211 VA 571

Record Nos. 7381, 7382

In the Supreme Court of Appeals of Virginia at Richmond

WILSON ALEXANDER COLEMAN

v. Record No. 7381

COMMONWEALTH OF VIRGINIA

JAMES W. STROTHER

v. Record No. 7382

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7381

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 3rd day of December, 1969.

WILSON ALEXANDER COLEMAN, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond
Samuel B. Witt, Jr., Judge

Upon the petition of Wilson Alexander Coleman a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 13th day of June, 1969, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7382

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 3rd day of December, 1969.

JAMES WARREN STROTHER, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond
Samuel B. Witt, Jr., Judge

Upon the petition of James Warren Strother a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 13th day of June, 1969, in a prosecution by the Commonwealth against the said petitioner for a felony (Attempted Grand Larceny); but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

* * * * *

CERTIFICATE OF JUDGE

Upon motion of the Plaintiff in error, in the above captioned matter, Record No. 7381, and for good cause shown, this is to certify that I have investigated the matter pursuant to Section 19.1-289 of the Code of Virginia, and it is my opinion that the Plaintiff in error is unable to pay, or secure to be paid, such costs to cover the writ tax and binding fee and the printing of the record in the above captioned appeal.

Enter: 12/23/69

Samuel B. Witt, Jr.
Judge

* * * * *

Recd. 12/24/69. HGT

* * * * *

AFFIDAVIT OF *FORMA PAUPERIS*

State of Virginia

City/County of Isle of Wight

The Plaintiff in error being duly sworn, says:

1. He is unable to pay the writ tax and binding fee or secure to be paid, the costs of printing the record in the above captioned matter;
2. His assets amount to a total of $.....none.

Wilson Alexander Coleman

Subscribed and Sworn to before me this 18th day of December, 1969.

Nancy W. Janis
Notary Public

My commission expires: Nov. 6, 1972

* * * * *

Recd. 12/24/69. HGT

* * * * *

CERTIFICATE OF JUDGE

Upon motion of the Plaintiff in Error in the above captioned matter, Record No. 7382, and for good cause shown, this is to certify that I have investigated the matter pursuant to Section 19.1-289 of the Code of Virginia, and it is my opinion that the Plaintiff in Error is unable to pay, or secure to be paid, such costs to cover the writ tax and binding fee and the printing of the record in the above captioned appeal.

Enter: 12/31/69

Samuel B. Witt, Jr.
Judge

* * * * *

Recd. 12/31/69 HGT

* * * * *

AFFIDAVIT OF *FORMA PAUPERIS*

State of Virginia
City of Richmond:

The Plaintiff in Error, being duly sworn, says:

1. He is unable to pay the writ tax and binding fee and is unable to pay or secure to be paid the costs of printing the record in the above captioned matter;
2. His assets amount to a total of $00.

James Warren Strother

Subscribed and sworn to before me this 31st day of December, 1969.

J. W. Hairfield
Notary Public

My commission expires: January 15, 1971

* * * * *

Recd. 12/31/69 HGT

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Records Nos. 7381-7382

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And at the same Hustings Court held for the City of Richmond, at the Courthouse, on the 13th day of June, 1969, the following order was entered:

Commonwealth
vs Indictment for Attempted Grand Larceny
Judge Witt
Wilson Alexander Coleman, Dft.

Commonwealth
vs Indictment for Possession of Burglars Tools No. 1
James Warren Strother, Dft.

Commonwealth
vs Indictment for Attempted Grand Larceny No. 2
James Warren Strother, Dft.

The said Wilson Alexander Coleman this day appeared and was set to the bar in the custody of the Sergeant of this City and being unable to employ counsel of his own, the Court this day appointed M. J. Janus, a competent attorney practicing before this Court, to represent him in his respective case. And the said James Warren Strother was this day led to the bar in the custody of the Sergeant of this City and was represented by Attorney Ralph Axselle, and the Commonwealth in each of the three cases was represented by Thomas N. Nance. And being arraigned the said Wilson Alexander Coleman pleaded not guilty to Attempted Grand Larceny as charged in his respective indictment, after consultation with counsel. And the said James Warren Strother being arraigned on his two indictments, pleaded not guilty to the possession of burglars tools as charged in Indictment No. 1 and he pleaded not guilty to attempted grand larceny as charged in Indictment No. 2, all after consultation with counsel. And the said James Warren Strother having consented to have his two indictments tried simultaneously, he and the said Wilson Alexander Coleman consented to have their respective cases tried jointly.

And with the consent of each of the accused, given in person, after consultation with counsel, and the concurrence of

the Court and the Attorney for the Commonwealth, the Court proceeded to hear and determine each of said cases without a jury. And the witnesses having been sworn and the Court having heard the evidence for the Commonwealth, the said defendants by counsel moved the Court to strike the evidence of the Commonwealth in their respective cases as being insufficient for the finding of judgments of guilty, which motions the Court doth overrule and the defendants note exceptions. And the Court having heard all of the evidence and arguments of counsel in each of the said cases, finds the said Wilson Alexander Coleman guilty as charged in his respective indictment and doth ascertain his term of confinement in the Penitentiary at two years. And the Court doth find the said James Warren Strother guilty as charged in each of his said indictments and ascertains his term of confinement in the Penitentiary at three years in the case of Indictment No. 1 and ascertains his term of confinement in the Penitentiary at two years in the case of Indictment No. 2.

Whereupon it being demanded of each of the defendants if anything for themselves they had or knew to say why the Court should not now proceed to pronounce judg-
page 10 } ment against them according to law, and nothing being offered or alleged in delay thereof, it is the judgment of this Court that the said Wilson Alexander Coleman be confined in the State Penitentiary for a term of two years, this being the period by the Court ascertained in his respective case. And the said James Warren Strother is to be confined in the State Penitentiary for two terms, three years and two years, these being the periods by the Court ascertained in his respective cases; said terms to run consecutively making a total of five years to be served by the said James Warren Strother with the three years given in the case of Indictment No. 1 to be served first.

And it is ordered that the Sergeant of this City do, when required so to do, deliver the said defendants from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law; said terms to be credited by there time spent in jail awaiting trial.

And thereupon the said Wilson Alexander Coleman and James Warren Strother are remanded to jail.

* * * * *

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NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

To The Clerk of the Hustings Court of the City of Richmond:

James Warren Strother, the defendant in the above styled case, hereby gives Notice of an Appeal from the judgment of this Court entered herein on June 13, 1969.

The said James Warren Strother will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to said judgment, and herewith sets forth his Assignment of Error, as required by Rules of Court 5:1, Section 4, as follows:

The judgment of the Trial Court is contrary to the law and the evidence in this case in that the Trial Court erred in overruling the Motion of the Defendant, James Warren Strother, to strike the evidence of the Commonwealth as to such defendant, made at the conclusion of the Commonwealth's evidence and of all the evidence.

Dated this 11th day of August, 1969.

James Warren Strother

By: Ralph L. Axselle, Jr.
Of counsel

* * * * *

Received & filed Aug 11 1969 Hustings Court Clerk's Office

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NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

This day came the defendant, Wilson A. Coleman, by

Murray J. Janus, his court-appointed attorney, and respectfully noted his appeal to decision of this Court on June 13, 1969, and assigned the following errors:

1. The Court erred in finding the defendant guilty in that said holding was contrary to the law and the evidence.
2. The Court erred as a matter of law in not holding the defendant only guilty of *pettit* larceny.

Wilson A. Coleman

By: Murray J. Janus
Of Counsel

Bremner, Byrne & Baber
Suite 1500—Seventh & Franklin Building
Richmond, Virginia 23207

* * * * *

Received & filed Aug 11 1969 Hustings Court Clerk's Office

J. William Hatfield, III, Deputy Clerk

* * * * *

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Hearing on June 13, 1969, before the Honorable Samuel B. Witt, Jr., Judge.

PRESENT:

Thomas N. Nance, Jr., Esq.
Attorney for the Commonwealth

Murray J. Janus, Esq.
Ralph L. Axselle, Jr., Esq.
Attorneys for the defendants

James Warren Strother and
Wilson A. Coleman, the
defendants, in person and
by counsel.

The Clerk: In the cases of the *Commonwealth* v. *James Warren Strother* and *Wilson Alexander Coleman*. Will the following witnesses answer to your names when called.

NOTE: At this time, the witnesses were called.

page 4 } Mr. Janus: Your Honor, could I make a motion on Coleman before we get started?

The Court: All right, sir, what is it?

Mr. Janus: Your Honor, I originally, before the preliminary hearing, was contacted by Coleman. Our arrangements have not been completed, he's not paid me a fee in the preliminary hearing balance or anything at all on this. For that reason I would move the Court to allow me to withdraw as Counsel. I would state further to the Court that I have done work on the case, I am prepared and I have done considerable legal research involved.

The Court: Well, is he out on bond?

Mr. Janus: Yes, sir.

The Court· And you mean—well, he's not made oath that he's indigent, has he?

Mr. Janus: No, sir—well, no, sir, he did not, but I would be willing, if the Court saw fit—

The Court: Well, I'll appoint you—I mean let me ask you some questions.

page 5 } By the Court:

Q. Why haven't you paid your counsel? (apparently the Court is talking with one of the defendants— nothing has been said to indicate to the transcriber who it is and in the responses the defendant is too far from the microphone)

A. Well, Your Honor, . . . sick . . . and I just started back to work . . .

The Court: Appoint Mr. Nance,—I mean Mr. Janus, we will appoint you if you will accept it, you are familiar with the case?

Mr. Janus: Yes, sir, I am familiar with it.

The Court: Let an order be entered appointing Mr. Janus as this one's attorney, it does not relieve you from carrying out your contract with Mr. Janus, you understand that, but that's for Mr.—the Court is doing this from Mr. Janus' standpoint.

The Clerk: In the Hustings Court on this Friday, the 13th day of June, 1969, in the case of the *Commonwealth* v. *Wilson Alexander Coleman,* an indictment for attempted grand larceny. The defendant is present in Court and the
page 6 } defendant is represented by Mr. Janus, Mr. Janus, is the defense prepared to proceed?

Mr. Janus: We are, sir.

The Clerk: And the Commonwealth is represented by Mr. Nance, Mr. Nance, is the Commonwealth prepared to proceed?

Mr. Nance: We are ready.

The Clerk: Wilson—

The Court: This one—which one is this?

The Clerk: Coleman.

The Court: Coleman,

The Clerk: Yes.

The Court: All right.

The Clerk: Wilson Alexander Coleman, you stand indicted that on the 5th day of April, 1969, in the said City and within the jurisdiction of the Hustings Court of the City of Richmond, that one camera with a projector and tire of the aggregate value of two hundred dollars, of the goods, chattels and property of Northside Foodland, Incorporated, then and there being found, did then and there unlawfully and feloniously steal, take and carry away against the peace
page 7 } and dignity of the Commonwealth o f Virginia.
How do you plead to this indictment?

The Defendant Coleman: Not guilty.

The Clerk: And on your plea of not guilty, do you wish to be tried by His Honor, the Judge or a jury?

The Defendant Coleman: Judge.

The Clerk: Do you also consent to be tried simultaneously and together with the defendant, James Warren Strother?

The Court: Strother?

The Clerk: Strother.

The Defendant Coleman: Yes.

The Clerk: Answer His Honor's questions.

By the Court:

Q. Your name is Wilson A. Coleman, that is your name?

A. Yes, Your Honor.

Q. How old are you?

A. Twenty-nine.

Q. And you are the same person that's charged with the offense that was read to you?
page 8 } A. Yes, sir.
Q. Have you discussed your case thoroughly with Mr. Janus, your Attorney?

A. Yes, sir.

The Court: And, Mr. Janus, you are ready for trial?

Mr. Janus: Yes, sir.

The Court: Have you any witnesses that you wanted summoned?

Mr. Janus: No, sir.

Q. Has Mr. Janus explained to you and gone over your case thoroughly with you?
A. Yes, sir.
Q. You understand that on a plea of not guilty you are entitled to have a jury try your case if you so desire, you understand that,
A. Yes, sir.
Q. and you waive the right to have the jury try you,
A. Yes, sir.
Q. and ask that the Court try you?
A. Yes, sir.
Q. And you consent to be tried jointly with James Warren Strother?
page 9 } A. Yes, sir.
Q. All right, sir, have a seat.

The Clerk: In the Hustings Court on this Friday, the 13th day of June, 1969, in the case of the *Commonwealth* v. *James Warren Strother,* an indictment for possession of burglar's tools. The defendant is present in Court and the defendant is represented by Mr. Axselle, Mr. Axselle, is the defense prepared to proceed?
Mr. Axselle: We are.
The Clerk: The Commonwealth is represented by Mr. Nance, Mr. Nance, is the Commonwealth prepared to proceed?
Mr. Nance: We are ready.
The Clerk: James Warren Strother, you stand indicted that on the 5th day of April, 1969, in the said City and within the jurisdiction of the Hustings Court of the City of Richmond that you did unlawfully and feloniously have in your possession certain tools, implements, or outfit with the intent unlawfully and feloniously therewith to commit burglary or larceny against the peace and dignity of the Commonwealth of Virginia. How do you plead to this indict-
page 10 } ment?
The Defendant Strother: Not guilty.
The Clerk: And on your pleas of not guilty, do you wish to be tried by His Honor, the Judge, or a jury?
The Defendant Strother: By the Judge.
The Clerk: James Warren Strother, you also stand indicted that on the 5th day of April, 1969, at the said City and within the jurisdiction of the Hustings Court of the City of Richmond, that one camera, movie projector, tire, of the aggregate value of two hundred dollars of the goods, chattels and property of Northside Foodland, Incorporated, then and

there being found, did then and there unlawfully and feloniously attempt to steal, take and carry away against the peace and dignity of the Commonwealth of Virginia, how do you plead to this second indictment?

The Defendant Strother: Not guilty.

The Clerk: And on your plea of not guilty, do you wish to be tried by His Honor, the Judge, or a jury?

The Defendant Strother: By the Judge.

The Clerk: Does the Commonwealth consent?

page 11 } Mr. Nance: The Commonwealth consents.

The Clerk: Now, do you also consent to be tried simultaneously and together with the co-defendant, Wilson Alexander Coleman?

The Defendant Strother: Together.

The Clerk: Answer His Honor's questions.

By the Court:

Q. Your name is James Warren Strother?

A. It is.

Q. What is your age?

A. Twenty-nine.

Q. And you are the same person as charged in each of these indictments?

A. I am.

Q. You have discussed your case thoroughly with Mr. Axselle, your counsel?

A. Yes, I have.

Q. Mr. Axselle, you are ready for

A. Yes, sir, we are.

Q. trial? Any witnesses that you wish sum-

page 12 } moned?

A. No, sir.

Q. You fully understand, Mr. Strother, that on a plea of not guilty, you are entitled to have a jury try your case, if you so desire,

Q. Yes, sir.

Q. you understand that? And you voluntarily waive that right and ask that the Court try you?

A. I do.

Q. All right, sir.

RAYMOND GARRETT, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

Raymond Garrett

DIRECT EXAMINATION

By Mr. Nance:

Q. Mr. Garrett, state your name and occupation, please?

A. Raymond M. Garrett, twenty-nine years—I mean thirty-one years old and I'm with Northside Foodland,

page 13 } Incorporated, President.

Q. What was the last statement, sir?

A. I'm with Northside Foodland, I'm president of Northside Foodland, Incorporated.

Q. You are president of that corporation?

A. Yes, sir.

Q. All right, did you have an occasion to see these defendants, Wilson Alexander Coleman and James Warren Strother, in the City of Richmond on April 5, 1969?

A. After they had been arrested, sir, I did see them at a closeup view,

Q. All right—

A. prior to that I had only seen three individuals at a distance.

Q. O. K., would you tell the Court, please, what occurred relative to the alleged attempted theft of the movie camera, tire and so forth, on April 5, 1969?

A. Well, on April 4th, we had been—it had been mentioned to us that someone apparently was watching—

Mr. Janus: I object to that, Your Honor.

Q. Wait a minute.

The Court: Pursuant to what you were in-

page 14 } formed, what did you do?

A. Sir?

Mr. Nance: Judge, if I might—

Q. You'll have to confine yourself, Mr. Garrett, to what you actually saw and what you know,

A. Right.

Q. and you know what you did,

A. Right.

Q. you can't tell what somebody else told you,

A. Yes, sir.

Q. and you referred to April the 4th, go ahead—

A. That was on a Friday.

Q. All right, go ahead?

Raymond Garrett

A. Starting on Friday—on Saturday or Friday?
Q. Well, whatever day of the occurrence?
A. On April the 5th, which was on a Saturday, a car was parked in the ABC parking lot in front of our store, facing our store, which is opposite of the manner in which a car would normally be parked in that particular parking lot.

Q. All right, now, where is your store?
page 15 } A. My store is located at 2919 North Avenue.
Q. North Avenue, and which way does it face?
A. My store faces west, I believe it is.
Q. It faces west?
A. Yes, sir.
Q. All right, where is the ABC parking—
A. The ABC store is—the ABC store and parking lot is on the opposite side of the street.
Q. And which way does the ABC store face?
A. It would be facing east.
Q. All right, now, you stated there was a car parked in that parking lot?
A. Yes, sir.
Q. And which way was the car parked going?
A. The car was facing east,
Q. I see?
A. facing toward my store.
Q. Was it up close to the building or was it closer to the curb line?
A. It was parked, I would say, about five car lengths into the lot and it was facing toward my store, it was
page 16 } facing east.

Q. Were there any other vehicles in that lot?
A. There were a couple of other cars in the lot at the time, they were not close by, though, they were—there was one truck setting towards the back and there had been another car which did move, but this car continued to set there for a good while and we had a feeling that something unusual—

Mr. Janus: I object to that, Your Honor.
The Court: Just state just what you did as a result of what you thought.

Q. All right, what time was this when you first noticed this car?
A. This was around 7 p. m., 7 to 7:15.
Q. O. K., now, as a result of what you thought, what did you do?

Raymond Garrett

A. After this car continued to set there I called the Bureau of Police and informed them that this car was located there and that I would appreciate it if they would send a car over. An officer was sent and I later went out and put a package in my trunk, I came back into the store, settled up.

page 17 } Q. Wait a minute, let's go back to the officer that came over there, who came over there, do you know?

A. This Officer Wajciechowski.

Q. All right, and what time was that that he arrived?

A. I don't have the exact arrival time, he might be able to give you that information, on that particular date I didn't make a memorandum of exactly what was going on, it was on a Saturday night, we were busy

Q. Well, how—

A. closing up.

Q. how long was it after—after that you saw this car, was it a matter of two hours—

A. No, sir, I would say it was within a half a hour.

Q. All right, now, you say that you went out of the store, after the officer arrived, you went out of the store and put something in your car?

A. Just prior to the officer arriving, I went out and put a package into the trunk of my car.

Q. Where was your car parked?

A. Right in front of my store at 2919 North Avenue.

page 18 } Q. All right, and that was right across the street from the other parked vehicle that you've referred to,

A. Right,

Q. is that—

A. my car was on the same side as the store though.

Q. Yes?

A. Right.

Q. All right, which way—which direction was your car headed?

A. My car would have been facing north towards Brookland Park Boulevard.

Q. O. K., and what kind of package did you put in the back of your car?

A. I put a package, it was a bag containing a night deposit bag.

Q. And what kind—what kind of

A. It was in a—

Q. outside container was it?

Raymond Garrett

A. It was in a regular sack like you would normally pack groceries in, a paper bag,

Q. Uh, huh?

A. about a eight-pound bag.

Q. What was in this bag?

page 19 } A. The only thing I had in this bag was a night-deposit bag.

Q. And nothing inside the night deposit bag?

A. No, sir, it was nothing inside this night deposit bag. I put this into the trunk of my car, came back into the store, the officer arrived, I told him what we had noticed, our feelings and—

Q. Now, what did you do at that time?

A. We watched the car constantly, either myself or my father-in-law who was in the store with me. We watched the car and no one got out of it, no one moved, and we later, after we had finished our business in the store, we left. Meanwhile, the police had—policeman had gone to his Unit and when we left, this car followed us. I went to—

Q. Did you leave in your car?

A. Yes, sir, I left in my automobile.

Q. All right, now, what time was this?

A. I would say it was approximately 9:15.

Q. All right, where did you go from there?

A. I left there, went to the corner of Brookland Park Boulevard and North Avenue, made a right turn

page 20 } and continued on Brookland Park Boulevard east towards Highland Park, which is approximately three-quarters of a mile. I stopped on the right-hand side of the street there next to the Highland Park School and got out of my car, and as I got out I noticed this vehicle which we had been, which we had noticed they was watching us or which was facing towards our store, passed on by us as I got out, I went over to the restaurant, ordered my meal and when we left and I went out, that's when I found that the police were there with several other units.

Q. Did you ever recognize any of these—

A. I had never seen them before, sir.

Q. How many people were in the car?

A. I could—when I was watching the car from the store, I could see three people in the—in the car. Of course, I could not recognize them, I could just—it was at such a distance that I could only tell that they were three individuals.

Q. Now, how about when you were going over to the restaurant?

A. I only saw two at that point, they were setting right in front, one driving and the other one riding on the right-hand side.

Q. How about when they passed by, could you
page 21 } recognize them—

A. I could see one of the gentlemen, I mean I saw one close, of course, they passed right on by and traffic was moving.

Q. When was the first time you recognized either one of them to

A. It was—

Q. definitely—

A. It was at that point when I was getting out of my car near Highland Park School.

Q. All right, can you tell which one or if either of these gentlemen were driving the car or was riding in the car?

A. Yes, sir.

Q. Which one was riding?

A. This gentleman in the gold shirt.

Q. Mr. Strother?

A. Yes, sir.

Q. And where was he seated?

A. On the right front of the automobile.

Q. All right, do you know what kind of automobile this was or is?

A. I didn't—the license number matched the license number on the vehicle, I don't have a record of the license
page 22 } number with me, but at that time I did have that number in my possession and the number matched the license number of the vehicle which we had been watching.

Q. What else was in the trunk of your car?

A. Well, I had my movie projector and also my camera and, of course, my tire tools, it was a tire and wheel in there, that was all,

Q. What—

A. other than the money bag.

Q. What was the condition of the tire and wheel?

A. The tire and wheel were both good.

Q. What year model car was it?

A. It's a '64 Falcon.

Q. All right, and how about the movie projector, how old is it?

A. The movie projector is a couple of years old, it's worth approximately a hundred and twenty-five dollars at this time, I'd say.

Raymond Garrett

Q. How about the movie camera, what kind of camera is that?

A. It's a eight millimeter movie camera, electric eye, I'd say it has a value of approximately seventy-five dol-
page 23 } lars, tire and wheel worth about ten or fifteen dollars.

Q. This automobile, who is it owned by?

A. By myself, me.

Q. How about the—all this stuff, is this—

A. It's all my property.

Q. It's all your personal property?

A. Yes, sir.

Mr. Nance: Judge, we—if I might at this time, we've got a problem with the indictment, it alleges that this property is the property of Northland—Northside Foodland, Incorporated, of which this man is the president, but it appears from the evidence that won't be changed or contradicted that it is his personal property, but I feel that this is a harmless situation in that we'd like to amend the indictment at this time to show that it is his property, it won't change the facts nor the

The Court: You want

Mr. Nance: the circumstances.

The Court: to object to it—object to that?

Mr. Janus: For purposes of the record, I would
page 24 } object to it.

The Court: Well, if that be so then the Commonwealth, if he wants to, can take a—*nol prosse* it and re-indict them and I'll forfeit their—require them to be confined until we get a date of trial, either one or the other. How does it embarrass you, I mean you can't—

Mr. Janus: Well, sir, as will be pointed out, I believe—

The Court: Well, if he owns all of the—all of the—if he's president of the corporation and this happens to be his personal property I don't know that it makes a great deal of difference, if it alleges that—I'll give you a continuance, if you ask for it.

Mr. Janus: Well, for the purpose of the record I would object, and I think I would then be entitled to a continuance and I will not ask for a continuance at this time—

The Court: Well, you do one of two things, I'll give you a continuance and I'll let him re-indict these two and—we will decide then about their bond.

Mr. Janus: I'm not asking for a continuance,
page 25 } Your Honor.

The Court: Well, what are you—you say you—you are not asking for a continuance, but you object to the changing—

Mr. Janus: No, sir, I'm asking the Court not to allow the amendment, I think the Court's already ruled on it.

The Court: Well, I'll let him amend it,

Mr. Janus: I'm not—

The Court: you don't ask for a continuance?

Mr. Janus: I'm not asking—

The Court: Do you, Mr. Axselle?

Mr. Axselle: No, sir.

The Court: All right. In each indictment,

Mr. Nance: Yes, sir.

The Court: amend it?

Mr. Nance: Well, one is—

The Court: Both of them charge grand larceny?

Mr. Nance: Yes, sir, but one of them is possession of burglary tools, Judge, does not allege any—

page 26 } The Court: Well, of course, that's not—you are not amending that, but you've got two charges against Mr. Strother, burglars tools and attempt to steal.

(There is a pause)

Q. All right, Mr. Garrett, is your store located in the City of Richmond?

A. Yes, sir.

Q. Did all this occur in the City of Richmond?

A. Yes, sir, it did.

Q. Did you ever leave the City of Richmond before you came back to your car and saw this—

A. No, sir, I did not.

Q. this thing occurred? Was there any damage done to your car in any manner?

A. Yes, sir, the trunk was pried and it was—

Q. The what was?

A. The trunk of the automobile had been pried to a point that it was just—just open—just a very small amount when I got back to it.

Q. All right, do you know—have you known pre-

page 27 } viously Wilson Alexander Coleman or James Warren Strother?

A. No, sir, I've never seen the gentlemen before.

Q. You, I assume, did not give them any permission to

A. No, sir, I did not.

Raymond Garrett

Q. enter or attempt to enter your car?
A. No, sir.

Mr. Nance: O. K., cross examine.

CROSS EXAMINATION

By Mr. Janus:
Q. Mr. Garrett, when you first observed the car it was approximately 7 to 7:15, is that correct?
A. In that neighborhood, I would say, yes, sir.
Q. This was at a time when other stores in that area, North Avenue and Brookland Park Boulevard are open, isn't that correct?
A. They are.
Q. The drug store, for instance, is open?
A. Right.
page 28 } Q. Later on, at some point in the evening, the Sahara Club is on the same side of the street as the ABC store and is opened, isn't that correct?
A. It's open from time to time, yes, sir.
Q. It's not unusual for cars to park in that ABC parking lot after the ABC store itself is closed, is it?
A. That's correct.
Q. Now, when you first observed the car across the street you said there were three men in it?
A. Just the three—I could see the three—heads of three people at that time.
Q. Where were they seated?
A. It was two
Q. All three in the front?
A. in the front and it appeared that one was in the back.
Q. Was the one in the back resting his head back as if he might have been sleeping?
A. It didn't appear that way.
Q. But later on when you saw the car driving you only saw the two—two people in the front seat?
A. At that point I only noticed two.
Q. How about the person behind the driver's
page 29 } wheel, did you notice his head leaning back as if he might have been napping?
A. I couldn't tell—when I saw the people at a distance I couldn't tell, just what I could only see, the fact that it looked like it was three individuals in the car, I couldn't come to any conclusion otherwise.

Raymond Garrett

Q. This would have been some seventy-five feet away from
A. Yes, sir.
Q. where you were in the store?
A. Right.
Q. And on this night it was raining at some point in the evening, was it not?
A. Later in the evening it was, yes, sir.
Q. Now, you did not keep but three people or the car itself in your constant vision from 7:15 to 9:15, did you?
A. Not in my personal vision but my father-in-law, who was in the store with me, while we were in the store, from the time we originally started to watch the car until we left the store, we were watching the automobile.
Q. But you yourself went about the business of waiting on customers
A. No, sir,
page 30 } Q. or attending the cash register?
A. the store was closed at 7:30, and after they —after we closed I continued to close up, get things straight until we left.
Q. There are certain things you have to do in closing up—
A. Right.
Q. close the register,
A. Uh, huh.
Q. And putting covers on certain counters and so forth?
A. Uh, huh.
Q. Now, you called the police—the Police Bureau at approximately what time?
A. This, I couldn't swear to, I don't know the exact time, as I said I failed to make a record of all of these times, it was, I would say, in the neighborhood of 7:15, 7:30.
Q. At that time you talked to Detective Wajciechowski, isn't that correct?
A. No, sir, I did not talk, I just placed a call requesting that a policeman be sent.
Q. You never talked to anyone?
A. I never talked to a policeman until he ar-
page 31 } rived at my store—
Q. When he arrived, he discussed with you putting the bag in the trunk, isn't that—
A. No, sir, I informed him that I had placed this bag in the trunk and that I had come back into the store.
Q. You never discussed with this detective or anyone else in the Police Bureau on any other occasions that you were going to place the bag in the trunk?

Raymond Garrett

A. No, sir.

Q. Please answer this question just yes or no, Mr. Garrett, this was your habit on Saturday nights to put your deposit in a bag and put it in the trunk, isn't that correct?

A. That was—had been habit, yes, sir.

Q. On this particular night, you didn't put any money in the deposit bag, but put what, sawdust?

A. I didn't—I believe I had a box of sugar in the bag at that time, I—the bag did not contain any money, I didn't put any money in it.

Q. The purpose of putting the sugar in was to make it,—simulate it as if it was a regular deposit like any other night, isn't that correct?

page 32 } A. There was just no intent in there, I just put the bag in there, I put the package into my trunk.

Q. Well, you don't usually put a box of sugar in your night deposit bag, Mr. Garrett, do you?

A. I do from time to time.

Q. Well, you did it for the purpose of pretending that you had money in there, though, didn't you?

A. My purpose I would rather not disclose unless in the presence of just the Judge as to why I just put sugar in there, but I do do this from time to time.

The Court: I think that's sufficient.

Q. Your trunk hadn't been closed or locked before that point, was it?

A. Yes, sir.

Q. You just went, opened the trunk, put this sack in the trunk—

A. Uh, huh.

Q. When you did that you were visible to people across the street?

A. To anyone who was on the outside, yes, sir.

Q. At no time during that evening did you put in or take out or move the movie projector or camera that you mentioned before?

page 33 } A. No, sir, I hadn't, I didn't touch that, I put it in there about three or four days earlier when I was using it and I just hadn't taken it into my home.

Q. And they'd been lying somewhere in the well of the trunk?

A. Yes, sir.

Q. The same be true of the tire and the tire iron jack, they remained in there?

A. Yes, sir.

Q. Now, approximately what time was that, that you did that, around 8 p. m.?

A. It was just prior to the officer's arrival that I placed this night deposit bag in the trunk and then I came back into the store, this was probably around eight, I would say, in that neighborhood.

Q. What kind of movie camera is this, sir?

A. It's an eight millimeter movie camera.

Q. What brand?

A. It's a Kodak.

Q. What does this sell for new?

A. Well, when I bought it about—it cost me a hundred and ninety-five dollars, I believe it was,

Q. And that was

A. when I purchased—

page 34 } Q. three or four years ago?

A. About two and a half years ago.

Q. The same—about the projector, is that a Kodak also?

A. Yes, sir.

Q. What was that—

A. I paid in the neighborhood of two hundred for that, I believe, I don't have the exact figures with me.

Q. And that would have been two or three years old, also?

A. That's about two and a half years old.

Q. You really aren't sure exactly what you could sell them for, what they would be worth, if you had to have a market for them today, are you?

A. I haven't had them appraised but I feel sure I could get the amount which I quoted, my figures.

Q. Now, when Detective Wajciechowski came to the store he came inside, isn't that right?

A. Yes, sir.

Q. At that point you had a discussion with him about what you were going to do when you left the store, isn't that correct?

A. I informed him what I normally did when I

page 35 } left the store and what my plans were on that particular night.

Q. You told him you were going to take the right at Brookland Park, go down, and stop at the restaurant?

A. Which I normally do, yes, sir.

Q. And he told you that he would wait, he was going to follow you?

A. He didn't tell me just what his intentions were but I assumed that he would be following me.

Raymond Garrett

Q. And he came out of the store with a purchase, a big plant or something of that nature?
A. Yes, sir.
Q. And when you got back to the car these two men were there as well as the policeman and Detective Wajciechowski, is that correct,
A. Yes, sir.
Q. this is after you got out of the restaurant?
A. Right.
Q. And at that point the merchandise, the bag and everything, was still in the trunk?
A. Still in the trunk, yes, sir.
Q. As well as the movie camera, projector, tire
page 36 } and so forth?
A. Yes, sir, it was.
Q. At that point it was raining?
A. It was raining, yes, sir, very much.
Q. This restaurant is on the corner of Brookland Park and what—*Meadowbrook?*
A. Right, Meadowbridge.
Q. Meadowbridge?
A. Yes, sir.
Q. Brookland Park runs—you say it runs north and south?
A. To me it runs east and west—Meadowbridge would run the opposite.
Q. Is this the paper sack that you used that night or do you know?
A. I don't believe it was, I believe that I had a regular paper bag rather than a
Q. Shopping bag?
A. shopping bag.
Q. And the deposit thing that was inside would be the regular canvas
A. Yes, sir.
Q. with the leather strip on the top?
A. With the zipper type, yes, sir.
page 37 } Q. I don't think I have any further questions.

Mr. Nance: That's all.

By Mr. Axselle:
Q. Mr. Garrett, now, I understand that North Avenue runs north and south, is that correct?
A. Yes, sir.

Raymond Garrett

Q. And your store faces west, and the ABC store is across the street facing *east*?

(The transcriber is not certain whether counsel said "facing *east*" or facing *you*")

A. Right.
Q. And these gentlemen were sitting in the car parked in the ABC parking lot?
A. Right.
Q. Now, where was your vehicle parked?
A. Directly in front of my store at 2919 North Avenue.
Q. Directly in front of the store, what—
A. In front of my store, yes, sir.
Q. Which direction was it facing?
A. It was facing north towards Brookland Park Boulevard.
page 38 } Q. And I would assume that would be on the east side of the street?
A. Yes, sir.
Q. This ABC parking lot, is it on the north or south side of the ABC store?
A. It would be on the north side.
Q. Now, this ABC store and your store, are they directly across from each other?
A. No, sir.
Q. Could you describe for the Court how they are in respect to each other?
A. Well, the store—if you were standing inside of my store, this store would be about approximately fifty feet to the south of the front of my store, that's the store itself, then a lot runs, the property line of the ABC store runs approximately right in front of my building.
Q. Now, I understand in this bag it was the brown bag, night deposit bag and then this box of sugar?
A. Yes, sir.
Q. What size box of sugar was it?
A. Two pound box, domino sugar.
Q. Would you show with your hands the approximate size of that?
A. About that long and about that square.
page 39 } Q. O. K. Now, was the—the night deposit bag is that larger than the brown paper bag, or taller?
A. No, sir, the night deposit bag is smaller than the paper bag in which I had it.
Q. In other words, it would fit down in the paper bag?

A. Yes, sir.
Q. And I believe you said this is your habit of putting your money in this type of bag?
A. This is a normal habit, yes, sir.
Q. No further questions.

Mr. Nance: That's all.

Witness stood aside.

page 40 } A. J. WAJCIECHOWSKI, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Nance:
Q. Detective Wajciechowski, state your name and occupation, please?
A. Detective Wajciechowski, assigned to the Detective Division, Richmond Bureau of Police.
Q. Did you respond to 2919 North Avenue on April 5, 1969, in regard to this matter?
A. Yes, sir, I did.
Q. All right, tell the Court, please, what you observed when you arrived there from—or from the time you arrived until you subsequently, I believe, arrested the two defendants?
A. I arrived at the store approximately 9 p. m. on that date and I talked with Mr. Garrett. I went inside the store, he were back in the back there, not close to the front, we observed out the window. He pointed to a '58 Pontiac across the street, Va. '68 issue A 753-919, the property of Wilson Coleman.
Q. You say the property of Wilson Coleman—
page 41 } A. He told me later after I arrested him and advised him of his rights that that was his automobile.
Q. All right, go ahead?
A. Well, after I talked with Mr. Garrett, he stated that he had already placed a bag in the trunk of his car and that it was his usual habit to carry a night deposit in the trunk of his car and then he usually goes down to Second and Brookland Park Boulevard and gets a bite to eat before he goes home. So I stayed in Foodland approximately a half hour and to avoid anyone suspecting anything suspicious I took a potted flower plant out with me when I left, this was the night

before Easter and I had a little plant for my wife. I got in my automobile and sat there for a while and in a few minutes—

Q. Where were you parked, Officer Wajciechowski?

A. I was parked, I believe it is the Safeway lot, which is on the same side of the street as the Foodland.

Q. Is it north or south of the Foodland?

A. This is south of the Foodland.

Q. All right, could you observe the '58 Pontiac from that point?

page 42 } A. I couldn't observe the whole automobile, no, sir, but I could see if it came out of the parking lot,

Q. All right?

A. I was observing Mr. Garrett's '64 Falcon, when I observed him come out and get into his automobile and pull out, and I also observed this '58 black and white Pontiac pull out behind him. He turned right at the light and went east on Brookland Park Boulevard, this Pontiac followed him and I followed the Pontiac. Mr. Garrett had a little lead on him going down Brookland Park Boulevard and the Pontiac sped up to catch up with him and I had to speed up also to keep up with the Pontiac. He went down and he parked in front of—let's see—1228 East Brookland Park Boulevard, which is just west of Second and Brookland Park Boulevard, by the school there. The Pontiac proceeded on past the '64 Falcon and turned right at Second and Brookland Park Boulevard. I proceeded up to the driveway into the rear of the school and parked up behind the school. This Pontiac came around the block and pulled up about a half a block behind the '64 Falcon. At that time, after he parked there for a couple of minutes, Strother got out of the automobile, walked up to the corner of Second and Brookland Park, returned back to the '64 Falcon, at that time, there was only two cars on that side of the street. He tried the door, apparently the door was

page 43 } locked on the passenger side, then he went to the trunk and I observed him at the trunk with a piece—a bar in his hand, which I later found out to be a tire iron, prying on the trunk, and he made three attempts and each time it slipped and made a loud popping sound as though somebody was hitting the automobile with a hammer, it made that much noise, I could hear it from where I was parked. After a few minutes an automobile came by, he walked up on the sidewalk, then he went back and made another attempt, after he went back and made another attempt

A. J. Wajciechowski

I pulled out and pulled up behind the automobile, went up and got out of the automobile and I pulled my revolver out and told James Strother to drop the tire iron, which he did, he threw it over the fence and it fell down behind the fence. I handcuffed him to the fence at that time and it was pouring down rain also at this time. I went back to the automobile that Coleman was setting up in, in an upright position observing what was going on, and I went back and placed him under arrest.

Q. How far was that car from Mr. Garrett's car?

A. It was approximately a half a block, it was—Mr. Garrett's car was approximately a quarter block from the corner and their car was parked a quarter block from the corner after they round that corner there.

Q. I ask you to take a look at this piece of metal
page 44 } and ask you if you can identify this?

A. Yes, sir, this is the tire iron that was dropped over the fence, it has my initials on it.

Mr. Nance: I'd like to ask that be introduced in the evidence, Your Honor.

The Court: All right, sir.

Q. All right, you stated that you did—went and arrested Coleman?

A. Yes, sir.

Q. Were there any statements made to you regarding this —their conduct that night by either one of them?

A. I later went to the lockup and advised Strother of his rights at 11:15 p. m. I advised him that—

Mr. Axselle: Your Honor, we will stipulate that Officer Wajciechowski properly advised Mr. Strother of his rights.

The Court: Do you, Mr. Janus?

Mr. Janus: Yes, sir.

The Court: All right.

A. And he stated to me that they were together from about six p. m. drinking and riding around and that he saw the owner put something in the trunk of his maroon
page 45 } Falcon and that he had only twenty-one cents in his wallet and he needed some money and that he was going to take what he put in the trunk, and I advised Coleman of his rights at 11:25 p. m., and he stated that he went to the drug store approximately 8:30 p. m. and then got back into the automobile and pulled off immediately. He stated they were together for—he stated they were only there ten or

fifteen minutes, and I asked him why he pulled off at that particular time, he stated he just pulled off when he did, and I asked him why he circled the block at Second and Brookland Park Boulevard and he denied circling the block.

Q. Well, you say that Coleman denied having any knowledge of any of this?

A. Yes, sir, yes, he did.

Q. And where was he when you arrested him?

A. He was behind the wheel in the automobile.

Q. Uh, huh, and I believe—

The Court: Coleman was behind the wheel?

A. He was the driver, yes, sir.

Q. And I believe you stated that he—previously stated that he told you this was his car?

page 46 } A. Yes, sir.

Q. '58 Pontiac that he was driving?

A. Yes, sir.

Q. And Strother was riding in it?

A. Yes, sir, Strother was a passenger in the front.

Q. Did anybody claim the tire iron?

A. Well, information I received—

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

Q. Did you—did you search Coleman's car?

A. I looked through it, yes, sir.

Q. Did you find a tire iron?

A. No, I didn't.

Q. O. K.

Mr. Nance: Cross examine.

CROSS EXAMINATION

By Mr. Janus:

Q. Detective Wajciechowski, what time did you get to the store, would you say around nine o'clock?

A. That's correct.

Q. Had you talked to Mr. Garrett on the phone

page 47 } at any time

A. No, sir.

A. J. Wajciechowski

Q. previously? When you got there he told you that he put the deposit bag in the trunk?

A. He had already placed the deposit bag in the trunk.

Q. And he informed you that he—it was empty as far as money was concerned?

A. The deposit bag?

Q. Yes, sir?

A. Yes, sir.

Q. When you looked out of the window of the store and observed the car across the street how many men did you see, two or three?

A. I could only see two at that time, the driver was laying back,

Q. He had his head back on the seat,

A. Yes, sir.

Q. as if he were napping or—

A. He was laying back, I could see the top of his head and apparently he could see out the window—

Q. Where was the other person that you could see, to his right—

A. He was in the passenger side sitting up.

page 48 } Q. Then you observed the Pontiac pull out and follow Mr. Garrett's car?

A. Yes, sir.

Q. You say that Coleman said the car was his, did you actually check a registration to find out whether or not it was in fact his automobile?

A. No, I believe he—if my recollection is right, he had the registration card that was registered to someone in his family,

Q. But he—

A. but he said that it was his.

Q. Now, they parked more—when I say they, I am referring to the Pontiac—parked more down to the opposite end of the car of the block from the restaurant, isn't that correct?

A. Yes, sir.

Q. And at this point you say it was pouring down rain?

A. It was raining hard, yes, sir.

Q. Did you observe two or three people in the car when it was following the Garrett car?

A. I could observe only two.

page 49 } Q. As a matter of fact, when you went back to the car and saw Coleman, was there a third person in the car?

A. Yes, sir, Herman *Polite* was in the back seat—Raymond *Polite*—Herman, that's correct.

A. J. Wajciechowski

Q. He was sleeping—
A. He was drunk, passed out.
Q. Coleman himself you could tell had been drinking some, isn't that correct?
A. Both of them appeared to have had something to drink.
Q. Now, sir, getting to the statements that Strother gave you, he said that he had intended to get the deposit bag, isn't that correct?
A. That's what he said, he intended to take what he put in the trunk.
Q. But didn't he say that he thought that was the deposit bag?
A. No, he didn't.
Q. Isn't that what you testified to at the preliminary hearing on May 13, 1969?
A. Not to my knowledge, I testified that he said he was going to take what he had put in the trunk.
Q. But he led you to believe that he thought it was the deposit bag with money, didn't he, with the week's
page 50 } deposit, or a night's deposit?
A. Well, I knew that they usually—he usually carried the deposit bag in the trunk.
Q. But didn't Strother lead you to believe that he thought it was the deposit bag?
A. I don't know what he thought it was, he stated that he was going to take what he had put in the trunk.
Q. He also told you that he had told Coleman that he was just going up to the restaurant, isn't that correct?
A. Repeat the question.
Q. Didn't Strother tell you that Strother had told Coleman that he was going up to the restaurant to get something?
A. That Strother told Coleman he was going to the restaurant?
Q. Yes, sir?
A. No, I don't recall anything like that.
Q. Strother did in fact go up to the corner to the restaurant first, though, didn't he?
A. He got out—oh, you mean at the scene?
page 51 } Q. Yes, sir?
A. He got out of the automobile and went to Second and Brookland Park, yes, sir.
Q. That was the location and the corner of the restaurant?
A. Right, the corner of the restaurant was on the other side of the street.

A. J. Wajciechowski

Q. And while—at some point while he was walking out of the car, Coleman had his head in the same position *leaing* back as if he were dozing?

A. No, sir, he was setting up the whole time after he reached the destination.

Q. Well, how far from his car were you in yours?

A. I was parked the same distance from him as they were from—the two cars were from each other, about a half a block.

Q. You were mainly concentrating on Strother, weren't you?

A. Well, I had full view of both of them.

Q. Full view of both of them while Strother was up at the corner of Second and Brookland Park?

A. I could see—when he went—got to the corner he went behind the building for a short time, then he came

page 52 } back to the car.

Q. By the time you got to the scene, the trunk of the car—of course, the trunk hadn't been fully opened and nothing had been disturbed inside?

A. Not to my knowledge.

Q. Well, you never saw the trunk up?

A. It was up when I came back after arresting Coleman.

Q. I'm talking about when you were at the scene with Strother—

A. Well, I immediately, as I stated before, I handcuffed Strother to the fence and went and got Coleman before he had a chance to get away.

Q. But at that point, when you apprehended Strother, the trunk hadn't been opened or gone into?

A. The trunk was up some, I couldn't tell whether it was all the way open or not.

Q. You say up, what are you talking about, an inch, two inches?

A. Well, it appeared to be not in a normal position, it appeared to be up from its normal position.

Q. I have no further questions.

page 53 } By Mr. Axselle:

Q. Mr. Wajciechowski, when you saw the trunk, was the lock broken?

A. When I got back to the trunk after arresting Coleman, the trunk was open.

Q. And who was there at the car?

A. Mr. Garrett and several other people were there, and

several other officers were there at that time.

Q. But when you initially left Mr. Strother, did you observe the lock?

A. I didn't have time to observe it, the only thing I observed that it was not in its normal position, it was up from its normal position, it could have been sprung to the side or—but it was not in its normal position.

Q. You say it, doesn't that mean the entire trunk was not in normal position?

A. The trunk cover—

Q. Yes, sir. Now—

A. Normal closed position.

Q. Right, now, Mr. Strother made a statement to you that he—I believe I have it correct, he was going to take what he put in the trunk, is he referring—was he referring to what Mr. Garrett put in the trunk that same evening?

page 54 } A. Yes, sir.

Q. Did he give you any indication of the knowledge or the movie camera, the movie projector, the tire,—

A. Strother, you talking about?

Q. Yes?

A. No, he didn't.

Q. At any time, once Mr. Strother got out of his vehicle and he walked up and I believe you said you lost sight of him for a few minutes, he went behind some buildings and then he came back to Mr. Garrett's car, is that correct?

A. He went up to the corner and from where I was sitting he went up just—just out of sight and then he turned and came immediately back.

Q. O. K., once he came back in your sight, did you lose sight of him any time then?

A. No, sir.

Q. How far were you from him, I understand that you were half a car from—half a block rather, from the car in which Mr. Coleman was sitting, how far were you from Mr. Garrett's vehicle?

A. I was approximately a half a block, I was about a half —about the same distance from both automobiles.

page 55 } Q. So the three vehicles were forming a triangle—

A. Yea, I was up in the parking lot near the school.

Mr. Axselle: I have no further questions, Your Honor.

A. J. Wajciechowski

By Mr. Janus:

Q. Coleman, at all times when you talked to him, denied knowing anything about the attempt theft of anything from the car, didn't he?

A. He said that he didn't know anything about it.

Q. And when you originally got this warrant for attempted larceny, you charged the two with attempted larceny of the deposit bag and the money that—and a sum of money that was allegedly in it, isn't that correct?

A. That's true.

Q. I have no further questions.

REDIRECT EXAMINATION

By Mr. Nance:

Q. Was—describe the area, please, around where the car was parked, where Coleman was?

page 56 } A. It's a block—Brookland Park Boulevard, Second and Brookland Park, block west of that, there's school on the corner.

Q. Are there any establishments or anything in that—

A. It's a restaurant on the northside, the corner, school on the southside of the corner—

Q. Well, that's a block away from where it was parked, wasn't it?

A. No, that's the same block they were parked in.

Q. The same block they were parked in. How close was he parked to any restaurant or commercial establishment?

A. He was block down—three-fourths of a block from the restaurant, it was raining hard at that time.

Q. Three-fourths of a block from the restaurant?

A. That's correct.

Q. And I believe you previously stated that there were only two cars parked on that side of the street in the whole block?

A. That's right.

page 57 } The Court: All right, sir.

Mr. Nance: That's the Commonwealth's case, Judge.

By the Court:

Q. Let me ask you one thing, where this thing occurred, is this in the City of Richmond?

A. Yes, sir.

Q. All right.

A. J. Wajciechowski

Witness stood aside.

The Court: All right, the Commonwealth rests?

Mr. Janus: Your Honor, on behalf of the defendant, Wilson A. Coleman, I would move to strike the evidence of the Commonwealth on two grounds, first of which is that there's not sufficient evidence at this point to show that he was involved in any attempted larceny whatsoever. The man parked across the street, a public parking lot, the parking lot page 58 } frequented by visitors to business establishments in the neighborhood which—several of which are open, his statement to the police were that he had gone out and gotten a sandwich, had been drinking with Strother and other individuals for some hour or so before. His conduct is not—nothing completely strange about it at that point, he drives away, gives no explanation for that, he said he just drove away at that point, he had been apparently sleeping or recuperating from the drinking at some point per Detective Wajciechowski's testimony that he saw him with his head leaning back, the other fellow at some point had in fact gone to sleep or passed out, which is consistent with the condition of Coleman. He drives around the block. One defendant had stated what his actions were going to be, yet throughout Coleman has denied it. He had driven around the block and stopped at a restaurant open to the public, someone in his car had gone up to the restaurant, it's pouring down rain, he's a half a block away from the car, he's never left the car—

The Court: Didn't the testimony indicate that page 59 } Coleman had already eaten something?

Mr. Janus: Yes, sir, Coleman had but not Strother, Coleman said that he had gotten

The Court: All right.

Mr. Janus: a sandwich from the drug store when he was parked at the ABC lot, there's no testimony that Strother had, and it was Strother who had gotten out of the car and gone up to the restaurant, there's no indication that he had anything to do with the attempt to break into the trunk, that would be the first point of our motion, the second—

The Court: You mean he didn't see the man with the—with the tire iron in his hand?

Mr. Janus: There is no evidence that he had anything to do with it, he—

The Court: Well, I mean you are asking the Court to say that when the man walked up to the restaurant with a tire

iron—the man he didn't see him, he thought he went to get the sandwich?

Mr. Janus: I don't think it's evidence whether it was visible or whether it wasn't.

page 60 } The Court: All right.

Mr. Janus: The second point, Your Honor, and I ask the Court's consideration for this, is assuming that he and Strother are under conspiracy, assuming it is some big plot, maybe laid in wait and they observed and they had specific intent and we, of course, are assuming this *arguendo,* what then, what are the legal ramifications? I respectfully submit to the Court that if that were true in fact they were looking and waiting for a deposit bag which they thought was going to contain money, whether they thought it was several thousand dollars or whatever sum, it doesn't make any difference, that is probably what they were going to assume. All right, they lay in wait watching from across the street, they see a paper bag being put in the trunk, Mr. Garrett testified that that in fact was his habit, he drives off, they drive off, Strother gets out with the tire iron—

The Court: Yet you are telling me, arguing me that they then went to get a sandwich for him—

Mr. Janus: No, sir, I'm asking you, assuming

page 61 } *arguendo* that this is what they are doing, after —if you don't go along with the first one,

The Court: I don't—

Mr. Janus: but then we have legal ramifications and I ask His Honor to bear me out listening.

The Court: All right, go ahead.

Mr. Janus: They are, in fact, that Strother, acting with Coleman even at this point, intended to steal what was in the bag, this is what he told the detective. What then was in the bag, what is he be guilty of? I submit to the Court he can be guilty of no higher attempt than would have been the actual consummation of the crime and that would have been petit larceny. There is nothing of any value in the bag other than a night deposit bag worth maybe two ninety-eight plus a two-pound bag of Domino sugar, and that is all, this was in his man—mind. Granted, he made a mistake, it might have been in his mind that he was going to get three thousand dollars from a week's deposit or a Saturday's deposit, we don't know,

but that is the only evidence before the Court of

page 62 } what his intention was, and this man, Wilson Alex-

ander Coleman, is charged with the attempt to commit a crime. The attempt is made up of two things, an overt act—O. K., we'll stipulate there was an overt act by the conspiracy, and the intent—and the law, Your Honor, we cite you to 2 Michie's Jurisprudence, Attempt—Section 4, is

the intent to commit a particular crime, and that particular crime was to remove the night deposit bag which they erroneously thought contained money, but what kind of money, you refer to the larceny statute which is 18.1-100 and 101, which distinguishes between grand and petit larceny. It doesn't matter what these men thought, as a matter of legal fact they could have been guilty of only petit larceny. Wajciechowski thought so much and was so sure that's what they intended, that's what he charged them with, with attempt—original with attempting to steal the deposit bag with what they thought was in it, they didn't think it was sugar in there. The intent must clearly appear, it cannot depend on *mer* speculation. Well, this camera, movie projector and tire

page 63 } is an after-thought on behalf of the Commonwealth, Your Honor, that isn't what these men were after, and I don't think they could be charged

with that just because it happened to be there, they didn't know that, there's no evidence of it. Penal statutes, of course, must be strictly construed, I refer, His Honor, also to 21 Am. Jur. 2d, at Criminal Law, Section 112. There they discuss that when a person is charged with an attempt they say that if the *im*possibility to commit the crime is impossible, which it would have been for grand larceny, then there can be no attempt, when as a matter of law the act, if accomplished, would not constitute a crime the attempt is not criminal.

The Court: There was a possibility for them to commit grand larceny, wasn't it?

Mr. Janus: Your Honor, their intent was to steal this deposit bag, that's the only evidence before this Court—Thacker—*Commonwealth* v. *Thacker,* 134 Va. 768, is a Virginia case dealing with attempts, states at 770, the law can presume—cannot—the law can presume the intention so far as realizing

page 64 } the act, but not an intention beyond what was so realized. Well, Your Honor, this intention which is reiterated, which is a matter of common knowledge

is to get what they thought Garrett was putting into the trunk, the money. You cannot presume intent . . . the Thacker case said, it must be with regard to this particular crime. The Virginia Code is specific—18.1-16 deals with attempt, 18.1-19—

The Court: Well, I agree with you about what constitutes an intent, but I am not—don't go with you thoroughly on the question of a person breaking in a house, for instance, and picking up a pocketbook and he thinks only holds—thinks holds five hundred dollars and it turns out it only has ten dollars in it—

Mr. Janus: Breaking in a house—

The Court: that—that makes any difference, this—can't —attempted grand larceny I mean the fact that he didn't actually take what was in the thing after he broke in the car, I think that the opportunity for it, the fact that he was stopped, that's what I want to hear the Commonwealth on.

Mr. Janus: Let's assume the crime was—

page 65 } The Court: I go with you, Mr. Janus, on the question of—you raised it thoroughly—but the question is did he have the intention or can he be convicted of grand larceny when he didn't get anything, isn't that your point?

Mr. Janus. Not only he didn't get anything, but if he had have gotten something what would the crime itself have been?

The Court: Well, if he had gotten anything he would have gotten all the other articles in there.

Mr. Janus: No, sir, I don't think—I don't think they would, I think the only evidence is that they had the intention to get that deposit bag, Your Honor, and that's all.

The Court: Well, I don't go with you that far.

Mr. Janus: Well, he—he may.

The Court: All right, I'd like to hear what you've got to say on the question.

Mr. Nance: Judge, I think the matter is one where you have to differentiate between attempt and intent

page 66 } and attempt includes intent, it's no question about the intent, these people had the intent to commit theft of whatever was in there. Now, the only statement is —that they hang their hat on—is he intended to steal what he put in there, I think it can be reasonably inferred that they intended to steal everything in there, and as far as the attempt is concerned, of course, we have shown the fact that he has pried the trunk open and you have both elements, you have the intent and the attempt.

The Court: All right, sir, I'm going to overrule your motion.

Mr. Janus: We note our exception, Your Honor.

The Court: All right.

Mr. Axselle: Your Honor, on behalf of the defendant, Strother, I would like to make the same motion regarding the attempted grand larceny and would not indulge the Court with the same statement, but we would take the same position, Your Honor.

The Court: All right, sir.

Mr. Axselle: And we would note our exception

page 67 } to the ruling.

The Court: All right, sir.

James Warren Strother

Mr. Janus: The defendant, Coleman, does not desire to put on any evidence at this time.

Mr. Axselle: I'd like to call Mr. Strother to the stand, please.

The Court: All right. Let me get straight, Mr. Janus, you represent Coleman, is that correct?

Mr. Janus: That's correct, Your Honor.

The Court: And you represent

Mr. Axselle: Yes, sir—

The Court: Strother? All right.

page 68 } JAMES WARREN STROTHER, the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Axselle:

Q. State to the Court your name and age, please?

A. James Warren Strother, twenty-nine.

Q. Let me call your attention to April the 5th, 1968, the incident we have been discussing here, tell the Court what you were doing there in the ABC parking lot?

A. Had been drinking and Wilson, where had been driving the car, he had been drinking, all us had been drinking, but *Polite,* the other fellow with us, he had been intoxicated more than what we were, so he went to sleep. So Wilson was hungry, and he don't have a permit to drive, so he say he won't going drive, say he going to the—it's a drug store on the corner—say he going to get him a hot dog, so he say he going to get him a hot dog, so he left out the car and went to the store to get a hot dog.

Q. Now, you say Wison, you mean Mr. Coleman?

A. Coleman.

Q. O. K., he went to the drug store to get a hot
page 69 } dog?

A. Yea.

Q. O. K.?

A. Well, in the meantime I was in the car, you know, in the front, I observe the manager of Foodland coming out putting a package in his car—

Q. Uh, huh. Now, was Mr. Coleman in the car at that time?

A. No, he wasn't in the car,

Q. O. K.?

James Warren Strother

A. he was going to the little store on North Avenue, I think it was a drug store.

Q. O. K., go ahead?

A. And his key was in the car, and I did take the tire iron out his car, without his knowledge of it, 'cause he wasn't in the car, you know, and my purpose was, by it raining, was to go over—I was going 'cross street then to see what he had put in the car—

Q. Now, you say you took the tire iron out,

A. Yes—

Q. when did you do this?

A. While Wilson were gone.

Q. While you were still sitting in the ABC lot?

page 70 } A. Yea, I was sitting in the ABC lot.

Q. O. K., then when did Mr. Coleman return?

A. I think he were gone in the store at least for fifteen minutes.

Q. Uh, huh, O. K., now, you all went on down—

A. No, we set in the car, he ate his hot dog, I got a piece of it, and he later say I'm going take a rest, well, he don't have a driving permit in the car, but the other fellow he was pretty high, so I was setting in the front, he was nodding and sleeping and, you know, as the bus pass and people pass by I doze off and woked up a few times, I didn't really go to sleep

Q. O. K.?

A. that part time why they stayed in the parking so long, so when the car left and when the man close up and the car left and went out from the store going on down, I kept shaking Wilson and told him to come on I was going back over to Church Hill, going home, so I asked him—

Q. Was Wilson—Mr. Coleman asleep at this time?

A. He was—he wasn't what you call fully sleep,

page 71 } he was drowsy like, he were coming out the sleep.

Q. O. K.?

A. So he say where you going, I say I going home, so we went on down North Avenue. Well, after we going down North Avenue, the car I seen in front of the store had done pull over on the corner, and so we going on down after we got almost to the corner, after he had pass the car, I seen the two men going in this service station so I asked him would he circle the block, go on around, I say I going in the store and get me something, so he went on around the street, went on back 'round the corner and park about a block down the street, so it were raining hard, so he say, "Well, where you going?" I say, "I going store and git me something", just

like that, you know, so he wouldn't know that I had the tire iron, I was going—

Q. Where was the tire iron at this time?

A. I had on my right—I had my overcoat on,

Q. Uh, huh?

A. I had it, you know, up my sleeve like, you couldn't see it no kinda way.

Q. O. K., and then what did you do?

A. I got out and went up the street past the car where I know that—I look back he couldn't see me 'cause
page 72 } it raining hard and it wasn't no light on the street, not on the . . . that he was on, and the other light he couldn't see, so I look over at the parking lot 'round, see could I see anybody, I never see anyone, so I went up to the corner and came back, so I try to open the trunk and it was popping, but it never open.

Q. O. K., what was Coleman doing when you last saw him prior to your arrest?

A. You mean when I got out the car?

Q. Well, when was the last time that you saw Coleman prior to your arrest?

A. I was in the patrol wagon.

Q. Well, let's see, when you got out of the car,

A. Yea.

Q. you walked up to the restaurant,

A. Yea—

Q. you say you turned around and looked then?

A. Back down the street.

Q. Did you see Coleman then?

A. No, you couldn't hardly see the car, wasn't no light down there.

Q. When you were standing at the car, Mr. Gar-
page 73 } rett's car, did you look back and see Mr. Coleman?

A. No, I ain't look back to see him, I look back to see was any other cars coming up the street.

Q. So you—the last time you saw Coleman was when you got out of the car?

A. When I got out the car.

Q. Now, you say you went to the trunk and you tried to open it, it popped a couple of times, it never came open—

A. It never, it just bent.

Q. What was your intention at that time while you were trying to open the car?

A. To get the bag that I seen the gentleman put in the trunk.

James Warren Strother

Q. Did you know that there was a movie camera or projector, or any of those items?
A. No, I didn't.
Q. The only thing you had seen him put in was this—
A. Was the bag.
Q. was the brown paper bag?
A. Like that
Q. I have no further questions.

page 74 } CROSS EXAMINATION

By Mr. Nance:
Q. If you had gotten in there and saw the movie camera and projector, would you have taken that?

Mr. Axselle: Your Honor, we'll object to that—

A. No, I wouldn't.

The Court: That's a proper question.

Q. Would you have taken that?
A. No, I couldn't have taken it, even if I would have wanted it.
Q. Why?
A. Because then you would had a knowledge I would did something wrong.
Q. Oh, you mean you didn't want Coleman to know
A. No—
Q. you had done anything wrong?
A. See the bag, I thought he was going see the bag—
Q. Why didn't you want Coleman to know you'd done anything wrong?
A. He had never claimed to do nothing wrong.
Q. I mean is that the only reason, you just
page 75 } hadn't planned anything,
A. Yes, sir.
Q. it was all your idea, huh?
A. Yea, that was my idea.
Q. Uh, huh?
A. See, I told the officer, see, he had implicate him, that me and Wilson was together on a plot to take something.
Q. What were you doing over in the northside anyway?
A. I got a lot of friends over there, I got (word unintelligible) over there.
Q. You live on Church Hill, don't you?
A. Yes, but I go over there quite often.
Q. And set in the ABC store lot,

James Warren Strother

A. Well—
Q. watch the bus go by?
A. I don't want to walk in the rain, he was high, the other fellow was drunk.
Q. Well, you wanted to walk three quarters of a block from where he parked behind that car to the restaurant, didn't you,
A. Yea.
page 76 } Q. instead of parking up next to the corner, it was only two cars on the whole side of the street, wasn't it?
A. But you can't park there, it's a bus stop.
Q. You can park on the other side of Second Avenue, can't you?
A. That's when you have to go across the street coming in, it's no room there to park.
Q. Come on, Mr. Strother.
A. It's nowhere on the other side—
Q. do you expect this Court to believe that you parked three-quarters of a block away in the driving rain and walked up to a restaurant
A. I didn't go to a restaurant.
Q. rather than tell your friend, Mr. Coleman here, that you were going to try to break in that car?
A. I didn't tell him
Q. And you tricked Coleman into driving you around the block then?
A. How I tricked him into driving me around?
Q. Parking right at the same place and you did all this without Coleman having any indication that you
page 77 } were going to go in that car?
A. Well, he didn't have it from me, I put it that way.
Q. Have you ever been convicted of a felony?
A. Yea, I been convicted of a felony, he didn't have no knowledge from me that I was going in there, that your assumption, not mine.
Q. You say that he wasn't—he wasn't even there when the man came out with a bag,
A. No, he wasn't in the car.
Q. he was gone to the—to the drug store?
A. To the store over on the corner, on North Avenue.
Q. And who was in the back?
A. Herman *Polite.*
Q. How long had you all been together?

James Warren Strother

A. That evening that day.
Q. How long?
A. I would say we been out about five o'clock, I would say around five.
Q. How long did you sit over there in the ABC store lot?
A. It was—it was 'bout few hours I would say.
page 78 } Q. Few hours. You ever seen this man put the bag in the back of his car before?
A. No, I haven't.
Q. You never seen him put it in there before?
A. Never before ony just this night.
Q. Weren't you sitting there watching and waiting on him to put something in the back of his car?
A. I ain't had no idea he going to put nothing in there.
Q. Didn't somebody from Church Hill tell you that he does that every night?
A. What someone, that—

Mr. Axselle: I object to that, Your Honor.
The Court: He's got a right to ask the question, but if he answers it no, why that's the end of it.

A. Why, no.
Q. Nobody asked you,
A. No.
Q. I mean nobody told you about that?
page 79 } A. Nobody told me.
Q. What did you think was in the bag?
A. I had a something that it might have been money, it coulda been.
Q. Well, *epople* come in and out of there all the time putting bags in the car, weren't they?
A. No.
Q. And you picked this one particular man and he put a bag in the back of his car and you figured it might be money?
A. That's right ,'cause—
Q. I don't have any further questions, Judge.

The Court: All right, sir.

Witness stood aside.

Mr. Janus: Your Honor, on behalf of the defendant, Coleman, I would renew my motions for the same two reasons, I think the Commonwealth is entitled to the weight—con-

clusions—(counsel is too far from the microphone
page 80 } to be heard by the transcriber—)

The Court: All right, you have the same motion?

Mr. Axselle: Yes, sir, and if I may be heard just briefly on this thing, 'cause I haven't had a chance to express myself—

The Court: All right.

Mr. Axselle: Your Honor, I think it's obvious that they were attempting to get in and take what was in that bag, by Mr. Strother's statement to Mr. Wajciechowski and his statement here today.

Your Honor, we submit that if they had thought there was a hundred dollar bill and they reached in there and grabbed it and it was a one dollar bill, they are guilty to taking it of petit larceny, and that, therefore, Your Honor, they were actually guilty in this case of attempting petit larceny, if anything, because the items were—

The Court: Well, the evidence doesn't show that he thought there was money in it, he didn't say how—he didn't think it
was a petty thing, it was day's receipts, he
page 81 } thought he was grabbing—not a petty amount of
money.

Mr. Axselle: Yes, sir, he says that it's—in his mind it could have been money, was his statement, I believe, and that he wanted—intended to take what he thought was in that bag, and, Your Honor, we submit that it's—the crime has been consummated, could not have been grand larceny, and we think it would be mere speculation to say that they would have taken the movie camera, the tire, and that type of thing. The—for an attempt I believe you have to have the specific intent to commit the particular crime, and I do not feel that they had the specific intent to commit the crime of larceny or the *move* camera projector entirely or the wheel, his intent was to take the items in that bag, which was a bag and a thing of sugar.

The Court: On your argument what he attempted to do, he didn't attempt to steal anything 'cause it didn't have any value, a pound of sugar six cents, diminimes, I would say.

Mr. Axselle: Well, Your Honor, we would submit that it
would have a nominal value and we would ask that
page 82 } the charges be dismissed as to Mr. Strother.

The Court: All right, sir, stand up—I'll overrule your motion.

Mr. Axselle: We note our—

Mr. Janus: We would note our exception.

The Court: All right, stand up—now, let me understand something, the car belonged to Coleman, is that correct?

Mr. Janus: The evidence was, Your Honor, Coleman said it was his car—

The Court: Well, it was in his custody?

Mr. Janus: Yes, sir.

The Court: All right, and at the time that they circled the block who was—was Strother driving or was Coleman driving?

Mr. Janus: I'm not sure there was specific evidence as to that, Your Honor.

The Court: But Strother says that he got him to take him around the block, if I'm correct in that, but anyway, the point I'm making, Strother is the one that got out with
page 83 } the burglar's tools, now, on the charge of possession of burglar's tools, I find Strother guilty of possession of burglar's tools, do you wish it referred?

Mr. Axselle: No, sir.

The Court: Huh—is that your client?

Mr. Axselle: Yes, sir,

The Court: All right.

Mr. Axselle: Strother's my client.

The Court: I will sentence you to serve three years in the State Penitentiary on the charge of possession of burglar's tools. On the charge of attempted grand larceny, the Court finds you guilty and sentences you to serve two years in the Penitentiary.

Now, stand up, Coleman—*Willis* Coleman, the Court finds you not guilty of possession—well, you weren't charged with possession of burglary tools—find you guilty of attempted grand larceny and sentence you to serve two years in the State Penitentiary, all right.

Hearing concluded.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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