CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760878

LEON TURNER

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

James N. Barker, Jr.
Post Office Box 216
Waverly, Virginia 23890

Counsel for Appellant

Attorney General's Office
Criminal Division
900 Fidelity Building
Richmond, Virginia 23219

Counsel for Appellee

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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COMMONWEALTH OF VIRGINIA:
IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA

vs. A FELONY

LEON TURNER #3

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Sussex, and now attending the Circuit Court of said County at its November 11th, 19 75 Term, upon their oaths present that LEON TURNER about or on the 13th day of July, 19 75, in the County of Sussex unlawfully and feloniously did break and enter the dwelling house of Mary Belle Hollingsworth Pond in the nighttime with intent to commit murder. Virginia Code Section 18.2-90

against the peace and dignity of the Commonwealth of Virginia.
Upon the testimony of:
W. E. Bradshaw
W. G. Harrison

GRAND JURORS RETURN

Returned in open court this 11 day of November, 19 75.

A TRUE BILL

Foreman

VIRGINIA: IN THE CIRCUIT COURT OF SUSSEX COUNTY,

COMMONWEALTH OF VIRGINIA

v. Felony - Breaking and Entering, with intent

Leon Turner #3 Case No. 1779

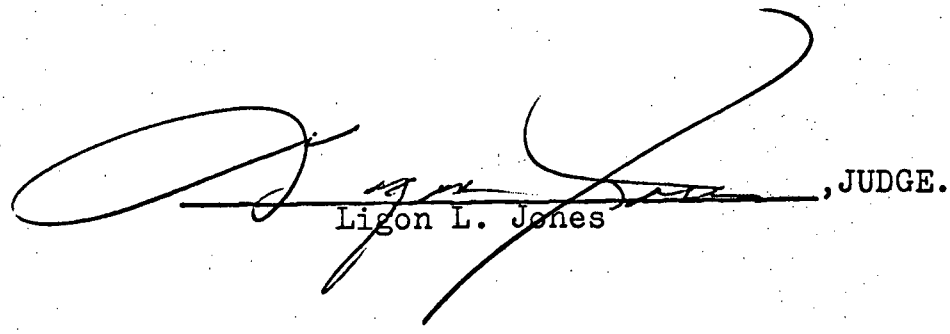
This day came again the Attorney for the Commonwealth and Leon Turner, who stands indicted for a felony, to-wit: Breaking and Entering, with intent to commit larceny, and who was led to the bar in the custody of the jailer of this court, and came also James N. Barker, Jr., his attorney heretofore appointed.

Whereupon, the accused was arraigned and after private consultation with James N. Barker, Jr., his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. 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 and argument of counsel, doth find the accused guilty of Breaking and Entering, with intent to commit larceny, as charged in the indictment.

The Court, on motion of the defendant by counsel, 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, on the 13th day of January, 1976, at 10 o'clock A.M., to which time this case is continued.

The defendant is remanded to jail.

ENTER THIS ORDER this 3rd day of December, 1975.



Ligon L. Jones, JUDGE.

MOTION TO SET ASIDE THE VERDICT

Now comes the defendant, by counsel, and moves the Court to set aside the verdict entered against him for murder in the first degree and breaking and entering with intent to commit murder, on the ground that the verdict was contrary to the law and the evidence, to-wit: one of defendant's fingerprints found on a two cell flashlight, said flashlight being found at the scene but being further unidentified, is insufficient to prove the defendant guilty beyond a reasonable doubt when other identifiable fingerprints were found at the scene that were neither the victim's nor the defendant's.

LEON TURNER

James N. Barker, Jr.

By Counsel

James N. Barker, Jr.

James N. Barker, Jr.
Attorney for Defendant
Waverly, Virginia 23890

C E R T I F I C A T E

I hereby certify that a copy of this Motion was mailed to E. Carter Nettles, Jr., Commonwealth's Attorney, Wakefield, Virginia 23888 this 2nd day of February, 1976.

James N. Barker, Jr.

James N. Barker, Jr.

S N. BARKER, JR
TTORNEY AT LAW
VERLY, VIRGINIA

FILED FEB 3 - 1976
GARY F. WILLIAMS, CLERK
By Ruth H. Durand D.C.

COMMONWEALTH OF VIRGINIA

v. Felony - Breaking and Entering, with intent

Leon Turner #3 Case No. 1779

This day came again the Attorney for the Commonwealth and Leon Turner (age: 23 -d.o.b. February 5, 1952), who stands convicted for a felony, to-wit: Breaking and entering, with intent to commit larceny, and who was again led to the bar in the custody of the jailer of this court, and came also James N. Barker, Jr., his attorney heretofore appointed.

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 the defendant.

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

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 be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of ten (10) years, and that the Commonwealth of Virginia do recover against the said defendant its costs in the amount of $ by it about its prosecution in this behalf expended.

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 defendant be allowed 184 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.

It is further ordered that the Cassettes upon which the evidence and incidents of trial in this case were recorded verbatim be and they are hereby made a part of the record.

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

ENTER THIS ORDER this 13th day of January, 1976.

Ligon L. Jones, JUDGE.

VIRGINIA: IN THE CIRCUIT COURT OF SUSSEX COUNTY,

COMMONWEALTH OF VIRGINIA

v. Felony - Breaking and Entering, with intent

Leon Turner #3 Case No. 1779

This day came again the Attorney for the Commonwealth and Leon Turner, who was on the 3rd day of December, 1975, convicted of a felony, to-wit: Breaking and Entering, with intent to commit larceny, and who was on the 13th day of January, 1976, sentenced to confinement in the penitentiary of this Commonwealth forthe term of ten (10) years, and who was again led to the bar in the custody of the jailer of this Court, and came also James N. Barker, Jr., his attorney heretofore appointed.

Whereupon, the defendant, by counsel, moved the Court to set aside the verdict of the Court on the grounds that it is contrary to the law and the evidence, which said motion the Court doth overrule.

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

ENTER THIS ORDER this 9th day of March, 1976.

Ligon L. Jones, JUDGE.

1975
111

NOTICE OF APPEAL AND ASSIGNMENT
OF ERROR PURSUANT TO RULE OF COURT 5:6

TO: Gary M. Williams, Clerk
Sussex County Circuit Court

And

E. Carter Nettles, Jr., Commonwealth Attorney
Wakefield, Virginia

PLEASE TAKE NOTICE that the defendant, Leon Turner, by counsel, hereby gives notice of appeal from the Order entered herein on March 9, 1976 and sets forth the following assignments of error:

1. The Court erred in overruling defendant's Motion to set aside the verdict as contrary to the law and the evidence.

2. The Court erred in finding the defendant guilty of murder, and breaking and entering with the intent to commit murder, in that the evidence produced at trial was insufficient to prove the defendant guilty beyond a reasonable doubt.

The transcript and other incidents of the case are to be hereafter filed.

LEON TURNER

By James N. Barker Jr
Of Counsel

BARKER, JR.
Y AT LAW
, VIRGINIA

James N. Barker, Jr.
Attorney at Law
Waverly, Virginia 23890

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal and Assignment of Error has been mailed to Gary M. Williams, Clerk of

the Sussex County Circuit Court and delivered to E. Carter Nettles, Jr., Commonwealth Attorney for the County of Sussex, Virginia, this 7th day of April, 1976.

FILED APR 8 - 1976
GARY M. WILLIAMS, CLERK
By Ruth H. Williams D.C.

James N. Barker, Jr.

Page No. 29

A COPY TESTE:
GARY M. WILLIAMS, CLERK
By Ruth H. Williams D.C.

COMMONWEALTH OF VIRGINIA:
IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA

vs. A FELONY

LEON TURNER #4

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Sussex, and now attending the Circuit Court of said County at its November 11th, 19 75 Term, upon their oaths present that LEON TURNER about or on the 13th day of July, 19 75, in the County of Sussex unlawfully and feloniously did rob one Mary Belle Hollingsworth Pond of one (1) White gold ladies Bulovia wrist watch having a value of about Fifty Dollars ($50.00). Virginia Code Section 18.2-58.

against the peace and dignity of the Commonwealth of Virginia.
Upon the testimony of:
W. E. Bradshaw
W. G. Harrison

GRAND JURORS RETURN

Returned in open court this 11 day of November, 19 75.

A TRUE BILL

Hugh W. Worrell
Foreman

COMMONWEALTH OF VIRGINIA

v. Felony - Robbery

Leon Turner #4 Case No. 1780

This day came again the Attorney for the Commonwealth and Leon Turner, who stands indicted for a felony, to-wit: Robbery, and who was led to the bar in the custody of the jailer of this court, and came also James N. Barker, Jr., counsel of his own choosing.

Whereupon, the accused was arraigned and after private consultation with James N. Barker, Jr., his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. 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. After having heard the evidence presented by the Commonwealth, the defendant by counsel, moved the Court to strike the evidence of the Commonwealth, which motion the Court doth sustain. Whereupon, there being no evidence before the Court upon which the accused could be found guilty, the Court doth find him not guilty.

Thereupon, the accused is discharged of the felony aforesaid and ordered to go thereof without day.

ENTER THIS ORDER this 3rd day of December, 1975.

1975
215.

Ligon L. Jones, JUDGE.

COMMONWEALTH OF VIRGINIA:
IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA

vs. A FELONY

LEON TURNER #5

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Sussex, and now attending the Circuit Court of said County at its November 11th, 19 75 Term, upon their oaths present that LEON TURNER about or on the 13th day of July, 19 75, in the County of Sussex unlawfully and feloniously did kill and murder one Mary Belle Hollingsworth Pond. Virginia Code Section 18.2-31.

against the peace and dignity of the Commonwealth of Virginia.
Upon the testimony of:

W. E. Bradshaw
W. G. Harrison

GRAND JURORS RETURN

Returned in open court this 11 day of November, 19 75.

A TRUE BILL

Hugh W. Rudd
Foreman

COMMONWEALTH OF VIRGINIA

v. Felony - Murder

Leon Turner #5 Case No. 1781

This day came again the Attorney for the Commonwealth and Leon Turner, who stands indicted for a felony, to-wit: Murder, and who was led to the bar in the custody of the jailer of this court, and came also James N. Barker, Jr., his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with James N. Barker, Jr., his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. 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 and argument of counsel, doth find the accused guilty of Murder in the first degree, as charged in the indictment.

The Court, on motion of the defendant by counsel, 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, on the 13th day of January, 1976, at 10 o'clock A.M., to which time this case is continued.

The defendant is remanded to jail.

1975
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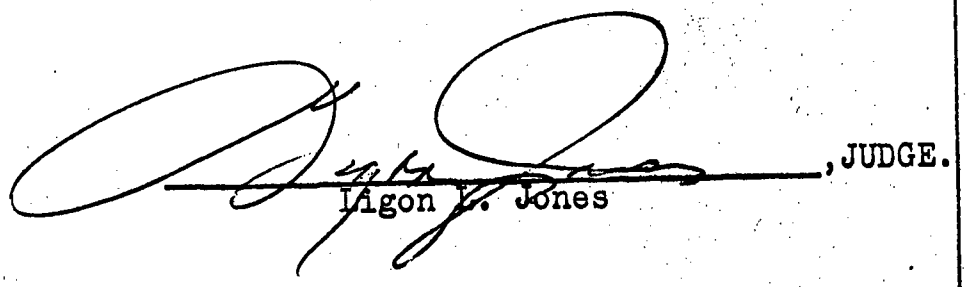
ENTER THIS ORDER this 3rd day of December, 1975.



Ligon L. Jones, JUDGE.

COMMONWEALTH OF VIRGINIA

v. Felony - Murder

Leon Turner #5 Case No. 1781

This day came again the Attorney for the Commonwealth and Leon Turner (age: 23 - d.o.b. February 5, 1952), who stands convicted for a felony, to-wit: Murder in the first degree, and who was again led to the bar in the custody of the jailer of this court, and came also James N. Barker, Jr., his attorney heretofore appointed.

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 the defendant.

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

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 be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the balance of his life and that the Commonwealth of Virginia do recover against the said defendant its costs in the amount of $ by it about its prosecution in this behalf expended.

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 defendant be allowed 184 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.

It is further ordered that the Cassettes upon which the evidence and incidents of trial in this case were recorded verbatim be and they are hereby made a part of the record.

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

ENTER THIS ORDER this 13th day of January, 1976.

Ligon L. Jones, JUDGE.

MOTION TO SET ASIDE THE VERDICT

Now comes the defendant, by counsel, and moves the Court to set aside the verdict entered against him for murder in the first degree and breaking and entering with intent to commit murder, on the ground that the verdict was contrary to the law and the evidence, to-wit: one of defendant's fingerprints found on a two cell flashlight, said flashlight being found at the scene but being further unidentified, is insufficient to prove the defendant guilty beyond a reasonable doubt when other identifiable fingerprints were found at the scene that were neither the victim's nor the defendant's.

LEON TURNER

By Counsel

James N. Barker, Jr.
Attorney for Defendant
Waverly, Virginia 23890

C E R T I F I C A T E

I hereby certify that a copy of this Motion was mailed to E. Carter Nettles, Jr., Commonwealth's Attorney, Wakefield, Virginia 23888 this 2nd day of February, 1976.

James N. Barker, Jr.

ARKER, JR.
AT LAW
VIRGINIA

Filed
2/5/76

VIRGINIA: IN THE CIRCUIT COURT OF SUSSEX COUNTY,

COMMONWEALTH OF VIRGINIA

v. Felony - Murder

Leon Turner #5 Case No. 1781

This day came the Attorney for the Commonwealth and Leon Turner, who was on the 3rd day of December, 1975, convicted of a felony, to-wit: Murder in the first degree, and who was on the 13th day of January, 1976, sentenced to confinement in the penitentiary of this Commonwealth for the balance of his life, and who was again led to the bar in the custody of the jailer of this Court, and came also James N. Barker, Jr., his attorney heretofore appointed.

Whereupon, the defendant, by counsel, moved the Court to set aside the verdict of the Court on the grounds that it is contrary to the law and the evidence, which said motion the Court doth overrule.

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

ENTER THIS ORDER this 9th day of March, 1976.

Ligon L. Jones, JUDGE.

1975
311

NOTICE OF APPEAL AND ASSIGNMENT
OF ERROR PURSUANT TO RULE OF COURT 5:6

TO: Gary M. Williams, Clerk
Sussex County Circuit Court

And

E. Carter Nettles, Jr., Commonwealth Attorney
Wakefield, Virginia

PLEASE TAKE NOTICE that the defendant, Leon Turner, by counsel, hereby gives notice of appeal from the Order entered herein on March 9, 1976 and sets forth the following assignments of error:

1. The Court erred in overruling defendant's Motion to set aside the verdict as contrary to the law and the evidence.

2. The Court erred in finding the defendant guilty of murder, and breaking and entering with the intent to commit murder, in that the evidence produced at trial was insufficient to prove the defendant guilty beyond a reasonable doubt.

The transcript and other incidents of the case are to be hereafter filed.

LEON TURNER

By James N. Barker Jr
Of Counsel

ARKER, JR.
AT LAW
VIRGINIA

James N. Barker, Jr.
Attorney at Law
Waverly, Virginia 23890

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal and Assignment of Error has been mailed to Gary M. Williams, Clerk of

the Sussex County Circuit Court and delivered to E. Carter Nettles, Jr., Commonwealth Attorney for the County of Sussex, Virginia, this 7th day of April, 1976.

FILED APR 8 - 1976
GARY M. WILLIAMS, CLERK
By Ruth H. Evans D.C.

James N. Barker, Jr.

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COMMONWEALTH OF VIRGINIA

v. Felony - Breaking and Entering, with intent

Leon Turner #3 Case No. 1779

This day came the Commonwealth of Virginia, by counsel, pursuant to the provisions of Section 8-485, of the 1950 Code of Virginia, as amended, and moved the Court to correct a clerical error entered on November 11, 1975, December 3, 1975, January 13, 1976 and March 9, 1976; and

It appearing to the Court that the indictment against Leon Turner #3 charged the crime of Breaking and Entering, with intent to commit murder and that the transcript and audible tape recording of the proceeding of the trial of Leon Turner convicted him of Breaking and Entering, with intent, as charged in the indictment;

It is, therefore, in the premises ADJUDGED and ORDERED that the orders heretofore entered on November 11, 1975, December 3, 1975, January 13, 1976 and March 9, 1976 are hereby amended to read Breaking and Entering, with intent to commit murder, as charged in the indictment.

ENTER THIS ORDER this 19 day of [illegible], 1977.

[illegible], JUDGE.
Ligon L. Jones

A COPY TESTE:
GARY M. WILLIAMS, CLERK
By [illegible] D.C.

Q: Do you have any complaint about anyone connected with this case you want to tell me about at this time?

A: No sir.

THE COURT: All right, be seated. Do you concur in the waiver of trial by jury, Mr. Nettles?

MR. NETTLES: Commonwealth concurs, Your Honor.

THE COURT: In all three cases and the Court concurs on all three cases. Who is your first witness?

MR. NETTLES: William Harrison.

Police Officer, William G. Harrison, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: What is your name?

A: William G. Harrison.

Q: What is your occupation?

A: Town Policeman, Town of Waverly.

Q: What is the date of the offense?

A: July 13, 1975.

Q: What was the location of the offense?

A: At the corner of Main Street and Elm Street or between Elm Street and Robert Wilkins Avenue.

Q: In what county?

A: Sussex County.

Q: What is located at this site?

A: The residence of Mrs. Mary Pond, and she has, I

1 think, two extra apartments in the house.

2 Q: Did you know Mrs. Mary Pond?

3 A: Yes, I did.

4 Q: Would you describe her? Who was she? Who was

5 Mary Pond?

6 A: She was in my opinion about--Mrs. Mary Pond was

7 rather elderly lady, nice.

8 Q: When did you first become aware of these offenses?

9 A: Approximately 5 a.m. on July 13th, on Sunday

10 morning, I got a call from the Town Office.

11 Q: What was your location?

12 A: When I got the call?

13 Q: Right.

14 A: I was at home in bed.

15 Q: What did you do when you received the call?

16 A: I received the call, went down to the Town Office--

17 when I got there one of her people that were renting an apartment

18 had her down at the Town Office.

19 Q: Had who?

20 A: Mrs. Mary Pond.

21 Q: What was her condition?

22 A: When I saw her she was bloody, her eyes and face

23 was swollen up, her hands and stuff was beginning to swell and

24 turn blue.

25 Q: Was she conscious?

26 A: Well, I was scared to talk to her on account of the

27 blood and stuff. I didn't want to hold up the rescue squad

28 because they were there when I got there.

1 Q: And you refer to her neighbors? Who do you refer
2 to--Mr. Bacon?
3 A: Yes, Mr. and Mrs. Bacon.
4 MR. BARKER: I'm sorry. I didn't understand the
5 question.
6 MR. NETTLES: Which neighbors.
7 MR. BARKER: Neighbors, oh.
8 MR. NETTLES: He said she was with the neighbors.
9 Q: Did you go to the scene?
10 A: Yes, I did. I got to the scene approximately
11 5:15 a.m.
12 Q: Who was with you?
13 A: Officer Barnes.
14 Q: Who else?
15 A: That's all at the time.
16 Q: Would you describe the scene?
17 A: When I first went in it was her bedroom, the living
18 room, the kitchen, the poarch, and the second bedroom was dis-
19 turbed, tore up; and it was also a dining room. I looked in
20 there and that wasn't, appeared to me, wasn't bothered or touched.
21 Q: Did you see the back door?
22 A: Yes, I did.
23 Q: What was the condition of the back door?
24 A: The back door was--he gained entrance through the
25 back door into the kitchen.
26 MR. BARKER: I object to that. That's conclusion.
27 THE COURT: Just what do you notice about it?
28 Q: Did you take any pictures of the back door?

1 A: Yes, I did.

2 Q: Do these pictures accurately reflect what you saw
3 and observed?

4 A: Yes sir.

5 Q: What time was it that you were looking at the back
6 door?

7 A: Approximately 5:18--5:19.

8 Q: Do you have pictures of the back door?

9 A: Yes sir.

10 Q: May I see them.

11 A: Yes sir.

12 Q: I show you this photograph and ask if you can
13 identify it?

14 A: Yes sir.

15 Q: Who was it taken by?

16 A: Me. William G...

17 Q: What does it depict?

18 A: This is the view from the kitchen entering the
19 porch--leaving the kitchen going to the porch. This picture
20 here--from the kitchen.

21 Q: Taken from the inside looking toward the out...

22 A: Yes sir.

23 Q: Out the back door?

24 A: Going on the porch, yes sir.

25 Q: Will you describe the window.

26 A: This window--this glass here and the sash here was
27 broken out and these spots here is blood on it.

28 THE COURT: The photograph will be received as

1 Commonwealth's Exhibit 1.

2 Q: I show you another photograph and let you identify
3 that.

4 A: Yes sir.

5 Q: What is it?

6 A: This is taken from the porch entering the kitchen
7 on the back side of the first picture here.

8 Q: Who took it?

9 A: I did.

10 THE COURT: At the same point?

11 A: Yes sir.

12 THE COURT: It will be received as Commonwealth's
13 Exhibit 2.

14 Q: I show you this picture and ask if you can identify
15 it?

16 A: This is a picture of the floor of the porch where
17 the blood stains right here where appeared she was cut.

18 THE COURT: It will be received as Commonwealth's
19 Exhibit 3. All of these photographs were taken the same time--
20 same night?

21 A: Yes sir.

22 Q: What was it taken with--a poloroid camera?

23 A: Yes sir.

24 Q: What is that a picture of?

25 A: This here is the picture of in the kitchen with
26 the door open leading to the porch showing the sash and much of
27 the cut out glass that was laying there from the kitchen.

28 THE COURT: It will be received as Commonwealth's

1 Exhibit 4.

2 Q: I show you this picture and ask if you can identify
3 that?

4 A: This picture here is taken in her bedroom which if
5 the bed is sitting like this, it will be on this side of the bed.
6 This picture here.

7 THE COURT: This picture is on the left side of the
8 bed?

9 A: Yes sir. And you can see there is some--appears to
10 be in blood stains here and (inaudible) her nightgown that
11 she had on.

12 Q: I show you another picture and ask you to identify
13 that?

14 THE COURT: The former picture will be received as
15 Commonwealth's Exhibit 5. Now this one--proceed with it.

16 A: This is a picture of her bed of the blood stains
17 and stuff on her bed where...

18 Q: Is it the same side or opposite side of the former
19 picture?

20 A: Well, the former picture was taken over here.

21 THE COURT: On the left side of the picture--left side
22 of the bed?

23 A: Of the bed, yes sir.

24 THE COURT: All right, the photograph will be received
25 as Commonwealth's Exhibit 6.

26 Q: I show you this picture and ask if you can identify
27 that?

28 A: This is a picture here of--this is the foot of her

1 bed on the right side--the angle and this is where her dresser
2 was and these clothes here which we could not find the other
3 part of this lamp here. And this door here is entering a little
4 small room where the bed was where apparently her husband--any-
5 how that...
6 THE COURT: It's a smaller bedroom?
7 A: Yes sir.
8 THE COURT: Any furniture in it?
9 A: Nothing but a bed and a whole lot of clothes
10 hanging up.
11 Q: How many bedrooms were in this apartment she lived
12 in?
13 A: In the part she lived in it was two large bedrooms
14 and that little small room back there.
15 Q: On the first floor or second floor?
16 A: This is on the first floor.
17 THE COURT: The photograph will be received as
18 Commonwealth's Exhibit 7.
19 Q: I show you another picture and ask if you can
20 identify that?
21 A: This is a picture here of the living room where
22 the phone and the lamp and stuff was knocked over where it looked
23 like someone had been struggling.
24 THE COURT: The photograph will be received as
25 Commonwealth's Exhibit 8.
26 Q: I show you this picture and ask if you can identify
27 that?
28 A: This picture here--this is what I call the front

bedroom where she--was for guests, I suppose. Where blood stains was on this desk here and where it was tore up, things knocked over.

THE COURT: It will be received as Commonwealth's Exhibit 9.

Q: I show you another picture and ask if you can identify that?

A: This is the same bedroom that the other picture was where the flowers and stuff was turned over and what have you and blood was on the floor.

THE COURT: This is Commonwealth's Exhibit 10.

Q: I show you another picture and ask if you can identify it?

A: This is the same bedroom where it was a blood stain and down here it was a rug that was slipped under the bed, evidently they must have the foot or something slipped under the bed and someone leaned on the bed. There was a blood stain on the bed in this front bedroom.

THE COURT: And this was in the front bedroom?

A: Yes sir.

THE COURT: This is Commonwealth's Exhibit 11.

Q: This time did you search the apartment for evidence?

A: At that time...

Q: You made a search at that time, did you not?

A: Yes sir.

Q: Did you or did you not find a Bulova watch?

A: No, I did not.

Q: Now, what did you do after that?

1 A: After that, I got back in the car and called the
2 dispatcher. Sergeant Bradshaw was out of town during that time
3 and I told her to touch with him--to come back to town right
4 away and that was approximately ten minutes to six which would
5 be 5:50. I left Officer Barnes there and told him to secure the
6 house and not to let anybody go in or out. And in the meantime
7 I want to Petersburg to see could I get any information from her
8 after the doctors looked at her and all she told me--her state-
9 ment...
10 MR. BARKER: Objection.
11 A: Well, anyhow I came back to Waverly and when I
12 got back there approximately quarter to seven, 6:45, Sergeant
13 Bradshaw was there and that's when both of us went back up there
14 and started picking up evidence and...
15 Q: Was Officer Barnes there when you returned?
16 A: Yes, he was.
17 MR. NETTLES: Answer, Mr. Barker.
18
19 CROSS EXAMINATION
20 BY MR. BARKER:
21 Q: Officer Harrison, did you all take samples of the
22 blood from each one of the rooms involved?
23 A: Well, I didn't.
24 Q: You did not?
25 A: No sir. All we took was the clothing and the
26 spread and stuff off the bed. We took that and sent it to the
27 lab.
28 Q: Did anyone tell you to look for a watch of any sort?

1 A: Mrs. Baker said that she wore a...

2 Q: Now, who is Mrs. Baker?

3 A: She was one who was renting the downstairs apart-
4 ment, I think. The door that she knocked...

5 Q: Mrs. Bacon?

6 A: What is it--Baker or Bacon? She is in court.

7 Q: All right, I know who you are talking about, but
8 you made a search for the Bulova watch, is that right?

9 A: Yeah, after she told me that Mrs. Pond wore a
10 Bulova watch all the time and it wasn't on her arm. She told
11 me that at the office.

12 Q: You made a search at the time?

13 A: Yes sir.

14 Q: When you got up--you were in bed asleep, is that
15 right?

16 A: That's right.

17 Q: When you got the call?

18 A: Right.

19 Q: You had not been on duty that night?

20 A: Yes, I had.

21 Q: You had?

22 A: Yes.

23 Q: How long had you been at home?

24 A: Oh, approximately an hour--forty-five minutes.

25 Q: Was it raining during the night?

26 A: Yes, it was.

27 Q: Did it rain part of the night or all of the night,
28 or what?

A: Part of the night, I would say.

Q: Which part?

A: It was--during that time, at five o'clock it wasn't raining to the best of my knowledge it wasn't.

Q: How about earlier in the night when you were on duty?

A: Yes, it was raining.

Q: It was raining?

A: Yeah.

Q: Was it raining when you said you had been home roughly an hour, was it raining when you went home?

A: Yes, it was.

Q: Did you recover a jacket or coat?

A: Yes, I did.

Q: Was that jacket or coat wet?

A: It wasn't soaking wet--it was damp.

Q: It was damp?

A: Yeah and the reason why I recovered the jacket was on account of the blood on it and it wasn't her jacket.

Q: Did you see the defendant there at all?

A: No, I didn't.

Q: Was anybody there when you got there?

A: No, it wasn't. Nobody but the Zazzarettis. They was living in the upper apartment but they wasn't nowhere around the scene. At least, we had to wake them up after we got there. I put it to you that way.

MR. BARKER: I don't have any further questions.

REDIRECT EXAMINATION

BY MR. NETTLES:

Q: Was it raining when you arrived?

A: When I arrived there at quarter after five?

Q: Yes.

A: To the best of my knowledge--if it was very drizzly--to the best of my knowledge. I know it was raining at--I know...

Q: You would say it was not raining?

A: At 5:15.

Q: When you arrived at the apartment?

A: Right.

Q: When was the first time that you saw Leon Turner after that?

A: It was approximately between three and four o'clock that evening--that Sunday evening, July 13th.

Q: Where was he when you first saw him?

A: At his home on Robert Wilkins Avenue.

Q: Will you describe his physical condition when you saw him on that occasion?

A: He appeared to be as usual--stubborn--didn't want to half way cooperate.

Q: Did you see any wounds upon him?

A: There was one wound, I think was on back of his arm.

Q: Would you describe that wound?

A: It was just something like a puncture. Next to a vein. I felt it very closely and see that it hit that vein and if it didn't hit it, it was mighty close to it.

Q: Could you tell whether it was a recent or an old...

A: It was a recent cut--puncture.

Q: Could you tell whether it had bled from it or not?

A: Well, from the shirt he had on I couldn't, but it was freshly cut.

Q: Did you see any blood on the wound?

A: At the time?

Q: Yes.

A: No, not at the time.

Q: Did it break the skin?

A: The wound?

Q: Yes.

A: Yes.

MR. NETTLES: No further questions.

RECROSS EXAMINATION

BY MR. BARKER:

Q: How do you tell a fresh cut from an old cut? How would you distinquish it?

A: Well, a puncture with a old cut, it'll come together or a cut it'll start back healing together; but a fresh one it'll be laid open either you'll still see the hole where the fresh meat is at.

Q: You are saying he had a puncture wound?

A: Appeared to me as a puncture.

MR. NETTLES: I would like the record to show that the witness is pointing to his left elbow.

THE COURT: You have made it so. All right, proceed.

1 Any other questions?

2 MR. BARKER: I don't have any further questions.

3 MR. NETTLES: I would like to call Mrs. Bacon.

4

5 The witness, Lou Ann Bacon, after having been duly

6 sworn, testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. NETTLES:

10 Q: Would you state your name for the record.

11 A: Lou Ann Bacon.

12 Q: What is your age?

13 A: Nineteen.

14 Q: Where did you live on July 13, 1975?

15 A: 122 West Main Street.

16 Q: Who owned that house?

17 A: Mrs. Mary Pond.

18 Q: Was your apartment upstairs or downstairs?

19 A: Downstairs.

20 Q: Who did you live there with?

21 A: My husband and my son.

22 Q: Did anything unusual happen on July 13?

23 A: Yes, at about five o'clock in the morning Mrs. Pond

24 came banging on my door, and I opened the door and brought her

25 into my apartment. Her eyes were blackened and her nightgown

26 had bloodstains on it and her arms were bruised. I took--I woke

27 my husband and told him that she said there was someone in her

28 apartment.

1 MR. BARKER: Objection.

2 Q: What did you husband do?

3 A: He stuck his head inside her apartment door, it
4 was still open and said there was noone there or he didn't see
5 anyone there.

6 Q: Well, would you describe her arms?

7 A: They were bruised up past the elbow and her hands
8 were swollen and bruised.

9 MR. BARKER: Her what was swollen and bruised?

10 A: Her hands.

11 Q: Did she have anything on her arm?

12 A: No.

13 Q: How long have you known Mrs. Pond?

14 A: Four--I'd say about three months.

15 Q: Did she customarily wear anything on her arm?

16 MR. BARKER: Objection.

17 THE COURT: Objection overruled. Go ahead.

18 A: She normally wore a watch.

19 Q: What kind of watch?

20 A: It was a white gold watch.

21 Q: What brand?

22 A: Well, I wasn't sure what brand it was until the
23 case was brought up. I knew it was a white gold watch but I
24 wasn't sure...

25 Q: Did she have a white gold watch on at that time?

26 A: No, she didn't as--well, I was going to say, as
27 a matter of fact she told me that he had taken it from her...

28 MR. BARKER: Objection.

THE COURT: She reported that her watch was missing. That's a report.

Q: Did you go into the apartment at that time?

A: No.

Q: Where did you go?

A: Well, I took her into the bathroom and washed her face to see how bad the cut on her face was, and my husband went out and started the car, and we took her to the police station in Waverly.

Q: After you took her to the police station what did you do?

A: My husband called the rescue squad--the police station called the rescue squad.

Q: Then what did you do after that?

A: We waited for the rescue squad and they took her to Petersburg General Hospital.

Q: What did you do?

A: Well, we returned to the house.

Q: Was anyone there when you returned to the house?

A: Officer Barnes.

Q: Was at the house?

A: He came back.

Q: Do you recall when Officer Bradshaw came there?

A: We were already there because we lived in the apartment.

Q: Did you ever go into the apartment that day?

A: Yes, while the police were making their--after the police had made their investigation some of the ladies got

1 together, and we cleaned up the apartment.

2 Q: That was after they had made their investigation?

3 A: Yes.

4 Q: And this is in the Town of Waverly?

5 A: Yes.

6 MR. NETTLES: Answer, Mr. Barker.

7

8 CROSS EXAMINATION

9 BY MR. BARKER:

10 Q: Mrs. Bacon, how long had it been before Mrs. Pond

11 knocked on your door that morning that you had seen her?

12 A: Well, we had stayed at my parents house the night

13 before, but I had seen her previously that afternoon.

14 Q: So it had been more than twenty-four hours, is

15 that right?

16 A: No, I had seen her that afternoon.

17 Q: The afternoon of what?

18 A: The afternoon of--it was on a Saturday afternoon

19 that I saw her.

20 Q: So you did not see her from then until...

21 A: Approximately 5 a.m.

22 Q: ...approximately 5 a.m. Did you see Leon Turner?

23 A: No.

24 Q: At all?

25 A: No.

26 Q: You did not. You say you do not know what kind

27 of a watch she had?

28 A: Well, I wasn't sure. I knew it wasn't a very

1 expensive watch, but I didn't know what brand it was until after
2 I had heard it in court today.
3 Q: All right, when Mrs. Pond came to your door had it
4 stopped raining?
5 A: No, it was still raining.
6 Q: Was it raining hard?
7 A: Yes.
8 Q: We're talking about a storm in the area or are we
9 talking about a...
10 A: Cloud burst.
11 Q: Yes.
12 A: Well, it was raining pretty hard.
13 Q: How long did it rain after that? Was it raining
14 when you took Mrs. Pond to the...
15 A: It was raining when we took her to the police
16 station, and when we returned with Officer Barnes it started to
17 slack up a little bit and then eventually it just stopped raining.
18 Q: You said that customarily Mrs. Pond wore a watch?
19 A: Yes.
20 Q: How often did you see Mrs. Pond?
21 A: Just about every day.
22 Q: Did you notice a watch every day? Were you
23 conscious of a watch every day?
24 A: Well, I never noticed her without it.
25 Q: But you don't know that she wore it all of the
26 time or what she did with it at night or anything of that sort
27 do you?
28 A: Well, I can say for one night she...

1 Q: But as a matter of habit one night does not
2 establish habit or custom. You don't know what she does--did
3 with her watch or any of her jewelry or anything of that sort
4 did you?
5 A: No.
6 MR. BARKER: I don't have any further questions.
7
8 REDIRECT EXAMINATION
9 BY MR. NETTLES:
10 Q: You said you did see her on one night?
11 A: I saw her--I don't understand.
12 Q: I'm talking about Mrs. Pond.
13 A: Okay, I saw her--she was over at our house one
14 evening, and she started feeling ill so I took her home and when
15 I took her home I told her to lay in bed and if she needed any-
16 thing to call for me because usually I could hear her from her
17 apartment so I went back over later to check on her, and she was
18 dressed for bed, and she still had her watch on.
19 Q: How long was this before July 13th?
20 A: I'd say about a month.
21 Q: Did you hear anything prior to her knocking on
22 your door on the night or morning of July 13th?
23 A: No, I didn't.
24 Q: Do you know--what had you been doing prior to her
25 knocking on the door on July 13th?
26 A: Well, I was sleeping.
27 Q: Do you know what time the rain had started that
28 night?

A: I have no idea.

MR. NETTLES: No further questions.

RECROSS EXAMINATION

BY MR. BARKER:

Q: Mrs. Bacon, the one time that you observed her with her nightclothes on and with the watch on was under unusual circumstances though--she was feeling ill at the time and went home to go to bed, is that not correct?

A: Yes.

Q: You still don't know what she normally did at night as far as her jewelry and watch are concerned?

A: Not as a habit.

MR. BARKER: Thank you. No further...

REDIRECT EXAMINATION

BY MR. NETTLES:

Q: Do you have an idea as to the value of that watch?

MR. BARKER: I object.

THE COURT: Objection sustained.

Q: I withdraw the question. Did the watch work?

A: Yes.

MR. NETTLES: No further questions.

RECROSS EXAMINATION

BY MR. BARKER:

Q: How do you know the watch worked?

A: Well, like I said, she came over to my apartment

1 fairly often, and I had work that I should have been doing, and
2 instead I felt that I should sit and talk with her and occasionally
3 I would try to prompt her and remind her of the time, and I'd
4 ask her what time it was, and she'd look at her watch and
5 generally it ran about twenty minutes fast.
6 Q: Do you know that the watch worked on July 13, 1975?
7 A: No, I can't say that I do.
8 MR. BARKER: Thank you.
9 THE COURT: Anything further of Mrs. Bacon?
10 MR. NETTLES: No further questions. I'd like to call
11 Mr. Bacon.
12
13 The witness, Donald Lee Bacon, Sr., after having been
14 duly sworn, testified as follows:
15
16 DIRECT EXAMINATION
17 BY MR. NETTLES:
18 Q: What is your name?
19 A: Donald Lee Bacon, Sr.
20 Q: Where did you live on July 13th?
21 A: On Main Street in Waverly.
22 Q: In what County?
23 A: Sussex County.
24 Q: Did you have occasion to see Mrs. Mary Belle
25 Hollingsworth Pond on July 13th?
26 A: Well, after Mrs. Pond knocked on our door my wife
27 woke me up and I went...
28 Q: Where was she when you first saw her?

A: In our doorway.

Q: What was her condition?

A: Well, her face was pretty badly beaten, her arms had blood on them and her nightgown was covered in blood.

Q: Did she report anything to you?

MR. BARKER: Objection.

THE COURT: Objection overruled.

Q: What did she report to you?

A: She said...

MR. BARKER: Your Honor, I object, if he wants to give a report, you've ruled that he can give something that she reported to him but not what she said.

THE COURT: What did she report to you?

A: She reported to me that it was a man in her apartment and that he was trying to beat her.

Q: Had you heard anything prior to that?

A: No sir, I did not. I'm a very heavy sleeper.

Q: At the time that you saw her on that occasion did she have a watch?

A: I don't recall, sir.

MR. NETTLES: Answer, Mr. Barker.

CROSS EXAMINATION

BY MR. BARKER:

Q: Did you see Leon Turner there that night?

A: No, I didn't.

Q: Did you see anybody there that night?

A: I went over there and looked inside the door. I

1 saw no one in the apartment at the time, it was dark.
2 MR. BARKER: No further questions.
3 THE COURT: Next witness.
4 MR. NETTLES: Stand aside. I call W. E. Bradshaw.
5
6 Police Officer, Wesley E. Bradshaw, having been duly
7 sworn, testified as follows:
8
9 DIRECT EXAMINATION
10 BY MR. NETTLES:
11 Q: Would you state your name for the record.
12 A: Wesley E. Bradshaw.
13 Q: What is your occupation?
14 A: Police Officer for the Town of Waverly.
15 Q: Were you so employed on July 13, 1975?
16 A: I was.
17 Q: Did you investigate the charges against Leon
18 Turner?
19 A: I assisted.
20 Q: You assisted Mr. Harrison?
21 A: Right.
22 Q: As such did you seize certain items of evidence
23 at the scene of the alleged crime?
24 A: I did.
25 Q: Do you have those with you?
26 A: I do.
27 MR.NETTLES: Your Honor, for purposes of identification,
28 we would like to at this time number the proposed evidence for

1 purposes of identification only and then we can refer to the
2 items and have the Court rule on their admissibility.
3 THE COURT: All right, how many different items are
4 there, Mr. Bradshaw?
5 MR. NETTLES: I think there are twenty-two.
6 MR. BRADSHAW: Twenty or twenty-two.
7 THE COURT: Twenty-two. They will be numbered twelve
8 through thirty-four, I think.
9 Q: What is the first item that you have, and if it
10 would be helpful you could number them. Do you have the sheets
11 and mattress cover and stained glass and those items?
12 A: (inaudible)
13 Q: What is the first item that you seized?
14 A: The way I have them listed here is one blood-
15 stained white sheet.
16 Q: Do you have that?
17 A: One blood-stained white sheet.
18 Q: What are you doing now? What are you opening now?
19 A: I'm opening the bag of evidence that I received
20 from the Consolidated Laboratory in Richmond--the evidence...
21 Q: Has it been in your possession since?
22 A: Yes.
23 Q: And it's stapled now. Has it been opened since
24 you've had it?
25 A: Not until right then.
26 THE COURT: Who sent it to Consolidated Lab?
27 A: I did.
28 THE COURT: You did.

A: I transported them up there.

THE COURT: You carried them in person, and how many different items are there in that one bag?

A: I'll have to count them but it's supposed to be at least four or five items in here.

MR. BARKER: Do you have a list of what you sent to them as far as...

MR. NETTLES: Well, let's go in general. How many items of evidence did you take at the scene of the crime?

A: I took twenty.

Q: Would you list those items?

A: One blood-stained white sheet, No. 2 is one blood-stained white sheet, No. 3 is a blood-stained mattress cover, No. 4 is a plastic container with blood-stained glass, No. 5 is a blood-stained blue jean jacket, No. 6--blood-stained pink stripped shirt, No. 7--blood-stained yellow shirt. One black telephone base, one black telephone receiver, one two-cell Everready flashlight, one name file, one white lamp base, three coca-cola bottles in a brown paper bag, one broken coca-cola bottle in a brown envelope, one pink dish top, one green dish top and base, one small green base, four broken peices of wood sash out of the back door, five rubber latent lifters in a white envelope and the one that was added on at the Laboratory was a blood sample from Mrs. Mary Pond.

Q: Those items that you seized at the scene, what did you do with them? Did you or did you not label them?

A: I labeled them.

Q: Then after you labeled them what did you do with them?

A: I labeled all the evidence and filled the form out that is required by the Laboratory, and I took them from Waverly to Richmond to the Consolidated Laboratory myself.

Q: Did you receive a receipt for those?

A: I did.

Q: Do you have that receipt?

A: I do.

Q: May I see it. We offer this as Commonwealth's Exhibit.

THE COURT: It will be received as Commonwealth's Exhibit 12. The receipt from the Consolidated Laboratory.

MR. NETTLES: We'd like to have the receipt back.

THE COURT: All right.

Q: Would you find your item No. 1.

THE COURT: For the purpose of identification, future reference, the items will be numbered 1, 2 through 20 as set forth on this list with the prefix A. A1, A2 and so forth so you can follow the identification of the objects.

Q: The first item on the receipt is Item 1. Would you find Item 1A--A1. What is this?

A: This is a sheet taken off of Mrs. Pond's bed.

Q: Did you take it yourself?

A: I did.

MR. NETTLES: We offer this as Commonwealth's Exhibit A1.

THE COURT: Any objection?

MR. BARKER: No objection.

THE COURT: All right. It will be received as

1 Commonwealth's Exhibit A1.

2 Q: Find your Item No. 2. Did you see this at the
3 scene? (blood-stained white sheet)

4 A: I did.

5 Q: We offer this as Commonwealth's Exhibit A2. Do
6 you have your item No. 3?

7 A: Mattress cover.

8 Q: We offer this as Commonwealth's Exhibit A3. Do
9 you have your Exhibit Item 4, a plastic container with blood-
10 stained glass. We offer this as Commonwealth's Exhibit A4. Do
11 you have your Item 5, the blood-stained blue jean jacket. We
12 offer this as Commonwealth's Exhibit A5. Do you have your Item
13 6, a blood-stained pink stripped shirt?

14 A: Both of them are in the same package.

15 Q: And Item 7, a blood-stained yellow shirt. We offer
16 this as Commonwealth's Exhibits A6 and A7. Do you have your
17 Item No. 8, a black telephone base? We offer this as Common-
18 wealth's Exhibit A8. Do you have your Item 9, a black telephone
19 receiver? We offer this as Commonwealth's Exhibit A9. Do you
20 have your Item No. 10, a two-cell EverReady flashlight.? On
21 the flashlight sir, what did you do--this was all transported to
22 the Bureau of Forensics Laboratory. Your Item 11, a name file.

23 THE COURT: Are you offering the flashlight?

24 Q: Yes sir, I'm offering the flashlight as Common-
25 wealth's Exhibit A10. We offer this name file as Commonwealth's
26 Exhibit A11. Your Item 12 is a white lamp base. We offer this
27 as Commonwealth's Exhibit A12. Your Item 13 is three coca-cola
28 bottles in a brown paper bag. We offer this as Commonwealth's
Exhibit A13. Your Item No. 14 is a broken coca-cola bottle in

1 a brown envelope. We offer this as Commonwealth's Exhibit A14.
2 Your Item No. 15 is a pink dish top. We offer this as Common-
3 wealth's Exhibit A15. Your Item 16 is a green dish top and base.
4 We offer this as Commonwealth's Exhibit A16. A small green vase,
5 your Item No. 17. We offer this as Commonwealth's Exhibit A17.
6 Your Item No. 14 is four broken pieces of wood sash out of back
7 door glass.

8 MR. BARKER: That's not Item 14.

9 Q: Item 18.

10 A: What is eighteen?

11 Q: Eighteen is four broken pieces of wood sash out of
12 back door glass.

13 A: This is four pieces of wood sash.

14 Q: We offer this as Commonwealth's Exhibit A18.
15 No. 19, five rubber latent lifts in a white envelope. We offer
16 these as Commonwealth's Exhibit A19. And Item 20--your Item 20.

17 A: That was--they added to the list.

18 Q: We offer this as Commonwealth's Exhibit A20.

19 MR. BARKER: I would like to ask a question about Item
20 A20. Who took this blood sample?

21 A: At the Laboratory.

22 MR. BARKER: This says--the report from the Lab says
23 sample of blood from victim. Who took that blood sample?

24 A: Mrs. Burton took it from the victim, I guess.
25 She'll have to testify to that.

26 MR. NETTLES: Well, this bears your initials. What
27 is that?

28 A: This is the blood that we picked up at the hospital

1 in Petersburg.

2 MR. BARKER: Were you present when this sample was

3 taken?

4 A: I was not.

5 MR. BARKER: I object to that until we have some other...

6 MR. NETTLES: We intend to tie it in, Your Honor.

7 THE COURT: The other items are received in evidence

8 in accordance with the numbers heretofore given. This is marked

9 for identification only. That is the blood sample, and before

10 you proceed with the testimony, I want to get all these items

11 labeled properly.

12 MR. NETTLES: May it please the Court, by agreement

13 of counsel, we would like to call at this time the Chief Medical

14 Examiner for the State, Dr. Weicking.

15

16 Chief Medical Examiner, Dr. David K. Weicking, after

17 having been duly sworn, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. NETTLES:

21 Q: Would you state your name for the record please.

22 A: David K. Weicking.

23 Q: What is your occupation, sir?

24 A: I'm a physician and Cheif Medical Examiner of

25 Virginia.

26 Q: What education have you had?

27 THE COURT: Do you waive the qualifications of the

28 doctor?

1 MR. BARKER: Yes, Your Honor.

2 Q: Dr. Weicking, I show you a report of investigation
3 by the Medical Examiner and ask if you can identify this?

4 A: This is a true copy of the report--the original
5 of which I have with me from our office in Richmond.

6 Q: Is this the results of an autopsy that you
7 performed?

8 A: That's the results of the medical examiners
9 investigation which incorporates my autopsy result.

10 MR. NETTLES: Your Honor, we offer this as Commonwealth's
11 Exhibit.

12 MR. BARKER: Your Honor, I don't object to Dr. Weickings
13 report in that, but I do object to the other reports that are
14 attached. The witnesses are not here to testify to those things.
15 It would be hearsay, and I object to their admission.

16 THE COURT: I think the objection is well taken,
17 Mr. Nettles.

18 MR. NETTLES: Your Honor, we rely on Virginia Code
19 section as to the admissibility of 19.1-45, subject to the
20 ruling of the Supreme Court of Virginia on September 5, 1975,
21 in the case of Ward versus Commonwealth. We do feel that they're
22 admissible under this court decision as to the facts it contains
23 but are inadmissible as to the opinions it might contain.
24 Inadmissible as to opinions, and we offer it for the facts that
25 they contain.

26 THE COURT: Well, that's all right, but not as to the
27 opinions.

28 MR. BARKER: That's correct, Your Honor, that's my
objection.

1 THE COURT: All right. It will be received as
2 Commonwealth's Exhibit 13. All right, proceed.
3 Q: Did you have occasion to perform an autopsy on
4 Mrs. Pond--Mrs. Mary Pond?
5 A: Yes sir.
6 Q: What was the date?
7 A: Twenty-fifth of September, 1975.
8 Q: What were your findings?
9 A: This was an elderly white female. There were--
10 you want them all or just the most...
11 Q: The ones that relate to the cause of death.
12 A: This woman had neurosurgical incisions in her
13 skull, and she had blood clots over the top of her brain in both
14 sides between the brain and the skull, and there were also areas
15 of infarction or blood clot in her right lung and blood clots in
16 the major arteries to the right lung. She also had arterio-
17 sclerosis and other diseases of aging.
18 Q: Do you have an opinion as to her cause of death?
19 A: Yes sir.
20 Q: What is that opinion?
21 A: In my opinion she died of the pulmonary infarcts
22 and the blood clots in the lung which were a complication of the
23 blood clots in her brain or over the head.
24 Q: Do you have an opinion as to what caused--what
25 percipitated the death?
26 A: Now this woman's clinical course--well the
27 clinical course--the blood clots on the brain such as this
28 woman had is that they are due to violence or trauma to the head.

1 Q: Have you had occasion to discuss with Officer
2 Bradshaw an event that occurred on July 13th?
3 A: By telephone, yes sir.
4 Q: Based on your conversation with Officer Bradshaw,
5 do you have any opinion as to the cause of death?
6 MR. BARKER: Objection, unless we know what the
7 conversation...
8 THE COURT: What did Officer Bradshaw tell you?
9 A: He related to me briefly the events in the Town
10 of Waverly in July concerning an alleged assault or beating in
11 July in Waverly on Mrs. Pond and her--the fact that she was then
12 taken to the hospital and so forth.
13 Q: And based on the information that Mr. Bradshaw
14 furnished you do you have any opinion as to that relation to
15 her death?
16 A: Well, based upon that information, in addition to
17 her hospital charts from Petersburg and Richmond Memorial
18 Hospital and Hermitage Methodist Home in Richmond, its my opinion
19 that it is quite consistent that the clots in her brain stem
20 from the incident in July.
21 Q: Are you saying that the injuries received in July
22 were the cause of her death?
23 A: In my opinion that would appear to be the case,
24 yes sir.
25 MR. NETTLES: Answer, Mr. Barker.
26
27
28

CROSS EXAMINATION

BY MR. BARKER:

Q: Now Doctor, this lady had a lot of other problems. She had according to your description here arteriosclerosis with calcification. She had problems with the kidneys. She had a--just old age was a problem was it not?

A: Certainly.

Q: There's also in the report that there was some congenital--not congenital but there was heart failure that was revealed in the autopsy, is that not correct?

A: Yes sir.

Q: And with all of these other things that she had wrong with her it is conceivable that some of these were the contributing factors or cause of death?

A: An elderly person such as this who has natural disease processes whose reserves are not as strong as a younger persons would be-naturally cannot withstand the insult that a younger person could. That's correct.

Q: Now you say that there was one lung that had the clots in it. A person can get along with one lung, can they not?

A: Some people can, yes.

Q: Well, are you saying in your opinion she could not?

A: I think this was a major factor which tipped her over the brink into death, yes sir.

Q: Well, I'm not sure I quite understand. She could survive with one lung though could she not?

A: Well, I think that's highly problematical. A

1 surgeon attempting to remove one whole lung of a woman of this
2 age in her physical condition--I think there would be a very
3 risky surgical procedure.
4 Q: Well, could you tell me how this clot reaches the
5 lung from the brain?
6 A: It doesn't come from the brain. The clot in the
7 lung comes from the pelvic or leg veins in a person who has been
8 recumbent or immobilized for a considerable period of time.
9 Q: Then how could the blows on the head be the cause
10 of death if these clots came from the lower limbs?
11 A: Because the medical train of events is injury to
12 the brain and had recumbency, disability, immobility, formation of
13 clots while they are immobile and unable to be active and then
14 the clot migrates to the lung causing the clotting in the lung
15 itself.
16 Q: Well, you don't know where the clot came from that
17 migrated to the lung then, is that right?
18 A: Medically they usually come from the pelvis or
19 legs.
20 Q: And this lady did have scars or she had had some
21 capitus inserted in her veins in her arms and in her legs, is
22 that correct?
23 A: She had numerous venipuncture marks as if she
24 had been in the hospital for a while, yes sir.
25 Q: Of course any one of those could have contributed
26 the fatal clot?
27 A: Medically in my opinion they did not contribute
28 to the fatal clot.

1 Q: Did you examine this lady for phlebitis?

2 A: I looked at her legs, and I didn't see--let me
3 see if I have any evidence of phlebitis. I don't have any
4 record that there was any evidence of that.

5 Q: This lady left the hospital and went home and then
6 she subsequently went to the Hermitage Home. She was up and
7 around, ambulatory and yet we are trying to attribute the cause
8 of death to a beating that she took in the middle of July and
9 you are saying that the beating that she took--there were no
10 direct clots that went from her head into her lungs. It came
11 from something else. Now, we've got a period of time here that
12 she was up and around, and she was doing well according to
13 reports, but still how do you explain that you are attributing
14 the cause of death to this beating on July 13?

15 A: The clot on the brain does not leave the brain.
16 It stays on the brain. It does not migrate to the lungs. It's
17 up here inside the bony skull. That is the clot the neurosurgeon
18 had to remove in the hospital in Richmond. That is the clot
19 which was the precipitating event which led her to be recumbent,
20 immobile, and in the hospital in Richmond.

21 Q: This clot didn't move to the lungs?

22 A: This is the clot that laid her out and set her up
23 for her other disease processes to take her over the brink.

24 Q: So it really wasn't that the beating that she took
25 and the trauma to the head that caused the death?

26 A: The medical train of events in my opinion is
27 relatively clear. The injury to her head is what precipitated
28 the medical train of complicated events which resulted in her
death.

1 Q: Well, how about the other problems she had with
2 her kidneys? The report showed that she had a definite problem
3 with some calcifications. This could well have put her in the
4 bed too, could it not?
5 A: She had--let me see what it--she had scarring of
6 her kidneys from arteriosclerosis of pyelonephritis which is
7 quite common in females particularly as they get older. I
8 don't think that would have put her in bed.
9 Q: How about the liver problems that you note there?
10 What effect does moderate fatty metamorphosis, slightly promi-
11 nent interportal fibrosis, and infiltration of portal areas
12 with lymphocytes?
13 A: This woman had a mild chronic congestion in the
14 liver which is an association with chronic--some degree of mild
15 chronic heart failure which is again not uncommon in elderly
16 people.
17 Q: What is the effect of that on her?
18 A: It is merely a manifestation that there is an
19 element of heart failure in her circulatory system. It is not
20 lethal in another cell.
21 Q: If you have--the result of this is less than what
22 we would say a normal blood flow would be, is that correct?
23 Through the body.
24 A: Well, I suppose in a sense that's true.
25 Q: Can't you have clots forming in the body when you
26 get the blood flow down to a certain level of blood pressure
27 getting down low you have clots forming. Clots that can kill,
28 can they not?

1 A: Well, in some people, yes. One could.

2 Q: And it is conceivable in this case that could have
3 happened, is it not?

4 A: Explain to me again what the question is.

5 Q: That these clots came from some of the natural
6 phenomena that you find in the body of an aging patient?

7 A: All clots come from natural phenomena in your
8 blood circulatory system, yes sir.

9 Q: But would it have happened whether she was in bed
10 or not?

11 A: The medical development of pulmonary thromboemboli
12 which caused the clots in the lung, it is associated with
13 recumbency, immobility, inactivity.

14 THE COURT: As I understand your testimony, Doctor,
15 the beating that she suffered on the 13th of July caused the
16 blood clot in the brain which had to be operated on which caused
17 her to be immobilized as a result of which she had the embolism
18 in her lungs which is directly attributable to the beating that
19 she received.

20 A: In my opinion that's correct...

21 THE COURT: That's my understanding of your testimony.

22 Q: Well, after the operation that relieved this blood
23 clot, your report says that she was somewhat more alert and
24 improved, was she not ambulatory?

25 A: I would have to refer to Richmond Memorial Hospital
26 charts to answer that question.

27 Q: Go right ahead.

28 A: On 9-4-75 the physical therapy note says--ambulating

1 with minimal assistance of two people holding her hands. Confused
2 and disoriented, easily distracted. Note on 9-7 staring ambula-
3 tory. Then after that she begins to go into decline as I read
4 the notes. Then it went on to dying.
5 THE COURT: Any further questions, Mr. Barker?
6 Q: Yes, Your Honor, I'm trying to find something
7 specific in here that I know is here, and I can't locate it.
8 Doctor, the records show--hospital records show that she started--
9 she developed abdominal pains September 10th.
10 A: Yes sir.
11 Q: And it was from that point that she started
12 deteriorating?
13 A: Well, the next note on November 11th doesn't
14 indicate that.
15 Q: Doesn't indicate what?
16 A: The note on 9-11 says alert, abdomen soft and less
17 tender today.
18 Q: Did you examine her abdomen in the autopsy?
19 A: Yes sir.
20 Q: Did you find anything abnormal?
21 A: No sir. Surgical absence of her appendix.
22 Q: I'm sorry.
23 A: Absence of her appendix.
24 Q: Well, thank you. I don't have any further questions.
25 THE COURT: Do you have anything further, Mr. Nettles?
26 MR. NETTLES: No sir. Just the fact that this witness
27 can be excused.
28 THE COURT: Certainly. You're excused.

1 MR. NETTLES: I would like to call Officer Bradshaw
2 back.
3 THE COURT: All right.
4
5 Police Officer, Wesley E. Bradshaw, being recalled to
6 the stand, testified as follows:
7
8 DIRECT EXAMINATION
9 BY MR. NETTLES:
10 Q: Mr. Bradshaw, did you fingerprint the accused?
11 A: I did.
12 Q: Do you have that fingerprint card with you?
13 A: Yes sir.
14 MR. NETTLES: We offer this as Commonwealth's next
15 exhibit.
16 THE COURT: It will be received as Commonwealth's
17 Exhibit 14.
18 Q: Pursuant to order of this Court, did you remove
19 any of the defendant's hair and secure saliva and blood?
20 A: I did.
21 Q: Do you have those with you?
22 A: Yes sir.
23 Q: Were they obtained in your presence?
24 A: Yes sir.
25 Q: Did you initial the vials?
26 A: Yes sir.
27 Q: When they were secured?
28 A: I did.

1 Q: Where were they secured?

2 A: Jarratt, Dr. Kirkland's office.

3 Q: Do you have those items? I show you this item and
4 ask for you to identify this.

5 A: I wrote Leon Turner's name on it September 12,
6 1975, and there's my initials and these are saliva swabs of
7 Dr. Kirklands.

8 Q: What did you do with these saliva swabs that were
9 taken in your presence?

10 A: I transported them to Consolidated Laboratory in
11 Richmond.

12 Q: Did you receive a receipt for them?

13 A: (no audible answer)

14 Q: Were you also present when blood was withdrawn?

15 A: Yes sir.

16 Q: Do you have that?

17 A: Yes sir.

18 Q: Is that this item?

19 A: Yes sir.

20 Q: What did you do with this blood once it was taken
21 from the accused?

22 A: I took both containers and transported them to
23 Consolidated Laboratory in Richmond.

24 MR. NETTLES: We offer these as Commonwealth's Exhibit.

25 THE COURT: That will be saliva samples.

26 MR. BARKER: I object to the admission of both of
27 these items on both the Fourth and Fifth Amendment grounds.

28 THE COURT: Objection overruled.

MR. BARKER: Please note my exceptions.

THE COURT: Certainly. The saliva samples will be received as Commonwealth's Exhibit 15, and the blood sample--Commonwealth's Exhibit 16.

Q: I show you this receipt and ask you what this is?

A: This is the receipt I received from Mrs. M. J. Burton on 9-12-75 for the evidence that was just submitted that I carried up there.

MR. NETTLES: We offer this as Commonwealth's Exhibit.

THE COURT: It will be received as Commonwealth's Exhibit 17.

MR. NETTLES: At this time I would like to excuse the witness with right to recall him.

THE COURT: Do you wish to cross examine up to this point, Mr. Barker, or wait until later?

MR. BARKER: I'll wait until later, Your Honor.

MR. NETTLES: At this point, I would like to call, Mr. Forrester.

The witness, Robert D. Forrester, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: Will you state your name for the record please?

A: Robert D. Forrester.

Q: By whom are you employed and in what capacity?

A: I'm employed by the Consolidated Laboratory

1 Services, The Bureau of Forensic Science which is the State
2 Crime Laboratory of the State of Virginia and as a fingerprint
3 examiner.
4 Q: What are your official duties?
5 A: Primarily as the examination of the evidence for
6 the purpose of finding or developing fingerprints on such
7 evidence and possibly comparing them with the fingerprints of
8 suspects.
9 Q: How many times in your career have you testified
10 in Court in criminal cases involving this expertise?
11 A: At least a hundred times all over the country.
12 MR. NETTLES: Do you waive further qualification?
13 MR. BARKER: Yes, I waive further qualification.
14 Q: I show you Commonwealth's Exhibit A10 and the
15 fingerprint card of the accused which is Exhibit 14 and ask if
16 you have ever seen these items before?
17 A: Yes sir, I have.
18 Q: On what occasion?
19 A: I saw those originally--let me get some notes
20 here--I received them from Chief Bradshaw on the 15th of July
21 at our Laboratory. That is I received the flashlight. I
22 received those fingerprints--the fingerprint card on July 21.
23 He brought them in later.
24 Q: Were you able to produce any latent prints on the
25 flashlight?
26 A: I was.
27 Q: Have you compared them with any known samples?
28 A: There was one that was valued. There were

1 fingerprints all over it in blood, but there was one in this
2 area that was of value, and it was identified as the right little
3 fingerprint. That is the same finger that made that print--made
4 the right little fingerprint on this card.
5 Q: How many points of identification do you have?
6 A: I have a chart here in which I have eleven charted
7 plus some others indicated which show eighteen points of identity.
8 That was a partial photograph due to the fact that the finger-
9 print was on this curved surface. It was somewhat hard to get
10 but in photographing the upper part, the total--there were at
11 least twenty points of identify in that fingerprint.
12 Q: Do you have that chart?
13 A: Yes, I do.
14 Q: May I see it? I show you this chart; would you
15 explain to the Court what the charts main fingerprint is?
16 A: That is the same portion, in other words, this is
17 a certain portion of this finger. The lower portion of this
18 first joint and the inked fingerprint portion is the same portion
19 on the ink print as appears in the latent print and this has been
20 enlarged over two hundred times.
21 Q: Where was the latent print obtained?
22 A: The latent print was obtained by photographing
23 it off of the flashlight next to the switch on the flashlight.
24 MR. NETTLES: We offer this as Commonwealth's Exhibit 15.
25 THE COURT: It will be received as Commonwealth's
26 Exhibit 17. Eighteen--the last exhibit was seventeen.
27 MR. NETTLES: Answer, Mr. Barker.
28

CROSS EXAMINATION

BY MR. BARKER:

Q: Mr. Forrester, you said that this flashlight and curvature created problems in lifting that.

A: I didn't lift it.

Q: What did you...

A: I photographed it.

Q: You photographed it. How do you photograph something on this surface?

A: In this case, I not only photographed it with a fingerprint camera, but I also had a photographer--our photographer at the Laboratory photographed the print. The difficulty encountered is in the fact that you have a curved surface, and it tends to compress it somewhat. You can see that on the--it is slightly compressed as compared with the flat prints such as you have here.

Q: Well, it leaves a lot or room for error, does it not?

A: No, it does not. The points of identity are there regardless.

Q: I notice that you have two fingerprint cards. Do you have another card in there of Leon Turner?

A: No, I don't.

Q: The other card is not his that you have?

A: I don't have another card. Oh, I have a copy of this, if that's what you saw. I have a zerox copy. I used that to compare to be sure that was the card.

Q: You have but one set of fingerprint cards?

A: I got a set originally at the same time that I got this flashlight, but I asked the Chief Bradshaw for better prints, consequently, he submitted this to me. As you can see this was taken on the nineteenth whereas he submitted this to me on the fifteenth.

Q: Aren't we running a risk and a danger of having smears on this?

A: No, not when you can see the points very well, which I could. I not only looked at that from a photographic point of view; I also looked at it with a fingerprint glass directly on the flashlight itself.

Q: Did you find other fingerprints on the flashlight?

A: On the flashlight there were a number of fingerprints. That was the only one that had enough points of identity in it to make an identification. In other words, there were fragments and partial prints on the flashlight.

Q: So it is possible that somebody else handled that flashlight as well?

A: I couldn't say. I don't know.

Q: Well, it is possible. There are other prints on there that you couldn't identify. Is that right?

A: I couldn't identify them because they were not of value. There wasn't enough points of identity. I don't know who they belong to.

Q: All right. That is my point. You also examined items A8 through A19 of the Commonwealth's Exhibits. Is that not...

MR. NETTLES: Mr. Forrester, for the purpose of

1 information, the Court has admitted the items on your receipt as
2 Commonwealth's Exhibits A1 through 20.
3 A: Yes sir, the items 1-20.
4 MR. NETTLES: The number on your receipt should
5 correspond to Commonwealth's Exhibit A1, A2...
6 A: Okay. Now would you repeat the question.
7 Q: Item A8 through A19--the report is signed by you
8 and it includes your report on Item 10 which is the print that
9 you found on the flashlight.
10 A: All right, and what would you like to know?
11 Q: I would like to know whether you found any other
12 identifiable prints on any of those items that are identified
13 as Leon Turners?
14 A: No, I did not find any that were identified as
15 Leon Turners.
16 Q: Who did you find if anyone...
17 A: I did not identify them.
18 Q: So there are a number of unidentified prints?
19 A: There are come unidentified prints, yes.
20 Q: On each one of these and out of all the items then
21 there is only one that had an identifiable print on them. So
22 any...
23 A: No sir, that's wrong.
24 Q: All right.
25 A: Therewere other identifiable prints, but they
26 weren't identified as the fingerprints of Leon Turner.
27 Q: They were the fingerprints of someone else. Were
28 they the fingerprints of Mrs. Pond?

1 A: They were not the fingerprints of Mrs. Pond. Now
2 a part of them was a palm print--because of the condition of the
3 body when I got it, I could not get the best possible prints
4 like you would under ideal circumstances and so there was an
5 impression which could have been either a fingerprint or palm
6 print on the phone. There was a latent palm print and there
7 was one other which appeared to be the side of a print, that is
8 was made with the side which I could not actually compare with
9 the fingerprints. Other than that though, the other finger-
10 prints were comparable--that is they could be compared with the
11 fingerprints of Mrs. Pond, and they were not her fingerprints.
12 Q: They could be and were not, and they were not
13 Leon Turner's fingerprints either?
14 A: That's correct.
15 Q: So we have a third person somewhere that has
16 handled these items, is that correct?
17 A: I wouldn't say a third. I don't know how many
18 people have handled them.
19 Q: At least somebody else?
20 A: That's a possibility, yes.
21 MR. BARKER: I don't have any further questions.
22
23 REDIRECT EXAMINATION
24 BY MR. NETTLES:
25 Q: How many points of identification are usually
26 considered for positive identification?
27 A: Most fingerprint people--well varies, but the FBI
28 normally uses eight points of identity or more. Some departments

use ten. Practically all departments in the United States--ten is sufficient to make an identification.

Q: You found over twenty in this instance?

A: I found approximately twenty, yes. I found eighteen that I can see in that portion and there were some others.

MR. NETTLES: I have no further questions.

THE COURT: Will you need Mr. Forrester any further?

MR. NETTLES: No sir. He may be excused.

THE COURT: You're excused.

MR. NETTLES: I'd like to call Dr. Burton or Mary Jane Burton.

The witness, Mary Jane Burton, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: Would you state your name please?

A: Mary Jane Burton.

Q: Where are you employed?

A: I'm employed for the State of Virginia at the Bureau of Forensic Science Division of Consolidated Laboratory Services.

Q: What are your duties at the Bureau?

A: I'm head of the Serology Section for the Forensic Laboratories. I routinely examine items submitted for blood, body secretions, hairs and fibers.

1 Q: How long have you been employed in this position?

2 A: I've been here in Virginia in that position for
3 about two and a half years.

4 Q: Have you been associated with any other crime
5 laboratories?

6 A: Prior to coming to Virginia, I was associated with
7 the Charlotte-Mecklenburg Crime Laboratory in Charlotte for two
8 years. Before that I was associated with the Cincinatti Crime
9 Laboratory in Cincinatti, Ohio, for two and a half years.

10 MR. NETTLES: Do you waive further qualifications?

11 MR. BARKER: I'd like to hear some more. Your Honor,
12 I understand that Mrs. Burton is going to present some novel
13 scientific evidence, and I would like to hear more of what her
14 qualifications are for going this.

15 Q: Would you please state your formal education?

16 A: I have a Bachelor of Science in chemistry from the
17 University of Cincinatti. I've taken graduate work at the
18 University of Cincinatti and the University of Miami and Oxford,
19 Ohio.

20 Q: Have you had any other experience which would be
21 helpful--which would help qualify you for this work?

22 A: After graduating from the University of Cincinatti,
23 I was associated with the Kettering Laboratory which is a
24 research institute attached to the College of Medicine at the
25 University of Cincinatti. I was there for eleven and a half
26 years and during the whole eleven and a half years I was
27 associated with the cancer research project. Part of these
28 eleven and a half years I was in charge of the biology section

1 and during which time we undertood many studies on the hemato-
2 globulin in blood and on hair studies.
3 Q: Have you had any specific training for these--for
4 your work besides the experience in other crime laboratories.
5 A: I have attended workshops, seminars, schools and
6 meetings on these particular subjects and other related subjects,
7 and I attended a school directed by Dr. Bryant Culliford from the
8 Metropolitan Police Laboratory in London.
9 Q: Have you ever been involved in helping train others
10 in the field of Forensic Science?
11 A: I've taught college level courses in the blood,
12 hair and fibers part of Forensic Science. I'm responsible for
13 the training of all present, past and future serologists in the
14 State of Virginia. I've assisted in the training of examiners from
15 other county, state and federal laboratories.
16 Q: What is a serologist?
17 A: A serologist in Virginia is an examiner of items
18 submitted for blood body secretions, hairs and fibers.
19 Q: Have you testified in court as an expert witness?
20 A: I've testified in courts in Virginia, Ohio, North
21 Carolina, South Carolina and in federal courts.
22 Q: I show you Commonwealth's Exhibit 16 and ask if
23 you've ever seen this before?
24 A: That's my case number, my initials and my item
25 number on it.
26 Q: I show you Commonwealth's Exhibit 12 and ask if
27 you've ever seen this before?
28 A: Yes sir, I have. It has my name--my signature.

1 Q: What is that?

2 A: It's the original copy of the request for
3 Laboratory examination which Chief Bradshaw presented to
4 Mr. Forrester and myself with the evidence.

5 Q: This contains on here a list of all the items 1
6 through 20, is that correct?

7 A: Yes sir.

8 Q: On items 1 through 19 the Court has received in
9 evidence and has labeled these exhibits A1 through A19 for
10 purposes of reference. I show you these items and ask if you
11 can identify these?

12 A: These are materials that I cut out of these various
13 items. Materials that I tested or tested from. Now, this is
14 Number 20 on there. This is what remains of the sample of blood
15 from the victim.

16 THE COURT: You're offering those in evidence?

17 MR. NETTLES: Yes sir, I will.

18 THE COURT: I think for simplicity, if they will be
19 received as B20, B19 and so forth for reference purposes.

20 A: Now, this is my Item Number 5 which is A5.

21 Q: Let's get them in order first. I show you two
22 plastic envelopes bearing initials and the numbers 1 and ask if
23 you can tell the Court what these are?

24 A: All right, this is a stained portion of the sheet
25 that's listed on here as A1. That's the particular sheet that I
26 cut out. I took portions of this for my tests and whenever I
27 ran a test on a stain I also run a unstained portion as a control.

28 Q: Of the same sheet?

A: Of the same sheet so these are both from A1.

MR. NETTLES: We offer this as Commonwealth's Exhibits 1B and C.

THE COURT: Now, I believe, this is the stain that you cut from the sheet. This is your test?

A: This is a piece of the sheet that was not stained.

THE COURT: That was not stained.

A: I wanted to be sure that nothing in the sheet itself contributed.

THE COURT: I see, well the blood stain will be received as Commonwealth's Exhibit 1B and the unstained sheet will be received as Commonwealth's Exhibit 1C.

MR. BARKER: Your Honor, I thought this list of Exhibits were A1 through...

THE COURT: That is true, but this is an exhibit from A1.

MR. NETTLES: This is a part of the Exhibit A1. It is cut out of A1.

THE COURT: So this is 1B and 1C.

Q: Do you have any conclusions?

A: I identified this stain as human blood, and the blood type was identified as Type B--EAP-B.

Q: What does that mean?

A: The Type B refers to the ABO Type. They're either Type A or B or AB or O. The stain on that sheet was found to be Type B in the ABO system. Now, there are many other systems by which we can classify blood. I'm sure you've heard the RH--they're either positive or negative. That's another system.

1 There's the MM system and there are many other systems. Now,
2 the EAP refers to an enzyme system. This is an enzyme in the
3 blood cell itself. It takes on different forms in different
4 people just like the ABO system does so therefore we can determine
5 the type of this enzyme. Now, in the EAP, which stands for
6 erythroparasite erythrophage or the red cell erythrophage system,
7 this stain was found to be Type B, and this is completely separate
8 from the ABO system.
9 THE COURT: How many different types under the other system
10 are there?
11 A: Under the EAP system there are six. There's A or
12 B or C, AB or CB or CA.
13 Q: Did you also type Commonwealth's Exhibit--the blood
14 from the accused?
15 A: Yes, I did.
16 MR. BARKER: Your Honor, this is what I raised an
17 objection to earlier. Item A20.
18 THE COURT: No, A20 is the victims blood.
19 MR. NETTLES: I'm referring to Exhibit 16, the blood
20 vial from Leon Turner. Did you type Exhibit 16?
21 A: Yes sir, I did.
22 Q: What type did you find that to be?
23 A: I found that he was Type O in the ABO system, and
24 Type CB in the EAP system.
25 Q: Did you draw any conclusions from the two samples
26 there?
27 A: Only that the stains on the sheets were not consis-
28 tent with his blood type.

Q: I show you Exhibits--three plastic envelopes and ask if you can identify that?

A: Yes sir, these are stains that I cut out of the other sheet marked A2. I have two Number 1 here and a Two Number 2. I selected two different stains from different areas and this again is the control.

Q: Were you able to type that?

A: Yes sir, I found that both stains were human blood and both were Type B in the ABO system and Type B in the EAP system.

Q: Were there any conclusions to draw from this?

A: These stains were not consistent with the blood sample from the defendant.

THE COURT: Are you offering these in evidence?

MR. NETTLES: Yes sir.

THE COURT: These two will be received as B2 and the test sample will be C2.

Q: I show you these two items and ask if you can tell the Court what you know about them?

A: This is a stain portion of the mattress cover that I cut out and the unstained portion. I identified this stain as human blood. It was Type B from the ABO system and Type B in the EAP system.

Q: I show you envelopes marked Number 4...

THE COURT: Those will be B3 and C3.

A: This is--there were pieces of glass submitted, and there was stains on the glass. Now, I removed the stains from the glass and this is the--my material that I used to remove it--

it's a sample piece of material that I always use. I identified these stains as human blood. It was Type B in the ABO system. The test for EAP type was inconclusive. In the ABO system the sample was not consistent with the defendant's blood. May I add something here?

Q: Yes.

A: If we would have a mixture of blood, for instance, if we would mix Type O blood with Type B blood the resulting combination would type out Type B. Now, if we had--were able to do the EAP type, here again we would have a combination; and if we would mix Type B in the EAP system with Type CB in the EAP system the resulting combination would be CB. It's an additive--a direct additive effect.

Q: I show you items--two envelopes marked 5.

A: All right, here again is the stained portion of the blue-jean jacket and an unstained portion that I cut out and tested. I found that the stains were human blood. I was not able to determine the blood type in any system.

MR. NETTLES: We offer these as Commonwealth's Exhibits 5B and C.

Q: I show you two envelopes marked 6 and ask if you can identify this?

A: Yes sir, I found stains on this shirt. I was able to identify it as human blood. In this case the amount was insufficient for typing. The stain was very tiny.

Q: I show you these two envelopes marked 7 and ask if you can identify that?

A: Yes sir, this is a stained portion and an unstained

1 portion of a shirt that I cut out. I found that the stain was
2 human blood Type O in the ABO system, and the amount was not
3 sufficient for the EAP system.
4 Q: I show you these two items and ask if you can
5 identify that?
6 A: Yes, these are stains that I removed from a
7 telephone base. This is what's left of the stain I removed from
8 the telephone base. This is what is left from a stain that I
9 removed from a wood sash from the back door. I identified stains
10 from both of these as human blood. The stain from the telephone
11 base I found was Type B in the ABO system and Type CB in the EAP
12 system. Now, this indicates that either a different person is
13 involved because the type is different or we have a combination
14 of Type O with Type B--we get Type B and Type EAP-B with CB
15 would give us CB.
16 MR. BARKER: Would you explain to me again the
17 combinations?
18 A: All right, if we would add Type A blood or Type B
19 blood with Type O blood we would get Type B. If we would add
20 Type A blood to O blood we would get Type A so in other words,
21 anything added to O would give whatever the other thing is. Now,
22 in the EAP system if we add B to CB we would get CB. The stain
23 from the wood sash door--back door was found to be Type B in the
24 ABO system and Type EAP-B in the EAP system and this is not
25 consistent with the...
26 MR. BARKER: Would you say that last again?
27 A: The stain from the wood was not consistent with the
28 defendants . The one from the telephone base could be a combinatim

1 of the victim and the defendant's blood.

2 Q: It's my understanding Mr. Bradshaw susmitted to

3 you Item A5, a blue jacket.

4 A: Yes sir.

5 Q: Now, did you perform any other tests on the jacket

6 other than the blood test? Well, let me ask you this question,

7 did you compare any samples of glass?

8 A: No. I did notice that the sleeve particularly the

9 sleeve and the cuff of the sleeve had little sparkling--particles

10 adhering to it and viewing it under the microscope I identified

11 it as glass so I did not compare the glass myself, but I did

12 send it to an examiner who does compare glass up in our

13 Northern Virginia office, and I believe he wrote a report on that,

14 but I did see the glass and submitted it to him for the exam-

15 ination.

16 Q: Do you have a copy of that report?

17 A: Yes sir, I do.

18 MR. BARKER: I object to this, Your Honor. I want

19 the examiner here to I can cross-examine him on this.

20 Q: We'll get to him in a minute. I show you two

21 envelopes=-plastic marked 20. Can you identify these?

22 A: Yes sir, these are both residues from the blood

23 sample from the victim. I identified the blood type as Type B

24 in the ABO system and Type B in the EAP system.

25 MR. NETTLES: We offer these as Commonwealth's Exhibits.

26 MR. BARKER: Your Honor, I understand now that this is

27 Item A20.

28 THE COURT: That is correct.

MR. BARKER: And this was--unless Mrs. Burton was present when this sample was taken from the victim there is no way to connect it to her.

THE COURT: These samples will be received as B20 in evidence.

Q: I show you this item and ask if you can identify that?

A: Yes sir, this is the residue from the blood from--these tubes here. I found that the blood type was O in the ABO system and CB in the EAP system.

THE COURT: It will be received as D16 to conform with the blood samples.

MR. BARKER: Your Honor, I raise the same objections that I did before on this. The Fourth and Fifth Amendment grounds on Item A21.

THE COURT: Objection overruled.

MR. BARKER: Note my exception.

MR. NETTLES: Answer, Mr. Barker.

CROSS EXAMINATION

BY MR. BARKER:

Q: Mrs. Burton, who devised the EAP system?

A: That isn't exactly the correct way to put it. It's who may have identified it or discovered it--in other words, this is a system that has been in our bodies since the beginning of time. It's just a matter of when it was discovered.

Q: All right then, who discovered it?

A: I don't know.

Q: Well, is this typing one that has been in common practice in courts for many years or is this something new that is being used to put in evidence?

A: I have been using it or identifying it on case material and testifying on it for about three and a half years.

Q: How many times did you testify on this using this method?

A: I would say at least twenty-five to thirty times. Other labs have probably even as much as a year or two years longer than I have. There are, of course, some labs that are still not using this system. It requires specialized equipment; and, of course, this is various for some laboratories.

Q: And you've been trained in this?

A: Yes sir, I have. This school--the people in London have been the leaders in this, and they have been using these techniques on not only this system but other systems which we are currently now doing too for maybe six or eight years, and they are the ones that developed techniques for these methods on dried stains. This is a system that has been used on whole blood longer, but any system on whole blood cannot always be adapted for dry stains. This is one that adapted very easily so therefore anything that we can do on dry stains in order to classify the blood further differentiated them so that fewer people could have blood of this type we're interested in.

Q: What percentage of the population has Type O blood?

A: About Forty-five percent.

Q: About forty-five percent. That's a pretty good segment. That is the largest grouping is it not?

A: Yes sir. That's the most prominent.

Q: What percentage of the population has Type B blood?

A: In the ABO system?

Q: Yes.

A: About ten percent.

Q: Then what type has the--narrowing it down--the EAP-B?

A: About thirty-three percent have the EAP Type B.

Q: About thirty-three percent?

A: Yes sir.

Q: Now, you say these are completely independent factors?

A: Yes sir.

Q: No overlapping at all?

A: No sir. They are formed by separate genes in the body. This is what determines your ABO Type and this also determines your EAP type.

Q: Now, as I understand it, Item No. A1 through A5 on your list were not comparable or compatible with the defendant's blood type, is that right?

A: A5 I could not determine the blood type. A1 through A4 were not compatible with the defendants. Well, A4 I could not determine the EAP type. Type B could be a combination of O and B, but of course, I cannot say that. The only thing, I could determine that it was B so we can say that A1 through A3 were not compatible with the defendant's blood type.

Q: Item A6 you could identify it only as human blood?

A: That's right.

Q: And Item A7 only as Type O which you say forty-five percent of the population has...

A: Yes sir.

Q: ...is that correct? So actually all the items that you checked that were taken from Mrs. Pond's residence with exception of the blue jean jacket were either inconclusive or they they were all--they were all either inconclusive or not compatible at all with the defendant's blood, is that correct?

A: No, that's not. A4 we don't know whether it is a combination or not. A5, of course, I could not determine that Type or A6.

Q: But you say it is inconclusive?

A: Right. A7 is compatible or consistent with the defendant's type. A8...

Q: Well, the way I phrased the question you may or may not know which items were taken from her residence?

A: Oh, no. I don't.

MR. BARKER: That's all. I don't have any further questions. Thank you.

MR. NETTLES: I have no further questions.

THE COURT: Let me ask you one question. Which of these items were compatible with the defendant's blood type?

A: On A7...

THE COURT: A7.

A: ...is type O. This is compatible in the ABO system. Type 8--A8, the EAP system is compatible with his. The ABO system is not, but as I explained this is compatible with a combination of the two or with a third persons blood type, and

1 that would be all.

2 THE COURT: All right. Any other questions?

3 MR. NETTLES: No further questions.

4 MR. BARKER: Can I clarity something I--with the risk

5 of being redundant. You say that in Item A8 that the EAP system

6 is compatible?

7 A: Yes sir.

8 Q: Or is it just a possibility that you could have a

9 combination of types?

10 A: In other words, you're asking could we have a

11 Type C and a Type B and--would give us a Type CB?

12 Q: Is that what you're telling me?

13 A: No. The EAP Type itself in No. 8 is the same as

14 the EAP Type of the defendant. Now, I don't know whether it is

15 a combination or not. I cannot tell. The only thing I can

16 determine that I got the same results as I would from a blood

17 sample that was Type CB in the EAP system. I did mention that

18 if we would mix Type B and Type CB both in the EAP system, the

19 result would be the same as I got for the EAP system in No. 8.

20 MR. BARKER: All right. Thank you.

21 MR. NETTLES: Do you know what percentage of the

22 population has Type C in the EAP?

23 A: Type EAP-CB you mean?

24 MR. NETTLES: Right.

25 A: About five percent.

26 THE COURT: All right. Any further questions?

27 MR. NETTLES: No sir. This witness may be excused.

28 THE COURT: You're excused.

MR. NETTLES: I would like to recall Mr. Bradshaw.

Police Officer, Wesley E. Bradshaw, being recalled to the stand, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: Mr. Bradshaw, you said you recovered exhibit--the flashlight. It is right in front of you. Where was that recovered in that apartment?

A: In Mrs. Pond's bedroom.

Q: Where in the bedroom?

A: In between the--her bed with standing--her bed--the head of it was west so standing at the foot of it was on the right hand side in between the bed and the wall.

Q: Does it show in any of the pictures?

A: No.

Q: How far from the back door was the flashlight found?

A: Well, you have to go in the back door come into the living room and get in Mrs. Pond's bedroom.

Q: After July 13th, when was the first time you saw Mrs. Pond?

A: I went up there on the same day she was admitted to the hospital on the 13th of July, and I went to see her again on Tuesday, July 15, 1975. On Friday, July 18, 1975, I took some pictures up for her to look at.

Q: On what day was that?

A: On Friday, July 18, 1975. On September 19, 1975, I went to Richmond Memorial Hospital in Richmond and she was in no condition to be talked to.

Q: When you saw her on July 18, did you have any conversation with her?

A: I went to her room and asked her how she was getting along.

Q: What did she tell you?

MR. BARKER: Objection.

THE COURT: How she was getting along, do you object to that? All right. Objection sustained.

MR. NETTLES: Your Honor, we intend to show a statement she made--make it admissible under the dying declaration...

THE COURT: On July 18th?

MR. NETTLES: Yes sir.

THE COURT: What have you got to say about it, Mr. Barker?

MR. BARKER: I would object to anything that she said as being hearsay. Certainly July 18th is far to remote from the time of death to be a dying declaration.

MR. NETTLES: Your Honor, we submit that she thought she was going to die by the 18th.

THE COURT: How can you submit it without proof of it?

MR. NETTLES: We want to--that's the purpose of the question.

THE COURT: How was she feeling? All right, you can describe her condition at that time. Are you in a position to give her mental state?

1 A: The only thing I can tell is what I saw.

2 THE COURT: What you thought?

3 A: What I saw.

4 THE COURT: Go ahead and tell what you saw.

5 MR. NETTLES: The question of the dying declaration
6 is that admissibility is personal of what the victim thought her
7 condition was.

8 THE COURT: That is true.

9 MR. NETTLES: The only way we can prove what she
10 thought her condition was is by her statement.

11 THE COURT: Well, I'll permit it only for that purpose--
12 not as to the question of guilt or innocence of the accused.

13 Q: What did Mrs. Pond tell you?

14 A: On the night that I carried the pictures up there...

15 MR. BARKER: I'm sorry, I didn't hear what you said.

16 A: On the night that I carried these pictures up
17 there Mrs. Pond looked at--I told her that I had brought some
18 pictures up there, and I would like for her to look at them and
19 take her time; I had plenty of time, and she looked at them and...

20 MR. BARKER: I object, Your Honor, to any identification
21 of any pictures whatsoever. That is hearsay. It does not give
22 the defense any opportunity to cross examine. It does not give
23 the defense any opportunity to show any kind of prejudice or any
24 kind of bias that might have taken place and it is inadmissible
25 for identification purposes.

26 MR. NETTLES: Your Honor, we think it's admissible--
27 number one, under what we said is the dying declaration but also
28 under the verbal acts doctrine in that he can describe what

1 actions she took.

2 THE COURT: Verbal acts doctrine--now tell me what you
3 mean by that?

4 MR. NETTLES: Well, we intend to describe what move-
5 ments that she made when presented with the pictures?

6 THE COURT: Where in the hospital?

7 MR. NETTLES: Yes sir.

8 THE COURT: I'm not going to permit any identification
9 there at the hospital. The pictures presented. Now, I'll let
10 you go into any kind of proof you have if she made a dying
11 declaration, but the evidence before the Court is that she was
12 severely beaten on about the 13th, I believe.

13 MR. NETTLES: That's correct.

14 THE COURT: And she went to the hospital and she lived
15 to sometime in September and unless you can bring in a Doctor
16 or someone there at the hospital that could clearly tell the
17 Court that she made that statement under impending feeling of
18 death, I don't think it's admissible, Mr. Nettles.

19 MR. NETTLES: We aren't prepared to do that. We'll
20 withdraw it. I'd like to have a recess, Your Honor.

21 THE COURT: All right. We will take a five-minute
22 break.

23 MR. NETTLES: I would like to recall Mr. Harrison.

24 THE COURT: Have a seat, Mr. Harrison.

25
26
27
28

Police Officer, William G. Harrison, being recalled to the stand, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: This is the witness, Police Officer, William G. Harrison from the Town of Waverly. Mr. Harrison, you said that you saw the accused Leon Turner on Sunday, July 13th, is that correct?

A: Yes sir.

Q: What time was that?

A: It was approximately between three and four o'clock that afternoon.

Q: That would be P.M.?

A: Yes sir.

Q: On that day was he arrested?

A: Yes sir. He was arrested that day.

Q: What was the charge?

MR. BARKER: Objection.

MR. NETTLES: What?

MR. BARKER: I object to the evidence of him testifying to any previous acts or charges against the defendant being irrelevant.

MR. NETTLES: May it please the Court, we intend to show from the records of this Court of Mr. Harrison of another offense that occurred approximately at the same time as this would show the accused in the vicinity of the Mary Pond residence.

THE COURT: What probative...

1 MR. NETTLES: To show that he was near the scene of
2 this crime.
3 THE COURT: Just by his arrest?
4 MR. NETTLES: By the commission of another offense
5 in the vicinity.
6 THE COURT: I think the objection is well taken as to
7 another offense. Yes--objection is sustained.
8 Q: When you first arrived at the scene, did you have
9 occasion to see Commonwealth's Exhibit A10--the flashlight?
10 A: Yes, I did.
11 Q: Where was that?
12 A: It was lying between the bed and the dresser or
13 the closet door.
14 Q: Could you show on the picture where it was located?
15 I show you Commonwealth's Exhibit 6--a photograph which is
16 written--the front of which is written her bedroom and ask if you
17 can point out where the flashlight was recovered?
18 A: The flashlight was recovered on this side of the
19 bed over here which I don't have a photograph...
20 THE COURT: That is the back side of the bed as looking
21 into the photograph?
22 A: Yes sir.
23 THE COURT: Was it in the position standing on the red
24 portion of the reflector or was it down?
25 A: I think it was laying down.
26 Q: Exhibit A5 is entitled bloody blue jacket--where
27 was that found in the apartment?
28 A: That was found in the picture of the kitchen. It

1 was right there at the entrance of the kitchen.

2 Q: I show you Commonwealth's Exhibit 4 and ask if you
3 can point out that?

4 A: This picture here was taken from the kitchen
5 leading out to the back porch. Up on this end was another door
6 leading into the living room and the coat was found right there
7 as you're leaving out the kitchen. On this end of the kitchen
8 and that door came to the porch.

9 Q: I show you Commonwealth's Exhibit No. 8, a photo-
10 graph which purports to show a telephone, a white lamp, and a
11 name file and ask you if those items shown in the picture are
12 Exhibits A11 and A13 and A8 entitled a black telephone base;
13 A12, a white lamp base; and A11, a name file.

14 A: Yes sir. All three of them. The telephone...

15 Q: That was before they were moved?

16 A: Yes sir. This is the same position we found them
17 in.

18 MR. NETTLES: I have no further questions of this
19 witness.

20 THE COURT: Any questions?

21 MR. BARKER: No, Your Honor, no questions.

22 THE COURT: I believe that when you went in and
23 examined the room you did not move the flashlight?

24 A: No sir.

25 THE COURT: That was when you told Officer Barnes to
26 seal the room and not permit anyone to come in?

27 A: The whole house.

28 THE COURT: All right.

MR. BARKER: I have one question. You testified that Officer Barnes was there when you got back, but you don't know what he did during the meantime, is that right?

A: When I was gone--no.

MR. BARKER: No further questions.

A: The room didn't seem to be moved when I left it.

THE COURT: All right. Anything further?

MR. NETTLES: I have one other witness. Mrs. Johnson.

MR. BARKER: May it please the Court, when we left at recess Officer Bradshaw was on the stand. I have not had a chance to cross examine him.

THE COURT: You'll certainly have a chance to cross examine him.

MR. NETTLES: Let me call this witness, and then I'll call Officer Bradshaw for purposes of cross examination.

MR. BARKER: All right.

The witness, Doris K. Johnson, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q: Would you state your name for the Court, please.

A: Doris K. Johnson.

Q: What kin, if any, were you to Mary Belle Hollingsworth Pond?

A: I'm her husband's niece.

Q: I ask if you have or have not qualified in any

capacity on her estate?

A: Yes, I have.

Q: As such, has any watch come into your possession?

A: No sir.

MR. NETTLES: Answer, Mr. Barker.

MR. BARKER: I have no questions.

THE COURT: You may stand aside.

MR. NETTLES: I would like to call Mr. Bradshaw for purposes of cross examination by Mr. Barker.

Police Officer, Wesley E. Bradshaw, being recalled to the stand, testified as follows:

CROSS EXAMINATION

BY MR. BARKER:

Q: Sergeant Bradshaw, when you arrested Mr. Turner--took him into custody, what items did you--physical evidence did you take from him at the time of the arrest?

A: At the time he was picked up and questioned on two different offenses--at that time a yellow shirt was taken.

Q: A yellow shirt was taken from him?

A: Right.

Q: He was wearing the yellow shirt at the time?

A: He was.

Q: At what time was this?

A: He was picked up and taken to the Town Office around 4 p.m. in the afternoon.

Q: Of what day?

A: July 13, 1975.

Q: How about Items A6 and 7; they're the two shirts. Neither one of those shirts were taken from the scene, is that correct?

A: The yellow shirt was taken off of him because at the time that he was picked up I had information that he had cuts on him by an informant and when...

Q: My point is that they were not found at the scene. Neither one of those two items of evidence were taken from the scene, were they?

A: Not at the scene.

Q: Where was the other shirt taken from?

A: His brother went home and brought it to the Town Office.

Q: What other physical evidence did you take at that time?

A: I didn't take anything but the shirt. He left a pair of overshoes in the office there. I told him he could put them back on, but he wouldn't put them on.

Q: Did you take anything--any glass samples?

A: I took some fragments from his shoes--bottom of his shoes and the sole, it looked like glass fragments.

Q: Did you get any report back on those?

A: I did.

Q: Were they inconclusive or identified as not--as being negative and not part of the...

A: Grain sand.

Q: So it was not glass?

1 A: No.

2 Q: Did you ever recover a watch of any sort?

3 A: I did not.

4 Q: Leon denied this to you when you questioned him,
5 did he not?

6 A: At the time I questioned him, he denied knowing
7 anything about it or going to the house, and I told him that I
8 had some evidence that I was going to submit to the laboratory
9 for latent fingerprints, and he said I could carry anything I
10 wanted to up there, that I won't going to find nothing in there
11 with is prints on it.

12 MR. BARKER: I don't have any further questions.

13 THE COURT: Anything further on this, Mr. Nettles.

14 MR. NETTLES: No sir.

15 THE COURT: You're excused.

16 MR. NETTLES: That's the Commonwealth's case, Your
17 Honor.

18 THE COURT: Your first witness.

19 MR. BARKER: May it please the Court, at this point I
20 would make a motion to strike the Commonwealth's evidence,
21 particularly the robbery charge. Robbery is a common-law offense.
22 There must be a forcible--you've got to show a forcible taking
23 of money or goods from somebody. They have not presented any
24 corpus delicti. We don't have any watch recovered from Mr. Turner.
25 We just have a missing watch. We have a situation where we don't
26 know where the watch is. We don't know when the last time was
27 that the lady even had it on. She may have sold it. She may
28 have given it away. She may have disposed of it. It may have

1 been completely thrown away. There has been no showing at all
2 that Mr. Turner had anything to do with this missing watch, and
3 I would move to strike the Commonwealth's evidence on that charge
4 in particular, and the other two charges the evidence is so
5 flimsy that I would--also there are holes in each piece of
6 circumstantial evidence that has been presented here and there
7 are things that are unexplained as the Commonwealth has not com-
8 pletely beyond a reasonable doubt isolated all theories of
9 innocence and left no room to feel that there is anything but
10 guilt. I understand that this is not on a motion to strike. We
11 don't have a reasonable doubt, but I don't feel that the evidence
12 that the Commonwealth has put on here to this point would sustain
13 any kind of conviction even taken as being true.
14 THE COURT: What have you got to say about the robbery
15 charge, Mr. Nettles? I'm not concerned about the other two.
16 There's no evidence that anything was taken out the apartment.
17 I know it is difficult to prove where the lady has passed away,
18 died.
19 MR. NETTLES: We feel that we have shown a robbery.
20 The fact that she had the watch on that afternoon. That she had
21 on one previous occasion worn the watch to bed, and the fact that
22 she did not have a watch when she came to the door that night
23 to Mrs. Bacons. We think certainly and one has not been recovered
24 since then--is sufficient to show the watch was taken from her
25 during this altercation.
26 THE COURT: All right. All motions are overruled at
27 this time. Your first witness.
28 MR. BARKER: I call Mamie Lee Jones.

1 The witness, Mamie Lee Jones, after having been duly
2 sworn, testified as follows:
3
4 DIRECT EXAMINATION
5 BY MR. BARKER:
6 MRS. JONES: When I laid down to...
7 THE COURT: Answer Mr. Barker's questions.
8 Q: Mrs. Jones, would you state your name and tell us
9 where you live?
10 A: My name is Mamie Lee Jones, and I live on Wilkins
11 Avenue.
12 Q: Where? Robert Wilkins Avenue in Waverly.
13 A: Robert Wilkins Avenue in Waverly, Virginia.
14 Q: Are you any kin to Leon Turner?
15 A: No. We don't have no relation.
16 Q: Did you have occasion to see Leon Turner on
17 July 13th?
18 A: Well, I see him...
19 MR. BARKER: I want you to tell the Judge now. You
20 told me, and I want him to hear it.
21 A: When I laid down it was raining so I went to sleep,
22 and when I was laying there somebody knocked. He woke me up so
23 I got up and went to the door so that was Leon, and he said Miss
24 Mamie let me come in out of the rain, and I turned him in. So
25 he sat down, and he went to sleep, and when he woke up, he went
26 home like he told me. He told me he was going home.
27 Q: What time was it Leon came?
28 A: I can't tell you what time it was but...

Q: Was it light? Was it dark?

A: It was dark when I opened the door for him, but it was light when he went home. That's all I know.

Q: You got any idea how long it was?

A: No sir. I can't tell you how long it was. I don't know. I had been sleep.

Q: But he was there?

A: Yes. He come there.

Q: Did you see any watch?

A: No sir, I didn't see no watch or nothing. He didn't have nothing I'd seen. If he did, I didn't see it.

MR. BARKER: All right. Answer Mr. Nettles please.

CROSS EXAMINATION

BY MR. NETTLES:

Q: How long have you known Leon?

A: Sir?

Q: How long have you known him?

A: I've been knowing Leon since he was small.

Q: Has he ever made any threats on you?

A: Well, no sir, not here lately, he ain't. When he come to the door, he didn't say nothing to me.

Q: Didn't say anything to you?

A: No, nothing but he say Miss Mamie he says let me come in out the rain. So he slept around going home so he went home.

Q: You saw the blood on his elbow didn't you?

A: Sir?

1 Q: You saw the blood on his elbow?

2 A: No, I didn't take notice. I ain't take notice
3 the clothes he had on. You know how a person is when they is
4 just waking up. I just got up and opened the door for him and
5 told him he could come in the house out of the rain.

6 Q: He had been in your house and slept like this many
7 times?

8 A: Yes sir. He has come in my house and sat down in
9 the chair and went to sleep.

10 MR. NETTLES: No further questions.

11 THE COURT: Next witness. Have a seat there. Your
12 next witness.

13 MR. BARKER: James Turner. You're not James. Is
14 James Turner in the courtroom? Your Honor, the defense rests.

15 THE COURT: No other witness?

16 MR. BARKER: That's our case, Your Honor.

17 THE COURT: All right. Do you care to argue the
18 matter, Gentlemen?

19 MR. NETTLES: We submit it, Your Honor. We feel like
20 we have shown our burden in three cases.

21 MR. BARKER: Your Honor, I renew my motion to strike
22 on the robbery charge. It is not...

23 THE COURT: Motion to strike on the robbery charge is
24 granted. As to the other two, they are overruled.

25 MR. BARKER: Your Honor, I would like to review the
26 evidence that...

27 THE COURT: All right. Can you explain to me how the
28 defendant's fingerprint was found on the flashlight within the

1 house with all the blood stains that are on it.

2 MR. BARKER: Your Honor, I don't think that the defense
3 has to explain that. I think the Commonwealth...

4 THE COURT: You don't so far as the Court is concerned
5 that's better than any personal identification of the accused on
6 those premises. Fingerprints do not lie.

7 MR. BARKER: Your Honor, the Commonwealth has not
8 shown that that was Mrs. Pond's flashlight.

9 THE COURT: Didn't have to be her flashlight. It was
10 found in the house where this tremendous assault occurred, and
11 they have been positively identified on this chart by some
12 eleven different points of identification. The Court has examined
13 those points of identification. It is good to have an expert,
14 but you can notice and see how well they match up with the
15 defendant's right little finger.

16 MR. BARKER: Your Honor, I give for the sake of
17 argument to say that it is his fingerprint. The problem is how
18 did the flashlight get in the house. Did the flashlight get in
19 the house because Mrs. Pond bought the flashlight and carried it
20 in the house or did it get in the house because somebody else
21 carried it in the house after Leon had handled the flashlight.
22 Now the fingerprint expert also said that there were other
23 fingerprints in there that he did not identify as either Mrs.
24 Ponds or Leons. There is a third person in this. At least, a
25 third person...

26 THE COURT: Mr. Barker, in any household there will be
27 hundreds of fingerprints in the house. I'm satisfied that in my
28 household there are hundreds of different fingerprints. My

1 understanding is that they might last for weeks from the experts
2 I have heard, but the fact that the other fingerprints in that
3 household; we're not concerned about those persons. The facts
4 as I have heard the case here today--Mrs. Pond went to the next
5 door completely bloody, horrible assault made upon her and asked
6 for help from the Bacons. They immediately carried her down to
7 the police headquarters wherein she was given aid by the rescue
8 squad and carried to the hospital and immediately Deputy Harrison
9 went to the premises and found this flashlight within fifteen
10 minutes after Mrs. Pond was carried to headquarters. He
11 immediately sealed the premises with Officer Barnes. When
12 Mrs. Bacon went back to the premises Officer Barnes wouldn't let
13 her into the premises until late that afternoon when the premises
14 were cleaned up. This flashlight was in those premises.
15 MR. BARKER: Your Honor, it is not my...
16 THE COURT: Mr. Turner testified to Officer Bradshaw
17 or stated to Officer Bradshaw you will not find my fingerprints
18 on the premises. He did find them on the premises. So far as
19 I'm concerned circumstantial evidence of fingerprints is the
20 best means of identifying that this defendant was on the premises
21 and committed this assault. Even today you can see the blood
22 that was left on it, and I rather imagine the blood stain through
23 which the fingerprint was taken helped to preserve it, but go
24 ahead.
25 MR. BARKER: My argument, Your Honor, is not that
26 something ghastly did not occur or that this flashlight wasn't
27 there at the time that the Officers went there and found it or
28 I'm not saying that somebody went in and put it there. I'm

1 saying that with something as mobile as a flashlight,that can
2 be picked up at any time, put in a pocket, transported and as
3 you said can be--a fingerprint can last for a long time. It is
4 not inconceivable and the Commonwealth has not presented any
5 evidence that would link Leon with that flashlight other than
6 the fingerprint. Now sometime in the past he may well have
7 handled that flashlight. We don't know whose flashlight that is.
8 It was found in the home of Mrs. Pond. No question about that
9 with his fingerprint on it, for the sake or argument on that.
10 But how did that flashlight get there. He could have handled
11 that flashlight and somebody else picked it up and carried it in
12 there and left it. And the Commonwealth has not excluded that
13 theory, and I think the other fingerprints that are in the home
14 helped my theory as to what and may have happened. We are
15 arguing a reasonable doubt, and there is a reasonable doubt as to
16 whether he is the man that carried that flashlight there or
17 whether he is the man that went in there and used Mrs. Pond's
18 flashlight. That's what I'm arguing. The other evidence didn't
19 link him to that. The blood stains are either inconclusive or
20 they are not compatible with his. That's the Commonwealth's own
21 evidence in here this afternoon. They have not excluded every
22 hypothesis of innocence beyond a reasonable doubt. If it was a
23 large object, if we had something that couldn't be moved readily
24 and there was a fingerprint on that, that's a different argument,
25 but there are thousands of flashlights like that. They are easy
26 to handle. They are easy to carry and anybody that is off
27 looking for or is going to go and commit something like this
28 could likely have such a flashlight. We've got to know where

1 that flashlight came from and whose it was, and there isn't any
2 evidence as to that. The only thing that we've got is there's
3 a fingerprint on it and it was found in a certain place and
4 absent more that's not sufficient to convict this man beyond a
5 reasonable doubt.
6 THE COURT: Anything further?
7 MR. BARKER: No, Your Honor.
8 THE COURT: From what the Court has already said that
9 there is no question but the fact that this defendant committed
10 this assault upon Mrs. Pond which resulted in her death in
11 accordance with the testimony of the Chief Medical Examiner. The
12 Court finds the defendant guilty of murder in the first degree
13 as charged in the...
14 MR. BARKER: May it please the Court, I would ask for
15 a pre-sentence report.
16 THE COURT: All right, stand up, Leon Turner. Upon
17 your plea of not guilty to the indictment charging you with the
18 murder of Mrs. Pond--Mary Belle Hollingsworth Pond, the Court
19 finds you guilty of murder in the first degree as charged in the
20 indictment. Upon your plea of not guilty to the indictment
21 charging you with breaking and entering in the nighttime the
22 dwelling of Mary Belle Hollingsworth Pond, the Court finds you
23 guilty as charged in the indictment.
24 On motion of your counsel, the Court will order a
25 pre-sentence report returnable to the first day of the next term.
26 Does that complete the docket?
27 MR. NETTLES: Yes sir.
28 THE COURT: Court is adjourned.

THE COURT: What is this - a motion to set aside the finding of the Court in the other matter?

MR. BARKER: Yes, Your Honor.

THE COURT: What is the basis of the motion?

MR. BARKER: The base of the motion is that the verdict was contrary to the law and the evidence in that there was not sufficient evidence presented at trial to convict Mr. Turner beyond a reasonable doubt, i.e. that one fingerprint on one flashlight found at the scene but otherwise unidentified is not sufficient to find him guilty, particularly in light of the fact that there were other fingerprints that were identifiable but not assigned to anyone there at the scene.

THE COURT: Is that the basis in essence of the motion to set aside the finding of the Court?

MR. BARKER: Yes, Your Honor.

THE COURT: Motion is overruled. And you have explained to him his right to appeal to the Supreme Court?

MR. BARKER: I have, Your Honor, and he has indicated he does want to appeal.

THE COURT: Will you aid and assist him in attempting to perfect the appeal?

MR. BARKER: I will, Your Honor.

THE COURT: All right. Put an order on to that effect.

CLERK: I already have.