215 Va. 308

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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

730676

JAMES HARLEN FORD, sometimes
known as JAMES HAROLD FORD

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

F. BRUCE STEWART, for Plaintiff in Error

JAMES E. KULP, Assistant Attorney General
(Andrew P. Miller, Attorney General) for
Defendant in Error

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COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

January 16, 1973

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about October 14, 1972 in the County of Southampton James Harold Ford unlawfully did have in his possession a "sawed-off" shotgun for offensive or aggressive purpose

Va. Code § 18.1-268.3

against the peace and dignity of the Commonwealth of Virginia.

This indictment found at the January 16 Term, 1973, of the Circuit Court of Southampton, on the evidence of Deputy Sheriff D. A. Price witnesses sworn and sent to the Jury by the Court.

A True Bill

PRESENT: Mr. Richard C. Grizzard,
Attorney for the Commonwealth

Mr. Richard E. Railey,
Counsel for defendant

THE DEFENDANT, JAMES H. FORD, WAS ARRAIGNED ON AN INDICTMENT CHARGING POSSESSION OF A SAWED-OFF SHOTGUN.

MR. RAILEY: Your Honor, before the defendant enters a plea, we would move to dismiss the indictment on the ground that the registration required by Section 18.1-268.7 of the Code of Virginia violates the defendant's privilege against self-incrimination as guaranteed by the Fifth Amendment of the Constitution of the United States. We cite as our authority the case of Haynes v. United States, a case decided in 1968. This case, if Your Honor please, is cited in a Virginia case, which I think is the only case that has had a chance to construe or interpret this section. Riley v. Commonwealth, 213 Va. 273, in the Riley case the Supreme Court of Virginia said the defendant relies on Haynes v. United States, 390, U. S. 85 (1968), which held that a proper claim of the privilege against self-incrimination provided a defense to a prosectuion for either failure to register certain weapons with the Secretary of the Treasury under the National Firearms Act, or for possession of certain un-

registered weapons. Now, the Supreme Court left out the word full when speaking of a defense to a prosecution. The Supreme Court went on to say, "We do not construe Haynes to hold that act unconstitutional per se". Then the Supreme Court said, "In the case at bar Riley did not assert his constitutional privilege against self-incrimination in the court below". The Supreme Court went on to say, "Constitutional objections may be met by a proper assertion of a claim of privilege". If Your Honor please, this case was brought under the Sawed-off Shotgun Act, which was enacted in 1968. 18.1-268.4 creates a rebuttable presumption, which the Supreme Court of Virginia said in Riley v. Commonwealth are not conclusive presumptions, but may be rebutted; one of which is that a sawed-off shotgun of the type described in the Statute, and has not been registered, the presumption is that it is held for an aggressive or offensive purpose. Now, in the case of Haynes V. United States, the defendant, the petitioner, was charged with violation of a Federal Statute, knowingly possessing a firearm as defined by the Statute which had not been registered with the Secretary of the Treasury or his delegate as required by another section. The petitioner moved before trial to dismiss this count asserting his right under the Fifth Amendment as the Supreme Court recognized, and there was

1 no question that this was done. Suffice it to say
2 it was denied in the lower court and the Supreme
3 Court of the United States reversed and entered
4 judgment for the petitioner, saying the petitioner
5 from the evidence now before us that the rights of
6 those subject to the Act will be fully protected
7 if a proper claim of privilege is asserted and pro-
8 vide a full defense to any prosectuion either for
9 failure to register under the section for possess-
10 ion of a firearm, which has not been registered,
11 and these are Federal Statutes sections in the
12 Haynes case. As I said, if Your Honor please, the
13 Haynes case, as I understand it, is not in consistent
14 with what our Supreme Court has said in the Riley
15 case. They did not declare the Federal Act un-
16 constitutional, and I think our Supreme Court is
17 right in that conclusion, but it said the defen-
18 dant had the right to assert his right that to
19 register would violate his privilege of self-in-
20 crimination. That was the perfect defense cited
21 in Haynes; a perfect defense to the Federal Regis-
22 tration Act. The difference we have here today
23 and in the Riley case; in the Riley case, to my
24 knowledge, is the only one which our Supreme Court
25 has interpreted and construed this section, and
26 this was decided on October 9th of last year. The
27 question of self-incrimination and the constitu-
28 tional question was not raised in the trial court,

and it seems to me, if Your Honor please, that we have exactly the same situation here as existed in the Haynes case, and the Supreme Court said the right was a perfect right to assert which the Court did not deal with in Riley, and they said Riley did not assert his constitutional right and the constitutional objections may be met by the proper assertion of claim and privilege, so we think it is proper under the Haynes decision of the United States Supreme Court, which is still the law under the Riley decision of the Virginia Supreme Court. The defendant at this point, after the reading of the indictment, moves to dismiss it on the ground that the registration, which creates one of the presumptions in this case, is the presumption on which the Commonwealth would proceed, and would violate his privilege against self-incrimination.

THE COURT: If he had registered it, he would have been in the clear?

MR. RAILEY: I don't think so, but for the purposes of this motion, failure to register creates a presumption, and he could register and he couldn't be charged with failure to register, and he couldn't be tried under the sawed-off shotgun Act, and the Commonwealth wouldn't have a presumption that failure to register would create a presumption, and that, of course, is what the

Supreme Court of the United States dealt with.

THE COURT: In that case, what was the situation? He was just supposed to register it anyway?

MR. RAILEY: Yes, sir. If he had it, he was supposed to register it.

THE COURT: But if he had registered it, then he wouldn't have violated the law, is that what you are saying?

MR. RAILEY: Yes, sir.

MR. GRIZZARD: In answer to that, Your Honor, under 18.1-268.7, you are required to register within twenty-four hours with the State Police, and the State Police must issue a certificate of registration. The only offense then that would be created if you did not have that certificate of registration with you, and did not produce it when asked for it by a police officer, that is a misdemeanor. Now a presumption is created by the Statute. Under 18.1-268.7, when there is a failure to register a sawed-off shotgun, they shall be presumed to possess the same for offensive or aggressive purposes because it wasn't registered within twenty-four hours. Indeed possession of a uniquely violent weapon, like a sawed-off shotgun so easily concealed, has no legitimate purpose in general use, and should be controlled in the public interest. The Statute does not prohibit possession

of a sawed-off shotgun, nor does it create a conclusive presumption that the weapon is used for an offensive or aggressive purpose. One in possession of a sawed-off shotgun may rebut the evidentiary that its possession was for an unlawful purpose. The burden then merely shifts to the defendant, and further down in the case, it says that in the case at bar Riley did not assert his constitutional privilege against self-incrimination in the court below. In our view, the registry provisions of 18.1-268.7 are not unconstitutional per se. The General Assembly may restrict the possession or use of a sawed-off shotgun by requiring registration with law enforcement authorities by a proper assertion and claim of privilege. Now, that is just one of the presumptions created by the Statute. There is nothing in the Statute which would make the defendant or any other individual guilty of possession of a sawed-off shotgun if it is registered. The only crime that would be committed then, and I quote from 18.1-268.7, "The superintendent of State Police shall immediately upon registration required in this section furnish the registrant with a certificate of registration, which shall be kept by the registrant and produced by him upon demand by any police officer. Failure to keep such certificate for inspection shall be a misdemeanor.

1 There is nothing on self-incrimination in that
2 Statute. You are allowed by the Statute to own a
3 sawed-off shotgun, and the only requirement is
4 that once you have got that certificate, you must
5 keep it like it is a motor vehicle title, or other
6 piece of property that the State requires you to
7 keep in your possession, and there is nothing un-
8 constitutional in the Act whatever.
9 MR. RAILEY: Just briefly to answer Mr.
10 Grizzard, he is saying there is nothing about
11 self-incrimination but the Supreme Court of Virgin-
12 ia doesn't agree with that. They certainly re-
13 cognize it because they have said that Riley did
14 not assert his constitutional privilege against
15 self-incrimination in the court below. The
16 General Assembly may restrict the possession of a
17 sawed-off shotgun by requiring the registration
18 with a law enforcement officer, and constitutional
19 objections may be met by the proper assertion of
20 claim of privilege. I agree with Mr. Grizzard and
21 he is exactly right that a person who registers
22 then the only violation under this Section is a
23 misdemeanor, which carries a fine up to one
24 thousand dollars for not having the certificate with
25 him, plus any peace officer may, without warrant,
26 seize the sawed-off shotgun and apply for its
27 confiscation. I think the Supreme Court of the
28 United States recognized the dangers of the

1 violation of rights of the citizen in the Haynes
2 case, and the Supreme Court of Virginia read the
3 Haynes case before they wrote the Riley opinion.
4 The Supreme Court of the United States said, "The
5 registration requirement is thus directed principally
6 at those persons who have obtained possession of a
7 firearm without complying with the Act's other
8 requirements, and who therefore are immediately
9 threatened by criminal prosectuions under sections
10 5851 and 5861. They are unmistakably persons
11 'inherently suspect of criminal activities.' It is
12 true, as the United States emphasizes, that regis-
13 tration is not invariably indicative of a viola-
14 tion of the Act's requirements; there are situa-
15 tions, which the United States itself styles 'un-
16 common,' in which a possessor who has not violated
17 the Act's other provisions is obliged to register.
18 Nonetheless the correlation between obligations
19 to register violations can only be regarded as
20 exceedingly high, and a prospective registrant
21 realistically can expect that registration will
22 substantially increase the likelihood of his
23 prosecution. Moreover, he can reasonably fear
24 that the possession established by his registra-
25 tion will facilitate his prosecution under the
26 making and transfer clauses of s. 5851. In these
27 circumstances, it can scarcely be said that the
28 risks of criminal prosecution confronted by

prospective registrants are 'remote possibilities out of the ordinary course of law,' yet they are compelled, on pain of criminal prosecution, to provide to the Secretary both a formal acknowledgment of their possession of firearms, and supplementary information likely to facilitate their arrest and eventual conviction. The hazards of incrimination created by the registration requirements can thus only be termed 'real and appreciable'." This is what the United States Supreme Court said in Haynes, and this is what the Supreme Court of Virginia had before it to consider in writing the opinion in Riley, and said, "The constitutional objections may be met by a proper claim of privilege", and we move to dismiss the indictment.

THE COURT: I will overrule the motion.

MR. RAILEY: We note our exception.

MR. WILLIAMS, CLERK: How do you plead to this indictment as read?

DEFENDANT FORD: Not guilty.

MR. WILLIAMS, CLERK: Do you wish to be tried by the Court, or by a jury?

DEFENDANT FORD: By the Court.

THE COURT: Let me ask you some questions. How old are you?

DEFENDANT FORD: Twenty.

THE COURT: When were you born?

MR. RAILEY: The defendant moves to exclude the witnesses.

THE COURT: All right, have them sworn and take them out.

MR. GRIZZARD: The Commonwealth concurs in the waiver of jury.

MR. RAILEY: If Your Honor please, before Mr. Grizzard proceeds, I have another motion that I don't think will take any time at all. We move to suppress the gun evidence, which I suppose he will attempt to introduce, and I make this motion now, and I think Your Honor can hear the evidence first.

THE COURT: All right, you can make the motion and then after I have heard the evidence I will rule on it.

MR. RAILEY: That is all right, sir. I don't see any need of a separate hearing.

THE COURT: It won't make any difference since we don't have a jury, and I will take that under advisement.

C. P. HOLLANDSWORTH, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIZZARD:

Q State your name, address and occupation.

A Lieutenant P. C. Hollandsworth, 5204 Rock String Court, Richmond, Virginia, and I am Assistant Investigator and Records Officer for the Virginia State Police.

Q And were you so employed in October of last year, sir?

A I was not so employed in October of last year. I assumed my duties in December.

Q How long have you been with the State Police.

A I have been with the State Police for more than eighteen years.

Q As an assistant in the Investigation and Records Section are you familiar with the records regarding registration of sawed-off shotguns required under 18.1-268 of the Code of Virginia?

A Yes, sir. This is one of my duties as the Assistant of Investigation and Records Office.

Q Did you have occasion to search the records as regards to James H. Ford?

A Yes, sir, I did.

Q Could you tell the Court whether or not there is any record the defendant, James H. Ford, had for ever registering a sawed-off shotgun of any make or description with your department.

MR. RAILEY: If the officer has the records here with him, I will call for them. They would be the best evidence.

THE COURT: Well if he didn't have a re-

cord, he wouldn't have it.

MR. RAILEY: He has searched the records as regards James H. Ford, and I would like to know what records he searched.

THE COURT: All right, Mr. Grizzard, you can be more specific.

MR. GRIZZARD CONTINUING -

Q What records did you search?

A I personally searched our master name file and our shotgun registration file, and did not find any record.

MR. RAILEY: Will you hold the answer to that and tell us what you searched?

MR. GRIZZARD: I don't know what else he could search.

THE COURT: Are there any other records up there that would show anything?

A The master name file covers everything, and the registration file would be a part of that.

MR. GRIZZARD CONTINUING -

Q Again I ask you the question whether or not those records revealed whether James H. Ford ever registered any shotgun of any make or description with your department?

A I found no record of any registration of a sawed-off shotgun in his name.

Q How far back did you search these records?

A Well, this master name file I am referring

to goes on back, well really, I don't know how far back, but it goes back into the thirties. I have seen some names in the thirties.

Q How far back did you search?

A I searched the complete file, our entire file, for this name and it would go on back as long as we have been keeping records.

Q This machine gun file, how far back did you check that record?

A I checked the complete file on it.

Q Which goes back to what date?

A Well, it would be hard to say exactly what date as long as we have been keeping machine guns and sawed-off shotguns.

Q What is the earliest date you recall seeing?

A There is nothing in there in his name, but there are some pretty old cases there on machine guns.

Q What I am saying, how far back was the earliest date that you can recall; 1940, 1950, 1960, or 1973?

A The earliest date that I can recall possibly six or seven years ago, but they go back further than that.

Q You did search it back for six or seven years?

A In other words, you search it from the inception; you don't have any certain number of years. You go back through the whole file, and it is a complete file.

Q Which is older than six or seven years?

A Yes, sir.

MR. GRIZZARD: That's all.

CROSS EXAMINIATION

BY MR. RAILEY:

Q Lieutenant Hollandsworth, as I understand you live in Richmond, and you are employed in Richmond?

A Yes, sir.

Q Where in Richmond is your office?

A The Administrative Headquarters of the Virginia Department of State Police, 7700 Midlothian Turnpike.

Q And you have been there since December 1 of last year in this capacity.

A I have been there in this capacity.

Q You were not there before December 1, 1972?

A No, sir.

Q So you had nothing to do with the master name file and the shotgun file before December 1, 1972?

A Not directly, no, sir.

Q Did you have anything to do with it indirectly, Lieutenant Hollandsworth?

A As being a member of the Department of State Police every member of the State Police can send in their records, or a part of them, furnishing the names to go with it.

Q You had nothing to do with keeping the master name file, or keeping the records there?

A No, sir.

Q You did what every other State Trooper does in sending in what you are required to send in?

A Yes, sir.

Q Lieutenant Hollandsworth, in the master name file when you were checking for the defendant in this case, for whom were you looking? What name and statistics did you have on the defendant?

A I was looking, of course, on the registration of the sawed-off shotgun in the name of the defendant.

Q And what information did you have for the name of the defendant?

A James H. Ford.

Q And what address did you have for him?

A There was no specific address that we had, but I checked the entire file on James Fords.

Q What age did you have?

A There was no specific age that I had on him.

Q Did you have any descriptive information? Did you have anything other than his name?

A No, sir, I did not.

Q The master name file, Lieutenant Hollandsworth, does that include a card for everyone who has ever been charged with any traffic violation in Virginia.

A This would not contain a name that has been charged with a traffic violation. It would include criminal violations, and his traffic records are kept at the Division of Motor Vehicles.

1 Q What I am getting at, the master name file
2 is in alphabetical order?
3 A Well, it is set up somewhat alphabetical.
4 Q And what you did, you went there and went
5 through it to the Fords and you went to the James Fords and
6 you pulled all the James Fords you had, didn't you?
7 A Yes, sir.
8 Q You didn't look in the S's and T's to see
9 if some Fords might have gotten there by mistake?
10 A No, sir.
11 Q Did you do this same thing in the shotgun
12 file? Did you go to look for James Ford?
13 A Yes, sir. The shotgun file is relatively
14 easier to check.
15 Q There are not as many names on there?
16 A No, sir.
17 Q How many would you say there are?
18 A Not over fifty.
19 Q In all?
20 A Yes, sir.
21 Q In the whole State of Virginia it would be
22 fifty, not over fifty sawed-off shotguns have been registered
23 since the law went into effect in 1968?
24 A Yes, sir.
25 Q And you found no James Ford?
26 A No James Fords.
27 Q Now, Lieutenant Hollandsworth, do you know
28 the defendant in this case, James Harrell Ford?

then you looked in the master name file?

A That's right, sir.

Q Do I understand you couldn't tell us today whether or not your master name file reveals whether or not James Ford is charged with possession of a sawed-off shotgun on October 14, 1972?

A Not positively, no, sir.

Q Do you have your blanks on which the sawed-off shotguns are registered? Do you have one with you?

A Yes, sir.

Q May I see one?

A Yes, sir.

MR. RAILEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. GRIZZARD:

Q May I see that blank? Do you have another copy of this?

A I think I do. If I don't, you are welcome to take that one.

MR. GRIZZARD: I would like to offer a copy of the application that is used for registration of a sawed-off shotgun into evidence as Commonwealth's exhibit number "1".

MR. RAILEY: We have no objection.

THE COURT: All right, that will be Commonwealth's exhibit number "1".

RECROSS EXAMINATION

BY MR. RAILEY:

Q Do you have a blank certificate?

A Yes, sir.

Q Do you have another one of these?

A We don't like to let them go.

Q I can see why you wouldn't. One other question on the registration application form, this was prepared by the State Police, I suppose, as required by the Statute?

A Yes, sir.

Q The blank requires the applicant to state the date he came into ownership. Does the applicant usually list the time that he acquired it?

A Yes, sir.

Q He is supposed to list the hour?

A Not necessarily the hour, but the day. We have had cases, of course, that maybe an applicant couldn't specifically remember the date it was acquired, but it has to be given to the best of the persons knowledge when they acquired it.

Q But the hour they acquired it is not put on it?

A The specific hour, it might be right hard to do.

Q The date would be March 13, 1972, if it was acquired today?

A That's all we would require, yes, sir.

MR. RAILEY: All right, that's all.

MR. GRIZZARD: Could we adjourn for lunch, Your Honor?

THE COURT: All right, we will adjourn for lunch until about quarter of two.

TRIAL CONTINUING AFTER LUNCH.

DAVID A. PRICE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIZZARD:

Q Mr. Price, state your name, address and occupation please?

A David A. Price, Deputy Sheriff, Courtland, Virginia.

Q Do you know the defendant in this case, James Ford?

A I do.

Q Did you have occasion to see him in the early morning hours of October 14th of last year?

A Yes, I did.

Q Where did you see him, sir?

A On the grounds of the Courtland Recreation Center, the old primary school in Courtland.

Q Were you on duty at that time?

A No, I was not.

Q When did you go off duty that day?

A I don't recall what time it was.

Q What time of day was it when you saw the defendant?

A Early morning hours, around 12:40 A.M.

Q And where was he when you saw him?

A He was standing on the grounds about fifteen feet from the pole that furnishes lights for the parking area.

Q Tell the Court what occurred at that time?

A When I saw the defendant, he was standing behind three other fellows, and I observed a gun in his hand, a sawed-off shotgun in his hand at that time, and I called to the defendant and asked what he was doing with the gun, and told him he didn't need it there, and he made about two steps backwards and he turned and ran off in the dark towards the bushes.

Q How was he holding the gun at that time?

A He was holding it to his side.

Q Right hand or left hand?

A Right hand side.

Q Who were the other people that were there? You say he was standing behind three other fellows; do you know who they were?

A He was standing behind James Butts and two Wrenn boys, I don't know their names.

Q What was going on that you observed with the defendant and these others?

A There was some type of argument between one of the three. It was Ronnie Whitney, I learned later.

1 Q Now, in regards to where this argument was
2 taking place, between one of these three in front and the
3 Whitney boy, where was the defendant, James Ford?
4 A What did you say?
5 Q Where was James Ford in regards to these
6 people standing up there arguing?
7 A He was immediately behind them, about a
8 yard behind them.
9 Q Now, when you spoke to the defendant, what
10 did you do at that time?
11 A I started toward him.
12 Q What happened?
13 A He stepped back and turned and ran, and I
14 started running after him, and then I stopped.
15 Q Where did the defendant go, if you know?
16 A He went off into the dark.
17 Q Walking or running?
18 A He ran.
19 Q Now, did you have occasion to see him later
20 that same morning?
21 A I saw him a few minutes later, and I don't
22 know how long it was, but immediately after he came back to
23 approximately the same place I had seen him before.
24 Q Did you notice anything about him then?
25 A He did not have the gun, and I asked him
26 where the gun was, and I told him I wanted it.
27 Q What, if anything, did he say when you asked
28 for the gun?

1 A He said, "What gun?".
2 Q What happened after this, was that the ex-
3 tent of your conversation with him at that time?
4 A Not exactly. I told him the one he had
5 before, and he said he didn't have any gun, and then I told
6 him he had to leave the grounds.
7 Q Did he leave?
8 A He went toward the car.
9 Q Did he go by himself?
10 A No. Some more fellows left with him in the
11 car; in James Butts' car, and I don't know who else was with
12 him when he left in the car.
13 Q What did you do after he left?
14 A When he left, I went back to my car, got my
15 flashlight and went in the direction he had run and looked
16 for the gun, and I didn't find it, so I came back and got in
17 my car and used the headlights, and I didn't find it then so
18 I waited there for a while looking, and as soon as he came
19 back I saw him, and I observed him again later walking back
20 down the road in the area he had run.
21 Q How much later was that after he had left?
22 A This was about ten or fifteen minutes later.
23 Q And when you saw him this last time, where
24 was he going and what was he doing?
25 A He was walking on the street, and I appro-
26 ached him and asked him where he was going, and he said he was
27 looking for someone to give him a jump. His car cut off and
28 I told him to go back to his car and wait there, and I would

send someone to give him a jump.

Q What, if anything, was he doing as he walked down the road?

A Well, I didn't approach him until he was walking about the center of the road, and he turned toward the edge of the road and that is when I approached him as he was looking down like he was looking for something, and that is when I approached him.

Q You say you had some conversation with him at this time?

A I did.

Q Tell the Court what this was?

A I asked him where he was going and what he was looking for, and he said he was looking for someone to give him a jump. His car had cut off, and I told him to go back to his car and I would send someone to give him a jump, or I would be there myself.

Q Did he leave?

A He left and started back in the way he had come.

Q What did you do then?

A I looked where he was looking before, and used my lights on my car to look, and there I found a sawed-off shotgun in the bushes.

Q Had far from the road?

A About four feet.

Q How farwas it from you when you stopped him and had this conversation with him?

A About 160 feet.

Q I am talking about the last conversation.

A About 12 feet. It would be to one side of the road.

Q What did you do with that gun?

A I brought the gun to the Sheriff's office, tagged it and put it in the locker.

Q Do you know where it has been since?

A It has been in the locker.

Q From where you first saw him, and you first said something about give me the gun, and he turned and ran, which direction did he go?

A He ran in front of me towards the wooded area.

Q In relation to where you found the gun, in which direction did he go?

A He ran toward the area I found the gun.

Q Have you ever seen this before, Mr. Price?

A Yes, sir, I have.

Q Tell the Court where.

A This was the gun I found in the ditch about four feet from the road.

MR. RAILEY: I object to the conclusion.

MR. GRIZZARD: To the conclusion, he said this is the gun I found.

THE COURT: He said that was the gun he found.

MR. RAILEY: Well, if Your Honor please, if

on it, and that is the gun he found.

THE COURT: Well he said it has been in the Sheriff's office all the time.

MR. GRIZZARD CONTINUING -

Q Do you know of your own knowledge whether or not this weapon works?

A No, I do not.

Q When did you next see James Ford after finding this gun?

A Around 6:00 P.M. Saturday afternoon.

Q And what was the occasion for that?

A I had sworn an arrest warrant for him for possession of the gun, and I served the warrant.

Q Did you arrest him?

A I arrested him at that time.

Q All right, who else was out there that night that you can recall at the Recreation Center when you first saw this gun?

A Joseph Harris, Sr.

Q Anybody else?

A I don't know who else was there besides the men that was standing in front of Ford, and the two Wrenn boys, and I don't recall anybody else by name.

Q You mentioned Ronnie Whitney.

A Ronnie Whitney had his back to me; he was doing the talking, and I don't know who else was there with him. There were more people there, but I don't know who they were.

Q Had you been in the Recreation Center? Had you been to the program there?

A Not to the program, no. I had been there to see someone.

Q You had been there to see somebody?

A Right.

Q And you were just seeing them on the outside?

A No, I saw them indoors.

Q It was a goodly crowd there, one hundred or so on the inside?

A Oh, I guess so. I don't know exactly how many.

Q It was a right good crowd?

A A good crowd there.

Q And you had been to see somebody and you had been inside and seen them, is that right?

A I had seen them.

Q And you had come on out, and were you leaving then when you saw James Ford?

A I was leaving.

Q How far was he from the building, Mr. Price?

A Between twenty and thirty feet.

Q You were going from the building to your car when you saw him?

A No, I had turned back. I had started to my car, and I heard the commotion and turned around.

1 Q You heard somebody arguing?
2 A Yes, then I turned around.
3 Q And you went back and found that somebody
4 was arguing with Ronnie Whitney, is that right?
5 A That's right.
6 Q And that is all that was going on there,
7 just a couple of men were arguing, a couple of young men?
8 A That's all I observed.
9 Q Did you say anything to them; did you tell
10 them to break it up?
11 A No, I didn't.
12 Q You didn't arrest either one of those men?
13 A No, I did not.
14 Q They were not creating any disturbance were
15 they?
16 A The argument ceased as we approached.
17 Q You say as we approached?
18 A Yes, there was someone with me. Joseph
19 Harris, Sr. was with me.
20 Q All right, so as you approached their
21 argument ceased and you didn't call to them to cease it and
22 they just stopped, is that right?
23 A That's right.
24 Q As you approached they ceased, and then
25 you could see James Ford, and you saw that he had a gun in
26 his hand?
27 A Correct.
28 Q In his right hand?

1 A That's right.

2 Q Now, Mr. Price, the Commonwealth has intro-
3 duced this gun as the one you say you found over there. The
4 Commonwealth has introduced this, Mr. Price, as the gun that
5 you say you found over in the ditch.

6 A Yes, sir.

7 Q Withholding any questions on that for the
8 time, can you say that this is the gun that James Ford had
9 when you went up there?

10 A No, I can not.

11 Q But he did have a gun that looked something
12 like this?

13 A He did.

14 Q Will you stand up and show Your Honor, Mr.
15 Price, how he was holding the gun?

16 A Something like this, down to his side.

17 MR. RAILEY: Would it be permissible to
18 show that Mr. Price was holding the gun and he has
19 it in his right hand by his right leg, and the hand
20 seems to be extended as far down toward his feet as it would
21 normally go.

22 THE COURT: And the barrel is pointing to
23 the ground.

24 MR. RAILEY CONTINUING -

25 Q Mr. Price, I noticed when you demonstrated
26 the gun, you did not have your finger in the trigger. Do you
27 know whether or not his finger was in the trigger?

28 A I do not know.

1 Q When you saw him standing there, you called
2 to him and told him to give you the gun, is that right, sir?
3 A I don't recall exactly what I said, but I
4 said, give it to me, and I told him he didn't need it. I
5 know I said that.
6 Q You knew him by name?
7 A Yes, I did.
8 Q How long had you known James Ford?
9 A A year or so.
10 Q Did you call him James, or did you call him
11 Turtle?
12 A Neither.
13 Q What did you call him?
14 A Ford.
15 Q You say as best you remember that you just
16 called to him, and said you don't need the gun?
17 A I said, "You don't need it, give it to me",
18 or what are you doing with it. I don't know exactly the words
19 I used.
20 Q You can't say postively that you told him to
21 give you the gun or not at that time?
22 A Not at that time.
23 Q And he ran and you started after him, but
24 you didn't go very far?
25 A No, I did not.
26 Q And then he came back in about five minutes
27 didn't he?
28 A Approximately.

Q You were still there where these folks were, Ronnie Whitney, the man who had been arguing and you were still in relatively the same place?

A No, we got back to the same place about the same time, and I left and went back to my car and got the flashlight.

Q In other words, this was after Ford left the first time?

A Right after he ran.

Q You started after him and stopped, and went back to your car and got the flashlight?

A Right.

Q You got the flashlight to look for him to see where he was going?

A Well, I didn't know what I was going to do with the flashlight at the time.

Q You just got the flashlight?

A Right.

Q It was early morning hours, and you wanted the flashlight so you could see what was going on?

A Right.

Q But this was right out under the light near the building, wasn't it?

A Yes, it was.

Q In other words, where the two men were arguing with each other and where Ford was standing behind some other folks, as you came out of the building you could see all of the people there, couldn't you? You might not

1 recognize every one of them, but you could see the people.
2 A I could see the people, yes.
3 Q You could see them in the light?
4 A I didn't look toward that light when I
5 came out.
6 Q What I am getting at, weren't they right
7 under the light?
8 A They were under the light, yes, about
9 fifteen feet from the pole that the light was on and you
10 could see.
11 Q In other words, if you had known every one
12 of them you wouldn't have had a bit of difficulty from the
13 light angle of identifying everybody there, would you? You
14 could have seen the people.
15 A I could have seen the people, right.
16 Q And if you had known them, you could have
17 identified them just as you did Ford?
18 A Correct.
19 Q Was any one of them further away from you
20 than Ford?
21 A Not when I approached, no.
22 Q He was the furtherest man away?
23 A Furtherest man away.
24 Q Did you hear him say anything at all?
25 A No, I did not.
26 Q He didn't make any remarks?
27 A No, he didn't.
28 Q All right, sir, after you got your flash-

1 Q You did not?
2 A No.
3 Q Do you knowwhether or not any other office
4 did?
5 A I do not.
6 Q How about the federal officers. You have
7 talked with them about the gun, haven't you?
8 A I did not.
9 Q When you found the gun, were there any shells
10 in it?
11 A It was not.
12 Q Did you find any shells in the area at all?
13 A No, I did not.
14 Q Were any guns fired there in the area of
15 the Courtland Recreation Center the night of October 14?
16 A Not to my knowledge.
17 Q How long were you there?
18 A Twenty minutes to a half an hour.
19 Q How long had you been there before you first
20 saw the defendant?
21 A Not five minutes.
22 Q So most of the time you were there was
23 after you saw him?
24 A Yes.
25 Q I believe you testified about twenty minutes
26 to one or maybe ten or fifteen after one that you found the
27 gun.
28 A That's correct.

A I do not.

Q You have never made any test of it?

A No, I have not.

Q You have never made any fire test or any other kind of test?

A No, I haven't.

Q And to your knowledge, no one else has?

A I don't know.

Q You have said it has been in the locker all the time except the time you brought it to County Court, and you brought it here today, and a test couldn't have been made with it in the locker, could it?

A No, I don't think so.

Q Suffice it to say, you know of no test, do you, Mr. Price?

A Correct.

Q Mr. Price, you say you have known James Ford for about a year?

A Maybe more than that.

Q You know that he is not a foreign born person?

A I assume so, I don't know.

Q And to your knowledge, prior to October 14, 1972, had he ever been convicted of a crime of violence in any court of record in the State, or federal courts of the United States of America or its territories, or its possessions?

A Not to my knowledge.

Q A crime of violence being defined, Mr. Price,

as any of the following crimes, or attempts to commit any of the same: murder, manslaughter, kidnaping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking and entering, and larceny; to your knowledge, you do not know of James having been convicted of any of those crimes prior to October 14, 1972?

A That's correct.

Q Did anyone else, or did you see anyone else have a weapon of any kind that night?

A No, I did not.

Q When I say a weapon, I mean pistols, knives, or anything of that sort; you didn't see any other weapon of any kind either at the Recreation Center or out there under the light?

A No, I did not.

Q And I believe you said you did not hear James Ford say anything at all except what he said to you?

A That's all I heard.

Q You, Mr. Price, observed Mr. Ford have a gun in the manner you have demonstrated, holding it in the manner in which you have demonstrated to Judge Whitley, and when you said something to him about it, he ran, and you haven't seen him with that gun or any gun at any time since, have you?

A No, I haven't.

Q Sometime after that you found what you say is this gun in a ditch some distance, as you have described,

RECROSS EXAMINATION

BY MR. RAILEY:

Q Was he the one that you went up and spoke to when you got there?

A That's right.

Q He was in the Recreation Center and you went up to speak to him?

A Right, I went to the door to see him.

MR. RAILEY: That's all.

JOSEPH HARRIS, SR., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIZZARD:

Q State your name, address and occupation please.

A Joseph Harris, Sr., Route 1, Box 74, Courtland, Virginia.

Q Do you know the defendant in this case, James Ford?

A Do I know him, yes, sir.

Q Did you have occasion to see him the early morning hours of October 14 of last year?

A Yes, I did.

Q Where did you see him?

A At the Recreation Center out there in Courtland.

Q What were you doing there at that time of morning?

A At that time of morning I am a special police in that area, and they had a dance out there.

Q Had you been there all night?

A Yes, I had been there from nine until about one.

Q Had you seen the defendant before the early morning hours of the 14th that night; in other words, had he been into the dance?

A I think I saw him, yes, sir.

Q What time did the dance get over with?

A Approximately one o'clock; nine until one.

Q Now, could you tell the Court whether or not you observed the defendant being involved in anything unusual at the Recreation Center that night?

A Well, the only thing I knew about or saw between twelve-thirty and about twenty minutes to one something was going on outside. There was a disturbance and what started it, I don't know.

Q Well, what attracted your attention to it?

A Well, what attracted my attention, we were taking a break and I went on the outside and Sheriff Price stopped by to see me at the time, and this action was going on outside.

Q What about this action; what was going on outside?

A It looked like to me there was an argument.

I don't know what it started about.

Q Did you hear any of the argument?

A No, I didn't.

Q What made you think it was an argument?

A Well, they were clustered around and Deputy Price and I saw him with this gun; that is the only thing I know about it.

Q Saw who with a gun?

A We saw Ford.

Q Where was this argument to begin with?

A It was out there in the Center when I first saw it, and it was between ten foot away when I first saw it.

Q When you first saw it?

A Him with the gun.

Q Which hand did the defendant have the gun in?

A I am not sure, but I think he had it most likely to his left, like this.

Q Take that gun up there and show the Court how he was holding it when you saw it.

A Something like this.

Q Who else was out there at that time?

A Some more people around at that time, and I don't know exactly who it was. Sheriff Price was along there with me.

Q What happened when you saw the gun like that?

A What happened?

Q Right.

A Well, he didn't resist, and Deputy Price told him to bring the gun and give it up, and he started going back in the other direction.

Q Well, then what happened?

A By that time after things quieted down, I went on back inside.

Q What I am saying, when Deputy Price told the defendant to give him the gun, you say he started going the other way?

A Yes, sir.

Q Where did he go?

A He went right straight across.

Q Walking or running?

A Mostly like running straight across.

Q And what did Deputy Price do, if you know?

A Well, the last thing I can remember, he stayed out there and I went back inside to see how things were going inside, and around about that time between quarter to one and ten minutes to one.

Q Which occurred first; did you see the gun first or did you hear Deputy Price ask for the gun first?

A Well, I heard Deputy Price ask for the gun first, and that's when I first discovered it, and like I say he was about ten foot from where we were standing at the time.

Q Was anybody between you all?

A Right at the time, it wasn't nobody standing between us. We were right in the open, but some people, I

1 don't know who they were, were clustered around on the side.
2 Q You said it was an argument. Do you know
3 who was arguing?
4 A No, I really don't.
5 Q Do you know James Butts?
6 MR. RAILEY: I object to the leading.
7 MR. GRIZZARD: I am asking if he knows some-
8 body. I don't know what is leading about that.
9 THE COURT: Well the Court thinks it is
10 leading and it is suggesting to him who might have
11 been there. He said there was some people clustered
12 around and you asked him if he knew any of them,
13 and he said he didn't.
14 MR. RAILEY: Your Honor, he asked him if he
15 knew Butts, and I am objecting to the suggestion.
16 THE COURT: See if you can keep from
17 suggesting.
18 MR. GRIZZARD: I am going to reel off some
19 names, and I intend to do so to see if he recognizes
20 any of them as being out there that night.
21 THE COURT: Who did you recognize being out
22 there? How many were there?
23 A Well, there were several around in the
24 bunch. I don't know exactly.
25 THE COURT: Name who they are.
26 A I can't, Your Honor.
27 MR. RAILEY: That is exactly my objection,
28 and I don't think it would be permissible for the

Commonwealth's Attorney to lead him.

MR. GRIZZARD CONTINUING -

Q One other question. This gun you are speaking of, can you describe it to the Court.

A Well, I couldn't say definitely that was the gun. I know he had a gun, but I can't say definitely that this was the gun.

Q Well, there is a large range of guns and it can be from a small caliber pistol all the way up to a 150 millimeter. I want to know if it was a shotgun, a pistol or what?

A A shotgun.

Q Or a machine gun or what.

A It was a shotgun, single barrel.

Q It was single barrel and was it normal, a normal shotgun?

A I'd say whatever you call it, it was sawed-off.

MR. GRIZZARD: All right, answer Mr. Railey.

CROSS EXAMINATION

BY MR. RAILEY:

Q How long have you known James Ford?

A I have been knowing him practically all of my life.

Q Practically all of your life. You have known him all of his life. You are a day or two older than he is?

1 A Yes, sir.
2 Q He is a native of Southampton County?
3 A Yes, sir.
4 Q Born and raised here in Southampton County?
5 A That's right, and I was too.
6 Q And have you ever seen him with any gun
7 before that night?
8 A No, I hadn't.
9 Q And you saw him that night, and you hadn't
10 seen him that night until Deputy Price asked him for the gun.
11 You hadn't seen him hold his gun until you heard Deputy Price
12 asking for the gun, and that is when you first discovered he
13 had one?
14 A That's right.
15 Q In fact, he hadn't even attracted your
16 attention because he was standing over there in the back part
17 of the crowd saying nothing and doing nothing, is that right?
18 A (Nods affirmatively).
19 Q You say you can't say this was the gun he
20 had, but you have described, in answer to Mr. Grizzard's
21 question, could he have been holding it like this, and I am
22 demonstrating to you that I have it in my right hand by my
23 right side, pointed down to the ground.
24 A I am not sure, but it was a little bit
25 leaning up, not too much.
26 Q Do you know whether or not the gun was
27 loaded?
28 A I really don't.

1 Q Have you seen it at any time since that
2 night; the gun that you saw him have that night?
3 A No, I haven't.
4 Q Now, Mr. Harris, you say you are a special
5 police in that area; when they have dances?
6 A Yes, sir.
7 Q How often do you have dances there at the
8 Recreation Center?
9 A Well, sometimes probably once a month or
10 every two months. It is two of us out there and we go out
11 there when we are not working.
12 Q But you say about once a month the dances
13 are there, or maybe once every two months.
14 A Once every two months, something like that.
15 Q And do you ever arrest anybody? Do you
16 have the authority to arrest anybody?
17 A Well, we do if we can't keep order. If they
18 get disorderly we have a permit or whatever to have them
19 arrested, and bring them down.
20 Q Do you arrest them yourself?
21 A No, I haven't ever arrested anybody.
22 Q And Deputy Price came there that night, he
23 just happened to stop by?
24 A That's right.
25 Q And when he stopped by, he went in and
26 checked with you to see how things were going?
27 A Yes, I was there by myself.
28 Q Things were going all right inside?

1 A All right.
2 Q You hadn't had any difficulty?
3 A Not on the inside.
4 Q You say you think you may have seen James
5 Ford earlier, but you are not sure?
6 A I am not sure, but I think I seen him
7 earlier, but everything was all right.
8 Q In other words, you hadn't had any diffi-
9 culty with him at all?
10 A That's right.
11 Q You hadn't heard a word from him?
12 A That's right.
13 Q Had there been any difficulty that night
14 at all?
15 A Not that I know of.
16 Q In other words, it wasn't any cause for
17 alarm and there was no trouble or disturbance at all?
18 A No.
19 Q Except you say that two men were arguing,
20 and you say you didn't know how it started and you didn't
21 know what they were arguing about, but you heard it and you
22 told Mr. Grizzard you don't know who it was, and you don't
23 know who was arguing?
24 A That's right. It was outside and I didn't
25 know what it was.
26 Q When Mr. Price came, and he came there to
27 the door and called you, just to see how things were?
28 A That's right.

1 Q And you told him everything was all right?
2 A Inside, right.
3 Q Did you go with him then outside? Did you
4 walk on out there with him right then?
5 A Yes, I did.
6 Q And I reckon you all had just heard these
7 two boys arguing and he was going to tell them to quiet down?
8 A That's right.
9 Q But they stopped before you got over there
10 didn't they?
11 A I think so.
12 Q And so when you got over there it wasn't
13 any trouble or bother or any disturbance at all, and then you
14 heard Mr. Price say something to Ford about the gun, and
15 that was when you noticed he had a gun?
16 A That's right.
17 Q And then you went on back into the Recrea-
18 tion Center?
19 A Yes, I did. I would say it was between
20 quarter to one and ten minutes to one because the dance was
21 over at one o'clock, and when I went back in the place it was
22 no later than five or six minutes before it was one o'clock.
23 Q The dance gets over right at one?
24 A Right at one and they cut down at one.
25 Q And they had a live band in there, or were
26 they playing records?
27 A Live band.
28 Q And they stopped playing right at one?

A I'd say about a minute or so of one because they had to have some time to get out.

Q Did you see Mr. Price any more that night after that?

A No, I didn't see Mr. Price no more that night, from one when the people cleared the building, I'd say about ten after I was off then and I went on home.

Q As far as you know, Mr. Price arrested no one there that night at the Recreation Center, or out in the yard, did he? He didn't arrest anyone?

A Not as I know of.

Q You knew of no reason for him to arrest them anyway?

A That's right.

MR. RAILEY: All right, that's all.

REDIRECT EXAMINATION

BY MR. GRIZZARD:

Q You don't know of any reason why he should have arrested anyone. Do you know that it is against the law to possess a sawed-off shotgun?

A Well, I think so.

MR. GRIZZARD: That's all.

RONALD G. WHITNEY, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIZZARD:

1 Q State your name, address and occupation,
2 please.
3 A Ronald G. Whitney, Route 1, Box 36, Sedley,
4 and I am a student at Southampton High.
5 Q Do you know the defendant in this case,
6 James H. Ford?
7 A Yes, sir.
8 Q Did you see him in the early morning hours
9 of October 14 of last year?
10 A Early morning? In the morning you are
11 talking about?
12 Q After midnight?
13 A Oh, yes.
14 Q Where did you see him?
15 A At the Recreation Center.
16 Q You are speaking of the Recreation Center
17 in the town of Courtland?
18 A Yes.
19 Q Under what circumstances did you see him?
20 Can you take your hand down and speak a little louder?
21 A Well, I was at the dance out there at my
22 car. I heard a lot of noise over there in a crowd, so I
23 didn't know what was going on, and I got out of the car and
24 went over there and when I got over there I don't know whether
25 you call it an argument or just something between two people,
26 and I didn't see him then but as I was standing there I saw
27 him, and he came up and he might have been in the crowd all
28 the time, but it was so many people out there I didn't see him

1 at the time, and I just went over there, and after we stood
2 over there about four or five minutes, I guess, I saw him.
3 Q What happened when you saw him over there
4 with the crowd?
5 A He was just standing there, and when I
6 saw him, he was just standing there.
7 Q All right, let's go back to when you first
8 got over there. What was going on in that crowd; you say it
9 looked like it was an argument or something between two
10 people?
11 A Yes.
12 Q Who were the two people involved?
13 A Pete Whitfield and George Allen Wrenn.
14 Q What were they doing.
15 A Well, it wasn't what you would call a fight
16 it was more like an argument.
17 Q What happened while they were standing
18 there? Were they wrestling?
19 A All of us were just standing around there,
20 so I saw my brother and he was over there, and I asked him
21 what was going on and he was upset about something.
22 MR. RAILEY: I object to what your brother
23 said.
24 THE COURT: Go ahead from there, but don't
25 say what he said.
26 MR. GRIZZARD CONTINUING -
27 Q Your brother was upset about something?
28 A He didn't answer me and didn't say nothing,

1 but I knew he was upset about something, because my brother
2 and Whitfield was together.
3 Q Did you see James Ford at this time?
4 A Yes, I saw him there.
5 Q What was he doing when you saw him; when
6 you first saw this wrestling match?
7 A Well, when I first was there, they had
8 stopped, and then they went back again and that was when I
9 saw him the second time. I didn't see him the first time, I
10 just saw the second one.
11 Q Could you tell the Court whether or not
12 you had any words with anybody out there that night?
13 A Yes. I did.
14 Q With who?
15 A Wrenn.
16 Q What led up to that?
17 A Well, after I saw that my brother was
18 over there and Pete and I wanted to know what it was all
19 about, and I saw he was upset, so Pete and this other guy was
20 wrestling then so we were all standing back, and so Larry,
21 he was kind of standing over there, and I told him to get
22 back so they could have more room, like that.
23 Q Was James Ford there at this time?
24 A Yes, he was there then.
25 Q What, if anything, did he do?
26 A Well, I did hear my brother say. .
27 MR. RAILEY: I object to what his brother
28 said.

1 MR. GRIZZARD: It is part of the res gestae.
2 MR. RAILEY: If it involved James Ford, yes.
3 THE COURT: Well, I don't want to hear
4 anything that has something to do with whether what
5 he said was true or not, but if he made some state-
6 ment, I will hear what he said.
7 MR. RAILEY: I reserve my right to my
8 objection.
9 MR. GRIZZARD CONTINUING -
10 A I did hear my brother say, "Go ahead James",
11 I did hear my brother say, go on James I ain't got nothing
12 else to say, like that. I did hear him say that.
13 Q So what did James Ford do then?
14 A Well, I didn't see him no more then be-
15 cause I was trying to talk to my brother and I didn't pay
16 them no mind.
17 Q What did you do?
18 A I stayed over there, and after it was over
19 with my girlfriend I came back, she came and got me and I
20 went on back to the car, and during this time, he had left.
21 Q Who is he?
22 A James, he left, and so after I got in the
23 car, I decided to leave and I left and I met him, and I
24 turned around and came back because my brother was still
25 there when I left, so I turned around and came back.
26 Q When you got back to the Recreation Center,
27 how far did you get from the Recreation Center to begin with?
28 A I turned around at this man's house on

616 and he's got a lot of pines in his yard, and I don't recall his name.

Q How far is that? The Court is not familiar with that house. How far is that from the Recreation Center?

A About a mile or a mile and a half, something like that.

Q Is this where you saw James Ford?

A Yes, I met him and that is where I turned around at.

Q When you got back to the Recreation Center, what was going on then?

A When I got back, I didn't see my brother or Pete either one, so I got out of the car and my oldest brother was there then, and I guess he was there when I left, and then me and Larry was talking and after I saw my brother had gone, I went back and got in the car and I was sitting in the car and Larry came over to the car and told me to come over there where they were all standing, but I didn't go and I get back out of the car and went back in front of the place.

Q Where did you go in relation to the light pole out there?

A I was parked right in front of the light pole.

Q When you walked over there, what happened then?

A Well, I didn't go to where they were.

Q I understand that.

A I walked to the front and Deputy Price came

1 up and asked me what was this all about, which I didn't know.
2 Q Where was James Ford, and James Butts and
3 this Larry somebody you are talking about?
4 A Well, at that time I went back and I didn't
5 see him again, but when I left from where my car was to go
6 over there James and James Butts and them were standing over
7 there by his car, and after I was standing there, Larry came
8 over to where I was.
9 Q What was taking place then when Larry came
10 over where you were?
11 A Well, we were talking and we got to talking
12 again.
13 Q Did you see James Ford at this time?
14 A Well at the time I was talking to Larry,
15 like I say, his car was parked opposite the way mine was
16 parked, and when I left my car, he was standing beside the
17 car, and when I came back to my car me and Larry were talking
18 in front of the place, and I came back to my car and he was
19 still standing there.
20 Q Did you notice anything about him?
21 A Well, not at that time, but after I was
22 sitting there and Deputy Price came over and asked him what
23 was going on, you know, and I told him that Larry and myself
24 had some words like that, and he said, "Well, where is he
25 now", and I said, "Standing over there", but Larry wasn't
26 standing over there. I thought he was, but it wasn't Larry
27 standing there, and that was when I knew he had something, but
28 I didn't know what it was, and I couldn't see what it was.

I knew he had something in his hand because he was kind of hiding it behind him, but I knew he had something in his hand and that was when Deputy Price was over there then, and that's when he shined the light over there and said, "Did you see him go over there", and that was when I could see the gun when he shined the light over.

Q And then what happened?

A That was when Deputy Price said something about what are you doing with that gun or something like that, and he run across the yard.

Q What did Deputy Price do?

A He told him to stop, but he didn't.

Q Did you see James Ford again that night?

A Yes, sir, I did.

Q When?

A Well about ten or fifteen minutes later I saw him coming around the back.

Q Did he have anything with him then?

A Not that I could see.

MR. GRIZZARD: Answer Mr. Railey.

MR. RAILEY: I have no questions.

WILLIAM D. TETTERTON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIZZARD:

Q Mr. Tetterton, would you state your name, address and occupation please.

A William D. Tetterton, Special Agent for the Bureau of Alcohol, Tobacco and Firearms, South Hill, Virginia.

Q I will show you this item marked Commonwealth's exhibit number "2", and ask you if you have ever seen it before?

A Yes, sir, I have.

Q Where have you seen it, sir?

A In this County. Sheriff Brooks gave it to me to test fire.

Q Did you test fire it?

A Yes, sir, I did.

Q Do you recall what day it was?

A No, sir, I don't.

Q Did it work?

A Yes, sir, it did.

Q Do you know the defendant in this case, James Ford?

A No, sir, I don't know him.

Q Have you ever seen him before?

A Yes, sir, I have.

Q When?

A In lower court.

Q The preliminary hearing in this court case?

A Yes, sir.

Q Was that gun test fired before or after that?

A No, sir, he is not.

Q Mr. Tetterton, there is no question in your mind, and you are positive that this gun that is up there on the Judge's bench you have had in your possession twice since October 14, 1972; one for the purpose of firing one shell and the other for the purpose of taking it to Petersburg and keeping it until the next time you came back to Courtland from Mr. Baxter's from checking the prints?

A Yes, sir.

Q So this gun hasn't been in the Sheriff's locker continuously from October 14 up until today?

A I couldn't tell you.

Q Well, you know the two times that you had it.

A It wasn't in the Sheriff's locker during the time I had it, no, sir.

MR. RAILEY: That's all.

MR. GRIZZARD: The Commonwealth rests, Your Honor.

MR. RAILEY: If Your Honor please, the defendant moves to strike the evidence. First of all, if Your Honor please, maybe I should argue my motion to suppress, which you have held under advisement.

THE COURT: All right, sir.

MR. RAILEY: If Your Honor please, on the gun that is exhibited here there is nothing I submit, if Your Honor please, nothing whatsoever

in between the Methodist church and the Recreation Center, the street that is nearest to the Jerusalem District School, and in the words of Mr. Price, it is a much traveled street by both vehicular traffic and pedestrians, and there is nothing to indicate, and there is nothing in the Commonwealth's evidence to indicate, that James Ford had any gun and that the one he had earlier was the one that Mr. Price found. We submit that on our motion to suppress which is timely made at the beginning, and you have heard the evidence on it, and the Commonwealth has rested, and we submit that our motion to suppress should be sustained, and I think the case could rise or fall on that.

THE COURT: I will overrule the motion. I think it is different from pubic hair, or drugs or blood. It is tagged and marked and now on the point of where it was found, it was found within fifteen to twenty minutes of the time that it was first seen, and it was a hundred and fifty feet from that spot, and the accused had come back and looked in the area, and Mr. Price was talking with him twelve feet from where he found the gun. I think that ties it up and I will overrule the motion.

MR. RAILEY: Now, if Your Honor please, on the motion to strike, we asked you this morning to dismiss the indictment on the basis of the Haynes

case decided by the United States Supreme Court and the Riley case of the Virginia Supreme Court, and if Your Honor has had a chance to read the Riley case, it is five pages in the advance sheets, and it is still in the advance sheets as of October 9, 1972, but the statute enacted in 1968 apparently there hasn't been a lot of activity under it because as I say to my knowledge this is the only case that has gone to our Supreme Court, and Lieutenant Hollandsworth says that it has almost been five years in the statute since it has been enacted, and they don't have fifty, the number of registrations is less than fifty, and so it hasn't been but fifty of them, and I think the statute leaves much to be desired in the wording of it. It meets itself coming and going, and maybe they are not so material at this point, but our Supreme Court in the case of Riley v. Commonwealth has decided that the language "offense or aggressive purpose" is not unconstitutional language as being over vague or over broad. They passed on that, but the statute does, if Your Honor please, create what constitutes offensive or aggressive purpose, the possession or use of a sawed-off shotgun shall be presumed to be for aggressive or offensive purpose. It has to be one of these things, and this is the section just before this says unlawful possession or use of a sawed-off shotgun for offensive or

1 aggressive purpose is hereby declared to be a crime
2 punishable by a term in the state penitentiary for
3 not less than ten years. That is what a man could
4 get for possession of a sawed-off shotgun for
5 offensive or aggressive purpose, from ten years up
6 to life and then the next section what constitutes
7 offensive or aggressive purpose and the statute
8 sets forth four situations or conditions that give
9 rise to the presumption, and as the Supeme Court
10 has said in Riley, these are evidentiary presump-
11 tions and they are not conclusive, and they are
12 rebuttable presumptions, and the first of them,
13 if Your Honor please, if the sawed-off shotgun is
14 found in the possession of an individual at the
15 scene of a riot or civil disturbance unless such
16 possession is on the premises owned or rented by
17 the individual for residential or business purposes
18 and obviously for the defense of his person, pro-
19 perty and family to such riot or civil disturbance.
20 Certainly I think the Commonwealth would concede
21 that this was at the scene of a riot or a civil
22 disturbance. The General Assembly has defined riot
23 in Section 19.1-254.1A as follows: "An unlawful
24 use of three or more persons acting together with
25 force or violence which seriously jeopardizes the
26 public safety, peace or public order is a riot".
27 Now, I don't find in the statute a definition of
28 civil disturbance in the same article that deals

with riots. Of course, we are dealing with unlawful assemblies and there is a definition of unlawful assembly, "Wherever three or more persons share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence to jeopardize public safety, peace or order". I do not find a definition of a civil disturbance, and that is not to say that there is not one in the Code, but I haven't found it. That is the first presumption if a person is in possession of a sawed-off shotgun at the scene of a riot or civil disturbance. I don't think the Commonwealth would contend that the Commonwealth has this presumption. Now the second one, if Your Honor please, would be when the sawed-off shotgun is in the possession of or used by an unnaturalized foreign-born person. The evidence of the Commonwealth is, by Joe Harris, that James Ford is not an unnaturalized foreign-born person and that he was born in Southampton County and lived here all of his life, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or possessions, and crimes of violence are defined in subsection two, and Mr. Price has testified that to his knowledge as of October 14, 1972, James Ford has never been convicted of any crime of violence. So, if Your Honor please, I don't believe that the

1 Commonwealth would contend that that presumption is
2 applicable in this case. Now the third one is when
3 the sawed-off shotgun is of the kind described in
4 18.1-268.1, and has not been registered as required
5 under 18.1-268.7 and I say that sometimes we meet
6 ourselves going and coming in this section because
7 in 1 and 2 they talk about the sawed-off shotgun,
8 but in 3 the sawed-off shotgun is of the kind des-
9 cribed, and the definition section, which is the
10 first section, and so when a sawed-off shotgun of
11 the kind described and it has not been registered
12 as required in this section, if Your Honor please,
13 Lieutenant Hollandsworth came on and testified as
14 of December 1, 1972, he is the Assistant Officer in
15 charge of investigation and records, and he has been
16 through the records and the master card file within
17 the sawed-off shotgun list, and he doesn't find
18 James Ford. So the statute says that if it is not
19 registered a presumption arises but it also says,
20 if Your Honor please, that every sawed-off shotgun
21 in the State shall be registered with the Depart-
22 ment of State Police within twenty-four hours after
23 its acquisition. Now the Commonwealth has not
24 shown, if Your Honor please, that the defendant had
25 acquired that shotgun more than twenty-four hours
26 after the time that these people observed it about
27 one o'clock in the morning, twelve-forty or so in
28 the morning. The Commonwealth has shown by negative

1 testimony, if you please, that James Ford does not
2 have a gun registered to him, but the Commonwealth
3 has not shown that James Ford, as of October 14th,
4 at the time the policeman Price observed him, had
5 acquired one within twenty-four hours before then,
6 and should have had it registered. In other words
7 the presumption, if Your Honor please, would not
8 arise until the Commonwealth shows that James Ford
9 had been in possession of this gun for at least
10 twenty-four hours. In other words, he must have it
11 registered within twenty-four hours from the time
12 he gets it, and the Commonwealth must show, it would
13 seem to me, if Your Honor please, that the Common-
14 wealth must show that he had had it longer than
15 twenty-four hours. Now the evidence on that, if
16 Your Honor please, was that no one had ever seen
17 him with a gun before. Mr. Price had known him a
18 little over a year. Joseph Harris had known him
19 all his life, and they had never seen him with any
20 gun at any time. Mr. Price had not seen him with
21 any gun, and Mr. Harris had not seen him with any
22 gun. Now the fourth presumption when the sawed-off
23 shotgun is found in the possession of an individual
24 under circumstances indicating preparation to
25 participate in a riot or civil disturbance, or his
26 preparation for the commission of a crime of vio-
27 lence. If Your Honor please, I don't think the
28 evidence shows that James Ford was there in the

1 preparation to participate in a riot or civil
2 disturbance, and I don't see any indication of that
3 there, and there was no riot or he was not in the
4 preparation of the commission of a crime of vio-
5 lence. On the question of riot, Mr. Price, appar-
6 ently from Mr. Harris' testimony, just dropped by
7 and he was off duty and he went there to the Re-
8 creation Center to check with Mr. Harris to see if
9 everything was all right. Do you need any help
10 Mr. Harris, he said, and there was no problem and a
11 couple of men were out there arguing, and they went
12 out there and as Mr. Price said just before they
13 got there they ceased arguing, and he said there
14 was not cause for any arrest, and that he made no
15 arrest, certainly, and there was no indication that
16 anybody, if Your Honor please, was acting out of
17 the way. There was no arrest for drunk in public
18 or disorderly conduct. There was no arrest out
19 there for anything. Mr. Price says there was some
20 ten to twenty people out there in the group at the
21 light pole, one hundred or so feet from the Recrea-
22 tion Center, and Mr. Harris indicated that there
23 was a crowd, and he didn't ask him about the num-
24 bers, but the witness indicated that there was a
25 crowd and he wasn't asked about the number, but I
26 submit, if Your Honor please, looking at the evidence
27 most favorable to the Commonwealth that there is
28 nothing to indicate that James Ford was making

1 preparation to participate in a riot or civil dis-
2 turbance, and by the same token there is nothing to
3 indicate that any preparation was made on his part
4 for the commission of a crime of violence. I think
5 Mr. Price's testimony indicates that James Ford was
6 the furtherest from Mr. Price as he went up there,
7 and he was in the back of the crowd, and as far as
8 Mr. Price could tell he was holding the gun by his
9 side pointing it down, as Your Honor observed and
10 is written into the record. Mr. Harris was asked
11 about that, the way Mr. Price demonstrated it, and
12 he said that it must have been, it seemed like to
13 him it was a little angled, I believe he said, but
14 there wasn't anything in James Ford's conduct or
15 behavior to indicate that he was making preparation
16 for the commission of a crime of violence and there
17 is nothing to indicate that the shotgun that he had
18 had any bullets in it to use, and I am mindful of
19 the fact that by definition a sawed-off shotgun is
20 any weapon loaded or unloaded, but for the presump-
21 tion under 4 he would have to make preparation for
22 the commission of a crime of violence, and certainly
23 it seems to the defendant that there is nothing
24 whatsoever to indicate that. Whitney testified,
25 as alluded to earlier, that at one place Mr.
26 Grizzard kept asking him what did you notice about
27 James Ford, and in one place he said he didn't
28 notice anything about James at that time. He was

1 just sitting there, and another place he observed
2 him, James Ford, he was there and he heard his
3 brother saying, go ahead James I've got nothing
4 else to say, and that was the extent of that, and
5 then he said he didn't see James Ford no more, but
6 if Your Honor please, we say on a motion to strike
7 looking at the Commonwealth's evidence in the light
8 most favorable to the Commonwealth, we submit that
9 it does not establish a prima facie case that we can
10 say that any of these presumptions evidentiary pre-
11 sumptions are created such as to shift the burden
12 to the defendant.
13 THE COURT: On the one about the registra-
14 tion you are relying on the case you have there?
15 MR. RAILEY: Yes, sir, the Haynes case and
16 the Riley case and the statutes.
17 THE COURT: I will overrule the motion to
18 strike.
19 MR. RAILEY: Your Honor, at the conclusion
20 of the Commonwealth's evidence I argued on the
21 motion earlier made to suppress the gun, which the
22 Commonwealth introduced, and you overruled that
23 motion. I think I took exception, but for the re-
24 cord the defendant does take exception to Your
25 Honor's ruling. Then the defendant moved to strike
26 the evidence of the Commonwealth and you overruled
27 that, and the defendant notes an exception to that.
28 Now, if Your Honor please, the defendant will take
the stand.

1 Q Were you working at the school in addition
2 to the courses you were taking?
3 A Yes, sir.
4 Q What kind of work were you doing?
5 A Tutoring.
6 Q What were you tutoring?
7 A Basic math.
8 Q And Mr. Price has suggested that you were
9 arrested on the afternoon of October 14 last year, were you not?
10 A That's right.
11 Q And you have been in Southampton County
12 Jail continuously since that time?
13 A Yes, sir.
14 Q You have heard Mr. Price testify, James,
15 that in the early morning shortly after midnight on October
16 14, 1972, he saw you with a short sawed-off shotgun down at
17 the Recreation Center in Courtland. You have heard him testify
18 to that?
19 A Yes, sir.
20 Q Did you have a gun at that time?
21 A Yes, sir, I had a gun.
22 Q And what kind of gun did you have?
23 A It was a sawed-off shotgun.
24 Q Where hau you gotten the gun from?
25 A Well, that Friday evening I had got paid
26 off from school, and I went down to the poolroom, and it was
27 a dude around there selling guns, so I bought it from him.
28 Q Was that the same day that you were at the

Recreation Center that night?

A Yes, sir.

Q What time did you buy the gun that day?

A Between five and five-thirty.

Q Where was it that you bought it?

A In the poolroom in the City of Franklin.

Q From whom did you buy it?

A Well, I don't know his name.

Q Was he from around Franklin?

A I don't think so, I didn't see him around.

Q How much did you pay for the gun?

A Twenty dollars.

Q What kind of gun was it?

A It was a 12 gauge sawed-off shotgun.

Q What did you do with the gun when you bought it, after you bought it?

A I locked it up in my box in the boot of my car.

Q You had your car with you at that time?

A Yes, sir.

Q You were driving it back and forth from home to school?

A Yes, sir.

Q All right, when did you take the gun out of the boot?

A Well, we were out there at the Recreation Center, and I had some friends around and I was telling them about the gun I had bought, and I showed it to them.

Q Who was there you were showing it to?

A James Butts, George Wrenn, we were standing out there beside my car talking.

Q James Butts and George Wrenn and who else?

A Me.

Q Was anybody else out there that you showed it to?

A No, sir.

Q Now had you been at the Recreation Center that evening at the dance that Mr. Harris has testified to?

A No, I had just got there.

Q Where had you come from?

A From a football game down at Franklin. The Broncos played Suffolk, I think.

Q Franklin played Suffolk?

A Yes, sir.

Q And you had gone to the football game?

A That's right.

Q Who did you go to the football game with?

A It was me, James Butts, George and Larry Wrenn.

Q Larry Wrenn, George Wrenn and James Butts and you?

A That's right.

Q Did you go on your car?

A Yes, sir.

Q Did you drive?

A Yes, sir.

Q After the game was over did you come directly from Franklin from the game to the Recreation Center?

A Yes, sir.

Q Do you know what time you got to the Recreation Center?

A I thought it was about eleven o'clock something like that.

Q How long had you been there, if you know, before Mr. Price came there?

A I'd say a good thirty minutes.

Q Well, did he get there about twelve-forty? You say you were there by eleven o'clock.

A I got mixed up on the time.

Q But you had been there for some time when Price got there, is that right?

A Yes, I had.

Q Now, James, as of October 14, 1972, had you ever been convicted of any crime of violence or any attempt to commit any crime?

A No.

Q And you were subsequent to that on November you were convicted by Judge Whitley in this Court on a felony?

A Yes, sir.

Q Now when Mr. Price asked you for the gun or told you that you didn't need it, or something like that as he has testified, why didn't you give him the gun?

A Well, I panicked because I was already out on bond, and I ran.

1 Q What did you do with the gun?
2 A I throwed it in the ditch.
3 Q Did you throw it in the ditch at the place
4 Mr. Price has described that he found it, was it in that area?
5 A Not where he said he found it.
6 Q Did you have any bullets, any shells with
7 you?
8 A No.
9 Q I believe you testified that the gun you
10 got was a 12 gauge?
11 A Yes, sir.
12 Q And you did not have any shells?
13 A No, sir.
14 Q Had you fired the gun from the time you
15 bought it up until the time you threw it in the ditch?
16 A No, sir.
17 Q Do you know whether or not it would fire?
18 A No, sir.
19 Q Had you had any indication up until that
20 day, and you have heard Mr. Tetterton testify today, that it
21 had been fired and would fire?
22 A No, I didn't know.
23 MR. RAILEY: All right, answer Mr. Grizzard.
24
25 CROSS EXAMINATION
26 BY MR. GRIZZARD:
27 Q Have you ever seen this gun before?
28 A Its the same one I got. I have seen one

like it.

Q Where have you seen one like it?

A I bought one like it.

Q Is this the gun you bought?

A I couldn't say definitely.

Q You bought it from some dude that you don't know, that you have never seen before?

A I had seen him around, but I don't know him not to associate with him.

Q You never told Deputy Sheriff Price where you got the gun?

A No, I didn't.

Q Even when he arrested you that night, that Saturday night?

A No, he didn't ask me no questions.

Q You have always denied having a gun?

A No, nobody asked me until he asked me that night and I denied it at that time.

Q That was the day you bought it?

A That's right.

Q So the first time you were seen with the gun, you denied having it and denied there was any gun?

A Yes.

Q Well, were you telling the truth then, or are you telling the truth now? Which is the Judge supposed to believe?

A Like I said I panicked at first, that Friday night.

1 Q You didn't panic so much that you didn't
2 go back to get the gun.
3 A I didn't go back to get the gun.
4 Q What were you doing? What were you looking
5 for on the ground? According to Deputy Price when you got to
6 a certain point you turned and started off toward the edge of
7 the road at which time he stopped you. What were you looking
8 for?
9 A I was walking down the middle of the road,
10 and I saw the car lights, so I moved to the side.
11 Q What were you looking for on the ground?
12 A Nothing.
13 Q He is wrong about where he found the gun,
14 and he is wrong about your looking on the ground, and he is
15 wrong about you moving to the side of the road, to the side
16 where he found the gun four feet from the edge of the road?
17 A I moved to the side of the road, and I
18 might have looked down too, with the car lights in my eyes.
19 Q Were you also in a panic at this time
20 when Deputy Price asked you for the gun?
21 A He didn't ask me for the gun then.
22 Q When he saw you the second time walking down
23 the highway?
24 A He didn't ask me for no gun.
25 Q You have since been convicted of a felony,
26 I believe?
27 A Yes, sir.
28 Q Now this trouble that night that involved

James Butts, George Wrenn and Larry Wrenn and yourself.

A (Nods negatively).

Q You were together?

A We were together.

Q You all as a group are known as the Black Jesus and the disciples?

A Not that I know of.

Q That's the same group involved up at the high school some six or seven months earlier, isn't it?

A The folks put it out that way, but we don't go around as that.

Q You don't go around as that, but you are known in the community as Black Jesus and the disciples?

A Not really.

Q Well, what do folks put around about you?

A They said we were calling ourselves that.

Q And on this particular night Larry Wrenn and George Wrenn had been, as Ronnie Whitney described, having a wrestling match with other people?

A George, not Larry.

Q And then you left?

A Right.

Q And you got down the road and turned around and came back?

A Who, me?

Q Yes.

A No, I went all the way home.

Q Then Ronnie Whitney didn't see you coming

down the road about a mile from the Recreation Center on your way back?

A He may have met me on my way back.

Q And up until the time you had left and come back, you hadn't brought that gun out, is that right or wrong?

A That's right.

Q But when you got back there and Larry Wrenn and one of the disciples was having some words with Ronnie Whitney that was when you got the gun out?

A I didn't do nothing about that, when they were having words.

Q But you were concealing it?

A Say what?

Q You were concealing it according to Deputy Price, Joe Harris and Ronnie Whitney. You were holding it down to your side.

A That was when I saw Price coming over toward me.

Q So you didn't have the gun out showing it to the other people as you have testified?

A We were over there to the car to ourselves talking. We wasn't among the crowd.

Q When were you going to register the shotgun that you bought from this dude in Franklin?

MR. RAILEY: If Your Honor please, he refuses to answer that question on the ground of the motion we made earlier, and the Fifth Amendment.

MR. GRIZZARD: Your Honor, he took the

witness stand, and once he takes the stand, he takes it in this case for every question I want to ask him. He has waived his right to the Fifth Amendment.

THE COURT: I will overrule the motion.

MR. RAILEY: The question is not material.

THE COURT: He is just asking him when he was going to register it, and the contingent has been made that he hadn't registered it within twenty-four hours.

MR. RAILEY: Obviously he couldn't register it within twenty-four hours.

MR. GRIZZARD: I object to Mr. Railey testifying.

MR. RAILEY: We note our exception.

MR. GRIZZARD CONTINUING -

Q When were you going to register this gun?

A I could have registered it Saturday, the following Saturday.

Q Were you aware that you had to register it?

A Yes.

Q You were aware that it was an illegal weapon?

A Yes.

Q And that was why you ran when you saw officer Price approach?

A Yes.

Q And you had it in your possession?

A Yes.

Q If you were going to register the gun Saturday, why were you so guilty? Why did you run?

A I didn't know about the twenty-four hours.

MR. GRIZZARD: Thank you, that's all.

MR. RAILEY: That's the defendant's case.

THE COURT: Do you gentlemen want to argue?

MR. GRIZZARD: If it please the Court, under the evidence in the case, we have got the testimony of Deputy Sheriff Price, Mr. Harris and Ronnie Whitney. There was some trouble outside and Ronnie Whitney has Larry Wrenn and George Wrenn involved with Pete Whitfield, and I think he said it was one that was with him and his brother, or with his brother, and Larry Wrenn had been involved, and had something to say that night during that time.

MR. RAILEY: Your Honor, I don't think the record shows this. Mr. Grizzard referred to that two or three times in his questions. I know we are now in the argument, but Ronnie Whitney testified that Larry came to where he was and got to talking, but two or three times he would say things like that, but I didn't understand from the testimony that at any time there was any argument or fuss between Larry Wrenn and Ronnie Whitney. If I am wrong, I stand to be corrected. I don't remember it in the record.

THE COURT: Well, there was some indication there was going to be a disturbance.

wealth cannot produce a witness who happened to be with the defendant when he was talking to this dude in Franklin at five-thirty; to say, yes, I saw him when he bought that shotgun. We are not required to do that. We have put it in his hand, and the Supreme Court said he then has to come forward with the evidence to rebut the presumption that it is in his hand, and I don't think he has carried that burden, and again I would ask the Court to find him guilty as charged.

THE COURT: Well obviously, if he had used it in the perpetration or attempted perpetration of a crime that would be a more serious offense. The charge here is on possession for an offensive or aggressive purpose and there are some other sections relating to that as to the presumptions. I think that this is a case that Section 18.1-268.3 contemplates and I am going to find him guilty as charged. Were you planning to ask for a probation report, Mr. Railey?

MR. RAILEY: Your Honor, a probation report has recently been made in another case.

THE COURT: All right, if you want me to look at that, and dispose of it today, I will, but it is a minimum of ten years and that is what the Commonwealth is asking for, but I would like to look at the probation report and see what I did last time with him.

PRESENTENCE HEARING HEARD
ON APRIL 16, 1973

PRESENT: Mr. Richard C. Grizzard,
Attorney for the Commonwealth

Mr. Richard E. Railey,
Counsel for defendant

MR. GRIZZARD: Your Honor, we have two presentence reports on the defendant James Ford, one for maiming and one for possession of a sawed-off shotgun. I assume we can hear them both at the same time.

THE COURT: I would think so.

MR. RAILEY: Yes, sir.

THE COURT: Mr. Railey have you been over the probation reports with your client?

MR. RAILEY: I have been over it with him and he has read it himself.

THE COURT: All right, we will file the reports with the papers in the case. Mr. Bradshaw is here in court, the Probation Officer. Does either party wish to examine Mr. Bradshaw?

MR. GRIZZARD: The Commonwealth has nothing.

MR. RAILEY: We have no questions.

THE COURT: Does either side wish to present any evidence relative to sentencing?

MR. GRIZZARD: The Commonwealth has none.

MR. RAILEY: We will have some evidence,

1 Your Honor.

2 MR. GRIZZARD: If it please the Court, I
3 reckon we will take these in order, the first being
4 the maiming charge on January 7, 1972. To refresh
5 the Court's memory, the defendant was tried on a
6 malicious maiming charge on November 3, 1972, on a
7 charge rising out of an incident at the basketball
8 game at Southampton High School on January the 7th.
9 The Court will recall in that particular case the
10 defendant was convicted of cutting O'Neal Warren with
11 a knife after they had some dispute, and some problems
12 between them at the ball game. I can't remember as
13 far as the evidence as to how many stitches were taken
14 in that particular case, but I believe there were
15 forty-five. On the conviction of malicious maiming
16 on January 7, 1972, I would recommend to the Court
17 that the defendant be sentenced to serve four years
18 in the State penitentiary. Some ten months after
19 this malicious maiming took place, and just a few days
20 before the trial on the merits of the malicious
21 maiming case, in fact on October 14, the defendant
22 was involved in some argument with James Butts and
23 some other people, and there was also Ronnie Whitney,
24 and others present during this argument, and the
25 defendant was standing in the background of this
26 argument, and the Court will recall Deputy Sheriff
27 Price saw this sawed-off shotgun in the hands of the
28 defendant, and, of course, the defendant ran at the

THE COURT: This is a most discouraging case because this young man might have sufferred some deprivations, but actually he was in college and doing well, and then he commits two felonies. Here he got into this altercation at the basketball game and inflicted a wound requiring forty-five stitches on the other man, and still at another recreational affair he is carrying a sawed-off shotgun, some nine months later. I don't feel at all that it is a case for probation. All right, stand up Mr. Ford. Do you have any statement you want to make, or do you want to advance any reason why the Court should not sentence you at this time?

DEFENDANT FORD: No, sir.

THE COURT: Now you have been convicted of malicious maiming and of possession of a sawed-off shotgun. For the crime of possession of the sawed-off shotgun, the Court sentences you to confinement in the State penitentiary for a term of ten years. For the crime of malicious maiming, the Court sentences you to confinement in the State penitentiary for a term of four years. Now it would be good reason for me to make these sentences to run consecutively, however, in view of the length of the sentences and your age, I am going to let them run concurrently, and I am expecting you to live up to your potentials and be a good citizen. Now, you have plead not guilty on both charges, and you have a right to appeal

and that is a matter that requires the services of an attorney, and papers should be filed or steps ought to be taken within thirty days if you wish to have an appeal. You can talk to your attorney about this; about an appeal to the Supreme Court of Virginia.

MR. RAILEY: Your Honor, now that the defendant has been sentenced and you have told him of his right to appeal on the convictions, on the conviction and sentencing in the gun case, the defendant moves to set aside the verdict as being contrary to the law and the evidence and without evidence to support it.

THE COURT: I will overrule the motion.

MR. RAILEY: The defendant excepts to your ruling, and gives notice of his appeal, and he expects to file his notice of appeal and assignment of errors on the gun case within thirty days.

Virginia: In the Circuit Court of Southampton County, the 13th day of March, 1973

Commonwealth

vs. #9-1973

James Harlen Ford aka
James Harold Ford

This day came again the Attorney for the Commonwealth, and James Harlen Ford, aka James Harold Ford, age 20, born November 14, 1952, who stands indicted for a felony, to-wit: That on or about October 14, 1972, in the County of Southampton, James Harold Ford unlawfully did have in his possession a "sawed-off" shotgun for offensive and aggressive purpose, was led to the bar in the custody of the jailer of this Court, and came also Richard E. Railey, his attorney.

Whereupon the accused was arraigned and before entering a plea, the attorney for the accused moved the Court to dismiss the indictment on the grounds that the rights of the accused against self-incrimination had been violated, which motion the Court overruled and to which ruling of the Court the defendant, by his attorney, excepted. After private consultation with Richard E. Railey, his counsel, the accused pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence

of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence of the Commonwealth, the defendant, by his attorney, moved the Court to suppress the introduction of the gun into evidence which motion the Court overruled and to which ruling of the Court the defendant, by his attorney, excepted. Whereupon the attorney for the defendant moved the Court to strike the evidence of the Commonwelath, which motion the Court overruled, and to which ruling of the Court the defendant, by his attorney, excepted. And having heard all of the evidence and argument of counsel the Court doth find the accused guilty of possession of a sawed-off shotgun as charged in the indictment.

The Court, before fixing punishment or imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, and this case is continued.

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

And the defendant is remanded to jail.

Virginia: In the Circuit Court of Southampton County, the 16th day of April, 1973

Commonwealth

vs. #9-1973

James H. Ford

This day came again the Attorney for the Commonwealth, and James H. Ford, age 20, born November 14, 1952, who stands convicted for a felony, to-wit: That on or about October 14, 1972, in the County of Southampton, James Harold Ford unlawfully did have in his possession a "sawed-off" shotgun for offensive or aggressive purpose, was again led to bar in the custody of the jailer of this Court and came also Richard E. Railey, attorney for the accused.

And the Probation Officer of this Court, to whom this case has been previously 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 fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in 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.

Whereupon the Court taking into consideration all of

the evidence in the case, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, 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 nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of the Commonwealth for the term of TEN (10) YEARS, which term is to run concurrent with another sentence this day imposed, and that the Commonwealth of Virginia do recover against the said defendant its costs by it about its prosecution in this behalf expended in the amount of $107.05.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed 185 days credit for the time spent in jail awaiting trial.

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

Counsel for the defendant advised the Court that he

had fully advised the defendant of his rights regarding appeal and the defendant, in person, so acknowledged.

And whereupon the defendant, by his attorney, advised the Court that he would appeal this case and the Court doth appoint Richard E. Railey to perfect the appeal for the defendant.

And the defendant is remanded to jail to await transfer to the penitentiary.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO THE HONORABLE B. A. WILLIAMS, JR., CLERK OF THE CIRCUIT COURT OF SOUTHAMPTON COUNTY:

Counsel for James H. Ford, the defendant in the above styled case in the Ciruit Court of Southampton County, Virginia, hereby gives notice of appeal from the order in this case on April 16, 1973, and sets forth the following assignments of error:

1. The Court erred in overruling defendant's motion, before his plea, to dismiss the indictment on the ground that the registration required by Section 18.1-268.7 of the Code of Virginia violates his privilege against self-incrimination as guaranteed by the Fifth Amendment of the Constitution of the United States.

4. The Court erred in overruling defendant's motion to strike the evidence at the conclusion of the evidence of the Commonwealth.

6. The Court erred in finding the defendant, James H. Ford, guilty as charged of unlawful possession or use of a "sawed-off" shotgun for an offensive or aggressive purpose.

7. The Court erred in refusing to set aside the verdict as contrary to the law and evidence and without evidence to support it.

Given under my hand this 10th day of May, 1973:

/s/Richard E. Railey
Counsel for James H. Ford

Richard E. Railey
Attorney at Law
Courtland, Virginia 23837

I hereby certify that a copy of the foregoing Notice of Appeal and Assignments of Error was delivered to the Honorable Richard C. Grizzard, Commonwealth's Attorney of Southampton County, Virginia, this 14th day of May, 1973.

/s/ Richard E. Railey

Filed May 14, 1973
/s/ George F. Whitley, Jr.