jurisdiction, I take charge of the body, go to the scene in case of violent deaths and investigate at the scene. In cases of non..... apparently non-violent deaths, usually have the body sent in and examine it at our central facility in Richmond. I do autopsy on the bodies as indicated, as I said on my own cases and on cases sent in by other medical examiners.

Q All right, sir. Now, will you tell the Court and the jury whether or not you have had an occasion to examine the body of one, Raymond Taliaferro, spelled T-a-l-i-a-f-e-r-r-o?

A Yes I did.

Q All right, sir, and what did you, was your result of that examination? What did you do, just tell the jury...and I believe you have some pictures there..... if you don't I may have some copies.

A Yes sir, I have the report here. The body in a case like this is always examined very carefully externally, literally from head to foot. Photographs, measurements, all indicated examinations are done. After which the body is opened and a complete autopsy is performed.

Q All right, sir. Now, what....with reference to this particular body, what did you find?

A The body was...

Q Beginning with your first external examination.

A The external examination showed a well developed and well nourished Negro male, measured 66 inches in

length, weight 177 pounds. There were no particular marks on the body, except a gun shot wound, the entrance and exit wound of the gun shot.

A This is a piece of paper containing an outline drawing of the human body, front and back, completely, a head to foot drawing. Indicated on the one on the right, it would be on your left - is the anterior front surface of the body. Indicated here is a gun shot wound of entrance. This was 15½ inches below the top of the head and 1½ inches to the right of the midline of the body..... the right chest. This bullet wound was 5/8 inches in diameter. It shows no powder residue on the skin. The posterior, back view of the body, shows an exit wound - where the bullet came out. This was 13½ inches below the top of the head and 7½ inches to the left of the midline of the body. This was 5/8 by 3/8 - it was slightly irregular.

Q Now, Doctor, from that diagram, can you tell from whence the missile came and how it entered the body... I mean from what direction....say you were standing straight up or would it come from this direction, this direction, this direction or what direction?

A It came from the front, slightly to the right of the individual.

Q You mean of the victim?

A Of the victim, yes.

Q And I believe you have testified it went all the way through?

A Yes sir.

Q Now, what in your opinion, Doctor, was the cause of death?

A The cause of death was gun shot wound of the chest with very massive damage to the root of the aorta which is the big vessel going out of the heart, supplying the rest of the body, and the base of the heart.

Q All right, sir, now, you testified that there were no gun shot wounds on the flesh, did you examine the clothes or not?

A No sir, I did not, the clothes were examined in the lab....I, myself, did not examine them.

Q Does your report show them...

A Yes sir, it shows a report of the laboratory.

Q What does that show?

A That shows no powder residue on the clothing, on the shirt, which was the outer garment....

Q Now, to make powder residue from a shot of this type, can you tell the jury, how far the shot would have to come from?

A No sir, not without firing the weapon.

Q You'd have to fire the weapon first?

A Yes.

Q What is normal, can you tell them?

A As I understand it, this has been told to me...

this was a 30 caliber or 306 caliber military style rifle. The normal powder spread on these rifles is something like 4 or 5 feet. That is you will get powder on external surfaces at about that distance.

Q Four to five feet?

A Yes.

Q All right. Now, can you tell the jury from your examination and from the autopsy and so forth, how long the victim would have lived after receiving a wound of this nature?

A The death was almost and you can never say quite, instantaneously but it was almost instantaneous. Probably a second or two at the most.

Q Doctor, I believe we asked you or your department to determine the blood alcohol content of the victim in this connection at the time that the body had reached the lab in Richmond?

A Yes sir, a determination of blood alcohol is routine on all autopsies in our laboratory, unless circumstances prevent it, such as decomposition or something of the sort. Blood alcohol was determined on this body and it was found to be 0.26 percent by weight by volume.

Q All right, sir, now does that mean the man had drunk right much or not very much or what...if you can answer that question?

A Well, quite a bit.

CROSS EXAMINATION

Q Did you say.....did you measure from the...entrance 15½ inches from head, exit 7½, is that right, Doctor?

A Entrance....exit was 13½ from the head.

Q And the exit....

A Exit 7½ from the midline of the body.

Q The exit was 7½?

A Right.

Q So it was at an angle?

A Yes sir.

Q Sloping upward?

A A little bit upward.

REDIRECT EXAMINATION

A Yes.....to the right of the midline, exit was to the left, so that it went through the body from right to left.

Q And upward?

A And upward.....and upward.

TESTIMONY OF SHERIFF HENRY A. KENNON:

DIRECT EXAMINATION

Q All right, Sheriff, you are Henry A. Kennon; you were Sheriff of Louisa County at the time this happened and you have been for the last nine and a fraction years, is that correct, sir?

A Yes sir, that's correct.

Q Do you remember Raymond Taliaferro?

A Yes sir.

Q Do you know where he lived?

A Yes sir, Mr. Taliaferro lived at the intersection of 250 and 613 and that's in the northwest corner of that intersection, about 1 mile east of Zion's Crossroads, in Louisa County.

Q All right, sir, directing your attention to about November 11, 1972, did you have an occasion to go to the residence of Raymond Taliaferro?

A Yes sir, I did.

Q Who else lived with Raymond Taliaferro's?

A His mother lived in the home, a number of sisters and other brothers lived in the home. The investigation showed that a Claude Perkins also lived in the home.

Q And who is this Claude Perkins, do you know him?

A He's the defendant here today in this cause.

Q All right.

A He also lived in the home and the investigation showed that he lived there with a Cora Taliaferro, his girl friend.

Q All right, now, how did you learn about this?

A It was a telephone call made to the office in regards to this and according to my investigation the call was made by a Claude Perkins, identifying that there had been an incident in the Taliaferro home, and had asked for someone from the Sheriff's Department to come to that location and had also asked for the Rescue Squad to come to that location.

Q All right, and as a result of that what did you do?

A I arrived at the Taliaferro home like I said around 8:30 and I proceeded to go into the home, where in a hallway I found what appeared to be a body, lying on its back, and it was much blood stain and blood and things about the body. Check of the pulse and things led me to believe that the person was dead, and I knew the subject, had known him in the past and I knew him to be Raymond Taliaferro. Investigation further into the matter....I asked the question what had happened...

A I made...I checked the body as I said and it led me to believe that the person was dead. I made a check of the body further for weapons or anything else about the body, I examined it and I found no weapons in regards to it, and I asked...just asked the question in the home - it was many people there. I'd say some 15 to 20 people was in the home, and I just asked openly, if somebody could tell me what had happened, and at that time Mr. Perkins here spoke up and said...voluntarily, that he was cleaning his rifle and it accidently went off and shot Raymond. I at that time advised Mr. Perkins his constitutional rights. I told him not to make any further statements and I advised him of his constitutional rights under the Miranda ruling.

Q If your Honor please, Mr. Neal may want to

question the Sheriff regarding these rights or he may not. If he does...

NEAL: The statement, I think it is Your Honor...we are not contesting the statements at all.

Like I say I made a search of the body and found no weapon, then after Mr. Perkins statement I went into this room which was identified as the room that Mr. Perkins and Cora Taliaferro was occupying in the home. In this room here I found a rifle here sitting on the floor with the barrel down, sitting in this location right here....the rifle and Mr. Perkins identified this as the rifle, which Mr. Taliaferro was shot with. In viewing the rifle, it was a clip type bolt action rifle.....I asked him for the clip to the rifle and it was not in it and he went to a bureau drawer here and gave me the clip - there was no cartridge in the clip, but it was one lying there in the room. I asked him for the...if he knew where the empty cartridge to the rifle was and he reached in his pocket and handed me that. The spun round...in turning Mr. Taliaferro over, the spun round had exited, it was found under Mr. Taliaferro in the hall, it had gone through..... anyway that's the location that we found this. In talking to Mr. Taliaferro again later that night...

Q You mean Mr. Perkins?

A Correction, Mr. Perkins, later that night, he gave me a statement in regards to it.....I have the rifle

and things.

A This is the rifle I found in Mr. Perkins' bedroom, sitting on the barrel with one live round, and the clip out of it. This is the clip that he gave me to the gun. These are...this here is the live round that was in the rifle. This is the empty cartridge that he put in his pocket. This is the spun round we found beneath the body .....of Mr. Taliaferro.

A Later that night, I spoke again with Mr. Perkins in regards to this and again advised him of his constitutional rights and he stated that he wanted.... that he would talk to me about this and stated at that time it was an accident. And so I indicated to him to go ahead and tell me what he knew about it and he gave me the following statement. He said I bought my hunting license today so that I could go hunting Monday. I decided to clean my rifle. I got my rifle out and was sitting on the bed. I was taking the safety off and I must have had my finger on the trigger, anyway the bullet struck Raymond, and I saw him fall in the hallway. I went to him and felt his pulse and he didn't say anything. I told them that I believed he was dead. I then....

A ...I then went and called the Sheriff and the Rescue Squad. That's all I know. And I asked him, I said where did you place the rifle after the shooting and in what position did you place it in, and Claude's statement

was it was by a fold-away cot along the wall with the barrel down.

Q Now is that not the little corner that you showed the jury a few minutes ago?

A Yes sir, that was the exact way I found the rifle.

Q All right.

A I asked him what was the clip doing out of the rifle....Claude said, I took it out after the shooting and put it in a bureau drawer, the same place that I got the clip from when I gave it to you. I asked him what account do you give for the live round in the rifle; Claude, when I took the empty cartridge out, I must have kicked the live round in. And I asked him, I said, Claude show me exactly how you were taking the safety off when the gun discharged. He gave me the following.....the gun had the safety off...this is the gun here.....had the safety here ...had it back like this is the way he had it and was trying to reach with this finger back over and get it over, but he never could...he worked on it about a minute I'd say or more, but he never could get the safety off the rifle to fire the gun.....to show me how he fired it.

Q How did he fire that gun...I saw you just fire it but I didn't see exactly how you did it?

A He was trying to reach over the....

Q How did you fire it just now?

A Well, I took the safety off.

A I then asked him if there was any argument tonight between you and Raymond. Claude's statement, no sir, there was no argument, Raymond and I got along real good together. I told you that it was an accident. And I then asked him where did you make the telephone call from to the Sheriff's office to report the shooting and he said from the home of Jack Ellis, not too far from the Taliaferro home. And I then asked him, did you live in the Taliaferro home, and Claude's statement, yes, roughly 18 months. Cora and I go together. I then asked him is there anything else that you would like to tell me about the shooting, and no sir, I tell you it was an accident ....based on this statement and the investigation charges brought against Mr. Perkins.

CROSS EXAMINATION

Q About how long after the call came was it before you got to the house?

A ...given account of everything probably 45 minutes, yes.

Q Now, when you arrived there, didn't you find the defendant waiting for you?

A Yes sir, he was in the yard of the home.

Q And wasn't he cooperative from the beginning?

A Yes sir.

Q This was the original statement he made to you

and he stuck to it?

A Yes sir.

Q That's all I wanted to know, thank you. He showed you the gun and I don't know what you called it, the spent cartridge or something he got from the drawer for you?

A Yes.

TESTIMONY OF CAPTAIN JOHN WILLIAMS:

DIRECT EXAMINATION

Q Your name is John Williams?

A Yes.

Q You live just north of Louisa?

A That's right, sir.

Q On Road and you are a retired Army officer?

A That's right.

Q Are you familiar with firearms, generally and particularly with military firearms?

A Especially with military.

Q And how long have you been familiar with them and what training if any did you have in using them?

A I had nine months in an arsenal school in 1917 in Rock Island, Illinois. And I've been known as what's been known as a company mechanic, private.....that's what you take care of was firearms. I've been working on guns in this county now for 17 years.

Q Are you registered with the Department of

Justice or whatever department...

A I am.

Q ...as a gun mechanic and dealer.

COURT: All right, do you wish to qualify this man as an expert, is that what you wish, Mr. Pettit?

Q That's what I was trying....

COURT: Do you wish to cross examine him as to whether he is an expert or not, Mr. Neal?

NEAL: No, we accept that the Captain is an expert, Your Honor.

A Well, with military guns and this is one of them, they have always on several different foreign actions, which this is, an English British , the safety is put on the left hand side so they cannot be tampered with and use them in a saddle boot or boot in a vehicle or so that the man will not be touching it over here when he is working the bolt on the right hand side. So it is put on the left hand side, and it's one...

Q Could you put another one in the chamber or not with a clip out?

A It would be very hard to do, because your bolt is hard to get down in here and get it lined up with this chamber, trying to push it in from here.

Q Now, would you tell the jury whether or not there have been any modifications on that gun, which affect its actions?

A No modifications that I can see.

Q Have there been other modifications?

A The wood has been cut off of it, trying to sportarize it.

Q What you call sportarizing.....it will only take a second, tell the jury what has been taken off?

A The wood from the bottom of this has been taken off from about here and also the top. And that wood was put on here to keep the man from burning his hands.

Q Would or would not that have anything to do with it?

A Nothing whatsoever in the action of the gun.

CROSS EXAMINATION

Q Captain, did you dismantle the gun?

A I did not.

Q You did not. When the bolt is locked, don't you have to release the safety on a British 303 to release the bolt?

A You have to, as I just showed...

Q Yes sir.

A The bolt is forward and the safety back, you cannot even lift the bolt.....

Q Now, if a hand or finger touched the trigger, wouldn't that release the sear during this operation and wouldn't that release the sear which in turn would release the firing pin?

A It would but this is a military trigger, don't

forget that now. And this trigger on the average has anywhere from two to three, sometimes five pounds pull, and it has an awful lot of slack before it ever comes back and touches...of course now, I haven't got the safety off but you have to pull way back and then you hit a hard spot and the trigger has to come clear back to there before it ever fires.

Q Now, the only other question I have to ask you, Captain, is the one at the prelim., which is you of course are predicating this on somebody that was knowledgeable about guns as you are? Couldn't this be different if there was some man who was an amateur, somebody who has not had the experience, somebody who is bumming around with it, in fact didn't you testify here today that an accident .....I wouldn't misquote....Captain...that accidents can always happen with a gun?

A The only way that this gun could be fired accidently was for the man to take it off and then pull the trigger accidently, because it would not fire with the safety on.

Q Surmising that the safety was released to release the bolt?

A That's right.

Q Then it could happen?

A That's right.

TESTIMONY OF ETTA TALIAFERRO:

DIRECT EXAMINATION

A Well, my age is 34, my name is Etta Taliaferro. My occupation...

Q Speak to the jury.....

A Name - Etta Taliaferro, age 34, my occupation - I roll fiber glass.....I work in the fiber glass factory.

Q All right, now I believe you are the sister of the deceased, Raymond Taliaferro, is that correct?

A Yes.

Q Directing your attention of the night....do you know Claude Perkins?

A Yes.

Q Is he in the courtroom?

A Yes, he is.

Q Can you point him out to the Court?

A Of course, I can.

Q Just point him out to the jury.

A Right there.

Q All right, now on the November 11, was he at your home...I didn't ask you where your home is, but you lived with...the same home that Raymond lived in, did you not?

A Yes, I did.

Q Were you there that night?

A Yes, I was.

Q Tell the jury what happened, if you will Miss

Taliaferro?

A Okay, during the first part of the evening I wasn't home. I was at my sister's...Bertha's.

Q You mean Mrs. Brown?

A Yes, but there had been an argument and a disturbance went on before I got there. Raymond had been stabbed by a fork before...and after that it was...

NEAL: Excuse me, Your Honor, this is hearsay in my opinion and if Your Honor wants to.....

A I saw the place and the mark on him, he showed it to me.

NEAL: I don't want to keep anything from the jury but I do want to be honest...this is secondhand...

COURT: All right, what we are asking you to do is just to say what you saw there that night.

A Okay. What I did saw?

COURT: What you saw and what you heard.

Q What you heard?

COURT: Heard...

A Well, it wasn't no argument there when I got there, but a little bit later it was one. After I was at home...around about I'll say 7 or quarter after 7, I'm not sure of the time. Anyway, Cora took Claude Perkins' car out in the yard and she went somewhere in it, she and Bertha. Bertha went out, I know about that. After that they came back in. It was a light come in and Raymond said.....if anybody put...do I have to repeat it?

Q Yes, you tell the jury exactly what happened.

A Raymond said, if anybody god damned called them...a policeman or anything, said he would take the ax and break the mother fucking windshield out. Well, after that he did not say Claude's car, because...he did not say that. He said a sheriff's car or either a policeman, but Claude spoke up and said nobody's going to break a mother fucking thing out of my car or nothing. So after that the argument started going on and on. So Raymond told....

COURT: Who was arguing?

A Claude and Raymond Taliaferro, they was cussing each other out....all kind of foul language.

COURT: All right.

A Well, he said, wasn't going to do nothing to him or his car. Raymond told him, said, the best thing for you to do is to get up and leave. Claude followed Raymond down the hall a way...no, pardon me, Raymond followed Claude down the hall.

Q Now, I don't like to interrupt you, but where were you then?

A I was sitting in the living room.

Q In the living room?

A Yes.

Q The reason I'm asking you that....

A I was sitting right at the door....part...the kitchen...

Q There is a diagram up here...

A Yes, I know.

Q And I think you've seen it, have you not?

A Yes, I have.

Q The living room, you know where that is?

A Yes.

Q And Raymond followed Claude?

A Followed Claude down the hallway.

Q All right.

A Raymond told him, said the best thing for you to do is get up and leave...when he said leave, Claude shot him.

Q Claude what?

A He shot him.

Q Oh, do you know of your own knowledge, where Claude was when he shot him?

A I don't know where Claude was at, but I think he was back in Cora's bedroom.

Q In Cora's bedroom?

A Yes.

Q Do you know where Bertha was at that time? Mrs. Brown?

A Bertha was walking behind him.

Q Did you follow them back or not?

A No, because I was sitting....in the hall part.

Q You heard the argument?

A Yes, I did.

Q Claude went back and Raymond told him to leave

and when he did, you heard the shot?

A That's when he shot him.

CROSS EXAMINATION

Q All right, and what was the first thing you saw?

A I saw Raymond sitting there with a big bloody spot right on his chest where he had been stabbed at with a fork . . . . . that's what I saw.

A He said anybody put a mother fucking cop on him, what he going to do.

Q All right, who did he say that to?

A He told Claude.

Q Told who?

A He was telling Claude and us in the living room.

Q He told you that and where was Raymond standing when that happened?

A He was still sitting.

Q And where was Claude now?

A He was standing behind me.

Q And then you heard this conversation going on across the room?

A Yes.

Q How many people were in the room at the time?

A Mama was there...

Q Well, just the number approximately...that's all right, how many people...who were there?

A About five of us.

Q About five?

A Six or seven....at least....Raymond and myself.

Q And go ahead please, your mother and...

A Yes, Donald Hall.

A Myself, Cora and Bertha, and Joyce.

Q All right, they were all present at the same time?

A Yes.

Q And there was some drinking going on?

A Yes.

Q How did you get down...where was Raymond when he told Claude this?

A He was...Claude was walking in front of him down the hallway, going towards Cora's bedroom.

Q Didn't Raymond exhibit violence at everybody during the period that you were there?

A Yes he had.

A And Raymond said the best thing for you to do is to get up and leave.

Q And Raymond was in behind him?

A He was behind Claude, yes.

Q And you followed them on down the hall?

A I did not. I was sitting in the chair that I was sitting in.

Q You were sitting over here, so you saw it from

that angle? Was Cora in the hall at the time?

A No.

Q Was Bertha in the hall?

A Bertha was in the hallway, yes.

Q And was Bertha in between your vision and, where you were sitting and Raymond and Claude?

A Yes, because I was sitting there and she was right behind Raymond.

TESTIMONY OF MRS. BERTHA BROWN:

DIRECT EXAMINATION

Q You are Mrs. Bertha Brown and you live with your husband, J. B. Brown, over near Troy is that right?

A Yes sir.

Q Did you know Raymond Taliaferro?

A Yes sir.

Q And where did he live?

A Louisa....with his mother.

Q Would that be out near Gillespie's Shop?

A Sir?

Q Would that be over by Gillespie's Shop, 616 and 250?

A Yes sir.

Q All right. Do you know Claude Perkins?

A Yes.

Q Is he in the courtroom?

A Yes sir.

Q Can you point him out to the jury?

A Yes.

Q All right, now, Mrs. Brown speak to the jury please, they have to hear back there.....were you there at Raymond's house on the 11th of November, 1972, or not?

A Yes sir.

Q All right, tell the Court what happened?

A When I got to my mother's home, there was an argument between Claude and Raymond, and after that, Cora and I went for a little ride. When we got back, Cora asked my mother what was going on. She said nothing.....so Raymond.....so Claude was after Raymond, you said that you would break the glass out of my car, Raymond said, yes, I said it.....so, then Etta and Roscoe was back and we was all sitting around playing and joking, so Cora she smacked Claude and dragged him down the hall, and Raymond...

Q Excuse me, I didn't hear you.

A Cora smacked Claude and dragged him down the hall. So, Raymond came through the back door and asked what was going on and Claude laughed at Raymond and said Cora smacked me and dragged me down the hall. Raymond said I don't have anything to do with that. So he went on and sat down on the sofa. So, Claude got up about the car, said you said you'll break the glass out of my car...

Q Who was he talking to then?

A He was talking to Raymond. Claude was talking to Raymond.

Q All right.

A He asked Raymond again, you say you'll break the glass in my car out....and he said, yes I did. Claude said, ain't no...

Q You have to say it, I know it's not easy.

A Ain't no mother fucker going to do a god damn thing to my car, and I don't want nobody coming back here fussing with me. So Raymond got off the sofa and went up the hall, and I was behind him. Raymond told him, said, I told you the best thing for you to do is to leave, and that's when the gun went off. So I started screaming, I went through the window.

Q Well, now, where was Raymond when the gun went off?

A He was standing partly in the door.

Q What door?

A Cora's bedroom.

Q And where was Claude?

A He was...I didn't see him.

Q Was there any light on in Cora's room?

A Yes.

Q Cora's room?

A Yes.

Q But you didn't see him?

A No, I didn't.

Q You heard the shot?

A Yes sir.

Q And then did you see, did Raymond do anything

after that or not?

A No, he just turned and fell in the floor when the gun went off.

Q How soon after that did the shot come?

A Well, as soon as Raymond told him, said the best thing for him to do was to leave.

Q The shot came immediately when he said that?

A Yes sir.

Q Did Claude say he was not going to leave or just went to the room and...

A No, he didn't say anything.

CROSS EXAMINATION

Q Everybody sitting around quiet.....just sitting quietly?

A Yes, but just Raymond and Claude arguing or something.

Q And when you came in Raymond and Cora were arguing?

A Yes sir.

Q Raymond was over here then. He came on in and sat down on the sofa?

A Yes.

Q Okay. All right then what happened?

A Claude laughed about the car and he went on up the hall and Raymond got in behind him.

Q So, the sequence then as you told it, Raymond was ahead of you?

A Yes, he was.

Q And Claude was ahead of Raymond?

A Yes.

Q And Claude would have gotten to his room first and then Raymond and you were behind that?

A Yes....I was following right behind them.

Q You followed Raymond, right, but not close enough to see what happened, you just heard the shot?

A Well, I heard when Raymond told him that the best thing for him to do was to leave and then the shot.

Q You heard that...where was Raymond when...

A He was standing in the doorway.

Q In the doorway?

A Yes.

Q He said the best thing for you to do is leave?

A Yes sir.

Q And then you heard a shot and you went out the window?

A Yes.

NEAL: Yes sir.....it's a motion to strike the Commonwealth's evidence as insufficient in law to sustain a conviction, and the defense feels that the Commonwealth has not made a prima facie case, that it has not proved the killing of the deceased was caused by any criminal violence on the part of the defendant or in any form of

negligence . . . . . looking at other degrees of homicide. Particularly in view of you know the presumption of innocence read with that the defense of accident and of course the reasonable doubt. That is the motion, Your Honor. Thank you.

COURT: The motion to strike has to be overruled, Mr. Neal. All right, bring....

NEAL: Your Honor, I respectfully except....for the reasons given, Your Honor.

TESTIMONY OF CORA TALIAFERRO:

DIRECT EXAMINATION

Q Miss Taliaferro, with Your Honor's permission I think she prefers....

COURT: Either way you wish to call it....

Q Thank you. You are the sister of the deceased? Is that correct?

A Yes, I am.

Q And you lived in the same house?

A Yes.

Q As the deceased?

A Yes.

Q And the defendant, Claude, lived in the same house, also?

A Yes, he did.

....you went back to get Claude, Perk, to go to the store for you, is that correct?

A That's correct.

Q All right, now, we've got that settled. Now, what was he doing when you went into this room?

PETTIT: I don't see any relevancy to this whatsoever..

A Well, he was laying down.

Q I...

COURT: Proceed Mr. Neal, proceed...

Q All right, what was he doing when you went in the room?

A He was laying down.

Q Was what?

A Laying down, lying down on the bed.

Q Lying down on the bed. Did you notice any of the things around the room?

A What are you talking about?

Q But did you notice anything around the room?

A No.

Q He was lying there, what did you tell him?

A I asked him to go to the store for me.

Q What?

A I asked him to go to the store.

Q You asked him to go to the store for you. All right. Then he left to go to the store, is that right?

A Yes.

Q All right, he went back to his room when he came back?

A Yes.

Q All right, he went back to his room. Then did you go back to the room to get him a second time when you found out he had forgotten something?

A Yes, I asked him to go to the store and get something.

Q What was he doing then?

A He was still in the room there.

Q So he was in the room the first time and the second time?

A Yes.

Q All right. And you sent him to the store a second time?

A Yes sir.

Q All right, do you recall how long he was away, or approximately what time it was when he got back?

A No, but he said he was talking to some friends, when he came back, so I don't know the approximate time.

Q All right.....all right, when...I'm trying to... to prove, to show Your Honor that the defendant was in the room a great deal of this time, was not around in the other rooms; it was no exposure to Raymond Taliaferro at that time.

COURT: Well, let's go on and get to the issue.

Q All right.

COURT: We're just wasting time now.

Q All right, yes Your Honor. Let's move up to

then when...did you and somebody else, one of your sister's go out in the car?

A Yes, we did.

A And you went to a friend's house or something ...I think?

A Yes, we did.

Q And you came back...will you tell the jury what happened?

A Well, when I came back into the house...I mean I didn't come right straight in the house...well, Etta's little boy named Randy, came running out to the car and he said that mama said get rid of the ax....he said he was going to knock the windshield out of the glass...I said... and so Bertha, she took the ax and throwed it down across the field. So, that...Claude didn't know anything about it.

Q This was you and Bertha?

A Bertha and I, yes.

Q And you?

A Yes.

Q And Bertha took the ax and threw it, and then did you all come in the house?

A We came in the house.

Q Where was Claude at this point?

A He was outside somewhere.

Q He was outside. Where was Raymond at this point?

A Well, he was outside like on the front of the house, and he was coming in the door at the time that Claude was coming in.

Q All right, can you pick it up from there and tell what happened?

A Well, Claude heard us saying something about the ax and he said what about the ax, and I told him nothing about the ax, and so he went on back to the room.....no, he was standing up in the doorway.

Q Claude was in the doorway and he asked you something about an ax?

A Asked me about the ax and I said...

Q You said nothing?

A Nothing....about the...

A Nothing about an ax?

A Nothing about an ax, I said.

Q Yes...I wanted to get the location, Your Honor, but go ahead and tell in your own words, what happened from that moment, when he said something about the ax?

A And so when Claude went down the hall he might have been saying something, but Raymond used violent language. And so, calling him names, you know, just like that...but Claude has gone back to his room and...in the living room...and so it would have to be another part about it before I could make myself straight.

Q After Claude had gone to his room, all of you

were in the living room talking, is that right?

A Yes, we was.

Q I'm trying to quote you again as to what...all right, then what happened?

A I don't even know what really happened...I don't really know.

Q Did you see anything else after that, or hear anything?

A He still was using violent language...

Q Who was using violent language?

A Raymond still was using violent language.

Q Where was he when he was using this violent language?

A In the middle of the floor.

Q In the middle of the floor, where? Where?

A In the middle of the floor in the living room.

Q Then what happened after that? Did you hear anything? If I may lead...may I just ask.....

COURT: Well.....did you see the shooting?

Q Did you hear the shot, did you see the shooting?

A I heard a shot.

Q You heard a shot?

COURT: You don't know where it came from or who shot, is that what you are saying?

A No, I don't know.

COURT: That's all she can say.

TESTIMONY OF CLAUDE WILFORD PERKINS:

DIRECT EXAMINATION

A Claude Wilford Perkins.

Q And what is your occupation?

A Carpenter.

Q And how long have you worked at this?

A I've worked at this job for about four years.. this special job, carpenter....I used to be a tractor trailer driver.

Q Were you employed before that?

A Yes sir.

Q Were you living with the Taliaferros on November 11, 1972?

A Yes sir.

Q You'll have to speak so the.....

A Yes.

Q How long had you been living there? Prior to November 11, approximately?

A About two years.

Q About two years?

A Yes.

Q Did you contribute anything to the household expenses, the family, anything?

A Yes sir.

Q What did you contribute? Can you think of anything?

A Food and helped take care of...paid the bills

and everything.

Q How frequently did you see Raymond Taliaferro during that period of two years?

A Every day...every night when I come from work.

Q Every night.

A When I wasn't on the road driving.

Q Did you ever fight with him?

A No sir.

Q You never fought with him? On any occasion?

A No sir.

Q Did you ever threaten him?

A No sir.

Q Did he ever curse you?

A No sir.

Q . . . the room that I got on this morning... All right would you describe your relationship with...

A Well, I just called him brother all the time.

Q Now on November 11, Claude, could you tell the jury how often and what time and so on that you saw Raymond that day?

A Yes sir. That morning I went down to Palmyra to pick up my hunting license, to go hunting the next following week...so I came back and I was showing it to everybody in the house. And I said to myself I haven't had the rifle out for a long time, I'll get it out and fix the clip on it, the clip was bent, and clean it up while I was getting it out...the season had come in, deer season.

So I goes in there and gets the rifle out, fooling with the rifle that day, sitting there somewhere around 12 o'clock or 12:30, I don't know what time it was. So, Cora came down the hall walking and I took the rifle...

Q All right, you went to Palmyra and got your hunting license?

A Right.

Q Right, this was early in the day?

A Yes sir.

Q And you said you came back?

A Yes.

Q Now would you start there?

A Then after I got back to the house and I was showing most everybody in the house, I said I got my license, and I'm going to get the big one, just like that. Then I went on in the room and got my rifle out of the box that was behind the dresser...so I took it out of the box and was getting ready to fix it...the clip was bad. Then I took the clip out and was fixing the clip on it and I put two shells in the thing and I put the shells...I heard Cora coming down the hall...and she already told me not to fool with the rifle...so I took the rifle and locked it and put it down behind the thing. So, she said honey...

COURT: Put it down behind what?

A Behind the closet...the curtain...behind it. So, I put it behind the curtain. And she said I want you to go to the store. I said, okay. So, then I said I'll

be on in a minute, so I laid back on the bed and then I got up and went on to the store, got what she had to get, some onions, potatoes and chicken. I came on back and went back to the room, and I picked the rifle up again and I was going to finish it. And I started to clean the rifle again, Cora came back down the hall, she said, honey you didn't even get the onions. So I had to put the rifle back behind the curtain again and never even unlocked it, never even moved it again. So I went on back to the store and got the onions...so I stayed over there a little while talking, and when I came back, I said, honey, I bought the onions. So, I went on back in the room, and I didn't think about the rifle any more then. I was drinking a beer. I heard the radio playing and she said, can I use the car just like that, said give me the keys. I said, where are you going. She said, oh, well, I'll be back in a few minutes, just like that. So, I said you've got your keys, you go ahead on and use the car. I ain't going to give you my keys. So her and Bertha left, went somewhere. So, I was still back in the room. So me and this Grafton boy, I call him Buck..we was back in the room playing with that little baby back there and the radio was still playing. So, Buck heard the car come in and he said that devil done come back and he said he was going on in there where they was at. So he got up and went on in the front room. So in two or three minutes I got up and went on out behind him and went on to the door to the bathroom. So I came

on back in...

A So when I came back into the kitchen I heard somebody was talking about an ax or something like this. I thought they wanted the ax to get wood...they had an ax to cut wood with. And I thought that's why they wanted the ax, so I said what about an ax. I thought the little boy where I live threw the ax away or broke the handle. So about that time, Dickie he came in the door, he said, what you say, he said. I said I wasn't talking to you, and I went on down the hall. I said, "Don't worry about it" like that. So I went on down the hallway, to take me a drink, just like that. So I went on back in the back room where I stayed and reached back in there to get the bottle I had and I felt the barrel of the gun, I said, Oh God, I forgot about that rifle just like that. So I picked it up and you want me to show you how it was handled...that's about as far as I can go...

A The rifle was sitting behind the curtain like this, and I reached back and I felt the barrel just like this and the rifle was...this thing on it like this, I don't know what you'd call it, the safety like this, that's the way I left it. So, I was in here trying to hold the thing and let it down but I couldn't get it down....not knowing this thing was on...this thing right here...so, I was trying to get this down and when I was trying to get this down...I just kept fooling with it and fooling with it and I couldn't get it down...I had the rifle like that.

So when I did like that...pow...it went off. And I did it back like this and I pushed it back like this...took the rifle and set it in the corner, took the clip out and put it in the drawer, took the hull and put it in my pocket and walked on down and go down to call...then I saw him... I said Raymond...then I went...I didn't see nothing to do but go call the Sheriff and undertaker. I went on and called the Sheriff, and the Rescue Squad, and waited until they got there.

Q Now, what were the... to go back over the day now, you carried us right up to the moment of the shot. How many conversations did you have with Raymond that day?

A One.

Q One. And when was this?

A Before I went to the store the first time.

Q Before you went to the store the first time?

A Yes. He was coming into the house and I was leaving out going to the store for getting groceries.

Q All right, now, what did Raymond say to you and what did you say to Raymond, would you tell the jury that?

A We spoke, stood there and talked for two or three minutes. He said, do you want a drink, and I said no thank you, said I forgot you don't drink bourbon. And then he said, well, I'll see you. I said, I got to go to the store for a minute, and I said I'll see you, just like that. I went on to the store and when I came back I didn't see him no more until a little before this

happened....when he walked in the door....into the door when I came in the room, when I came from the store, not in the door that he was shot in....I didn't see him when he walked in there. I didn't see nobody when he walked in the door, because I wasn't even looking in the door.

Q Did you...well, while we are on this...you said you weren't looking at the door.....where were you sitting in the bedroom?

A On the bed, facing the door, kind of like this ....with the rifle in my lap like this....with the thing like this. That's how it went off, and I pulled that off and kicked it off...

Q Now you heard the testimony here...the defense has been here all day and obviously....the defendant has been here all day, and you've heard the testimony here today in the trial about this rather violent quarrel between you and Raymond, at this place...you heard probably a couple of versions of it?

A Yes.

Q Did it happen right before Raymond was shot?

A Did it happen before?

Q Yes.....did it happen right before Raymond was shot, when you went down the hall, what you said to him ....one version was as I recall that you were cursing each other across the room, etc.?

A Wasn't no argument between me and him.

Q Now, I want to get your version of this?

A It wasn't any argument between me and him.

Q There was no argument at all?

A No more, than he just came in the door and said, what you say, like that....I said I wasn't talking to you and went on down the hall.

Q Was there any argument about the windshield?

A No sir, I didn't know nothing about no windshield. I wasn't even there. I was back in the room, I never came out until Cora came back from down where they went to when that little boy came up there and told me about the windshield. I didn't know nothing about that until I was in jail, that's when I found it out.

Q Now, back to the gun...you were sitting on the bed?

A That's right.

Q And you put...would you go through it again, exactly how you handled...you held the...put the stock?

A You mean like this?

Q Yes.

A I was sitting like this, holding the rifle... more specifically like this.....see, I was trying to let this bolt down. Like the man said, you can't let this bolt down....I know I found that out after he showed me how to do it.

Q Was the bolt locked?

A Yes..

Q That's why you couldn't do it.

A This was locked.

Q Then you fooled around with the safety?

A Yes, I fooled around with the safety. See when I kicked the safety off, see...just like that....and it went off.

Q You may have testified...did you hear Raymond coming down the hall?

A No sir, I had the radio on. I wasn't aware of nobody coming down the hall.

Q The first time you saw Raymond at the moment of discharge of the gun would you repeat that?

A I didn't...

Q You were working with the gun...

A I never seen him when I was working on the gun.

Q All right, you were working on the gun...

A I didn't know who it was that fell in the hall ...that fell until I went over there.

Q You didn't know who you shot?

A It could have been anybody....

Q How much experience have you had with this gun?

A Very little. No more than I saw this man demonstrating it in jail.

Q Where? In jail?

A Yes, in this county.

Q I mean prior to November 11?

A That's right...on that Sunday...that Sunday morning...he was demonstrating it.

Q The experience has been in jail?

A Right.

Q You heard them say, I may be repeating here... did you hear Raymond say, I'm going to throw him out?

A No sir.

Q You heard that said here from the stand earlier?

A Oh yes, I heard it here.

Q And you are denying that?

A Yes.

CROSS EXAMINATION

Q You've had the gun about three years haven't you?

A Yes sir.

Q You mean to tell this jury that you're not familiar with it?

A I don't hunt.

Q I didn't ask you that, I said you were not familiar with it?

A No sir.

Q Who modernized that thing?

A I did that.

Q You did that?

A Yes.

Q How did you know how to do that, if you weren't familiar with that?

A Well, that's.....brains...you know, being.. trying to learn something...never trying to...

Q If you weren't familiar with it, how did you know the clip was bent?

A I know it was bent because you'd put bullets in it and the boy said it wouldn't hold, they would jump out. If you put bullets in it wouldn't hold, they would jump out.

Q What boy said that?

A James Payne....my cousin.

Q And you went to Palmyra that morning and said you were going to get a big one that day?

A I said I was going to get a deer....hunting season come in.

Q You said you were going to get a big one that day?

A No, I said, hunting season come in.

Q And you say you were cleaning the gun about 12 o'clock? Right?

A Fixing the clip. I never did get a chance to clean the gun.

Q Never did get a chance to clean the gun?

A No sir.

Q Now, you showed this jury one time how you held that gun and you held it up like this....

A I...

Q Then you had it down like this....

A I'm sitting in a chair...

Q How do you explain that bullet hitting Raymond

here and coming out back here if you were holding the gun like you were just showing the jury?

A I can show you exactly how I had the gun. Sitting in the chair...I have to...

Q Are you telling this jury that Etta said, everything that Mrs. Brown said, everything that everybody else said, here today, and everything that you told the Sheriff was a lie, is that what you are trying to tell the jury?

A I didn't tell the Sheriff anything....no more than what he put on that paper.

Q You said it was an accident, didn't you?

A Yes, told him it was an accident....that's what I told him.

Q You don't remember walking down the hall?

A Walking down the hall, sure I remember going down the hall.

Q You knew Raymond was behind you didn't you?

A No sir.

Q You knew Bertha was behind you, didn't you?

A Okay....just how can I walk down the hall with Raymond behind me and pick up a gun and hold it in this position...

Q I'm not asking you..

A ..with an upright shot...

Q You answer my question....

A That's what I'm trying to do. I'm trying to answer your question.

Q All right, try to answer the question.

A Like this chair is not sitting you know like a bed...you've sat on a bed before, haven't you? So that's what it is, the bed sits down lower, and you've got more of...more weight on this hip than it is in a solid chair, which makes this barrel drop...the gun drop down, making it raise up...

Q Why didn't you show the Sheriff that night?

A Show him that night....you mean...I tried to show him that night..

Q What do you mean....

A He just asked me a few questions and I told him what I did and he took me on to jail. I wasn't on no trial.

Q You didn't have any argument with Raymond?

A No.

Q You didn't hear Raymond say the best thing for you to do was get out?

A No sir.

Q You didn't hear any of that?

A No sir.

Q How much had you had to drink?

A I had drank a couple of beers and going back to get me a little drink of vodka because I don't drink bourbon. Hadn't been drinking nothing until then..... hadn't drank nothing that day.

Q Hadn't drunk nothing that day?

A Nothing that day...late that day....I drank some beer that morning and drank some beer that evening. I told you about drinking a beer then right before this happened....going to the store.

Q And you deny everything that's been said about these arguments? Is that right?

A That's right.

Q Everything

A Yes sir.

TESTIMONY OF MR. EARL PRICE:

DIRECT EXAMINATION

Q Mr. Price, I think you've just stated your name....and what is your present position, sir?

A Sales manager for Carter's Gun Works, Charlottesville, Virginia.

Q And will you explain to the jury what type of... what you do there? What is Carter's Gun Works? Do you sell or what?

A Yes...primarily we sell all types of sporting guns.

Q Is this...the work you do does it require you to have knowledge of various types of firearms and make accuristics and so on?

A Yes, it does.

Q Now, how long have you been at Carter's...sales manager at Carter's?

A Nearly 11 years.

Q Nearly 11 years, and would you tell the Court and the jury what you did before that? Were you...did you have any other experience involving guns?

A Well, I started competitive rifle shooting in 1946, and I joined the Army in 1949, served in the Korean war, and I ran the sniper schools and was a combat sniper in the Korean war and won a battlefield commission. After that, I'm originally from South Carolina...I went back home and started my business...which I would take rifles like this and well, I'll just say this..various rifles and would do what we call accuracy work, which means you know get the barrels and fit them to the stocks so you would get the maximum accuracy from them, and then I was a deputy sheriff for 20 months, and then I left that area and went up into the New England area and worked for Iva Johnson Arms Company, as a final assembler in pistols and then I worked for Winchester Fielding Arms Company and right after....before my military career was....I would like to point this out...ended...I was assigned to the infantry school at Fort Benning, Georgia, on board 4 which was convened in 1953, for a selection...it was known as weapons evaluation system, which we took off and on rifles that...and gunners and other military services in the various parts of the world used, and from that we selected the rifle that later become known as the M-14.

REDIRECT EXAMINATION

Q Your Honor, I'd like to qualify this man.

COURT: I think he is qualified...to answer...

Q Thank you, sir.

COURT: ...as an expert.....proceed, Mr. Neal.

Q Are you familiar with a gun called the British 303?

A Yes sir.

Q You have had experience with this gun?

A Yes sir.

Q Thank you, Your Honor. Now I'm going to ask you to assume a certain set of facts to be truth, I'm going to read you these and then I'll ask you a question about them. A man starts to unload a British 303 rifle, that has one cartridge in the barrel, and one in the magazine. He's right handed. He holds the gun with the left hand and rests the stock on his right knee. Then he attempts to unlock the bolt because the bolt is locked. Then the gun held so finger is in the trigger guard, he tries to release safety. When safety is released, gun discharges, that's the end of the statement. Assuming these facts to be true and correct, can you express an opinion with reasonable certainty of whether or not this could happen?

COURT: Now you can't ask that...

Q Excuse me...

COURT: You can ask him if he can...if the safety can be opened in various positions and things of that nature, Mr. Neal.

Q All right, sir. When the gun is held so that the trigger guard....and the safety is released, would this discharge the gun? May I ask him that?

COURT: Yes.

Q I was trying to cover too much your Honor, I'm sorry.

COURT: A very pertinent question.

Q Yes sir. Could that happen?

A Yes sir.

Q Now, that is your opinion...could you tell the Court and the jury what your reason is for this, can you explain it?

A I could explain it, but since I can't use that to demonstrate with this...

Q If you can demonstrate that it would be better ....

A All right. This weapon here...I could show you better. The British 303 has a firing pin and it has what is known as a swinging sear which is inside the mechanism here. The trigger pressing backward releases this sear causes the pivot downward and that in turn lets the firing pin or the striker go forward and strike the cartridge. A 303 British rifle was designed so that when the safety is on you cannot open the bolt. Now, doing it as he says in the facts, if you release this safety, it normally will not fall. Now, I have sold thousands of these guns and they were all military surplus, which means that you have

mismatched bolts and all. I have seen these guns when something might have been keeping it from releasing it... the safety would then fall. This would seem to be in good mechanical condition. So the only way you could so that, a person not familiar with the gun or anyone not armed, he would immediately take it like that and the gun would fire, as soon as the safety is released, if you heard the gun fire. I'm going to pull the safety back on, you notice it here, if he pulls it, and the gun fires. It's very easy. I've seen it many times happen in the store...by persons who are not familiar with operations of guns.

COURT: You are using your left hand to push the safety?

A I assume that this gentlemen was right handed and this will be...if you will note...if you had a gun and you tried to open it like that the natural inclination would be to take the gun like this and fire it you see. To open the bolt with the right hand and knowing that you had to get the safety. I'm of course just stating how it could happen because I have seen people in the store, who are unfamiliar with it....I've seen some come in, close the thing, and put the safety on and couldn't open it and thought they had broke the bolt and just quietly put it back on the rack and walk out the door - they thought they had broke the gun. But that's not the fact at all, you have to have the safety off before you can open the bolt on a 303 British rifle.

RECROSS EXAMINATION

A Well, no sir...I'm not...May I do it one more time? All right, being familiar with the gun, of course, I would take my right hand and push this safety forward, as you can see it's a little hard to do...it can be done... I think that's the way they intended for it...I can't imagine any Army that would have one that would require you to move the left hand to the rear to do it...but I am assuming I don't know this gentleman, I've never seen him, and I don't know how familiar he is with guns, and I'm basing what I said strictly on the facts that I have seen it done in the store. A man will lock it accidently and he'll either take hold of it like this and push that safety, in which case it will fire or if he really wanted to open it, if there was a round in it, I would assume that he would want to open it, and this thing is on, the natural inclination would be to take this thing like that. Now, if you did not put your finger on the trigger than as I said, barring a mechanical failure, then you can take this off - it makes no difference which hand you use, the thing will not fire, but I have seen them mechanically at fault. But this one appears to be in good mechanical condition.

Q And would not normally fire unless the safety came off?

A It would not fire without the safety off...I don't believe on this one, sir.

NEAL: That's it, Your Honor, I would like...the defense at this time wishes to renew its motion to strike the evidence, as insufficient in law and for the same reasons that were enumerated at the time of the first motion.

COURT: What is your position, Mr. Pettit?

PETTIT: If Your Honor please, the evidence here is totally contradictory between the Commonwealth and the defense with the exception of the gun, I think that dovetails in perfectly and...

COURT: So you are saying the entire issue has to be..

PETTIT: I say the entire issue should go to the jury.

NEAL: Yes sir, Your Honor, the defense moves to set aside the jury's verdict as being contrary to the law and evidence. I don't think there is one iota of evidence to support the charge of malice, the element of malice in this crime...if it was a crime.

COURT: Well, of course, if you believe the Commonwealth's evidence in this case there was malice shown by the fact that there was argument, ill will and...between the two. One told the other one to leave and that's when the shot took place. And so I can't disregard that testimony. I have to overrule the motion to set aside the verdict, Mr. Neal.

NEAL: I respectfully except Your Honor on that and the grounds mentioned previously.