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SUPREME COURT OF VIRGINIA
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APR 25 1977
RICHMOND, VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761282

LEROY HOUSTON BAKER,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

JOINT APPENDIX

J. Ronald Lynch, Esq.
HOWARD, STEVENS, LYNCH
CAKE & HOWARD
128 North Pitt Street
Alexandria, Virginia 22314

Counsel for Appellant

Alan Katz, Esq.
Assistant Attorney General
Criminal Division
900 Fidelity Building
Richmond, Virginia 23219

Counsel for Appellee

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

TABLE OF CONTENTS

		APPENDIX PAGES
1.	INDICTMENT FOR MURDER ENTERED JANUARY 20, 1976	1
2.	INDICTMENT FOR MURDER & ORDER ENTERED MAY 28, 1976	2-3
3.	ORDER STAYING JUDGMENT ENTERED JUNE 17, 1976	4-5
4.	ORDER DENYING MOTION TO SET ASIDE VERDICT	6
5.	REPORT OF INVESTIGATION BY MEDICAL EXAMINER DECEDENT: HENRY FRANCIS GREENE	7-8
6.	REPORT OF AUTOPSY DECENDENT: HENRY FRANCIS GREENE	9-11
7.	REPORT OF INVESTIGATION BY MEDICAL EXAMINER DECENDENT: AARON FRANCIS JOHNSON	12-13
8.	REPORT OF AUTOPSY DECENDENT: AARON FRANCIS JOHNSON	14-16
9.	DIAGRAM OF SCENE OF INCIDENT	17
	EXCERPTS FROM TRIAL TESTIMONY	
10.	DISCUSSION BETWEEN COURT AND COUNSEL	18-34
11.	TESTIMONY OF DR. JAMES BEYER	35-40
12.	" " OFFICER F. MILLER	41-45
13.	" " OFFICER CHARLES KENNEDY	46-51
14.	" " FREDERICK B. GREENE	52-68
15.	" " FRANCESCA GREENE	69-94
16.	" " OFFICER CHARLES KENNEDY (RECALL)	95
17.	" " LEROY H. BAKER	96-109
18.	" " OFFICER F. MILLER (RECALL)	110-111
19.	" " LEROY BAKER (RECALL)	112-116
20.	" " MRS. KING	117-126
21.	" " GERALD F. SPEARS	127-132
22.	COMMENT OF COURT	133

23. JURY INSTRUCTION NUMBER 1 134
24. " " " 2 135
25. " " " 3 136
26. " " " 4 137
27. " " " 5 138
28. " " " 6 139
29. " " " 6 (REVISED) 140
30. " " " 7 141
31. " " " 8 142
32. " " " 9 143
33. " " " 10 144
34. " " " 10 (REVISED) 145
35. " " " 10 (REVISED) 146
36. " " " 11 147
37. " " " 11 (REVISED) 148
38. " " " 11 (REVISED) 149-150
39. " " " 11 (REVISED) 151
40. " " " 12 152
41. " " " 13 153
42. " " " 13 (REVISED) 154
43. " " " A 155
44. " " " A1 156
45. " " " A1 (REVISED) 157
46. " " " B 158
47. " " " C 159
48. " " " D 160

49. JURY INSTRUCTION NUMBER E 161
50. " " " F 162
51. " " " G 163
52. " " " H 164
53. " " " H (REVISED) 165
54. " " " I 166
55. " " " J 167
56. " " " K 168
57. " " " L 169
58. " " " M 170
59. " " " M (REVISED) 171
60. " " " N 172
61. " " " O 173
62. " " " P 174
63. " " " Q 175
64. " " " R 176
65. " " " R (REVISED) 177
66. " " " S 178
67. " " " T 179
68. " " " U 180
69. " " " V 181
70. NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR..... 182

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

January 20, 1976

COMMONWEALTH OF VIRGINIA	)	
	)	INDICTMENT FOR
vs.	)	
	)	MURDER
LEROY H. BAKER	)	

COUNT I

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its January Term, 1976 charges that: On or about the 29th day of November, 1975 in the County of Fairfax, Leroy H. Baker feloniously did kill and murder one Aaron Francis Johnson. Va. Code §18.2-31

COUNT II

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its January Term, 1976 charges that: On or about the 29th day of November, 1975 in the County of Fairfax, Leroy H. Baker feloniously did kill and murder one Henry Francis Greene. Va. Code §18.2-31

A True Bill_____

No True Bill_____

_____

F O R E M A N

Witnesses subpoenaed, sworn and available to testify before the Grand Jury:

Inv. T. R. Woodrell, Fairfax County Police Dept.

JM/djg

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	Indictment - First Degree Murder and Involuntary Manslaughter
vs.	)	
LEROY HUSTON BAKER	)	#22363

This 28th day of May, 1976, came the Commonwealth, by her Attorney, and the Defendant, LEROY JUSTON BAKER, who stands convicted of a felony, to-wit: first degree murder and involuntary manslaughter, being confined in jail, was brought into Court and put to the Bar of the Court in the custody of a Deputy Sheriff, also appeared J. Ronald Lynch, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Probation Officer of this Court, to whom this case had been previously referred for investigation, appeared in open Court with a written report, copies of which had previously been furnished to Counsel for the Defendant, Attorney for the Commonwealth, and the Court. Counsel for the Defendant then advised the Court that he had discussed the report with the Defendant and the Defendant was fully advised of the contents thereof.

Whereupon the Attorney for the Defendant made a motion that the Court reduce the sentences heretofore imposed by the jury on the 16th day of March, 1976, which motion the Court denied.

Thereupon, it was demanded of him, LEROY HUSTON BAKER, if anything he knew or had to say why the Court should not proceed to pass sentence and judgment upon him, and nothing being offered or alleged in delay of judgment, it is ADJUDGED and ORDERED the Defendant do serve thirty-five (35) years in the Penitentiary House of this Commonwealth at hard labor for first degree murder, and three (3) years in the Penitentiary House of this Commonwealth at hard labor for involuntary manslaughter, the said sentence is to run concurrent with the sentence imposed for first degree murder.

It is further ORDERED that the Defendant be given credit for 182 days in jail.

Thereupon, the Attorney for the Commonwealth made a motion that the weapon in this case be forfeited to the Commonwealth, which motion the Court granted.

The Court certifies that the Defendant was present at all stages of this trial.

The fee of the Court Reporter who recorded the evidence and incidents of trial in this case is hereby assessed as costs in this case as provided in Sec. 17-30.1 of the 1950 Code of Virginia, as amended.

The Defendant is hereby remanded to jail to await transportation to the Penitentiary.

DOB: 3/10/48

Thomas J. Middleton
JUDGE

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

v. Crim. No. 22363

LEROY H. BAKER

Defendant

ORDER STAYING JUDGMENT

THIS CAUSE came to be heard this 17th day of June, 1976, upon the motion of the defendant, LEROY H. BAKER, by counsel, for the entry of an Order staying the judgment and sentence of this Court entered on May 28, 1976, for the purpose of allowing the Court to consider the motions filed by the defendant, by counsel, to set aside the verdict, judgment and sentence of this Court, and to grant a new trial; and

UPON CONSIDERATION WHEREOF, the Court noting that the motion by the defendant to stay the judgment of this Court entered on May 28, 1976, to allow the Court to consider the motion to set aside the verdict has been filed within twenty-one (21) days of the date of this Court's judgment and sentence herein; that this Court has jurisdiction to stay its judgment herein; that the motion to stay should be granted; and upon argument of counsel, it is

ORDERED that the judgment of this Court entered herein on May 28, 1976, and the sentence imposed thereby, be, and the same hereby is, stayed until the further order of this Court to allow the Court to consider the motion by the defendant to set aside the verdict, judgment and sentence of this Court, and to grant a new trial; and

IT IS FURTHER ORDERED that this cause be, and the same hereby is, continued until the 9th day of July, 1976, at which time argument upon the

RD, STEVENS.
CH, CAKE &
WARD, P. C.
RTH PITT STREET
NDRIA, VIRGINIA
22314

motion filed by the defendant to set aside the verdict, judgment and sentence of this Court, and to grant a new trial will be heard.

THIS CAUSE IS CONTINUED.

ENTERED this _____ day of June, 1976.

Thomas J. Middleton
Circuit Court Judge

WE ASK FOR THIS:

J. Ronald Lynch
Counsel for Defendant

SEEN:

Commonwealth Attorney, Fairfax County

HOWARD, STEVENS,
LYNCH, CAKE &
HOWARD, P. C.
28 NORTH PITT STREET
ALEXANDRIA, VIRGINIA
22314

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

FAIRFAX COUNTY PRINCE WILLIAM COUNTY
FAIRFAX CITY FALLS CHURCH CITY

ARTHUR W. SINCLAIR
BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
PERCY THORNTON, JR.
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
JUDGES

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

July 1, 1976

RECEIVED JUL - 2 1976

J. Ronald Lynch, Esq.
HOWARD, STEVENS, LYNCH, CAKE &
HOWARD, P.C.
128 North Pitt Street
Alexandria, Virginia 22314

Robert F. Horan, Jr., Esq.
Commonwealth Attorney for Fairfax County
4000 Chain Bridge Road
Fairfax, Virginia 22030

Re: Commonwealth v. Baker
Case No. 22363

Gentlemen:

On June 25, 1976, the motion to set aside the verdict, judgment and sentence was argued before the Court.

It was contended by the defendant that instructions numbered 4, 5, 6, 7 and 9 violated the rule of law as announced in the case of Mullaney v. Wilbur, 421 U.S. 684.

The Mullaney case, recent cases decided subsequent to the opinion rendered in the Mullaney case and the law in the State of Virginia has been reviewed by the Court.

It is the opinion of the Court that the jury instructions do not violate the due process of law concept announced in Mullaney. At no time under the instructions granted was the ultimate burden of proof on any issue ever placed on the defendant.

Very truly yours,

Thomas J. Middleton

Thomas J. Middleton

TJM/nlo

RECEIVED 2 DEC 1975 NORTHERN VA. DIVISION OFFICE OF CHIEF MEDICAL EXAMINER

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042
Phone (703) 560-7910

☐ Resident
☒ Non-resident

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT: HENRY (First name) FRANCIS (Middle name) GREENE (Last name) AGE: 26 SEX: M RACE: Negro

ADDRESS: 17 W. Delray Avenue (Number and Street) M W S D OCCUPATION: Laborer

Alexandria, Va. (City or County / Zip Code) SSN 225-70-2798 EMPLOYER: Fairfax County Sanitation

TYPE OF DEATH: (Check one only)

Sudden in apparent health ☐ Suspicious ☐ Violent or Unnatural ☒
Unattended by physician ☐ Unusual ☐
In prison, jail, or police custody ☐ Operating Room Death ☐

Means: GUNSHOT WOUND

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified
DATE	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75
TIME	4:00 am	4:00 am	4:05 am	4:30 am	4:50 am	4:07 am

If Motor Vehicle Accident Check One Of The Following
DRIVER ☐
PASSENGER ☐
PEDESTRIAN ☐

NOTIFICATION BY: _____ OFFICIAL TITLE _____
Address _____

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
INJURY OR ONSET OF ILLNESS	5220 Second Road Fairfax, Va.	Fairfax County	Home
DEATH	Same	Same	Same
VIEWING OF BODY BY MEDICAL EXAMINER	Same	Same	Same

DESCRIPTION OF BODY

Clothed ☒ Unclothed ☐ Partly Clothed ☐
Hair Color: Black Beard: ____ Mustache: ____
Pupils: Irre Irre Eyes: Color: Brown
Body Heat: Cooling Scars, Tattoos, etc. ____

	NOSE	MOUTH	EARS
Blood	o	o	o
Froth	o	o	o
Other (Sand, dirt water, etc.)	o	o	o

WEIGHT 210 lbs LENGTH 69"

RIGOR: Jaw ☐ Neck ☐ Arms ☐ Legs ☐ Complete ☐

LIVOR: Color: Purplish; Anterior ☐ Posterior ☒ Lateral ☐ Regional ____

NON FATAL WOUNDS: Abrasion ☐ Burn ☐ Contusion ☐ Stab ☐ Gunshot ☐ Incised ☐ Laceration ☐ Fracture ☐
DISTRIBUTION: Scalp ☐ Face ☐ Neck ☐ Chest ☐ Back ☐ Abdomen ☐ Arms ☐ Legs ☐

FATAL WOUNDS (GUNSHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION
SEE AUTOPSY PROTOCOL				

PROBABLE CAUSE OF DEATH:
PENETRATING GUNSHOT WOUND TO HEAD

MANNER OF DEATH: (Check one only)
Accident ☐ Suicide ☐ Homicide ☒
Natural ☐ Undetermined ☐ Pending ☐

AUTOPSY: Yes ☒ No ☐
AUTHORIZED BY: ME
Pathologist: J. C. BEYER, M.D.

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with Section 19.1-42, Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

12/2/75 — *Date*
Fairfax County — *City or County of Appointment*
Claude E. Cooper, MD — *Signature of Medical Examiner*

FOR V.S. CODING
CME 1 .....
CAS 10 .....
CLS 11 .....

A COPY TESTE: DEC 19 1975
7
Assistant Chief Medical Examiner

NY 07

MEDICAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE:

NAME OF PHYSICIAN OR INSTITUTION	ADDRESS	DIAGNOSIS	DATE

CIRCUMSTANCES OF DEATH:

	NAME	Official Title or Relationship to Decedent	ADDRESS
FOUND DEAD BY	County Police		Fairfax, Va.
LAST SEEN ALIVE BY	Leroy Houston Baker		5305 Second Rd., Fairfax, Va.
WITNESSES TO INJURY OR ILLNESS AND DEATH	Same		

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

Decedent was shot by assailant along with another companion. He was dead at the scene. He was transferred to Fairfax Hospital for autopsy.

C E Cooper MD

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042

Autopsy No. NV-855-75
Date 11/29/75
Time 12:50 p.m.

REPORT OF AUTOPSY

DECEDENT HENRY (First) FRANCIS (Middle) GREENE (Last)

Autopsy Authorized by: Dr. Claude E. Cooper - Fairfax County

Body Identified by: Fairfax County Police Dept. tag, 11/29/75

Persons Present at Autopsy: James C. Beyer, M.D.

Rigor: complete X jaw ____ neck ____ arms ____ legs ____
Livor: color Reddish-purple distribution: Posterior
Age 31 Race Black Sex Male Length 69" Weight Est. 200 Eyes Brown Pupils: R RRE L RPE
Hair Black Mustache Yes Beard Yes Circumcised No Body Heat None

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:
See attached sheet.

PATHOLOGICAL DIAGNOSES:

CARDIOVASCULAR SYSTEM: Heart, no evidence of hypertrophy, valvular or congenital abnormalities. Coronary arteries, normal origin and distribution; no significant sclerosis. Myocardium, no evidence of trauma or fibrosis. Aorta, minimal arteriosclerosis.

RESPIRATORY SYSTEM: Larynx, trachea and bronchi, no evidence of trauma or obstruction. Lungs, pulmonary congestion.

~~PATHOLOGICAL DIAGNOSES:~~

LIVER: Hepatomegaly, 2015 gms.; marked congestion; fatty metamorphosis.

SPLEEN: No evidence of trauma.

PANCREAS, ADRENAL AND THYROID GLANDS: No significant alteration.

GASTRO-INTESTINAL TRACT: No evidence of trauma, hemorrhage or ulceration.

GENITO-URINARY TRACT: Kidneys, no evidence of trauma or inflammation.

HEAD: Penetrating gunshot wound: Entrance left frontal region with wound track extending backward, downward and to the right with perforation of both cerebral hemispheres and bullet embedded in bone of right occipital region.

Probable cause of death: PENETRATING GUNSHOT WOUND OF THE HEAD

Provisional Report ____
Final Report ✓

The facts stated herein are true and correct to the best of my knowledge and belief:

APPROVED 3 DEC 1975 Date Signed
OFFICE OF CHIEF MEDICAL EXAMINER

Fairfax Hospital
Place of Autopsy

Signature of Pathologist

A COPY TESTE: DEC 19 1975

Assistant Chief Medical Examiner

CME FORM NO. 10, REVISED 2/73

GROSS DESCRIPTION

SEROUS CAVITIES:	
PLEURA:	Intact, smooth and glistening.
PERITONEUM:	Intact, smooth and glistening.
PERICARDIUM:	Intact, smooth and glistening.
HEART:	385 gms. No valvular or congenital abnormalities. Coronary arteries, normal origin and distribution; no significant sclerosis. Right ventricle 3 mm.; left 15 mm. No evidence of trauma, fibrosis or inflammation.
AORTA:	No evidence of trauma.
LUNGS:	Right lung 575 gms. Left lung 460 gms. Larynx, trachea and bronchi, intact and free of trauma or obstruction. Lungs exhibit pulmonary congestion with no evidence of trauma or pulmonary artery emboli.
LIVER:	2015 gms. Capsular surface intact and smooth and the free edges are rounded. On section the parenchyma exhibits marked congestion but no fibrosis or nodularity.
GALLBLADDER:	No significant alteration.
SPLEEN:	150 gms. Capsule intact.
PANCREAS:	No significant alteration.
ADRENAL GLANDS:	No significant alteration.
G. I. TRACT:	Stomach contains partially digested food material. No evidence of trauma, hemorrhage or ulceration.
KIDNEYS:	170 gms. each. Capsules strip with ease to reveal an intact, congested and smooth surface. No trauma or inflammation.
BLADDER:	Intact.
INTERNAL GENITALIA:	No significant alteration.
NECK ORGANS:	No evidence of trauma.
BRAIN AND MENINGES:	1450 gms. Penetrating gunshot wound: Entrance left frontal region; wound 3/8" with irregular edges and surrounding powder debris. Wound track continues backward, downward and to the right with perforation of temporal lobe of left cerebral hemisphere, brain stem and right cerebellar hemisphere; considerable tissue destruction along wound track. Deformed bullet embedded in bone of
SKULL:	right occipital region. Bullet base deformed; mark placed on nose.
VERTEBRAE:	No evidence of trauma.
RIBS:	No evidence of trauma.
PELVIS:	No evidence of trauma.
EXTREMITIES:	

OTHER LABORATORY PROCEDURES: TOXICOLOGY ☒ BACTERIOLOGY ☐ DENTAL CHART ☐ X-RAY ☐ FINGER-PRINTS ☐ PHOTOGRAPHY ☐

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
Heart blood.				

COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

A. W. Tiedemann, Ph. D.
Director

Charles E. O'Rear, Ph. D.
Deputy Director
Tel. No. 804—770-2261

LABORATORY REPORT

December 5, 1975

TO: Dr. James C. Beyer
Medical Examiner
3300 Gallows Road
Falls Church, Va. 22046

cc: Dr. Cooper

Re: Homicide

Your Case # ---

FS Lab # 75-N-441

Victim(s): GREENE, Henry F.

Examiner: T. J. Siek, Ph.D.

Laboratory: Northern
2714 Dorr Ave.
Box 486
Merrifield, Va.

Suspect(s):

Date Received: 11/29/75

Evidence Submitted By: Dr. Beyer, Dr. Cooper

One vial of blood, vial of urine for alcohol, vial of blood for typing.

RESULTS OF EXAMINATION:

BLOOD: 0.18% ethanol weight/volume; blood group is O, Rh positive and antigen N is positive.

URINE: 0.24% ethanol weight/volume.

A COPY TESTE: DEC 19 1975

Assistant Chief Medical Examiner

Theodore J. Siek
Toxicologist

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE

RECEIVED 2 DEC 1975 NORTHERN VIRGINIA DIVISION OFFICE OF CHIEF MEDICAL EXAMINER

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042
Phone (703) 560-7910

(X) Resident
☐ Non-resident

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT AARON (First name) FRANCIS (Middle name) JOHNSON (Last name) AGE: 35 SEX: M RACE: Negro

ADDRESS 11924 Washington St. (Number and Street) M W S D OCCUPATION: Laborer

Fairfax, Va. 22030 (City or County, Zip Code) SSN 224-54-4357 EMPLOYER Fairfax County Sanitation

TYPE OF DEATH: (Check one only)

Sudden in apparent health ☐ Suspicious ☐ Violent or Unnatural XX
Unattended by physician ☐ Unusual ☐
In prison, jail, or police custody ☐ Operating Room Death ☐
Means: GUNSHOT WOUND

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified
DATE	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75	29 Nov 75
TIME	4:00 am	4:00 am	4:05 am	4:30 am	4:50 am	4:07 am

If Motor Vehicle Accident Check One Of The Following
DRIVER ☐
PASSENGER ☐
PEDESTRIAN ☐

NOTIFICATION BY: _____ OFFICIAL TITLE _____
Address _____

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
INJURY OR ONSET OF ILLNESS	5220 Second Road Fairfax, Va.	Fairfax County	Home
DEATH	Same	Same	Same
VIEWING OF BODY BY MEDICAL EXAMINER	Same	Same	Same

DESCRIPTION OF BODY
Clothed ☒ Unclothed ☐ Partly Clothed ☐
Hair Color Black Beard ____ Mustache ____
Pupils: R rrr rrr Eyes: Color Brown
Body Heat Coolong Scars, Tattoos, etc. ____

	NOSE	MOUTH	EARS
Blood	o	o	o
Froth	o	o	o
Other (Sand, dirt water, etc.)	o	o	o

WEIGHT 175 lbs LENGTH 74½"

RIGOR: Jaw ☐ Neck ☐ Arms ☐ Legs ☐ Complete ☐

LIVOR: Color Purplish; Anterior ☐ Posterior ☒ Lateral ☐ Regional ____

NON FATAL WOUNDS: Abrasion ☐ Burn ☐ Contusion ☐ Stab ☐ Gunshot ☐ Incised ☐ Laceration ☐ Fracture ☐
DISTRIBUTION: Scalp ☐ Face ☐ Neck ☐ Chest ☐ Back ☐ Abdomen ☐ Arms ☐ Legs ☐

FATAL WOUNDS (GUNSHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION
SEE AUTOPSY PROTOCOL				

PROBABLE CAUSE OF DEATH:
PENETRATING GUNSHOT WOUND TO LEFT ANTERIOR THORAX

MANNER OF DEATH: (Check one only)
Accident ☐ Suicide ☐ Homicide ☒
Natural ☐ Undetermined ☐ Pending ☐

AUTOPSY: Yes ☒ No ☐
AUTHORIZED BY: ME
Pathologist J. C. BEYER, M.D.

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with Section 19.1-42, Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

12/2/75 (Date) Fairfax County (City or County of Appointment) Clarence E. Cooper M.D. (Signature of Medical Examiner)

FOR V.S. CODING
CME 1 ....
CME 10 ....
C.S. 11 ....

A COPY TESTE: DEC 19 1975

Assistant Chief Medical Examiner

NV 07612

12

MEDICAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE:

NAME OF PHYSICIAN OR INSTITUTION	ADDRESS	DIAGNOSIS	DATE

CIRCUMSTANCES OF DEATH:

	NAME	Official Title or Relationship to Decedent	ADDRESS
FOUND DEAD BY	County police		Fairfax, Va.
LAST SEEN ALIVE BY	Leroy Houston Baker		5305 Second Rd., Fairfax, Va.
WITNESSES TO INJURY OR ILLNESS AND DEATH	Same		

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

Decedent was shot by assailant along with another companion. He was dead at the scene. He was transferred to Fairfax Hospital for autopsy.

C R Cooper MD

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042

Autopsy No. NV-854-75
Date 11/29/75
Time 1:55 p.m.

REPORT OF AUTOPSY

DECEDENT AARON (First) FRANCIS (Middle) JOHNSON (Last)

Autopsy Authorized by: Dr. Claude E. Cooper - Fairfax County

Body Identified by: Fairfax County Police Dept. tag, 11/29/75

Persons Present at Autopsy: James C. Beyer, M.D.

Rigor: complete X jaw ____ neck ____ arms ____ legs ____
Livor: color Pale red distribution: Posterior
Age 35 Race Black Sex Male Length 74 1/2" Weight Est. 175 Eyes Brown Pupils: R RRE L RRE
Hair Black Mustache Yes Beard Lower lip Circumcised No Body Heat None

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:
See attached sheet.

PATHOLOGICAL DIAGNOSES:

CARDIOVASCULAR SYSTEM: Heart, no evidence of hypertrophy, valvular or congenital abnormalities. Coronary arteries, normal origin and distribution; no significant sclerosis. Myocardium, no evidence of fibrosis or inflammation. Left atrium, perforating missile wound track with mutilation. Aorta, no evidence of trauma.

RESPIRATORY SYSTEM: Larynx, trachea and bronchi, no evidence of trauma or obstruction. ~~PATHOLOGICAL DIAGNOSES~~ Hemothorax, right 1700 ml.; left 600 ml. Left lung, upper lobe, perforating missile wound track; right lung, lower lobe, perforating missile wound track.

LIVER AND SPLEEN: No evidence of trauma.

PANCREAS, ADRENAL AND THYROID GLANDS: No significant alteration.

GASTRO-INTESTINAL TRACT: No evidence of trauma, hemorrhage or ulceration.

GENITO-URINARY TRACT: Kidneys, no evidence of trauma or inflammation.

SCALP AND SKULL: No evidence of trauma.

CEREBRAL MENINGES: No evidence of hemorrhage or inflammation.

CIRCLE OF WILLIS: No significant alteration.

BRAIN: No evidence of trauma or hemorrhage.

PENETRATING GUNSHOT WOUND: Entrance left anterior thorax with perforation of upper lobe of left lung, perforation of left atrium of heart and perforation of lower lobe of right lung. Bullet in subcutaneous position of right posterior thorax.

Probable cause of death: PENETRATING GUNSHOT WOUND OF LEFT ANTERIOR THORAX

Provisional Report ____
Final Report ✓

The facts stated herein are true and correct to the best of my knowledge and belief:

3 DEC 1975
Date Signed
CHIEF MEDICAL EXAMINER

Fairfax Hospital
Place of Autopsy

J C Beyer
Signature of Pathologist

A COPY TESTE: DEC 19 1975

J C Beyer
Assistant Chief Medical Examiner

CME Form No. 10 Revised 2/73

GROSS DESCRIPTION

SEROUS CAVITIES:	
PLEURA:	Right hemothorax 1700 ml.; left 600 ml.
PERITONEUM:	Intact, smooth and glistening.
PERICARDIUM:	Perforating missile wound track with blood.
HEART:	375 gms. No valvular or congenital abnormalities. Coronary arteries, normal origin and distribution; no significant sclerosis. Right ventricle 3 mm.; left 15 mm. No evidence of fibrosis or inflammation.
AORTA:	Minimal arteriosclerosis.
LUNGS:	Right lung 370 gms. Left lung 320 gms. Larynx, trachea and bronchi, intact and free of trauma or obstruction. See below.
LIVER:	1640 gms. Capsular surface intact and smooth. On section there is no evidence of fibrosis or nodularity.
GALLBLADDER:	No significant alteration.
SPLEEN:	100 gms. Capsule intact.
PANCREAS:	No significant alteration.
ADRENAL GLANDS:	No significant alteration.
G. I. TRACT:	No evidence of trauma, hemorrhage or ulceration.
KIDNEYS:	150 gms. each. Capsules strip with ease to reveal an intact, pale, smooth surface. No trauma or inflammation. The pelvis of the left kidney is dilated.
BLADDER:	Intact; small amount of urine.
INTERNAL GENITALIA:	No significant alteration.
NECK ORGANS:	No evidence of trauma.
BRAIN AND MENINGES:	1400 gms. Scalp and skull, intact and free of trauma. Cerebral meninges, intact and free of hemorrhage or inflammation. Cerebrospinal fluid clear. Circle of Willis, no significant alteration. Section of the brain fails to reveal any evidence of trauma or hemorrhage.
PENETRATING GUNSHOT WOUND:	Entrance left anterior thorax; wound 1/4", oval with no evidence of powder debris; lateral guttering. Wound track continues with fracture of left fourth rib anteriorly; perforation of upper lobe of left lung-left hemothorax 600 ml. Entrance into pericardial sac with perforation of left atrium and mutilation; wound track continues backward and to the right with superficial perforation of lower lobe of right lung-right hemothorax 1700 ml. Exit through right seventh interspace and eighth rib posteriorly with bullet recovered in subcutaneous position of right posterior thorax near the apex of the posterior axillary line. Bullet marked inner wall of base.
VERTEBRAE:	
RIBS:	
PELVIS:	
EXTREMITIES:	

OTHER LABORATORY PROCEDURES: TOXICOLOGY ☒ BACTERIOLOGY ☐ DENTAL CHART ☐ X-RAY ☐ FINGER-PRINTS ☐ PHOTOGRAPHY ☐

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
Heart blood and urine.				

COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

. W. Tiedemann, Ph. D.
Director

Charles E. O'Rear, Ph. D.
Deputy Director
Tel. No. 804—770-2281

LABORATORY REPORT

December 5, 1975

TO: Dr. James C. Beyer
Medical Examiner
3300 Gallows Road
Falls Church, Va. 22046

cc: Dr. Cooper

Re: Homicide

Your Case # ---

FS Lab # 75-N-442

Victim(s): JOHNSON, Aaron F.

Examiner: T. J. Siek, Ph.D.

Laboratory: Northern
2714 Dorr Ave.
Box 486
Merrifield, Va.

Suspect(s):

Date Received: 11/29/75

Evidence Submitted By: Dr. Beyer, Dr. Cooper

One vial of blood, vial of urine for alcohol, vial of blood for typing.

RESULTS OF EXAMINATION:

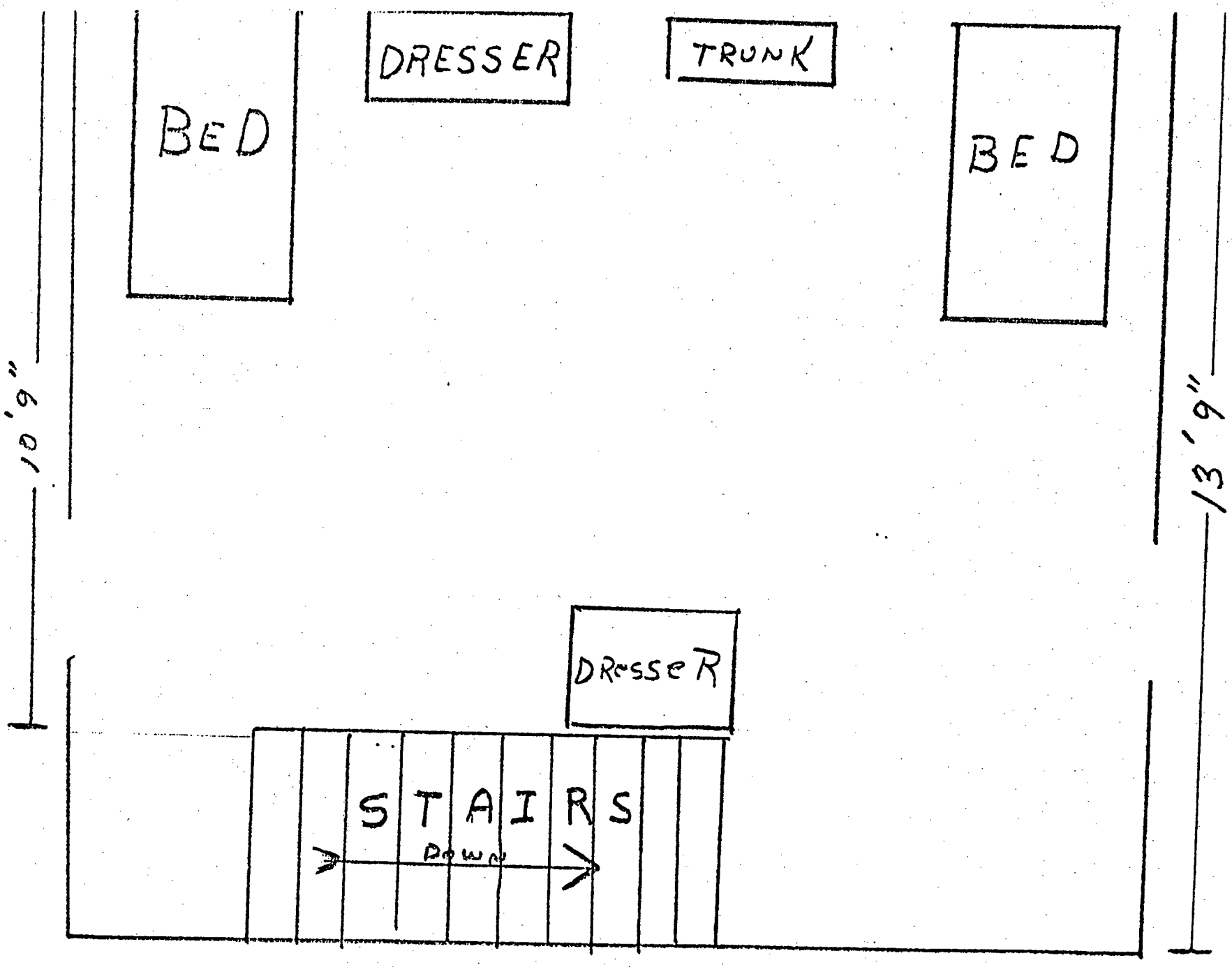
BLOOD: 0.15% ethanol weight/volume; blood group is O, Rh positive and antigen M is positive.

A COPY TESTE: DEC 19 1975

Assistant Chief Medical Examiner

Toxicologist

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE



SW BR. #8.

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
AUG 25 1978
JAMES ... LE
Clerk of the Circuit Court
of Fairfax County, Va.

3 - - - - - - - - - - - - - - - - - - x

4 COMMONWEALTH OF VIRGINIA, :

5 Plaintiff, :

6 -vs- : Criminal Docket No. 22363

7 LEROY H. BAKER, :

8 Defendant. :

9 - - - - - - - - - - - - - - - - - - x

10 Circuit Courtroom No. 4
Fairfax County Courthouse
11 Fairfax, Virginia

12 Friday, June 25, 1976

13 The above-entitled matter came on for hearing

14 before THE HONORABLE THOMAS J. MIDDLETON, Judge, in and for

15 the Circuit Court of Fairfax County, Virginia, commencing at

16 10:00 o'clock a.m.

17 APPEARANCES:

18 On behalf of the Commonwealth:

19 ROBERT T. HORAN, JR., Esquire
Commonwealth Attorney

20 On behalf of the Defendant:

21 J. RONALD LYNCH, Esquire
22 Howard, Stevens, Lynch, Cake & Howard, P.C.

23 - - -

1 P R O C E E D I N G S

2 (Whereupon, the Court Reporter was first duly

3 sworn by the Clerk of the Court.)

4 THE COURT: Commonwealth versus Baker.

5 Mr. Lynch, this is your motion.

6 MR. LYNCH: Yes, Your Honor.

7 THE COURT: Why don't you be seated, Mr. Baker.

8 MR. LYNCH: Your Honor, the basis for setting

9 aside the verdict and judgment conviction is on the theory

10 of the denial of Mr. Baker's rights of due process clause,

11 United States Constitution.

12 The case I think has much bearing on the question,

13 the case of Melaney versus Wilbur decided June, 1975, by

14 the Supreme Court of the United States. This Court may recall

15 in that case there was an issue of whether or not it was a

16 violation of due process to put the burden on the Defendant

17 to go forth with evidence to show passion and provocation to

18 reduce the crime of murder to manslaughter.

19 In Maine there are two basic categories of

20 homicide: murder and manslaughter. And the case went around

21 the horn as far as how it got to the Supreme Court of the

22 United States. It went to the -- up to the Supreme Court of

23 Maine; back down to the federal District Court; back up to

1 the Circuit Court, federal Circuit Court; and on up to the
2 Supreme Court.
3 That -- The Court had to deal with this instruction
4 that was given to the jury. It says the jury was further
5 instructed however, that if the prosecution established that
6 homicide was both intentional and unlawful, malice afore-
7 thought must be conclusively implied unless the Defendant
8 proved by fair preponderance of the evidence that he acted
9 in the heat of sudden -- heat of passion on sudden provocation.
10 Now, the Supreme Court, as I said, said this:
11 The issue is whether the Maine rule requiring the Defendant
12 to prove that he acted in the heat of passion on sudden
13 provocation in the course of due process, the conclusion
14 was that by forcing the Defendant to do that, it was a
15 violation of the due process clause as applied to this
16 Defendant and held the statutory constitution.
17 Now, as far as LeRoy Baker is concerned, Virginia
18 has different degrees of homicide, more degrees than Maine
19 has. We've got murder, first degree and second degree,
20 voluntary manslaughter and involuntary manslaughter; but to
21 look at the instructions that I am concerned about --
22 THE COURT: This is the instruction given in the
23 trial?

1 MR. LYNCH: Yes, sir.

2 THE COURT: All right, sir.

3 MR. LYNCH: There is really not much difference,

4 Your Honor.

5 His Instruction No. 4:

6 "The Court instructs the jury that

7 a mortal wound given with a deadly weapon in

8 the previous possession of the slayer without

9 any provocation or slight provocation, is prima

10 facie willful, deliberate and premeditated

11 killing and throws upon the slayer the necessity

12 of showing extenuating circumstances."

13 This instruction doesn't even give the degree

14 of evidence that the Defendant has to come on with. He has

15 got to show the necessity of showing extenuating circumstances.

16 Now, 5 clarifies 4: Five says:

17 "The Court instructs the jury that

18 the presumption referred to in Instruction No. 4

19 is not a conclusive presumption but may be

20 overcome by proof of extenuating circumstances

21 sufficient to create a reasonable doubt in favor

22 of the Defendant."

23 Now, Your Honor, if that doesn't say that the

1 Defendant must come forward with proof -- We can call it
2 burden of going forward or burden of persuasion, but if that
3 doesn't mean the Defendant has got to -- If that doesn't tell
4 the jury the Defendant has got to prove something, I don't
5 know what is.
6 Instruction No. 6:
7 "The Court instructs the jury that
8 if there is an absence of proof to the contrary --"
9 Which parathentically is saying that if the
10 Defendant doesn't come up with some type of proof --
11 "-- malice may be implied from the deliberate
12 use of a deadly weapon when used in a manner
13 calculated to take the life of another human
14 being."
15 Now, aside from the due process question, there's
16 also whether or not there is a connection between the
17 inference or implication here in the facts proven. Why
18 should it be implied that it's malice if it's a deadly weapon?
19 But I don't think that that argument is quite as on point
20 with this instruction as No. 9, which I'll get to in just a
21 minute.
22 Now, 7 says:
23 "The Court instructs the jury that

1 the malice necessary to constitute a crime of
2 murder may be either express or implied. The
3 word "malice" in the foregoing definition of
4 murder is used in a technical sense and
5 includes not only anger, hatred and revenge
6 but every unlawful and unjustifiable motive.
7 It is not confined to ill will to any one or
8 more particular persons, but is intended to
9 denote an action flowing from a wicked and
10 corrupt motive, done with an evil mind and
11 purpose and wrongful intention, where the act
12 had been attended with such circumstances as
13 to carry in them the plain indication of a
14 heart deliberately bent on mischief."
15 Now, here is the essence of it, Your Honor:
16 "-- Therefore, malice is implied by law. It is
17 a legal presumption of malice from any wrongful,
18 deliberate and cruel act against another, however
19 sudden."
20 Now, what that is saying is that if the Commonwealth
21 shows a wrongful , deliberate and cruel act, then this implies
22 by law that it is at least murder in the second degree
23 because you have to have malice to get up to murder in the

1 second degree. It's not a -- It's not saying it's a
2 presumption of fact. It's a presumption of law. It's an
3 implication of law.
4 Now, the real -- the real winner is No. 9.
5 Opening paragraph:
6 "The Court instructs the jury that
7 every unlawful homicide is presumed to be murder
8 in the second degree. In order to elevate an
9 unlawful homicide murder to first degree, the
10 burden of proving the elements thereof is upon
11 the Commonwealth."
12 Now, what Mr. Horan did in this particular
13 situation to circumvent Melaney is he left out the next
14 paragraph which shows the burden is on the Defendant to
15 reduce it to manslaughter.
16 Now, that in and of itself does not cure the
17 error in this instruction because I believe the opening
18 paragraph is a blatent violation of the due process law, in
19 my opinion, based on the theory of Melaney.
20 "The Court instructs the jury that
21 every unlawful homicide is presumed to be murder
22 in the second degree."
23 Now, that's the one worst yet, Your Honor. Where

1 is the logic to that if the Commonwealth establishes an
2 unlawful homicide, right away it becomes murder in the second
3 degree. That means right away malice is established by the
4 fact as showing an unlawful homicide.
5 Under this theory, Your Honor, if the deceased
6 were killed by way of being hit with a car, the person that
7 is charged could be charged with murder; and once the
8 Commonwealth showed that the pedestrian was run down with
9 this car, we would start out with murder in the second degree.
10 Now, that's where I was talking about there has got to be
11 some logical connection between the fact proven and the fact
12 inferred.
13 Now, the fact proven, under the theory of this
14 instruction, is once the Commonwealth proves unlawful
15 homicide, this infers, implies, establishes, presumes, that
16 there is malice present, that it's murder in the second degree.
17 So, the Defendant started out -- Once Mr. Horan
18 established the two deaths in this case, we started out with
19 murder in the second degree.
20 Now, all I've got to say, Your Honor, is if this
21 isn't -- if Melaney is not on point with those Virginia
22 instructions, then I don't know what is. The cases say on
23 these instructions, and they've been around for 200 years;

1 they have been. The Maine statute was around for 100 years,
2 and we have got to change sometime and this Court has the
3 power to do it, to set aside this judgment, this conviction.
4 Now, what Mr. Horan is going to say, and I'm a
5 little embarrassed here, is why didn't Mr. Lynch raise this
6 at the time that the instructions were introduced; and I
7 probably contribute to Mr. Lynch's stupidity, Your Honor; it
8 just went by me. But I think the issue can be saved by way
9 of Rule 3A-22. I refer to it --
10 MR. HORAN: Your Honor, to save any argument on
11 this case, in the Melaney case, the Counsel didn't raise it
12 at trial either.
13 MR. LYNCH: That's right, Your Honor.
14 Well, does that --
15 MR. HORAN: There is no constitution implication --
16 THE COURT: Well, if his argument has merit, the
17 fact that it wasn't objected to at trial is not going to
18 affect any decision I will make.
19 MR. LYNCH: Your Honor, that's the only thing I
20 wanted to cover.
21 THE COURT: All right.
22 MR. HORAN: Your Honor please, there are some
23 significant distinctions between this case and Melaney. And

1 number one, in Melaney, of course, and the Supreme Court notes
2 it right at the beginning, in Melaney you are dealing with
3 a conclusive presumption and you are dealing with a specific
4 burden of proof that was placed upon the Defendant. He had
5 the burden of not only going forward with the evidence, he
6 had the burden of persuading that jury by a fair preponderance
7 of the evidence that it was manslaughter rather than murder.
8 That's one thing.
9 The second thing is that in the Melaney case,
10 there was no saving instruction that ultimately told that
11 jury that the ultimate burden of proof rested on the
12 prosecution. That was a significant factor that was missing
13 in Melaney, and the Court alludes to that fact in the course
14 of analyzing the case.
15 We started in this case with an instruction that
16 Counsel trips happily by, and that's Instruction "E", which
17 said that the burden was on the Commonwealth to prove beyond
18 a reasonable doubt every material and necessary element of
19 the offenses herein. That was a clear statement to the jury
20 as to where the ultimate burden of proof rested in the case.
21 In both the second degree and the first degree
22 murder definitions and instructions the jury was told that
23 they must find beyond a reasonable doubt A, B and C in order

1 to find either murder-one or murder-two. That again was
2 something that was missing in the Melaney case.
3 I would suggest to the Court that the instructions
4 we're dealing with here are instructions that fall within the
5 general category of those cases that the Supreme Court alludes
6 to in footnote 31.
7 THE COURT: In Melaney?
8 MR. HORAN: In Melaney.
9 In footnote 31, the Supreme Court said that
10 generally in a criminal case the prosecution bears both the
11 production burden and the persuasion burden. In some
12 instances however, it is aided by a presumption -- for
13 example, United States versus Davis, where the presumption
14 was one of sanity -- or a permissible inference, such as
15 United States against Gainey, where there is an inference
16 of knowledge from the presence of an illegal still on
17 property. These procedural devices require in the case of a
18 presumption, or permit in the case of an inference, the
19 trier of fact to conclude the prosecution has met its burden
20 of proof with respect to the presumed or inferred fact by
21 having satisfied totally established other facts. Thus, in
22 effect, they require the Defendant present some evidence
23 contesting the otherwise presumed or inferred facts. In each

1 of these cases however, the ultimate burden of persuasion by
2 proof beyond a reasonable doubt remain on the prosecution.
3 That's exactly the situation we have here. The
4 Supreme Court in Melaney doesn't outlaw all presumptions.
5 It doesn't outlaw all inferences. All the Supreme Court does
6 in Melaney is say, you cannot say the Defendant must prove
7 by a preponderance of evidence a certain fact to the jury.
8 That's all it said. And footnote 31 makes it quite clear
9 that they are not dealing with standard presumptions that
10 we find in many criminal cases or inferences such as the
11 one found in instruction 6 where it merely says in the
12 absence of proof to the contrary, malice may be implied.
13 These are procedural devices. In this case, by
14 this Court's instruction, the ultimate burden of proof on
15 every material element in this case rested with the
16 Commonwealth; and that is a factor that is totally lacking
17 in Melaney and that is the curative factor that we find here.
18 As a matter of fact, this Court, in instruction
19 "U", makes it quite clear that the Defendant doesn't have any
20 burden of proof resting on him.
21 If you recall in this case, we had a rather
22 peculiar situation. We had a double homicide; the defense to
23 one homicide is self-defense; the defense to the other

1 homicide is accident. Two crimes happening within minutes
2 of one another. In instruction "U", the Court told the jury
3 that where the defense is accident, the Defendant is not
4 required to prove this fact but the burden is upon the
5 Commonwealth to prove that it was not accidental; and that's
6 exactly what the jury was told.
7 The jury, rather significantly in this case, after
8 reading the instructions, the same presumptions that applied
9 in both cases, the jury took the position that with regard
10 to the one homicide there was no malice, and with regard to
11 the other homicide there was malice. And I submit the jury
12 was properly instructed, and the instruction in "E" made it
13 perfectly clear to the jury that they had to find the
14 Commonwealth carried the day on its ultimate burden of proof
15 of every material and necessary element.
16 MR. LYNCH: Your Honor, just a short rebuttal.
17 Mr. Horan bottoms his defense to these instructions
18 on footnote 31, which, as Mr. Horan pointed out, deals with
19 the presumption of sanity and deals with the inference that
20 someone, if they're at the scene of a still, there is an
21 inference that he knows it's there.
22 Now, I'm aware of the fact that we can have these
23 inferences. I'm aware of the fact that we can have certain

1 presumptions such as the presumption of sanity. But what we
2 are talking about here isn't dealing with a still. It's not
3 dealing with sanity. It's going right to the heart of the
4 criminal law of this state; right to the heart of the
5 Constitution, particularly the due process clause as applied
6 to LeRoy Baker.
7 We're not talking about any whiskey case. We're
8 not talking about whether or not LeRoy Baker is presumed to
9 be sane.
10 These instructions say use of a deadly weapon --
11 Instruction 4, use of --
12 "...a deadly weapon in the previous
13 possession of the slayer without any provocation
14 or slight provocation is prima facie willful,
15 deliberate and premeditated killing and throws
16 upon the slayer the necessity of showing
17 extenuating circumstances."
18 Now, if that is not -- How Mr. Horan can compare
19 that instruction with the eye of the concept of whether it
20 was presumed to be an illegal still or not, or LeRoy Baker
21 is presumed to be sane, I don't know.
22 And then 9 is -- I won't repeat myself as far as
23 going through 4, 5, 6 and 7, but 9, Your Honor, starting out:

1 "The Court instructs the jury that
2 every unlawful homicide is presumed to be murder
3 in the second degree."
4 Members of the Jury, once Mr. Horwn has
5 established that there has been an unlawful homicide, you can
6 take it from there and presume that there is malice and you
7 can presume that it's murder in the second degree, and taking
8 out that third paragraph doesn't cure the error. The
9 instruction is erroneous under Melaney and it's about -- We've
10 got to change it. Whether this Court will see fit to do so,
11 I don't know, but these instructions fly right in the face of
12 Melaney and it's just a matter of semantics that Mr. Horan
13 says, no, these aren't -- this isn't really the same as
14 Melaney because Melaney says in footnote 31 that inferences
15 and some presumptions are okay. Well, they may be but we're
16 not talking about presumptions of sanity and inferences of
17 knowledge of a whiskey still. We're talking about the due
18 process clause and LeRoy Baker's rights under these
19 instructions.
20 The only thing I can say, Your Honor, is I'm just
21 sorry I didn't bring them up before but I think the error is
22 right on the face of these instructions and they've got to be
23 changed.

1 THE COURT: All right.

2 Gentlemen, I am going to take this case under

3 advisement. I want to read both of those -- I want to read

4 Melaney and I want to read those instructions in conjunction

5 with that again.

6 My inclination at this moment is not to grant

7 your motion, to be quite candid with you, Mr. Lynch, but I

8 don't think I should be that presumptuous. I will read them

9 through and I will write and tell you exactly what I think

10 about them.

11 MR. LYNCH: Thank you. Will that be in the form

12 of an order, Your Honor?

13 THE COURT: I will write you a letter in which

14 I'll tell you exactly what my thoughts are, and then we'll

15 decide whether you want an order or not.

16 MR. LYNCH: Yes, sir. Because it's close to time

17 on the appeal, is what I'm concerned about.

18 THE COURT: What is the appeal time on your

19 appeal?

20 MR. LYNCH: Well, the 21 days -- It's into the

21 twentieth day, and you signed the order stopping running the

22 21 days last Thursday; so I guess once you sign the order,

23 if it's a letter of opinion, his time starts to run again, so --

1 THE COURT: All right. I will try to get this
2 thing out to you by next Wednesday.
3 MR. LYNCH: Well, it's stayed right now as of
4 this point.
5 THE COURT: All right. But I don't want to delay
6 it. I want to - while it's fresh in my mind --
7 MR. LYNCH: Thank you, Your Honor.
8 THE COURT: Mr. Baker, you are remanded to the
9 custody of the Sheriff.
10 (Whereupon, at 10:25 a.m., the hearing in the
11 above-entitled matter was concluded.)
12 - - -
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23

1 Q. State your full name, please, and your occupation?

2 A. Dr. James Beyer, Deputy Chief Medical Examiner in

3 Charge of the Northern Virginia Division, Office of the Chief

4 Medical Examiner.

5 Q. For how long have you been so employed, Doctor?

6 A. Since this office was established in July of 1971.

7 Q. Would you tell the Jury what your educational back-

8 ground is?

9 A. I graduated Loyola University School of Medicine with

10 an M.D. Degree. A Masters Degree in Anatomy from the same

11 institution. Twelve years in the U.S. Army Medical Corps.

12 MR. LYNCH: Excuse me, Your Honor. At whatever

13 point Mr. Horan wishes to cease questioning Dr. Beyer, I will

14 stipulate to his qualifications.

15 THE COURT: Thank you, Mr. Lynch.

16 MR. HORAN: Mr. Lynch will stipulate that Dr. Beyer

17 is an expert in the field of Pathology?

18 MR. LYNCH: I will.

19 MR. HORAN: I will ask no further questions.

20 THE COURT: All right. Thank you.

21 BY MR. HORAN: (Resuming.)

22 Q. Directing your attention to November 29, 1975, did

23 you have occasion on that date to perform autopsies on one

1 Aaron Francis Johnson and Henry Francis Greene?

2 A. Yes, autopsies were performed on both of these

3 individuals on that date in my morgue at Fairfax Hospital.

4 Q. Directing your attention, first to the autopsy per-

5 formed on Aaron Francis Johnson, would you tell the Jury what

6 your physical findings were with regard to him?

7 A. This individual had sustained a penetrating gunshot

8 wound. That is, one that had only a wound of entrance, no

9 wound of exit. The wound had entered on the left anterior or

10 front of his chest above the breast area.

11 The bullet then had angled backward slightly down-

12 ward and to the right side of his body, with the bullet being

13 recovered beneath the skin in the right back or posterior

14 aspect of his chest. Along its course, it involved the upper

15 lobe of the left lung, the upper chamber of the left side of

16 the heart and the lower lobe of the right lung.

17 Q. Doctor, do you have an opinion based upon reasonable

18 medical certainty as to the cause of death of Aaron Francis

19 Johnson?

20 A. The cause of death was due to blood loss, secondary

21 to a penetrating gunshot wound of the left chest.

22 Q. Directing your attention to the autopsy of Henry

23 Francis Greene. Would you tell the Jury what your physical

1 findings were with regard to Mr. Greene?

2 A. This individual had also sustained a penetrating

3 gunshot wound which entered in the area of the left forehead.

4 This wound track had angled towards the back of the head

5 slightly downward into the right side. Along its course, it

6 involved the left side of the brain and a portion of the

7 posterior aspect of the right side of the brain. The bullet

8 was recovered in the skull area, in the right posterior or back

9 of the head.

10 Q. Doctor, do you have an opinion based on reasonable

11 medical certainty as to the cause of death of Henry Francis

12 Greene?

13 A. Cause of death was due to a penetrating gunshot wound

14 of the head with involvement of the brain.

15 Q. Doctor, have you brought your Report of Autopsy with

16 you?

17 A. Yes.

18 Q. May I have that, please?

19 MR. HORAN: If Your Honor please, I'll ask the Court

20 to admit into evidence, since I'm taking the Doctor out of

21 order, as Commonwealth's Exhibits No. 6 and No 7; the Report

22 of Autopsy in the case of Henry Francis Greene and Aaron

23 Francis Johnson.

1 Q. Aaron Johnson.

2 A. Aaron Johnson. Essentially correct. Yes. The
3 bullet enters approximately where your left hand is
4 (indicating), the thumb of your left hand. The missile
5 passed, passage being backward, slightly downward and to the
6 right. The bullet then being recovered where the thumb of
7 your right hand is (indicating)the back of his chest).

8 Q. All right, sir. Now, in other words it wasn't a
9 straight through the chest type of -- like through the front
10 and straight towards the back?

11 A. No, sir, it enters on the left and goes towards the
12 right.

13 Q. All right. Now, I believe you said as far as the
14 entry wound with Francis Greene, it went in the left temple,
15 slightly downward and towards the right side of the head?

16 A. It comes in the right forehead region, three inches
17 from the top of his head and 3-1/8 inches from the midline
18 towards the left side. So, it is slightly above and in front
19 of his left external ear.

20 Q. Doctor, upon the autopsies of these men, did you
21 process the removal of any blood from them and sent it some-
22 place?

23 A. Blood samples were removed from both individuals for

1 alcohol determination as well as blood typing.

2 Q. Where did you send it?

3 A. Blood alcohol determination is performed in a

4 laboratory associated with my office. Blood typing is per-

5 formed in a State laboratory in Richmond.

6 Q. Are you familiar with a Dr. Siek?

7 A. Yes, I am.

PE C 8 Q. Where is he located?

9 A. He is located in a chemistry or toxicology laboratory

10 associated with my office. He is a Toxicologist.

11 Q. Is that where it was sent, to Dr. Siek, for this

12 process of the blood and ~~urine?~~

13 A. He performed the alcohol determinations on both of

14 these individuals.

15 Q. All right, now. Doctor, in regard to Francis Greene,

16 would you tell these folks, please, what if anything you

17 observed on the entrance wounds on the left side of the head?

18 A. The skin surrounding the wound, particularly towards

19 the front of the head exhibited a deposition of smoke, soot,

20 and powder debris extending out to a 3/4 inch radius surround-

21 ing the wound itself.

22 Q. Doctor, do you have a medical opinion or an opinion

23 that comes from your expertise of Pathology as to the distance

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HORAN:

4 Q. State your full name, please, and your occupation?

5 A. Officer F. Miller, Police Officer, Fairfax

6 County Police Department.

7 Q. What are your duties in the Fairfax County Police

8 Department?

9 A. I am presently assigned to the identification section.

10 Q. Directing your attention to the 29th day of

11 November, 1975, were you so employed at that time?

12 A. Yes, I was.

13 Q. What are the duties of the identification section?

14 A. Our main duties are photographing, processing various

15 crime scenes that occur throughout the County.

16 Q. Directing your attention to the early morning hours

17 of November 29, did you have occasion to go to the location

18 known as 52 22nd Road?

19 A. Yes, I did.

20 Q. Is that located in Fairfax County?

21 A. Yes, it is.

22 Q. Where is it?

23 A. It's off Braddock Road, I guess. Sort of west of

1 the end of the gun barrel was from the entrance wound in this
2 particular case of Francis Greene?
3 A. I would estimate the range to be within the category
4 of three to five inches from muzzle to skin.
5 Q. Thank you. That's all I have.
6 THE COURT: Further questions, Mr. Horan?
7 REDIRECT EXAMINATION
8 BY MR. HORAN:
9 Q. Just one. Doctor, did you find any powder debris on
10 the body of Aaron Johnson?
11 A. No, sir.
12 MR. HORAN: No further questions.
13 THE COURT: Mr. Lynch?
14 MR. LYNCH: Nothing further.
15 THE COURT: May Dr. Beyer be excused?
16 MR. LYNCH: Yes, sir.
17 MR. HORAN: Yes.
18 THE COURT: Thank you, Doctor.
19 May I have those reports? Thank you, sir.
(Witness excused.)
20 Whereupon,
21 OFFICER F. MILLER
22 called as a Witness by Counsel for the Commonwealth, having
23 been duly sworn by the Clerk of the Court, was examined and

1 Ox Road, off Route 123, several miles down the road.
2 Q. Approximately what time did you arrive there?
3 A. I arrived -- may I refer to my notes? About 5:30 in
4 the morning, early morning.
5 Q. Did there come a time when you took any photographs?
6 A. Yes, I did.
7 Q. Where were these photographs taken?
8 A. These were taken inside the house at that address
9 in the upstairs area.
10 Q. Officer Miller, I show you these photographs marked
11 Commonwealth's Exhibits Nos. 1 through 5, and ask can you
12 identify them?
13 A. Yes. I took these pictures.
14 Q. You took those photographs?
15 A. Yes, I did.
16 Q. Do they accurately reflect the scene as you saw it
17 on the morning of November 29th?
18 A. Yes, they do.
19 Q. If Your Honor please, I would offer these photographs
20 in evidence as Commonwealth's Exhibits Nos. 1 through 5?
21 THE COURT: Any objection to the admission of these
22 photographs, Mr. Lynch?
23 MR. LYNCH: No, Your Honor.

1 BY MR. LYNCH:

2 Q. Officer Miller, who accompanied you when you went
3 to this place?

4 A. From our office, Officer Kennedy.

5 Q. All right, now. Were you and Officer Kennedy more or
6 less working as a team?

7 A. Yes, we do.

8 Q. And did you have occasion to take pictures of the
9 dead men shown in the picture?

10 Did you have occasion to search either one of these
11 people?

12 A. Yes, I did.

13 Q. One or both?

14 A. Both of them.

15 Q. Tell the members of the Jury, please, what you found,
16 if anything, in the pocket of Aaron Johnson?

17 A. May I refer to my notes?

18 Q. Yes.

19 A. There was in the right hand front pocket of Mr.
20 Johnson -- there was a two-shot loaded derringer, stainless
21 steel colored and I think it had pearl handles, too, and
22 pearl colored handle grips.

23 Q. You say it was loaded?

1 derringer?

2 A. I believe it was a .32. I'm not sure about the

3 caliber.

4 Q. Was there another bullet matching the two that were

5 found in the derringer in the pocket of Aaron Johnson?

6 A. I don't know, I don't recall.

7 Q. What did you find in the pocket of Frank Greene,

8 if anything?

9 A. Okay. I removed from Mr. Greene -- this the only

10 thing I removed from his pocket was -- there was an old, some

11 type of knife. The blade was open and this was in the right

12 rear pocket. The brand name we could determine is a Barlev

13 knife. Just an average size pocket knife.

14 Q. Open?

15 A. Open.

16 Q. An average size pocket knife? Open?

17 A. Yes.

18 Q. Let me ask you this; did you find a black leather

19 coat there at the scene?

20 A. Yes, I did.

21 Q. Were you able to determine who it belonged to?

22 A. Not at the time. I -- again, Officer Kennedy might

23 shed more light on that because I am just familiar with the two

1 weapons that were taken from the decedents' bodies.

2 Q. Officer, as far as you know, as of right now, you

3 don't know where all of these items are that we're talking

4 about are located?

5 A. Other than we placed them in the property room the

6 date of the offense.

7 MR. LYNCH: Thank you, Officer.

8 REDIRECT EXAMINATION

9 BY MR. HORAN:

10 Q. Did you find any empty shells in the derringer?

11 Fired shells?

12 A. In the derringer?

13 Q. Yeah.

14 A. They were loaded bullets.

15 Q. Is there ~~any evidence that that~~ weapon had been

16 fired?

17 A. No.

18 Q. I'm showing you Commonwealth's Exhibit No. 1. Would

19 you show the Jury which one of those two men is Aaron

20 Johnson?

21 The one that you removed the derringer from?

22 A. If memory serves me correct, I believe he is the

23 fellow right here -- right here. Let's see, I can't say for

1 sure which one is which. I just have to let it go at that.

2 MR. HORAN: Thank you.

3 THE COURT: Does Mr. Lynch have any other questions?

4 MR. LYNCH: No, Your Honor.

5 THE COURT: Is this Officer free to go?

6 MR. HORAN: Yes.

7 MR. LYNCH: Yes.

8 THE COURT: Mr. Horan?

9 MR. HORAN: Free to go, as far as I'm concerned.

10 THE COURT: Thank you, Officer.

11 Whereupon,

12 OFFICER CHARLES KENNEDY

13 called as a Witness by Counsel for the Commonwealth, having

14 been duly sworn by the Clerk of the Court, was examined and

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HORAN:

18 Q. State your full name, please, and your occupation?

19 A. Charles Kennedy. I'm an Identification Officer for

20 the Fairfax County Police Department.

21 Q. Were you so employed on November 29, 1975?

22 A. Yes, sir, I was.

23 Q. Did you have occasion on that date to go to the home

1 located at 52 22nd Road?

2 A. Yes, sir, I did.

3 Q. What was the occasion of your going there?

4 A. I was called out to process a homicide scene at that

5 location.

6 Q. Would you tell the Jury what you found when you

7 arrived there?

8 A. Upon arrival at approximately 05:30 in the morning I

9 found in the upstairs portion of the residence, the bodies of

10 one Aaron Johnson and the body of Henry Greene. From the

11 scene it had been a -- the victims had been shot and it appeared

12 that there was a gambling game at that location. The place --

13 Q. Officer Kennedy, did there come a time when you drew

14 a sketch of the upstairs portion of the house?

15 A. Yes, sir, there was.

16 Q. I show you that diagram and ask; can you identify

17 it?

18 A. Yes, sir, I can.

19 Q. Did you prepare that yourself?

20 A. Yes, sir.

21 Q. Is that based on measurements you took at the location?

22 A. Yes, sir, it is.

23 Q. Are the items you show in that sketch as items of

1 furniture; are they approximately the location where you found
2 them on that morning?
3 A. Yes, sir.
4 MR. HORAN: If Your Honor please, I would offer this
5 sketch in evidence as Commonwealth's Exhibit No. 8.
6 MR. LYNCH: No objection.
7 THE COURT: Any objection?
8 MR. LYNCH: No, sir.
9 THE COURT: It will be admitted as Commonwealth's 8.
10 (The document referred to was
11 marked for identification as
12 Commonwealth's Exhibit No. 8 and
13 was received in evidence.)
14 BY MR. HORAN: (Resuming.)
15 Q. Now, Officer Kennedy, would you come over in front of
16 the Jury and show them where you found the bodies located with re-
17 gard to that sketch?
18 (The Witness left the Witness stand.)
19 A. The body of Aaron Johnson -- his head was in this area
20 (indicating) with his feet extended down. The body of Henry Greene
21 had his head over top of the feet of Aaron Johnson (Indicating),
22 coming back in this manner.
23 MR. HORAN: I have no further questions.

1 CROSS EXAMINATION

2 BY MR. LYNCH:

3 Q. This doorway; do you recall from your recollection

4 whether it had a door on it?

5 A. Yes, sir. The doors were closed here. Also, there

6 was another room going here. (Indicating)

7 Q. Not to be argumentative with you, Officer, but didn't

8 just one of the rooms have a door on it?

9 Didn't one of them have a blanket --

10 A. Yes. I beg your pardon. There was a blanket over

11 the far door.

12 Q. You're pointing to the one to the right?

13 A. Yes.

14 Q. All right. Now, you've drawn at the stairs, could

15 you tell these folks, please -- I assume that we're on the

16 upper level --

17 A. Yes, sir, this is the upper level.

18 Q. And there's a room here, and there's a room here?

19 A. Yes, sir.

20 Q. And, basically, there are three rooms, but the room

21 that you've drawn the dresser and the trunk and the two beds is

22 in the middle one?

23 A. The main room is the middle one.

1 Q. The main room is the middle one?

2 A. Yeah.

3 Q. Now, when you leave there, I assume the stairs lead

4 right up into that middle room?

5 A. Yes, sir. There's a little landing here. You step

6 down, like down the steps, and then there is another -- one

7 row at a time on the stairs.

8 Q. That's my next question; when you get down these

9 stairs, it puts you where?

10 A. This little landing right there -- at the bottom --

11 there's a little door -- I'm sorry, I failed to leave it in

12 there.

13 Q. That's all right. But, when you go out you go into

14 what kind of room?

15 A. A living room.

16 Q. Is this kind of a split level house?

17 A. I would imagine, yes.

18 Q. This isn't a full flight of stairs, is it?

19 A. No, sir.

20 Q. So, it's kind of half way up and then the living room

21 or whatever is on the upper level. That's all I have of the

22 diagram, take your seat, please.

23 (The Witness resumed the stand.)

1 Q. Among the articles gathered by you, Officer Kennedy,
2 did you in fact gather a black leather coat?
3 A. Yes, sir. I gathered two of them.
4 A. Two of them?
5 A. Yes, sir.
6 Q. And did you determine who -- or rather one of them
7 was Leroy Baker's black leather coat?
8 A. Yes, sir. One belonged to Mr. Baker and another one
9 belonged to one of the deceased.
10 Q. All right. Now, can you tell the Jury, please,
11 where -- let me back up a minute -- Officer Miller has
12 testified that a derringer was found in the right hand pocket
13 of Aaron Johnson. Is that correct, sir?
14 A. Yes, sir, that is correct.
15 Q. And a knife was found in the right rear pocket of
16 Francis Greene?
17 A. Yes, sir.
18 Q. Was there in fact -- was that derringer loaded?
19 A. Yes, sir, it was.
20 Q. With two bullets?
21 A. Yes, sir.
22 Q. Do you remember the caliber?
23 A. A .38 caliber, sir.

1 THE COURT: All right. Thank you.

2 Members of the Jury, all of the Witnesses were sworn

3 before you took your seats this morning. Now, you may have

4 wondered why they haven't been sworn, but they were sworn

5 early this morning.

6 Whereupon,

7 FREDERICK B. GREENE

8 called as a Witness by Counsel for the Commonwealth, having

9 been duly sworn by the Clerk of the Court, was examined and

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HORAN:

13 Q. State your full name, please, and your address?

14 A. Frederick B. Greene, Braddock Road, 11934 Washington

15 Street.

16 Q. How old are you, Mr. Greene?

17 A. Fifteen.

18 Q. What do they call you -- by what name?

19 A. Fred.

20 Q. Freddie?

21 A. Fred.

22 Q. Fred Greene. Now, directing your attention to

23 Thanksgiving Weekend the 29th of November, 1975; did you have

1 occasion to be in Mrs. Newman's house that night?

2 A. Yes, I was.

3 Q. Approximately what time did you get there?

4 A. Around 1:00 o'clock.

5 Q. That's 1:00 in the morning of the 29th or in the

6 afternoon of the day before?

7 A. In the morning.

8 Q. In the morning. What was going on when you arrived

9 at the house?

10 A. They was at a party when I got there.

11 Q. Did you see Leroy Baker there?

12 A. Yes, I did.

13 Q. Where was he when you got there?

14 A. He was downstairs, then he went upstairs.

15 Q. How about Francis Greene?

16 A. He was also downstairs and then upstairs.

17 Q. How about Aaron Johnson?

18 A. He was upstairs, too.

19 Q. Now, are you any relation to Francis Greene?

20 Were you any relation to him?

21 A. Cousin.

22 Q. Cousin?

23 A. Yeah.

1 Q. What Cousin?

2 A. First.

3 Q. First cousin. Fred, I want to show you a photograph

4 and that's marked at the bottom, Commonwealth's Exhibit No. 1.

5 Would you tell the Jury do you know those two men?

6 A. That's Henry Greene and that's Aaron Johnson, both

7 dead. Laying by the bed, Henry Greene is laying down.

8 Q. Now, you call him Henry Greene?

9 A. Uh-huh.

10 Q. And that's Francis Greene (indicating)?

11 A. Uh, huh.

12 Q. And the man by the bed is Aaron Johnson?

13 A. Yes, it is.

14 Q. And that night, did you happen to see a dice game

15 going on?

16 A. Yes, I did.

17 Q. About what time did the dice game start?

18 A. I really don't know.

19 Q. What time did you first see the dice game?

20 A. As soon as I got there, I think it was starting.

21 Q. Okay. Who was in the dice game?

22 A. Well, Leroy Baker was in it. Aaron, Frank, there

23 was Johnny Diamond. But I can't think of who else there was.

1 Q. How long did that dice game go on after you got there?
2 A. Until 4:00 o'clock in the morning, that morning.
3 Q. Now, in the photograph there is something that Henry
4 Greene is lying on. What was that?
5 A. That's the cloth.
6 Q. That's a cloth?
7 What was that being used for?
8 A. That's what they was playing on.
9 Q. Did they have a name for that cloth?
10 A. They call it the table.
11 Q. That was a table?
12 A. Uh-huh.
13 Q. Did there come a time when anything unusual happened
14 at that dice game?
15 A. Could you repeat that, please?
16 Q. Did there come a time in the course of that dice game
17 when something unusual happened?
18 A. Yes, it did.
19 Q. Would you tell the Jury in your own words what that
20 was?
21 A. Well, what it was, Leroy had laid $5.00 on the side
22 and Aaron had picked it up and Eric had got mad, didn't like it
23 and he shot him.

1 Q. Leroy shot Aaron?

2 A. Un-huh.

3 Q. Now, where was Leroy at that time he shot Aaron?

4 A. Leroy was standing in front of me, standing beside

5 the dresser in front of me.

6 Q. Now, looking at that picture, Commonwealth's Exhibit

7 No. 2, do you see that?

8 A. Uh-huh.

9 Q. Well, would you go over here and stand in front of

10 the Jury?

11 (The Witness left the stand.)

12 Q. Would you tell the Jury where -- point out where

13 Leroy Baker was in that dice game?

14 A. He was standing back of this side.

15 Q. Okay, where were you?

16 A. Standing beside, behind him.

17 Q. Where was Aaron Johnson?

18 A. He was over on this side. He was kneeling on a

19 mattress.

20 Q. Kneeling on a mattress?

21 A. Uh-huh.

22 Q. How about Henry Greene, where was he located?

23 A. He was standing on this side.

1 Q. Now, did you see Leroy Baker when he shot Aaron
2 Johnson?
3 A. Yes, I did.
4 Q. Did you see Aaron Johnson?
5 A. Uh-huh.
6 Q. Did you ever see Aaron Johnson with a gun?
7 A. Uh-huh.
8 Q. Did you ever see him make any threat toward Mr. Baker
9 A. No, I didn't.
10 Q. Did you see what --
11 MR. LYNCH: Your Honor, I object, he's leading the
12 Witness, now.
13 THE COURT: Please don't lead the Witness, Mr. Horan.
14 MR. HORAN: You can go back and have a seat.
15 (The Witness resumed the stand.)
16 BY MR. HORAN: (Resuming.)
17 Q. Did you see where that gun came from that Mr. Baker
18 had?
19 A. Yes, I did.
20 Q. Where was it?
21 A. On the side.
22 Q. By on the side, what do you mean by that?
23 A. On the left side.

1 Q. Was it laying on the floor?

2 Was it on the bed?

3 Where was it?

4 A. No, he had it down on the side, the side of his pants.

5 The side (indicating).

6 Q. Did he say anything at all to Aaron Johnson before

7 he fired at him?

8 A. Yes, he did.

9 Q. What did he say?

10 A. He kept on saying, I want my money back, Aaron.

11 Q. Now, after Aaron Johnson was shot, what happened to

12 him?

13 A. Who, Baker?

14 Q. No, Aaron Johnson. What happened to him?

15 A. Well, he fell on the floor.

16 Q. Then what happened?

17 A. Then Henry Greene jumped up and went over towards

18 him, they was struggling over the gun and Baker pushed him back

19 and shot him.

20 Q. Did you see that?

21 A. Yes, I did.

22 MR. HORAN: No further questions.

23 CROSS EXAMINATION

1 BY MR. LYNCH:

2 Q. How far did he push you back?

3 A. Just a little ways back.

4 Q. What's that mean?

5 A. About two or three feet, back away.

6 Q. Two or three feet back?

7 A. Un-huh.

8 Q. So that you're saying that Henry Green was two or

9 three feet back from the gun -- the gun was fired?

10 A. Yes, it was.

11 Q. And that is when Leroy Baker shot?

12 A. Yes.

13 Q. Two or three feet back?

14 A. Well, first he had pushed him back first.

15 Q. Pushed him back two or three feet away?

16 A. (Nodding affirmatively.)

17 Q. And shot him in the head?

18 A. Uh-huh.

19 Q. Now, where do you live?

20 What do they call you?

21 A. Fred.

22 Q. Is it all right to call you Fred?

23 A. Uh-huh.

1 A. Baker was up here (indicating).

2 Q. All right. Leroy Baker was up at this dresser, then,
3 at the top of the drawing. Can you turn so the people in back
4 of you can see it.

5 In other words, you're saying that Leroy was at this
6 dresser? (Indicating)

7 A. Uh-huh.

8 Q. When he fired the gun at Aaron?

9 A. Uh-huh.

10 Q. Where was Aaron?

11 A. Aaron was over here on this bed.

12 Q. By this bed?

13 A. He was on the bed?

14 Q. On the bed?

15 A. Uh-huh.

16 Q. Sitting down?

17 A. No. He was kneeling.

18 Q. Okay. Now, in other words, I don't want to mark this
19 up, but you are saying that Leroy shot across the room at
20 Aaron at this angle (indicating)?

21 A. Uh-huh.

22 Q. Okay. Now, could you tell me, please; let's say
23 you are Leroy Baker and I am Aaron Johnson. How should I turn

1 to be in the position that Aaron Johnson was in when Leroy
2 fired the shot?
3 A. Well, Aaron was down like this on his knees and he
4 was turned this way (indicating).
5 Q. So I'm down on my knees, what do I do?
6 A. He had like both hands on the bed and his knees --
7 Q. Both hands on the bed?
8 A. He had his hands on the bed.
9 Q. Well, the bed was in back of him, wasn't it.
10 A. No. He was on the bed -- at the edge of the bed.
11 Q. You mean like this -- like the chair is the edge of
12 the bed?
13 A. Yeah, but he wasn't sitting on the bed.
14 Q. Then he was down on his knees?
15 A. Yes, he was.
16 Q. Where were his hands?
17 A. Down like on the bed.
18 Q. On the bed, but the bed's back here.
19 A. He was kneeling on the bed.
20 Q. Kneeling on the bed?
21 A. Yes, he was.
E D 22 Q. Up on top of the bed, kneeling?
23 A. Yes.

his hands?

A. No, I didn't.

Q. Now, are you saying that -- you said that when Mr. Horan asked the question -- that Aaron Johnson did not have a gun?

A. Not that I know of.

Q. I don't mean in his hands. I mean did he have a gun on him?

A. I don't really know.

Q. How long have you known Aaron Johnson?

A. For a long time.

Q. But you never knew him to carry a gun?

A. Uh-uh.

Q. Now, Fred, before you came -- remember the day you came to the preliminary hearing?

A. Yes.

Q. You didn't testify there but did you talk to Francesca about what went on in that room, before you came to the preliminary hearing?

A. No, I didn't.

Q. Have you talked to Francesca before the trial today?

A. No, I haven't.

Q. Have you talked to Gerald Spears about it?

1 A. I haven't seen him.

2 Q. Has Francesca talked to you about it?

3 A. No, she hasn't.

4 Q. Did Leroy Baker have a coat with him that night?

5 A. Yes, he did.

6 Q. Did he have it on?

7 A. Yes.

8 Q. He had it on?

9 A. (Nodding affirmatively.)

10 Q. I'm talking, when I say he had it on just about the

11 time the shooting took place; did he have the coat on?

12 A. Yes, he did.

13 Q. Where did he take the gun from?

14 A. From this side of his hip.

15 Q. All right. Now, where was that in relationship to

16 the coat? That is, he had to go under the coat?

17 A. He had to go up under the coat on the other side, inside

18 his pants and get it.

19 Q. Would this be a black leather coat?

20 A. Yes, it was.

21 Q. And you're saying he went in, it was this black

22 leather coat he had on --

23 A. Yes.

1 A. Well, money was on the table there that Aaron won
2 and Baker picked it up because it was Aaron's money and he,
3 Baker, laid $5.00 on the side and Aaron picked it up, thought it
4 was his money and then Baker shot him.
5 Q. Shot him?
6 A. (Nodding affirmatively.)
7 Q. Just like that?
8 A. After he told Aaron to give him his money back.
9 Q. So you're saying that there was sort of a discussion
10 between Aaron and Leroy?
11 A. Yes.
12 Q. And not between Leroy and Francis Greene?
13 A. No.
14 Q. Now, was Leroy cheating Aaron and your cousin?
15 A. In the sort of way I seen.
16 Q. Pardon?
17 A. In a different way I seen that he was.
18 Q. In a different way than you seen; what do you mean
19 by that?
20 A. Well, when he rolled the dice the dice went off the
21 table and Aaron said, he told him that it went off the table
22 and he looked at Henry Greene and told him to, asked Henry did he
23 see that. And Leroy tried to cheat him, that the dice didn't go

1 off.

2 Q. Tried to cheat him out of saying the dice didn't go

3 off?

4 A. Yes, sir.

5 Q. Did you tell that to Officer Woodrell?

6 A. I think I did.

7 Q. Let me ask you this, Fred. Let's talk about Frank

8 Greene. Weren't Frank Greene and Leroy Baker struggling over

9 the gun?

10 A. Yes, they was.

11 Q. That Leroy had?

12 A. Yes.

13 Q. And didn't Frank Greene have his hands on the -- on

14 Leroy's hand?

15 A. Yes.

16 Q. Where the gun was?

17 A. Had his -- like by the wrist (indicating).

18 Q. And they were struggling?

19 A. Yes, they was.

20 Q. Did there come a time when Leroy went back either

21 against the wall or the door?

22 A. No.

23 Q. And they were struggling in the middle of the room?

1 A. Frank was.

2 Q. Now, as far as the weight between Leroy Baker and

3 Aaron Johnson, who was bigger in weight?

4 A. Sir?

5 Q. As far as between Aaron Johnson and Leroy, who is

6 the bigger in weight?

7 A. I don't know.

8 Q. If you don't know, that's all right. But, you say

9 Francis Greene was as much as -- would you say Francis Greene

10 was as much as 200 pounds?

11 A. I would say so.

12 Q. Excuse me?

13 A. I would say so.

14 Q. And it is your testimony, Fred, that Leroy had his

15 coat on when this happened?

16 A. Yes.

17 Q. Did he take it off afterwards?

18 A. After he shot both of them, he must have took it off

19 and threw it on the floor and ran.

20 Q. You mean he shot them -well, he was trying to get out

21 of there, if he shot them, wasn't he?

22 A. Yes.

23 Q. And he -- how did he go out?

1 Q. Fred, can you tell this Jury exactly how far Henry
2 Greene's face was from the muzzle of the gun when the gun was
3 fired at him?
4 A. Well, you see at the edge of the table right there?
5 (Indicating.)
6 Q. Can you tell the Jury exactly?
7 Are you able to tell the Jury exactly what the dis-
8 tance was between the two?
9 A. Well his face was about this far from the gun
10 (indicating).
11 MR. LYNCH: Could you hold your hands right there,
12 please, Fred?
13 For the record, Your Honor, will you agree on
14 the distance, Mr. Horan?
15 MR. HORAN: The Jury can draw their own conclusion
16 as to what the distance is.
17 THE COURT: I think the record ought to stipulate
18 How many inches do you think that is , Sir? Do you have any
19 idea?
20 THE WITNESS: It's about two.
21 THE COURT: Two inches? Gentlemen, I think maybe we
22 better measure it if you're going to put it in the record.
23 MR. LYNCH: I do, too, Your Honor.

1 MR. HORAN: Your Honor, I would be willing to
2 stipulate h held his hands about a foot apart.
3 THE COURT: All right. Do you agree to that
4 Mr. Lynch, about 12 inches?
5 MR. LYNCH: I'll agree to 12 inches.
6 THE COURT: All right. Do you have any other
7 questions of this Witness, gentlemen, either one of you?
8 MR. HORAN: No, Your Honor.
9 THE COURT: Is this Witness free to go?
10 MR. LYNCH: Yes.
11 MR. HORAN: Yes.
12 THE COURT: Mr. Greene, you are free to go. You may
13 remain in the Courtroom or in the Courthouse, as you see fit.
14 MR. HORAN: Your Honor, might we have a very short
15 recess? There's a Witness who was not here earlier at the time
16 the rest were sworn.
17 I don't know whether he --
18 THE COURT: Sure.
19 We'll take a ten minute recess. Members of the Jury,
20 we'll recess for ten minutes.
21 (Whereupon, at 12:15 o'clock, recess was taken.)
22 THE COURT: Gentlemen, are you ready for the Jury to
23 be brought back?

1 MR. LYNCH: Yes.

2 MR. HORAN: Ready.

3 THE COURT: Please bring the Jury down.

4 MR. HORAN: Francesca Greene.

5 Whereupon,

6 FRANCESCA GREENE

7 called as a Witness by Counsel for the Commonwealth, having

8 been duly sworn by the Clerk of the Court, was examined and

9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HORAN:

12 Q. State your full name, please, and your address?

13 A. Francesca Marie Greene, 11934 Washington Street,

14 Fairfax, Virginia.

15 Q. Did you know ~~Henry Greene~~?

16 A. Yes, I did.

17 Q. Were you related to him?

18 A. He was my first cousin.

19 Q. Directing your attention to the 29th day of November

20 1975, did you have occasion to go to a party on that date at

21 Virginia Newman's house?

22 A. Yes.

23 Q. Where is that house located?

1 A. Right on Second Street off Braddock Road.

2 Q. About what time did you get there?

3 A. About 10:00 o'clock.

4 Q. What was going on when you got there?

5 A. They were dancing, drinking and they had a crap

6 game upstairs but it didn't start until later, I guess, after

7 I was there for a while.

8 Q. About what time did the crap game start?

9 A. I have no idea.

10 Q. Was it before or after midnight?

11 A. Before midnight, I think.

12 Q. Now, when you got to the party did you stay on the

13 first floor or the second floor?

14 A. First.

15 Q. What were you doing on the first floor?

16 A. Dancing.

17 Q. Did there come a time when you went up to the second

18 floor?

19 A. Yes.

20 Q. About what time was that?

21 A. I don't know what time it was.

22 Q. Before or after midnight?

23 A. After.

1 Q. Would you come down here in front of the Jury?
2 (The Witness left the stand.)
3 THE COURT: What document is that that you have in
4 your hand?
5 MR. HORAN: Commonwealth's No. 8, Your Honor.
6 THE COURT: Thank you.
7 BY MR. HORAN: (Resuming.)
8 Q. Now, Miss Greene, I show you what is marked
9 Commonwealth's Exhibit No. 8 which is the diagram of the
10 second floor of that house. Now, would you show the Jury
11 where you stood when you came upstairs?
12 THE COURT: Talk to the Jury so that they can
13 understand.
14 A. I was here in front of this dresser.
15 Q. Where was Leroy Baker?
16 A. In front of the --
17 Q. Where was Henry Greene?
18 A. Around here somewhere.
19 Q. Where was Mr. Johnson?
20 A. Here.
21 Q. Now, did there come a time when something unusual
22 happened?
23 A. Yes.

1 Q. Would you tell the Jury what that was?

2 A. Well, they was like around the room and Henry Greene

3 said did you take the dice off the table and he said, No,

4 I didn't, and then Frank told Johnson, he said this man

5 tried to -- and he said, well, I am not going to stay in

6 there and watch this man have my money. So then he took the

7 money off the table and Ernie picked up some money from the pot.

8 Q. Would you go back to the Witness chair, please.

9 (The Witness resumed the stand.)

10 BY MR. HORAN: (Resuming)

11 Q. Now, Miss Greene, you testified that Leroy Baker

12 picked up some money and Aaron Johnson picked up some money

13 that was near him. And that's when Baker shot him?

14 A. Yes.

15 Q. Did you see the gun?

16 A. Yes.

17 Q. Did you see where it came from?

18 A. From his left side.

19 Q. Would you show the Jury how he held the gun when he

20 fired it?

21 A. Like this. (Indicating)

22 Q. Where was Aaron Johnson at the time he fired the gun?

23 A. He was kneeling on his knees beside the bed.

1 Q. Was he facing toward Mr. Baker or away from him or to
2 the side of him; how was he facing?
3 A. Towards him.
4 Q. Did you ever see Mr. Johnson with the gun on that
5 night?
6 A. No. I didn't.
7 Q. Did you see him make any moves toward a gun?
8 A. No.
9 Q. What was he doing at the time he got shot?
10 A. He was picking up the money off the table.
11 Q. Now, after that, what occurred?
12 A. Well, then after Leroy shot Ernie, then Frank Greene
13 ran towards Leroy and he was struck one with a gun. And, at
14 that time, I was at the stairs and I didn't see what
15 happened after that. But the only thing I did see was Frank
16 fall to the floor.
17 MR. HORAN: I have no further questions.
18 THE COURT: Mr. Lynch?
19 CROSS EXAMINATION
20 BY MR. LYNCH:
21 Q. Was there an argument between Aaron Johnson and
22 Leroy Baker just before the shooting?
23 A. No.

1 Q. Those two weren't arguing?

2 A. What?

3 Q. Leroy and Aaron weren't arguing?

4 A. No.

5 Q. Where do you live? What's your address?

6 A. I used to live on 5308 Second Road but now I live on

7 11934 Washington Street.

8 Q. 5308 Second Road, is near a 52 22nd Road, is it not?

9 A. Yes.

10 Q. Fred Greene lived there with you, your brother?

11 A. Yes.

12 Q. Where did Gerald Spears live at that time?

13 A. He lived on Braddock Road. I don't know exactly

14 where.

15 Q. But near Second Road?

16 A. Yes.

17 Q. There were quite a few people at the house that

18 particular night, weren't there?

19 A. Yes, there was.

20 Q. And, I believe, upstairs was you; and just before

21 the shooting it was you, Larry Diamond, Gerald Spears, Fred

22 Greene, Frank Greene, Aaron Johnson -- anybody else?

23 A. Leroy Baker.

1 Q. Leroy Baker. How about the man by the name of
2 Keith Parker, was he up there?
3 A. Yes.
4 Q. Have you seen Keith Parker here today?
5 A. No.
6 Q. Have you seen Larry Diamond here today?
7 A. No.
8 Q. Now, when Mr. Horan asked you about where Leroy Baker
9 reached for the gun, you pointed to your left side, did you
10 not?
11 A. Yes.
12 Q. And did Leroy have a coat on at this time?
13 A. Yeah.
14 Q. A black leather coat?
15 A. Yeah.
16 Q. And did he reach under the coat or in the pocket?
17 A. Well, his hand was under the coat. I don't know if
18 he was going in his pocket or what.
19 Q. Where did the gun come from; did it come from under
20 the coat or out of his pocket?
21 A. Under his coat.
22 Q. Did you recall testifying, Miss Greene, at the pre-
23 liminary hearing when Mr. Horan and I were both asking you

1 THE COURT: All right, you're on Page 6 of that docu-
2 ment, is that correct?
3 MR. LYNCH: Yes, sir, it took place in Fairfax County
4 in General District Court.
5 THE COURT: All right.
6 BY MR. LYNCH: (Resuming.)
7 Q. Starting with line 3, your testimony being this,
8 Miss Greene: You can read along if you want.
9 "Frank, he kept telling Leroy the dice went
10 off the table. Leroy says his dice didn't go off the
11 table. Then it went around again and then Frank said
12 again, 'The dice went off the table.'
13 And Frank looked at Aaron and said, 'Didn't
14 you see that man's dice go off the table?'
15 Aaron says, 'Yeah, I seen it go off the
16 table.' He said, 'Let Leroy go ahead and shoot.' He
17 said, 'Don't want charity -- no trouble. Let the
18 man go ahead and shoot the dice and get his money.'
19 Q. Then what happened?
20 A. Well, that's when I seen Leroy standing by
21 the dresser and I seen Leroy's hand inside of his
22 coat. I didn't know what he was doing and I seen the
23 gun go off. Aaron was hit, fell on the floor. Then

1 I seen Frank run towards Leroy, he was struggling
2 with the gun and I seen Frank fall back. And I heard
3 the gun go off again."
4 Q. Now, do you recall making that statement?
5 A. Yes.
6 Q. Now, let's go over to page 24, Miss Greene on line 13:
7 "Q. He didn't know what he was doing? (Referring
8 to Leroy Baker.)"
9 Do you have it, Miss Greene?
10 A. Yeah.
11 "Q. (Referring to Leroy Baker.) You did not
12 know what he was doing when he pulled the gun?
13 A. No. I didn't know he was pulling the gun
14 or what. I seen him go in his pocket."
15 Q. Do you recall making that statement?
16 A. Yes.
17 Q. In what pocket were you referring to? Coat pocket?
18 A. Sir?
19 Q. Were you referring to the coat pocket?
20 A. No.
21 Q. What pocket were you referring to, Miss Greene?
22 A. The pants pocket.
23 Q. You seen Leroy go in his pants pocket?

1 A. You asked me what pocket I was referring to?

2 Q. Yes. We're talking about Leroy where he went to get

3 the gun.

4 A. Well he went inside of his coat. And you asked me

5 did he go in his pocket, his pants pocket or in his coat

6 pocket.

7 Q. No. But when you testified at the preliminary

8 hearing, talking about Leroy you said, "No, I didn't know if

9 he was pointing the gun or what. I seen him go in his pocket.

10 A. Excuse me, but I'm kind of mixed up on this.

11 Q. You're kind of mixed up on what?

12 A. On this paper.

13 THE COURT: Could you come forward, Mr. Lynch. Per-

14 haps you can show Miss Greene what you were referring to.

15 BY MR. LYNCH: (Resuming.)

16 A. What line?

17 Q. Line 13, Miss Greeen. Starting here. Do you

18 remember my asking you this series of questions starting with

19 1-13:

20 "Q. You didn't know what he was doing when he

21 pulled the gun?"

22 And, according to this transcript you

23 answered, "No."

1 I'm asking you now if you said that at the
2 hearing: "No, I didn't know if he was pulling
3 the gun or what. I seen him go in his pocket."
4 A. Yeah.
5 Q. Did you state that at the hearing?
6 A. Yes.
7 Q. Now, would you turn over, Miss Greene, to page 25
8 the next page over? Let's start with line 1, Miss Greene,
9 this is me still questioning you:
10 "Q. Well, and you were looking at Leroy Baker?
11 A. No, I was looking at Aaron.
12 Q. (By me.) Why were you looking at Aaron?
13 Leroy had the gun?
14 A. Because he was picking up the money. I was
15 not paying attention to what Leroy was doing."
16 Q. Do you recall saying that?
17 A. Yes.
18 Q "Q. You were not paying attention to someone
19 standing there with a gun?
20 A. See him -- seen him go into his pocket. How
21 was I supposed to know he'd pull a gun?"
22 Q. You said "pocket" --then -- did you not, at the
23 hearing?

1 A. Yes.

2 Q. Tell the members of the Jury, please, when he went --
3 wherever he got the gun; did he pull it out fast or did he
4 pull it out slow?

5 THE COURT: Did you understand the question.

6 BY MR. LYNCH: (Resuming.)

7 Q. When Leroy pulled out the gun and shot Aaron, did
8 he pull it out fast or pull it out slow?

9 A. Well, he had his hand inside of his coat for a
10 little while and then he just pulled the gun out and shot it.

11 Q. When he pulled the gun out, did he pull it out fast
12 or did he pull it out slow?

13 A. Not very fast.

14 Q. Not real fast?

15 A. No.

16 Q. Not real slow?

17 A. No.

APE E 18 Q. Now, directing your attention to line 16 --

19 THE COURT: What page are you on, sir?

20 MR. LYNCH: I'm sorry, page 25. It should be the
21 page we were just on, Miss Greene.

22 BY MR. LYNCH: (Resuming.)

23 Q. All right, go down to line 15, excuse me, 16 -- the

1 question by me:

2 "Q. Did he pull the gun out and fire right away

3 or did he hold it?

4 A. He pulled it out slow."

5 Q. Did you say that?

6 A. Yes.

7 Q. Now, turn over, please, to page 26. Directing your

8 attention, please, Miss Greene to line 5. My question:

9 "Q. You mean there is a man standing there with

10 a gun just getting ready to fire, but you're not

11 paying any attention to him? You're watching old

12 Aaron picking up the money?

13 A. He pulled the gun out so fast it scared

14 everybody and nobody -- (it's not finished.)"

15 Q. Did you say that?

16 A. You're on line 9?

17 Q. Yes.

18 A. Yeah.

19 Q. Did you say that?

20 A. Yes.

21 Q. Now, moving down to line 16. Question by me:

22 "Q. He pulled it out fast?

23 A. That is what I am saying.

1 Q. All right. Now, what about -- just a minute
2 ago you said he pulled it out slow. Which is right?
3 A. Slow or fast. He just quick pulled the gun
4 out."
5 Q. Do you recall saying that?
6 A. Yes.
7 Q. Now, when Leroy shot Aaron, how did he shoot him in
8 so far as the angle of the gun. Was it straight on or was it
9 an angle or what?
10 A. You mean was it aimed at him?
11 Q. No. When Leroy shot Aaron, say you were Leroy
12 standing straight -- looking straight out at me. Now, was
13 Aaron looking directly at him, like I'm looking directly at
14 you or was he turned or bent over or what?
15 I think you said he was down on his knees?
16 A. Yes.
17 Q. But at what angle was he turned?
18 A. Well, the dresser that Leroy was standing by -- we'll
19 say the dresser over here and that you're there down on your
20 knees.
21 Q. Right.
22 A. So, he's in front of him.
23 Q. So, all right. Say you're Leroy and you're by the

1 Q. Now, where was -- thank you, Miss Greene -- now,
2 where was Aaron's hands just as he was shot, just before he
3 was shot?
4 A. His left hand was on the money and his right hand,
5 he had on the bed.
6 Q. Aaron wasn't up on the bed?
7 A. No.
8 Q. And he didn't make any move at all towards his body?
9 A. No.
10 Q. Do you know if he had a gun in his pocket?
11 A. No, I don't.
12 Q. How long were you up there before the shooting took
13 place?
14 A. I don't know how long it was.
15 Q. Well, you got up there around 12:00 o'clock, didn't
16 you -- upstairs to the dice game?
17 A. Yes.
18 Q. This shooting took place about 4:00 o'clock, didn't
19 it?
20 A. Uh-huh.
21 Q. So that would make it four hours, would it not?
22 A. Yes.
23 Q. That you were up and you didn't see any bulge in

1 Aaron's pocket?

2 A. No.

3 Q. You didn't see any knife in Frank Greene's pocket?

4 A. No.

5 Q. And you say that as Leroy shot Aaron, he had a

6 black coat on?

7 A. Yes.

8 Q. I mean Leroy had a black leather coat on?

9 A. Yes.

10 Q. Do you recall at the preliminary hearing, so far as

11 the angle of what Aaron was to Leroy; I'm directing your

12 attention to page 38, Miss Greene, line 1. Question by me:

13 "Q. All right, you did say that he -- that it

14 was a face-on shot. Leroy shot him through the

15 front, that he was facing Johnson when he shot him?

16 A. Yes."

17 Q. Do you recall saying that?

18 Do you recall?

19 You say you did not see the shooting between Frank

20 Greene and Leroy Baker?

21 A. No.

22 Q. Starting with line 6, Miss Greene. I'm questioning:

23 "Q. All right. Now, if you didn't see him shoot

1 how do you know what Frank Greene was doing, if you
2 didn't see him?
3 Let me re-phrase the question; if you didn't
4 see Leroy Baker fire the gun at Frank Greene --"
5 A. Excuse me, what page are you on?
6 Q. I'm sorry, 42. Okay?
7 A. Yeah.
8 Q. Line 6, question by me:
9 "Q. All right. Now, if you didn't see him shoot
10 how do you know what Frank Greene was doing, if you
11 didn't see him?
12 Let me re-phrase the question; if you did
13 not see Leroy Baker fire the gun at Frank Greene,
14 you said you heard it. Now, if you didn't see him
15 doing it, how do you know what Frank Greene was doing?
16 A. Because I seen him fighting with Leroy.
17 Q. That is before the shot -- right?
18 A. Right after Frank grabbed Leroy on the hand,
19 he had his hand up in the air and the gun went off."
20 Q. Do you recall saying that?
21 A. Yes.
22 Q. Do you know which hand the gun was in, to your
23 knowledge, right now?

1 A. Repeat that, again?

2 Q. The gun went off, shooting -- at the time the gun

3 went off shooting Frank; do you know which hand of Leroy's

4 the gun was in?

5 A. No. It was in his right hand one time whenFrank

6 grabbed him by the hand, but I don't know what hand the gun

7 was in when he got shot.

8 Q. Was there any question, Miss Greene, that Leroy and

9 Frank Greene were struggling after Aaron Johnson was shot?

10 That you did see a struggle going on between the

11 two of them?

12 A. Yes, I seen Frank grab the money and struggle with

13 the gun. And that's when all of us ran to the step and

14 couldn't get down the step because people was coming up and I

15 heard the shot go off and I seen Frank fall. So, I don't

16 know if it was an accident or if he meant to.

17 Q. Have you talked to your brother, Fred, about your

18 testimony today?

19 A. No.

20 Q. About the case at all before you came in here?

21 A. No.

22 Q. Did you talk to Gerald Spears?

23 A. No, I haven't seen him.

1 Q. Have you talked to Larry Diamond about the case at
2 all, since this happened?
3 A. No.
4 Q. Just a couple of other questions and then I will
5 finish, Miss Greene. Maybe we can do it from here.
6 When Leroy Baker fired the shot at Aaron Johnson,
7 where was Leroy -- point to where Leroy was?
8 A. He was standing in front of this dresser.
9 Q. Referring to Commonwealth's Exhibit No. 8, and you
10 are pointing to the dresser at the top of the diagram, is that
11 correct?
12 A. Yes.
13 Q. And you were where?
14 A. Here in front of this dresser.
15 Q. You're pointing to the dresser at the bottom of the
16 diagram?
17 A. Yes.
18 Q. And Frank Greene was where?
19 A. Here, beside me.
20 Q. You're pointing to the left of you, or to the left
21 of the dresser at the bottom?
22 A. Left of me.
23 Q. And the blanket was in the area,that kind of

1 between all of these articles, does it not?
2 A. Yeah.
3 Q. Between the two beds and the dresser.
4 A. Yeah.
5 Q. You say Aaron Johnson is where, now?
6 A. He was right here.
7 Q. You're pointing to the bed to the right of the
8 diagram?
9 A. Yes.
10 Q. On his knees?
11 A. Yes.
12 Q. And he was -- and did Leroy -- would it be correct
13 to say Leroy fired across this way, towards Aaron?
14 A. Well, if beds were drawn on the board, right,
15 then you can see where-it's really not drawn right on the
16 cardboard.
17 Q. How would it be correct, then?
18 A. Both beds should be even and the dresser should be
19 here -- this dresser should be up some.
20 Q. All right. But, I mean, the bed was generally in
21 this corner, was it not; the upper right corner?
22 A. Yes, uh-huh.
23 Q. And that's where Aaron was?

1 A. Yes.

2 Q. Well, generally, I'm not saying to ask for a specific

3 degree of the angle but Leroy had to fire over this way, did

4 he not?

5 A. Yeah.

6 Q. And you say Aaron was facing which way?

7 I think you said slightly to the right -- and

8 down playing Aaron, I was slightly turned to the right?

9 A. You were facing the left.

10 Q. Well, was I facing -- did you want me to face --

11 turn slightly this way or --

12 MR. HORAN: Your Honor, I object to this line of

13 questioning. We're going back over exactly the same grounds.

14 Witness has already covered this.

15 MR. LYNCH: I know that but --

16 THE COURT: I think he's in an area, Mr. Horan,

17 where the Witness is not testifying in exactly the same fashion

18 as she did before, so I'm going to allow him to verify it.

19 BY MR. LYNCH: (Resuming.)

20 Q. As Leroy Baker fired at Aaron Johnson -- I'm Aaron

21 Johnson, I'm down on my knees (indicating) with one hand on

22 the bed, not putting it towards the gun or anything, and one

23 hand is on the blanket. Now, which way do you want me to turn

1 to be --

2 A. Turn like you was a while ago.

3 Q. Excuse me.

4 A. Turn in the position you was before.

5 Q. Like this.

6 A. His hand wasn't back that far.

7 Q. But how about my body?

8 A. How about your body?

9 Q. Yes.

10 A. Well, he wasn't bending over that far, he has pretty

11 long arms.

12 Q. Long arms?

13 A. Yeah.

14 Q. So he didn't have to bend over that far, but he was

15 turned this way? (Indicating.)

16 A. Yes, **sort of, and I was standing here.**

17 Q. Well, shall I turn more?

18 A. If I'm standing here.

19 Q. No, you're standing right where you are and you're

20 Leroy Baker and I'm --

21 MR. HORAN: Your Honor, I object to that. Now, he

22 wants to change the pattern here.

23 MR. LYNCH: No, Your Honor, no, I don't.

1 THE COURT As I understand the question, Mr. Horan,
2 I'm going to allow him to continue. Go ahead.
3 MR. HORAN: Your Honor, my objection is the Witness
4 is not sitting in the same place right now as she was when he
5 asked the prior question.
6 THE COURT: All right. This diagram has raised the
7 question, Mr. Horan, and she is having a slight difficulty in
8 locating Mr. Johnson in relation to the diagram. Mr. Lynch is
9 trying to have her clarify it. That's all it comes down to.
10 MR. HORAN: The only point I'm trying to make, Your
11 Honor, the Witness has put Aaron Johnson in exactly the same
12 position on the floor of this Courtroom both times.
13 THE COURT: I understand that.
14 MR. HORAN: The only thing is when she testified the
15 first time --
16 THE COURT: All right.
17 MR. HORAN: I think counsel ought to at least put her
18 in the same position she was in before.
19 THE COURT: All right. Mr. Lynch, have you finished
20 your examination of this Witness?
21 MR. LYNCH: You want to come back down here, please,
22 Miss Greene?
23 (The Witness left the Witness stand.)

1 THE WITNESS: You want me to come down and stand
2 here?
3 MR. LYNCH: Stand wherever you were before. He said
4 you stood before, I'm not sure exactly where it was but I
5 think it was in front of this table right here, but I'm not
6 sure.
7 THE WITNESS: I was standing here.
8 MR. LYNCH: You were standing up there?
9 MR. HORAN: That's right.
10 THE COURT: Yes, that's exactly where she was.
11 BY MR. LYNCH: (Resuming.)
12 Q. Now, you're Leroy Baker.
13 A. Uh-huh.
14 Q. The dresser would have been in back of you, the
15 dresser at the top of the diagram, would it not?
16 A. The dresser is beside it.
17 Q. Beside it?
18 A. Yes, sir.
19 Q. So your back with the dresser to your side.
20 A. My back is towards the other bed, the bed on --
21 Q. Well, now if your back was --
22 A. Here's the dresser, okay?
23 Q. Right.

1 A. This is the bed, over by this this wall next to the
2 other bedroom.
3 Q. You're referring to this bed, here?
4 A. Yes. This is the bed beside the doorway into the
5 other bedroom.
6 Q. So Leroy's facing this way?
7 A. Yes.
8 Q. He's facing this way, across the diagram (indicating)
9 referring to Commonwealth's Exhibit No. 8.
10 A. Uh-huh.
11 Q. Okay. You're by them and the bed is generally
12 in back of you, but you're facing across the room and you're
13 Leroy Baker?
14 A. Uh-huh.
15 Q. Okay. Now, I'm Aaron Johnson, I'm down on my knees
16 picking up the money. Now, which way shall I turn? (Indicat-
17 ing.)
18 A. With one hand on the floor.
19 Q. This way?
20 A. Put one hand on the floor.
21 Q. Okay.
22 A. And lay down on the bed.
23 Q. This one is up on the bed?

1 A. No, bring it around some.

2 Q. This way?

3 A. Yes. Put it up a little bit. You're not that short.

4 Q. How?

5 A. He wasn't leaning over that far.

6 Q. Yes, but my arms are only so long, so his arms were

7 longer. And one arm was on the floor, one arm was on the bed?

8 (Indicating.)

9 A. Yes.

10 Q. This is the way it was?

11 A. Yes.

12 Q. Thank you, Miss Greene. That's all the questions I

13 have.

14 REDIRECT EXAMINATION

15 BY MR. HORAN:

16 Q. Miss Greene, other than this case have you ever

17 testified in a Criminal Courtroom before?

18 A. No.

19 MR. HORAN: No further questions.

20 THE COURT: Is this Witness free to go?

21 MR. LYNCH: Yes, Your Honor.

22 THE COURT: Do you have any other questions in this

23 regard?

1 Q. Now, directing your attention to this item contained
2 in the plastic bag. Of course, it appears to be a black leather
3 coat, can you tell us where you found that?
4 A. Yes, sir. This is the coat, of Leroy Baker that
5 was found on the bed upstairs.
6 Q. In the room where the shooting occurred?
7 A. Yes, sir.
8 Q. That was about what time of the day or night that you
9 found it?
10 A. I arrived at the scene approximately 5:30, so the
11 coat would have been collected approximately 6:30 in the
12 morning.
13 Q. Where was it in the room?
14 A. On one of the beds, in a corner of the room.
15 MR. LYNCH: Are there any questions?
16 CROSS EXAMINATION
17 BY MR. HORAN:
18 Q. Officer Kennedy, how do you know that's his coat?
19 A. I was told it was his coat by several of the people
20 there. That's the only way I knew it was his. We collected
21 two that day. We collected the one that they claim was
22 Mr. Baker's and then another one that they claim was Mr. Greene's
23 They were identical coats.

1 as much as you can.

2 How old are you, Mr. Baker?

3 A. Twenty-eight.

4 Q. You are presently now at Fairfax County Jail, are you

5 not?

6 A. Right.

7 Q. How long have you been there?

8 A. I've been there now for four months.

9 Q. And before that, with whom were you living?

10 A. Frances King. Frances King.

11 Q. And who lived there with you?

12 A. A girl-friend.

13 Q. What was her name?

14 A. Daisy Hogan.

15 Q. And do you and Daisy have any children by this

16 relationship -- with your relationship to Daisy?

17 A. Yes, sir. Got one.

18 Q. How old is that child?

19 A. He's two.

20 Q. Two years old?

21 A. Yes, sir.

22 Q. And are there any other children that live there with

23 you?

A. Town of Herndon.

Q. Town of Herndon?

A. Yeah.

Q. What did you do there, Mr. Baker?

A. Well, I was -- all different kinds of work at the time. And I was supposed to been -- checking meters, but at that time the guy was supposed to have taken another position. You know, the position was not open yet at the time.

Q. How long had you been working there?

A. It wasn't very long. I don't know -- I got two pays. I'd say about four weeks, maybe a month. I don't know.

Q. Now, Mr. Baker, have you ever been convicted of a felony?

A. ~~No, sir.~~

Q. Who cares for or who supports Daisy Hogan and the three children -- four children in all?

A. Most of the time I did.

Q. Did you know Aaron Johnson or Francis Greene?

A. Well known.

Q. Excuse me?

A. They was well known.

Q. Now, in regard to Aaron Johnson did you, can you say whether or not you had knowledge or lack of knowledge of the

1 fact that he carried a gun?

2 A. Yes, I do.

3 Q. At that time, you are talking about the date this

4 incident occurred or --

5 A. All the time.

6 Q. On this particular day, November 29, 1975; you've

7 heard the testimony of Witnesses that you, in fact, went to

8 6220 Second Road in Fairfax County. Is that fact true?

9 A. Yes, I did.

10 Q. Did you do that? Tell the members of the Jury what

11 time you first went there that day.

12 A. It was approximately about 5:00 o'clock.

13 Q. In the morning or afternoon?

14 A. It was in the afternoon. Him and his brother, he

15 wanted me to take him to the bank. I said wait a few minutes.

16 Q. When did this happen?

17 A. The first time. So I took him to the bank and he got

18 a check cashed and he said he had to do some shopping. So we

19 carried him to the Safeway to do some shopping and so, when he

20 come back, I had bought some groceries myself, so I took it down

21 to the house and come back.

22 Q. Which house did you take it to?

23 A. Where I lived at.

1 gun?

2 MR. HORAN: I object, Your Honor, to that question.

3 The Witness has already testified that he did not see anyone

4 with a gun the first time around.

5 THE COURT: That's true.

6 MR. LYNCH: All right, I'll re-phrase the question.

7 THE COURT: Please re-phrase the question, sir.

8 BY MR. LYNCH: (Resuming.)

9 Q. Did you ever see Aaron Johnson with a gun that

10 particular day?

11 A. No, sir.

12 Q. Now, when you went back the second time -- this is

13 later on in the day -- where did you go to?

14 A. Well, like I say, when I came back to the house, they

15 had the crap game going upstairs so he was standing over --

16 well -- back towards the wood, there's a doorway there, and as

17 he was standing up, I was kneeling down and you could see the gun in his pocket.

18 Q. Now, you just said to me a minute ago that you didn't

19 see anybody with a gun.

20 A. Yeah, but the first time when I first went in I didn't

21 see it, you see, because he was down. But the second time I

22 went up to the upstairs -- you see, I was kneeling down and he

23 was up, and I could see the print in his pocket.

1 Q. All right, step down here a minute, would you, please?
2 (The Witness left the stand.)
3 Q. Now, place the gun where you said it was -- where
4 you thought it was.
5 A. Just like this in the pocket.
6 Q. Now, turn around and show the Jury, please?
7 Now, what are you talking about -- you were saying
8 Aaron was doing something?
9 A. Like I told him, you know, I was ready to leave,
10 you know, when the dice roll off the board. Aaron Johnson said
11 Did you see the dice roll off? John said No. So I just
12 picked up the dice because he didn't say not to shoot it. So
13 I picked it up and shot it.
14 Q. Well, Mr. Baker I'm talking about the gun, now?
15 A. All right.
16 Q. Can you tell the Jury about the gun -- who got the
17 gun -- would that have been the pocket, the right-hand
18 pocket whereyou saw it?
19 A. Yeah, that's right. Correct.
20 Q. You were at the point that I was to get the gun off
21 the Judge's Bench. I asked you if you were talking about your
22 bending down or something. Could you tell the Jury about that?
23 A. Well, I was down like this here (indicating) and

1 they said Johnson was going in his pocket. And that's when I
2 turned around and shot him.
3 Q. Now, tell the members of the Jury, please, if you can
4 refer to Commonwealth's Exhibit No. 8, if that will help you.
5 First of all, would you look at Commonwealth's Exhibit No. 8
6 and tell the Jury, as far as you recollect, was this the general
7 layout of the upper room?
8 A. I can't really say, you know because --
9 Q. But can you look at it?
10 A. Like these are the stairs, that's the dresser there,
11 I really don't know.
12 Q. All right. Now, where were you when you shot Aaron
13 Johnson -- in the room -- where in the room?
14 A. I was in the middle of the floor.
15 Q. And can you demonstrate to the Jury, please. I
16 might have to get you up again.
17 (The Witness left the stand.)
18 Q. Can you demonstrate to the Jury when you say you went
19 to get your coat?
20 A. Yes, sir.
21 Q. Why did you turn around?
22 A. Well, I felt something like, you know, there was
23 something behind me so this is when I turned around. That's

1 when Johnson was going in his pocket.

2 Q. All right. Now, demonstrate to the Jury if you would,

3 please, how Mr. Johnson was going in his pocket; how was he

4 standing?

5 A. He was in between the door so he turned his back

6 towards the blind side of the door. He was going up his leg

7 just like this here (indicating) pointing to his pocket.

8 That's when I shot him.

9 Q. All right. How many times did you shoot him?

10 A. Once.

11 Q. Which hand did you use to fire the gun?

12 A. My right hand.

13 Q. Go over and have a seat, please.

14 (The Witness resumed the stand.)

15 Q. Did you have that gun with you when you went in

16 there?

17 A. Yes, I did.

18 Q. Did you have it when you went the first and the

19 second time?

20 A. Yes, sir.

21 Q. Why did you have it?

22 A. For protection.

23 Q. Why did you feel you needed protection?

1 A. Because it's kind of a bad neighborhood, everybody
2 always talking about it.
3 Q. What happened after you shot Johnson; so far as--
4 there's no question that you, is there not, intended to shoot
5 Mr. Johnson?
6 A. Well, there wasn't any intention but I was just only
7 trying to protect my life.
8 Q. Now, after you shot Mr. Johnson, what happened in so
9 far as Henry Greene?
10 A. What he done, he come and he said, Leroy, what did
11 you do that for? That's when he grabbed for my gun. I
12 pointed the gun up and somehow he pushed me back and that's
13 when the gun went off.
14 Q. He pushed you back?
15 A. Yes, sir.
16 Q. Do you know what you went back against?
17 A. I fell back against the wall.
18 Q. Do you know which wall?
19 A. Well, the wall towards the woods.
20 Q. The wall towards the woods?
21 A. Yeah. The side where the beds was -- like the beds
22 was up against the wall and that's where he pushed me at.
23 Q. When Henry came after you, did you still have the

1 gun in your hand?

2 A. Yes, I did. Bit I had no intention of trying to kill

3 this man.

4 Q. Did you intentionally pull the trigger, so far as

5 Henry Greene is concerned?

6 A. No, I didn't.

7 Q. Where was your coat at this time?

8 A. It was behind me on a bed or something; I don't know

9 where it was.

10 Q. Did you have your coat on as you shot Aaron Johnson?

11 A. No, I didn't.

12 Q. Is this your coat? I show you what has been marked as

13 Defendant's Exhibit 2.

14 A. Yes, it is.

15 Q. Where did you, after the second shooting, how did you

16 feel, what did you feel?

17 A. Well, I was scared. I was scared when I heard the shot

18 the first round and, like I say, I had no intention of shooting

19 the second one.

20 Q. Where did you go, after the second shot?

21 A. I ran down the street -- I ran where I lived at but

22 everybody said that I went in this friend's house. But I didn't

23 go in her house.

1 A. I didn't see him.

2 Q. You didn't see him at all?

3 A. No.

4 Q. How about the girl who testified this morning -- see

5 her?

6 A. I seen her one time but at that time, to my knowledge,

7 I thought she went back downstairs, because there wasn't no

8 other girls up there.

9 Q. Now, eventually, it's your testimony that you get in

10 an argument over the pot?

11 A. I don't say it was an argument, because it wasn't no

12 argument, just some words like he said, the first thing Johnson

13 said, I am not gonna let you take my money like that. I said

14 man, I haven't took no money from you.

15 Q. Johnson said that?

16 A. Yes, he did.

17 Q. It's your testimony right after that you rolled again?

18 A. No. Just like I said -- this one dice that went off

19 the board and allthree witnesses that know this; they said the

20 dice wasn't off the board but the dice was off the board and

21 Johnson did not say you couldn't shoot no more, so to be fair,

22 you know, I took the dice and rolled them again. That's when

23 I made my point.

1 A. I don't know.

2 Q. Well, a gun won't show in those.

3 A. Say what?

4 Q. You couldn't see the top of the gun, could you?

5 A. I could see the whole gun in his pocket.

6 Q. You could see the gun in his pocket?

7 A. It's like the gun in my pocket a little while ago,

8 you could see it in his and I know you seen that. You can see

9 it like you saw me, you could see it in his pocket.

10 Q. Now, your testimony is that you picked up the pot

11 and that there's no argument going on?

12 A. No.

13 Q. What did you do right after you picked up the pot?

14 A. I was ready to leave.

15 Q. You got ready to leave?

16 A. Right.

17 Q. Because you finished with the dice game?

18 A. I see it wasn't no sense in arguing because I wasn't

19 trying to get myself involved in no trouble.

20 Q. Well, I thought you said nobody was arguing?

21 A. There wasn't kind of an argument, it was like some

22 cross words, that's all.

23 Q. Just some cross words?

1 A. I don't call that really arguing.

2 Q. Now, was Aaron Johnson angry?

3 A. I don't know.

4 Q. How about Henry Greene, was he angry?

5 A. He didn't seem like to be.

6 Q. How about you?

7 Were you angry?

8 A. No, I wasn't.

9 Q. Nobody's angry?

10 A. No.

11 Q. And you're just going to pick up your coat and you're

12 going to leave?

13 A. That's right.

14 Q. Now, you testified that Aaron Johnson ran his hand

15 up his leg like this? (Indicating)

16 A. Yes, sir.

17 Q. And, I believe, you testified he had his side to you,

18 he wasn't facing you?

19 A. Yes, he was facing me but he had turned on an angle.

20 Q. Was he like this? (Indicating.)

21 A. On an angle -- know what an angle is?

22 Angle's like this. (Indicating.)

23 Q. Which kind of angle was he?

1 A. Oh, maybe about 30 degree angle, I don't know.

2 Q. This way? **(Indicating)**

3 A. Right.

4 Q. With you right there? (Indicating.)

5 A. Huh?

6 Q. You're right there and he's at this angle from you?

7 A. He wasn't quite that way, quite the way you're saying.

8 Q. Well, how was he?

9 A. Turn back a little.

10 Q. Like this? (Indicating.)

11 A. All right. Just like standing between the

12 door. You turned on an angle -- on the blind side -- he

13 thought I didn't see him but he was trying to go up his

14 pocket. That's about the time I shot him.

15 Q. He turned away from you like this? (Indicating.)

16 A. No, he don't turn around like that.

17 Q. You said he was on the blind side.

18 A. The side where his gun was was the blind side, but

19 he -- I'm looking right at this man just like I'm looking at

20 you. So, he was trying to go in his pocket and get his gun.

21 Q. Okay. He put his hand down inside his pocket?

22 A. I can't really say that.

23 Q. Pardon?

1 shot him in the chest?

2 A. Yes, I did.

3 Q. And you knew you shot him in the chest?

4 A. I didn't know exactly I shot him in the chest, I say

5 I probably shot him in the chest.

6 Q. It is a fact that you told Investigator Woodrell that

7 you just drew quicker than he did?

8 A. Well, I might have, I don't know. At that time, I

9 was in shock.

10 Q. What did Johnson do after you shot him?

11 A. What did he do? He fell.

12 Q. Just fell right down?

13 A. Yeah. They said he was trying to say something, but

14 I don't know what he was trying to say because I was - I wasn't

15 there.

16 Q. You weren't there when he tried to say something?

17 A. No. I wasn't.

18 Q. And right after you shoot Johnson, then Henry Greene

19 comes and tries to get the gun away from you?

20 A. Right.

21 Q. And you shot Henry Greene in the face?

22 MR. LYNCH: Your Honor, he keeps saying face. It

23 wasn't the face. Dr. Beyer, unless Dr. Beyer was talking about

1 a different person, it was the left temple. He keeps saying
2 face.
3 MR. HORAN: Maybe that's not part of your face. It
4 seems to me left temple is part of your face.
5 THE COURT: All right. Was there testimony it was
6 the left temple?
7 MR. LYNCH: Yes.
8 THE COURT: All right. We'll let it stand. That's
9 what it was.
10 BY MR. HORAN: (Resuming.)
11 Q. You shot him in the head?
12 A. But it was on the side, like -- I had the gun, I had
13 no intention to kill this man because, I mean, this man had
14 no -- well, we had no quarrel or nothing so why should I shoot
15 this man? This man hadn't done anything to me, so when he
16 pushed me that's when the gun went off.
17 Q. You took the gun with you for self defense, is that
18 what you said?
19 A. Not self defense, but protection.
20 Q. You carried a gun all the time?
21 A. Most of the time.
22 Q. You need protection all the time?
23 A. That's right.

1 Q. And you have no hesitancy about using that gun, do
2 you?
3 A. No, if I'm in the right.
4 Q. Pardon?
5 A. If I'm in the right.
6 Q. Now, Henry Greene didn't try to shoot you, didn't
7 try to do anything to you?
8 A. Well, I wasn't intending to shoot this man, either.
9 Q. He was trying to take the gun away from you?
10 A. Yeah. Well, I figure I don't see why the reason he
11 jumped me like he did because I hadn't said anything to this
12 man.
13 Q. Was Aaron Johnson a friend of Henry Greene?
14 A. I think his brother in law. I don't know. I don't
15 know too much about the family.
16 Q. Well, now, Johnson -- or Henry Greene -- just saw you
17 kill Aaron Johnson, didn't he?
18 A. See what?
19 Q. On this night, he saw you kill Aaron Johnson?
20 A. Right.
21 Q. And he tried to get that gun away from you?
22 A. Right.
23 Q. Did you say, All right, Henry, here's the gun ?

1 A. All right.

2 Q. Nobody said they were going to hurt you?

3 A. No.

4 Q. Henry Greene didn't threaten you at all?

5 A. That's right.

6 Q. And either did Aaron Johnson?

7 A. That's right.

8 Q. But you shot them?

9 A. Yes, I did.

10 Q. And that wasn't for any protection because nobody

11 was threatening you, were they?

12 A. What am I supposed to do -- let this man just turn

13 around and just blow me away?

14 Q. Pardon?

15 A. What am I supposed to do -- let this man blow me away?

16 Q. But nobody threatened to blow you away, did they?

17 A. They don't have to.

18 Q. Nobody said he was going to shoot you?

19 A. This man was going for his gun. What am I supposed

20 to do, run downstairs and let him shoot me in my back?

21 Q. You just thought it was easier to handle this thing

22 by shooting them both?

23 A. No. Like I said, I had no intention of shooting the

1 second man. Like I didn't want to shoot the first guy, now
2 what am I supposed to do; stand there and let him shoot me and
3 then shoot him back? Like we're playing cowboys or something?
4 Q. Let's play cowboys a minute, Mr. Baker. When you
5 pulled the gun out, didn't you have the gun pointed at Aaron
6 Johnson?
7 Where was his hand?
8 A. Whose? Whose hand?
9 Q. Aaron Johnson.
10 A. It was going -- it was going in his pocket.
11 Q. Did you say anything to him, like 'Pull that gun out
12 or I'll blow your head out'?
13 A. I couldn't say that because I was in shock, man.
14 Q. Well, his hands were down.
15 A. When you see somebody pull a gun on you, see how much
16 you can say.
17 Q. But his hands were down.
18 A. But I'm just saying, let somebody pull a gun on you
19 and see what you say.
20 Q. His hand was down inside his pocket?
21 A. This man was going for his gun.
22 Q. Right.
23 A. What am I supposed to tell him? Tell him, don't go for

1 Q. Where was it?

2 A. By his pockets.

3 Q. By his pockets?

4 A. Only he was going into them, he hadn't got into them

5 but he was going in them.

6 Q. He hadn't gotten to his pocket?

7 A. No, he hadn't.

8 Q. And you already got the gun out and you were

9 pointing it towards him?

10 A. This is when I turned around.

11 Q. Talking about when you were pointing a gun toward

12 him?

13 A. That's, as I say, that's when I turned around and

14 that's when I shot him.

15 Q. Well, you just turned around and shot without even

16 looking?

17 A. I said the man -- I, ah -- I said the man was going

18 into his pocket to get his gun.

19 Q. All right, Mr. Baker. When you turned around and

20 you got your gun out and you're pointing that gun at him, where

21 is his right hand at that time?

22 A. By his pocket, right pocket.

23 Q. By his pocket. And you're pointing the gun at him

1 Q. Going for his pocket?

2 A. (Nodding affirmatively.)

3 Q. Now you reached down underneath your sweater and you

4 pulled that gun out and turned around and faced him, is that

5 right?

6 A. Right.

7 Q. Where was his hand when you turned around with the

8 gun facing?

9 A. It was in his pocket.

10 Q. In his pocket?

11 A. Yeah. When he fell his hand came right out of his

12 pocket.

13 Q. Pardon?

14 A. When he fell his hands went out in front of him, just

15 like this here. (Indicating.)

16 Q. Just went out in front of his body?

17 A. Yeah.

18 Q. When you pulled the gun out and turned around, and

19 you faced him --

20 A. Right.

21 Q. -- did you say anything to him at all?

22 A. I didn't say nothing.

23 Q. Never said a word, just shot.

1 BY MR. LYNCH: (Resuming.)

2 Q. You're pointing to which man?

3 A. (Indicating.)

4 Q. The man with the striped pants?

5 A. Yeah.

6 Q. And can you see the bulge that you said you saw

7 before in the photograph?

8 A. Yeah. Right here.

9 Q. You're pointing to the lower part of his -- of the

10 bodies' thigh there?

11 A. Right.

12 Q. In commonwealth's Exhibit No. 3?

13 A. Yeah.

14 Q. Is that the same bulge you saw?

15 A. Right.

16 Q. Do you remember how Mr. Horan asked you about the

17 position of Aaron Johnson's hand when he fell after you shot

18 him; did he fall with his hand in his pocket, like this

19 (indicating)?

20 A. I don't know, see, I don't know. I don't know how

21 he hit or which way he fell.

22 MR. LYNCH: That's all I have.

23 THE COURT: Recross or redirect?

1 here -- Johnson pulled a gun on her -- I assume she can testify
2 to that. But he's not talking about that, he's talking about
3 reputation.
4 THE JUDGE: This specific thing, such as
5 character, as to turbulence, not carrying a gun, is that
6 not a specific act?
7 MR. HORAN: No. That's not reputation. That is not
8 evidence of a turbulent nature, the mere fact that he carries
9 a gun. No, she knows of a specific act.
10 MR. LYNCH: She does.
11 MR. HORAN: Where he shoots the gun? That is
12 not what he is asking.
13 THE COURT: Will you lay your foundation based ona
14 specific act, would you, Mr. Lynch?
15 MR. LYNCH: Yes, sir.
16 THE COURT: Okay.
17 (The proceedings resumed within the hearing of the
18 Jury:)
19 BY MR. LYNCH: (Resuming.)
20 Q. Mrs. King, you stated that you have known Aaron
21 Johnson for about nine years?
22 A. Yes, sir.
23 Q. Can you tell the members of the Jury, please, whether

1 or not he ever pulled a gun on you?

2 A. Sure, he did. But he never shot me.

3 Q. But he pulled a gun on you?

4 A. Sure.

5 Q. About how many times?

6 A. I can't count them.

7 Q. You can't count them?

8 A. (Nodding negatively.)

9 Q. More than five?

10 A. More than five.

11 Q. More than ten times?

12 A. I'd say that.

13 Q. When would he do that?

14 A. When he got mad. Is that all?

15 MR. LYNCH: That's all we have.

16 THE COURT: Mr. Horan?

17 CROSS EXAMINATION

18 BY MR. HORAN:

19 Q. Mrs. King did you live with Mr. Johnson?

20 A. No, sir.

21 Q. During these nine years when he pulled a gun on you,

22 would it be in the course of an argument between you and he?

23 A. Yeah.

1 Q. And in the course of those arguments, did you ever
2 threaten him with any weapon?
3 A. No.
4 Q. Knife?
5 A. No.
6 Q. Gun?
7 A. No.
8 Q. In the course of an argument, it's your testimony
9 that he would pull a gun on you?
10 A. Sure.
11 Q. Pardon?
12 A. Yes.
13 Q. He never shot you or anything like that?
14 A. No.
15 Q. As a matter of fact, you never knew him to shoot
16 anybody, did you?
17 A. No.
18 Q. How well do you know the Defendant here?
19 A. Baker?
20 Q. Yes.
21 A. I know him as a friend. I don't know.
22 Q. Baker is your friend?
23 A. Yeah.

1 Q. Are you related to Daisy Hogan?

2 A. Sister.

3 Q. Daisy Hogan is your sister?

4 A. Yes, sir.

5 Q. And he lives with Daisy Hogan; Baker lives with

6 Daisy Hogan?

7 A. Yes, sir. Me and Baker had an argument but it was

8 nothing big.

9 Q. Pardon?

10 A. We had an argument but it wasn't nothing big. I

11 ain't got nothing against nobody.

12 Q. Who had arguments?

13 A. Me and Leroy.

14 Q. You and Leroy had arguments?

15 A. (Nodding affirmatively.)

16 Q. Did he ever pull a gun on you?

17 A. No.

18 MR. LYNCH: Your Honor, I think-- well,

19 it's already been answered.

20 It doesn't make any difference now.

21 BY MR. HORAN: (Resuming.)

22 Q. You know he carried a gun, didn't you?

23 A. Well, he had one but I never, you know, saw it on

him. I never saw the gun on him.

Q. How many times did you see him in the last month before he shot Johnson and Henry Greene?

MR. LYNCH: Your Honor --

THE COURT: Just don't answer the question, ma'm. Mr. Lynch?

MR. LYNCH: I'd like to approach the bench, again.

THE COURT: Please do.

(The following was had at the Bench, outside of the hearing of the Jury:)

MR. LYNCH: Your Honor, I'm surprised at Mr. Horan. I think he knows better that this case talks about the victim in a criminal case. Now, Mr. Horan cites the Barnes Case, which he really didn't agree with in the first place and now is thinking and carrying it over to apply to the Defendant I don't think he can. He can go into general reputation of --

THE COURT: Uh-huh.

MR. LYNCH: But not any specific acts.

THE COURT: Not any specific acts?

MR. HORAN: I am just approaching her on the question of his turbulent nature.

MR. LYNCH: Not by way of specific acts, is what I'm saying.

1 THE COURT: The Attorney General conceded before us
2 that where an accused adduces evidence that he acted in self
3 defense to a situation, then the specific act is admissible.
4 Wait a minute. That is to show the decedent again. That's
5 the Stover case.
6 If Mr. Horan disagrees with Mr. Lynch's position, can
7 you cite me anything specific to support it?
8 MR. HORAN: Well, Your Honor, just specifically --
9 that's one book of law. The minute he takes the Witness
10 stand he puts his character --
11 THE COURT: Not the fact that he took the stand,
12 itself. But this is not him you are cross examining; it is
13 another Witness that's come forward.
14 MR. HORAN: That's right.
15 THE COURT: All right. On direct, he asked about
16 Johnson's character. You redirected on that and now you are
17 moving toward the Defendant through this Witness.
18 MR. HORAN: That's right.
19 THE COURT: And it seems to be out of line.
20 It is not in response to direct, number one.
21 MR. HORAN: Well, I would make her my Witness.
22 MR. LYNCH: Your Honor --
23 MR. HORAN: I don't know what he said.

1 MR. LYNCH: He's done that.

2 MR. HORAN: I'm beyond the scope of direct, there's

3 no question about that and I'm bound by what she said.

4 THE COURT: Then you're making her your Witness as

5 to this man's character?

6 MR. HORAN: That's right.

7 THE COURT: You're saying he's placed his character,

8 and it's his position now that specific acts may be adduced

9 in the examination, is that correct?

10 MR. HORAN: Yes, Your Honor.

11 THE COURT: Mr. Lynch, you say no?

12 MR. LYNCH: No, sir. There is authority for that.

13 He says it is Hornbook law but not for the Defendant.

14 MR. HORAN: Your Honor, let me at this juncture ask

15 the specific character question.

16 THE COURT: If you want to lay the foundation you

17 are pointing out before Mr. Horan, then I think it's incumbent

18 upon you at this time to do that.

19 MR. HORAN: All right.

20 THE COURT: And --

21 MR. HORAN: She has already said in answer to her

22 question that he never threatened her.

23 And so --

1 THE COURT: That's true.

2 MR. HORAN: So Defense is not hurt by that, that

3 helps them.

4 THE COURT: Right. No problem with that.

5 MR. HORAN: I want to ask her the character.

6 THE COURT: I don't think you have to get into the

7 general character questions that you were talking about just a

8 while ago.

9 MR. HORAN: Right.

10 THE COURT: All right.

11 MR. HORAN: Okay.

12 (The Proceedings resumed within the hearing of the

13 Jury:)

14 BY MR. HORAN: (Resuming.)

15 Q. Miss King, have you ever, in any community in which

16 you lived; have you ever heard Leroy Baker's character for

17 peace and good order discussed?

18 A. I don't know.

19 Q. You don't know whether you ever heard that discussed?

20 A. Right.

21 MR. HORAN: I have no other questions.

22 THE COURT: All right, sir. Mr. Lynch?

23 MR. LYNCH: No other questions.

1 THE COURT: All right. May this Witness be excused?
2 All right, thank you. You're free to go, ma'am. You
3 may leave or stay in the Courtroom, as you would like.
4 MR. LYNCH: That's the Defendant's case, Your Honor.
5 THE COURT: Does Commonwealth have any rebuttal?
6 MR. HORAN: One Witness, Your Honor. Gerald Spears.
7 MR. LYNCH: Your Honor, Mr. Spears is being called
8 as a rebuttal witness and I would like to discuss the matter
9 with the Court and Commonwealth.
10 THE COURT: All right. Please come forward, then.
11 (The following was had at the Bench, outside the
12 hearing of the Jury:)
13 MR. LYNCH: Your Honor, I'd like to inquire as to
14 what the essence of that testimony of Gerald Spears is to see
15 whether --
16 MR. HORAN: I haven't talked with Mr. Spears because he
17 showed up late, but he will testify as he did downstairs that
18 this Defendant never turned his back. It was testified he
19 turned back and was going away.
20 THE COURT: He was present at the scene, wasn't he?
21 MR. HORAN: He was at the scene.
22 THE COURT: That's why you're bringing him on, as
23 an eyewitness that can testify; you're bringing him on for

1 his eyewitness testimony?

2 MR. HORAN: That's right.

3 MR. LYNCH: But, Your Honor, this should have been --

4 I'm submitting the Court is -- he should have been called as a

5 Witness in chief, because, otherwise -- and if the Court

6 allows the Commonwealth to do this, then they can do it

7 theoretically every time. They can call two or three Witnesses,

8 take a case to the Jury and that puts the Defendant in the

9 position of going forward with the proof, and then they just

10 save their ace Witness for the last Witness.

11 I'd ask the last Witness to be heard before the Jury.

12 What I'm saying to the Court is, not that he wasn't there, not

13 that he's not a competent Witness, not that he may not have

14 relevant testimony, but that he should have been called for the

15 case in chief. Mr. Horan didn't call him and he waived his

16 right to call this Witness.

17 THE COURT: I don't agree with you, Mr. Lynch. I'm

18 going to overrule your objection.

19 MR. LYNCH: Please note my exception.

20 THE COURT: Yes, sir.

21 (The Proceedings resumed within the hearing of the

22 Jury:)

23 MR. HORAN: This Witness has not been sworn, Your

1 Honor.

2 THE COURT: May I ask how old this Witness is,

3 Mr. Horan?

4 MR. HORAN: Fourteen, Your Honor.

5 Whereupon,

6 GERALD F. SPEARS

7 called as a Witness by Counsel for the Commonwealth, having

8 been duly sworn by the Clerk of the Court, was examined and

9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HORAN:

12 Q. State your full name, please?

13 A. Gerald F. Spears.

14 Q. How old are you, Mr. Spears?

15 A. Fourteen.

16 Q. Directing your attention to the early morning hours--

17 speak right into the microphone--directing your attention to

18 the early morning hours of November 29, 1975 did you have

19 occasion to be in Virginia Newman's house on Second Road in

20 Fairfax?

21 A. Yes, sir.

22 Q. What time did you get there?

23 A. I don't know what time it was.

1 Q. Was it the night before or early in the morning of
2 the 29th?
3 A. What do you mean, the night before?
4 Q. In the evening before?
5 A. No, I got there that night.
6 Q. Okay. Were you there when the dice game was going on?
7 A. Yeah.
8 Q. Where was the dice game taking place?
9 A. Upstairs.
10 Q. Who was in the dice game?
11 A. It was Larry, and Leroy, and Aaron. That's all that
12 I know of.
13 Q. Now, is Leroy -- Leroy Baker?
14 A. Yeah.
15 Q. And Aaron, is that Aaron Johnson?
16 A. Yeah.
17 Q. Was Henry Greene in the game?
18 A. No, I didn't see him at it.
19 Q. Henry Greene?
20 A. Henry Greene.
21 Q. I show you this picture, Commonwealth's Exhibit No. 4.
22 Do you know that man?
23 A. Yeah.

1 Q. Who is that?

2 A. That's Frank Greene.

3 Q. Frank Greene? Francis Henry Greene?

4 A. Yeah.

5 Q. You know him as Frank?

6 A. Yeah.

7 Q. Was he in the dice game?

8 A. No, he might have been but I ain't seen him at it

9 because I kept going up and down.

10 Q. Okay. Did there come a time, Mr. Spears, when you

11 saw any shooting take place?

12 A. Yeah.

13 Q. Will you tell the Jury how that happened?

14 A. Well, where everybody said that it was Adrian's

15 money and Leroy said it wasn't. So, then he picked it up.

16 Q. Who picked the money up?

17 A. Adrian. He picked up his money, then --

18 Q. Who is Adrian, is that Aaron Johnson?

19 A. Yeah.

20 Q. Okay.

21 A. And then, Leroy keep telling him to put it down and

22 he didn't and then Leroy went to get his gun. He pulled it

23 out and then he shot him and I ran down the stairs.

1 Q. You ran downstairs?

2 A. Yeah.

3 Q. Did you get a chance to see Mr. Johnson before he got

4 shot?

5 A. Yeah.

6 Q. Did he have a gun?

7 A. I don't know.

8 Q. Did you see one?

9 A. No.

10 Q. Did you see what he was doing before he got shot?

11 A. He was on his knees on the bed

12 Q. Doing what?

13 A. He had one hand down in front of him.

14 Q. What was he doing?

15 A. He was picking up the money.

16 Q. Was that just before he got shot?

17 A. Yeah.

18 Q. Did you at any time see Mr. Johnson threaten Leroy

19 Baker?

20 A. No.

21 Q. You think you would have seen it if he had?

22 A. Yeah.

23 MR. HORAN: No further questions.

1 A. No.

2 Q. Have you talked to these people before you testified

3 here, today?

4 A. No.

5 Q. About what happened that night?

6 A. No.

7 Q. Now I believe you said that Aaron Johnson's hands

8 were where as Leroy shot him?

9 A. One was in front of him, one was kind of like beside

10 him.

11 Q. Could you stand up, please, and show up what you're

12 talking about?

13 A. Sort of like this. (Indicating.)

14 Q. Please continue, Gerald. Where was the other hand?

15 A. Like right here (indicating) beside him.

16 Q. By his pocket?

17 A. It wasn't by his pocket, it was down more.

18 Q. His right hand, then?

19 A. All's I know is what hand it was.

20 Q. As a matter of fact, you don't know where his hands

21 were, do you?

22 A. I know ~~where his~~ hands were.

23 Q. As he was shot, do you know where his hands were?

1 A. No, not really; I wasn't looking at his hands.

2 Q. As Leroy Baker shot him, you don't know where Aaron

3 Johnson's hands were?

4 A. I wasn't looking at his hands.

5 Q. Now, you don't know whether or not Aaron Johnson

6 had a gun, do you?

7 A. No.

8 Q. You're not saying he did; you're not saying he didn't.

9 MR. LYNCH: All right, that's all.

10 THE COURT: Anything else, Mr. Horan?

11 MR. HORAN: No, Your Honor.

12 THE COURT: All right. Thank you very much. You

13 may step down or you may remaim in the Courtroom or leave as

14 you see fit.

15 For the Jury, I would ask you to retire at this time

16 It is necessary for the Court to hear any motions of counsel

17 and to go over the Instructions that will be given to you

18 prior to summation by counsel. You may retire.

19 (The Jury retired from the Courtroom, and the

20 following was had outside the hearing of the Jury:)

21 MR. LYNCH: Your Honor, at this time I would like to

22 renew my motion to strike. Mr. Horan got a rebuttal Witness

23 in so fast I didn't even have a chance to make it at that time.

1 P R O C E E D I N G S

2 THE COURT: Gentlemen, are you ready for the Jury
3 to be brought in?
4 MR. LYNCH: Yes.
5 MR. HORAN: Ready for the Commonwealth, Your Honor.
6 THE COURT: Members of the Jury, I have before me the
7 Instructions which contain the law applicable to this case.
8 I'm now going to read them to you. You will not understand
9 them in their entirety. I can assure you of that, right now.
10 But, please, read them when you're back in the Juryroom and
11 attempt to understand the meaning of them.
12 I have placed them in the order in which I think is
13 relevant but the order in which they are read to you is not
14 relevant to your decision. You may review them in the order
15 which you care to do.
16 Now, here are the Instructions. There are 26 of them
17 and I'm going to take them one at a time. In this case, you
18 may find any one of the following verdicts with respect to the
19 death of Aaron Johnson.
20 One: That the Defendant is guilty of murder in the
21 first degree. Murder in the first degree is punishable by
22 confinement in the penitentiary for life or for any term not
23 less than 20 years.

Jpm

INSTRUCTION NO. 1

The Court instructs the jury that the defendant is presumed to be innocent of the offense with which he is charged and this presumption of innocence goes with him through the entire case and applies at every stage thereof and is sufficient to require you to find the defendant not guilty unless and until the Commonwealth upon whom the burden rests, proves his guilt beyond a reasonable doubt.

JPM

INSTRUCTION NO. 2.

The Court instructs the jury that the jury are the sole judges of the credibility of the witnesses; and in determining the weight given to the testimony of the witnesses the jury may consider the appearance and demeanor of the witness on the witness stand; their manner of testifying; their apparent intelligence or lack of it; their interest or lack of it in the outcome of the case; their temper, feeling or bias, if any has been shown; their opportunity for knowing the truth and having observed the things concerning which they testify; and from these and all other surrounding circumstances at the trial; the jury are to determine which witnesses are more worthy of credit and give credit accordingly.

withdrawn

1

INSTRUCTION NO. 3

The Court instructs the jury that the burden resting upon the Commonwealth to prove guilt of the defendant beyond a reasonable doubt does not require that such guilt be proven beyond every imaginable, conceivable or possible doubt, but only beyond a reasonable doubt. The jury must limit its consideration to the evidence introduced, and you are not to go outside the evidence to hunt up doubts, nor must you entertain doubts which are speculative or conjectural. And if, upon a consideration of all the evidence you are satisfied of the guilt of the defendant beyond a reasonable doubt, then you shall find him guilty.

INSTRUCTION NO. 4

The Court instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer, without any provocation or even with slight provocation, is prima facie wilful, deliberate and premeditated killing, and throws upon the slayer the necessity of showing extenuating circumstances.

INSTRUCTION NO. 5

The Court instructs the jury that the presumption referred to in Instruction No. 4 is not a conclusive presumption but may be overcome by proof of extenuating circumstances sufficient to create a reasonable doubt in favor of the defendant, either as to the degree of the offense or as to his guilt or innocence. You are the judges of whether the weapon used by the defendant in this case was a deadly weapon when used in the manner and under the circumstances in which it was used as disclosed by the evidence.

Jpm

INSTRUCTION NO. 6

The Court instructs the jury that ~~if the~~ if there is an absence of proof to the contrary, malice may be implied from the deliberate use of a deadly weapon, when used in a manner calculated to take the life of another human being.

INSTRUCTION NO. 6

Jpm

The Court instructs the jury that if there is an absence of proof to the contrary, malice may be implied from the deliberate use of a deadly weapon, when used in a manner calculated to take the life of another human being.

INSTRUCTION NO. 7

The Court instructs the jury that the malice necessary to constitute a crime of murder may be either express or implied. The word "malice" in the foregoing definition of murder is used in a technical sense, and includes not only anger, hatred and revenge, but every unlawful and unjustifiable motive. It is not confined to ill will to any one or more particular persons, but is intended to denote an action flowing from a wicked or corrupt motive, done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them the plain indication of a heart deliberately bent on mischief; therefore, malice is implied by law from any willful, deliberate and cruel act against another, however sudden.

Jpm

INSTRUCTION NO. 8

The Court instructs the jury that to constitute a willful, deliberate, and premeditated killing, it is not necessary that the intention to kill should exist for any particular length of time prior to the actual killing; it is only necessary that such intention should have come into existence for the first time at the time of such killing, or at any time previously.

INSTRUCTION NO. 9

The Court instructs the jury that every unlawful homicide is presumed to be murder in the second degree.

In order to elevate an unlawful homicide to murder in the first degree, the burden or proving the elements thereof is upon the Commonwealth.

It is your duty to consider all of the testimony, no matter by whom introduced, and ascertain therefrom if the defendant is guilty or innocent, and if guilty, of what offense.

INSTRUCTION NO. 10

The Court instructs the jury that murder in the first degree is the willful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Aaron Francis Johnson, then you shall find him guilty of murder in the first degree, ~~and fix his punishment at confinement in the penitentiary for life, or for any term not less than twenty years~~ as specified in Instruction D, paragraph numbers 2 & 3.

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Aaron Francis Johnson, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree, ~~and fix his punishment at confinement in the penitentiary not less than five nor more than twenty years.~~ as specified. P2

P3

Instruction No. 10

The Court instructs the jury that murder in the first degree is the willful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Aaron Francis Johnson, then you shall find him guilty of murder in the first degree and fix his punishment as specified in Instruction A, paragraph 1.

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Aaron Francis Johnson, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree and fix his punishment as specified in Instruction A, paragraph 2.

The Court instructs the jury that voluntary manslaughter is the unlawful killing of another without malice, either upon sudden heat of passion, upon reasonable provocation, or in mutual combat, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Aaron Francis Johnson, without malice in a sudden heat of passion, upon reasonable provocation, or in mutual combat, you shall find him guilty of voluntary manslaughter, and fix his punishment as specified in Instruction A, paragraph 3.

INSTRUCTION NO. 10

The Court instructs the jury that murder in the first degree is the willful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Aaron Francis Johnson, then you shall find him guilty of murder in the first degree and fix his punishment as specified in Instruction A, paragraph 1.

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Aaron Francis Johnson, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree and fix his punishment as specified in Instruction A., paragraph 2.

The Court instructs the jury that voluntary manslaughter is the unlawful killing of another without malice, either upon sudden heat of passion, upon reasonable provocation, or in mutual combat, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Aaron Francis Johnson, without malice in a sudden heat of passion, upon reasonable provocation, or in mutual combat, you shall find him guilty of voluntary manslaughter and fix his punishemtn as specified in Instruction A, paragraph 3.

INSTRUCTION NO. 11

The Court ~~instruction~~ instructs the jury that murder in the first degree is the willful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Henry Francis Greene, then you shall find him guilty of murder in the first degree, Instruction A and punish him as provided, ~~paragraph 1.~~

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Henry Francis Greene, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree, Instruction A and punish him as provided in ~~paragraph 2.~~

The Court instructs the jury

and if you believe from the evidence beyond a reasonable doubt that the defendant ~~without malice~~ killed AFG without malice and upon sudden heat of passion

you shall find him guilty of voluntary manslaughter & punish him as provided in instruction A

INSTRUCTION NO. 11

The Court instructs the jury that murder in the first degree is the willful, deliberate, premeditated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Henry Francis Greene, then you shall find him guilty of murder in the first degree, ~~and fix his punishment at confinement in the penitentiary for life, or for any term not less than twenty years~~. A1 TP numbered

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Henry Francis Greene, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree, ~~and fix his punishment at confinement in the penitentiary not less than five nor more than twenty years~~. A1 P2

A1 TP3

INSTRUCTION NO. 11

The Court instructs the jury that murder in the first degree is the willful, deliberate, premediated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Henry Francis Greene, then you shall find him guilty of murder in the first degree, and ~~punish~~ fix his punishment ~~him~~ as ~~prescribed~~ specified in Instruction A 1, paragraph 1.

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Henry Francis Greene, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree and ~~punish him as provided~~ fix his punishment as specified in Instruction A 1,paragraph 2.

The Court instructs the jury that involuntary manslaughter is the killing of one accidentally, contrary to the intention of the defendant, while in the prosecution of some unlawful, but not felonious, act, and if you believe from the evidence, beyond a reasonable doubt, that the defendant accidentally contrary to the intention of the defendant, while in the prosecution of some unlawful, but not felonious act

did kill Henry Francis Greene, then you shall find him guilty of involuntary manslaughter ~~and punish him as provided~~ and fix his punishment as specified in Instruction A 1 paragraph 3.

INSTRUCTION NO. 11

The Court instructs the jury that murder in the first degree is the willful, deliberate, premediated and malicious killing of a human being, and if you believe from the evidence, beyond a reasonable doubt, that the defendant willfully, deliberately, premeditatedly and maliciously killed Henry Francis Greene, then you shall find him guilty of murder in the first degree and fix his punishment as specified in Instruction A-1, paragraph 1.

The Court instructs the jury that murder in the second degree is the unlawful killing of a human being with malice and without premeditation and deliberation, and if you believe from the evidence, beyond a reasonable doubt, that the defendant unlawfully killed Henry Francis Greene, with malice but without premeditation and deliberation, you shall find him guilty of murder in the second degree and fix his punishment as specified in Instruction A-1, paragraph 2.

The Court instructs the jury that involuntary manslaughter is the killing of one accidentally, contrary to the intention of the defendant, [while in the prosecution of some unlawful, but not felonious, act,] and if you believe from the evidence, beyond a reasonable doubt, that the defendant accidentally, contrary to the intention of the defendant, while in the prosecution of some unlawful, but not felonious act did kill Henry Francis Greene, then you shall find him guilty of involuntary manslaughter and fix his punishment as specified in Instruction A-1, paragraph 3.

Jpm

INSTRUCTION NO. 12

The Court instructs the jury that the law of self defense is the law of necessity, and the necessity relied upon to justify the shooting must not have arisen out of the defendant's own misconduct.

INSTRUCTION NO. 13

The Court instructs the jury ~~even should~~ that if you believe that the defendant through fear believed that it was necessary to shoot as he did in order to save his own life or avoid serious bodily harm, unless you further believe from the evidence that the deceased had made some overt act indicative of imminent danger to the defendant, then the defendant cannot rely upon a plea of self-defense.

INSTRUCTION NO. 13

Jpm

The Court instructs the jury if you believe that the defendant through fear believed that it was necessary to shoot as he did in order to save his own life or avoid serious bodily harm, unless you further believe from the evidence that the deceased had made some overt act indicative or imminent danger to the defendant, then the defendant cannot rely upon a plea of self-defense.

INSTRUCTION NO. A

In this case, you may find any one of the following verdicts with respect to the death of Aaron Johnson:

1. That the defendant is guilty of murder in the first degree. Murder in the first degree is punishable by confinement in the penitentiary for life or for any term not less than twenty years.

2. That the defendant is guilty of murder in the second degree. Murder in the second degree is punishable by confinement in the penitentiary not less than five nor more than twenty years.

3. That the defendant is guilty of voluntary manslaughter. Voluntary manslaughter is punishable by confinement in the penitentiary not less than one nor more than ten years, or in your discretion, by a fine not exceeding $1,000.00 or confinement in jail not exceeding one year, or both

4. That the defendant is not guilty.

INSTRUCTION NO. #1

In this case, you may find any one of the following verdicts with respect to the death of Aaron Johnson:

1. That the defendant is guilty of murder in the first degree. Murder in the first degree is punishable by confinement in the penitentiary for life or for any term not less than twenty years.

2. That the defendant is guilty of murder in the second degree. Murder in the second degree is punishable by confinement in the penitentiary not less than five nor more than twenty years.

3. That the defendant is guilty of voluntary manslaughter. Voluntary manslaughter is punishable by confinement in the penitentiary not less than one nor more than ten years, or in your discretion, by a fine not exceeding $1,000.00 or confinement in jail not exceeding one year, or both.

4. That the defendant is guilty of involuntary manslaughter. Involuntary manslaughter is punishable by confinement in the penitentiary not less than one nor more than five years, or in your discretion, by a fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both.

5. That the defendant is not guilty.

Greene: 1st
2nd
Inv. Mans.
N/G

INSTRUCTION NO. A-1

In this case, you may find any one of the following verdicts with respect to the death of Henry Francis Greene:

1. That the defendant is guilty of murder in the first degree. Murder in the first degree is punishable by confinement in the penitentiary for life or for any term not less than twenty years.

2. That the defendant is guilty of murder in the second degree. Murder in the second degree is punishable by confinement in the penitentiary not less than five not more than twenty years.

3. That the defendant is guilty of involuntary manslaughter. Involuntary manslaughter is punishable by confinement in the penitentiary not less than one nor more than five years, or in your discretion, by a fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both.

4. That the defendant is not guilty.

INSTRUCTION NO. 6

Even though you may believe from the evidence beyond a reasonable doubt that the defendant killed Aaron Johnson, if you further believe from the evidence that the killing was not from malice, but was done in the heat of passion, upon reasonable provocation, then you shall not find the defendant guilty of any higher offense than voluntary manslaughter.

withdrawn

INSTRUCTION NO. C

The jury are the sole judges of the credibility of the witnesses; and in determining the weight given to the testimony of the witnesses the jury may consider the appearance and demeanor of the witness on the witness stand; their manner of testifying; their apparent intelligence or lack of it; their interest or lack of it in the outcome of the case; their temper, feeling or bias, if any has been shown, their opportunity for knowing the truth and having observed the things concerning which they testify; and from these and all other surrounding circumstances at the trial, the jury are to determine which witnesses are more worthy of credit and give credit accordingly.

INSTRUCTION NO. D

If you believe from the evidence that any witness has knowingly testified falsely as to any material fact in this case, you have a right to discredit all of the testimony of such witness or to give to such testimony such weight and credit as in your opinion it is entitled.

INSTRUCTION NO. E

The burden is upon the Commonwealth to prove by the evidence beyond a reasonable doubt every material and necessary element of the offense charged against the defendant. It is not sufficient that the jury may believe his guilt probable, or more probable than his innocence. Suspicion or probability of guilt, however strong, will not authorize a conviction, but the evidence must prove his guilt beyond a reasonable doubt. The jury shall not speculate or go outside of the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence introduced by the Commonwealth and the defense, and unless you believe, upon a consideration of all the evidence before you, that guilt of the defendant has been proved beyond a reasonable doubt as to every material and necessary element of the offense charged against him, then you shall find the defendant not guilty.

INSTRUCTION NO. F

The finding of the indictment by the Grand Jury against the defendant in this case is no evidence against him and must not be permitted to influence the jury in any manner in arriving at a verdict.

INSTRUCTION NO. 6

The mere fact that a person who was present at the scene where a crime was committed thereafter leaves the scene, creates no presumption that such person is guilty of having committed the crime.

INSTRUCTION NO. 4

If you believe from the evidence that the defendant at the time of the shooting was without fault on his part and was being attacked by ~~the deceased~~ Aaron Johnson, and further that he reasonably feared death or serious bodily harm to himself at the hands of the deceased, then he had the right to stand his ground and, if necessary, kill his assailant. And if you further believe this to be the situation in the instant case, you shall find the defendant not guilty of the killing of Aaron Johnson.

INSTRUCTION NO. H

If you believe from the evidence that the defendant at the time of the shooting was without fault on his part and was being attacked by Aaron Francis Johnson and further that he reasonably feared death or serious bodily harm to himself at the hands of the deceased, then he had the right to stand his ground and, if necessary, kill his assailant. And if you further believe this to be the situation in the instant case, you shall find the defendant not guilty of the killing of Aaron Francis Johnson.

INSTRUCTION NO. I

In passing upon the danger, if any, to which the defendant was exposed, you will consider the circumstances as they reasonably appeared to the defendant, and draw such conclusions from these circumstances as he, the defendant, could reasonably have drawn, situated as he was at the time; and the Court instructs you that the defendant is entitled to be tried and judged by facts and circumstances as they reasonably appeared to him and not by any intent that may or may not have existed in the mind of the deceased.

withdrawn

INSTRUCTION NO. 5

When a person reasonably apprehends that another intends to attack him for the purpose of killing him or doing him serious bodily har, then such person has a right to arm himself for his own necessary self-protection, and in such case, no inference of malice can be drawn from the fact that he prepared for it.

INSTRUCTION NO. K

Withdrawn

If you believe from the evidence that the defendant, although in some fault in the first instance in provoking or bringing on the difficulty, was attacked by the deceased, and that he, the defendant, retreated as far as possible and announced his desire for peace, then if you further believe from the evidence that he killed the deceased while acting upon a reasonable apparent necessity to preserve his own life or save himself from great bodily harm, you shall find the defendant not guilty.

INSTRUCTION NO. 2 spm

The defendant in this case pleads self defense in the shooting of the deceased, Aaron Johnson, and you have the right in determining his guilt or innocence, to consider any reputation of the deceased for being a person of violent or turbulent disposition.

INSTRUCTION NO. M

As to each count of the indictment,

The Commonwealth must prove from the evidence beyond a reasonable doubt every material fact and if the jury have a reasonable doubt as to the grade of the offense, then they must resolve the doubt in favor of the defendant and find him guilty of the lower grade; to illustrate, if you have a reasonable doubt as to whether he is guilty of murder in the first degree or second degree, you should find him guilty of second degree; if you have reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, you should find him guilty of manslaughter; if you have a reasonable doubt as to whether he be guilty at all, you must resolve that doubt in favor of the defendant and acquit him.

INSTRUCTION NO. M

As to each Count of the indictment, the commonwealth must prove from the evidence beyond a reasonable doubt every material fact and if the jury have a reasonable doubt as to the grade of the offense, then they must resolve the doubt in favor of the defendant and find him guilty of the lower grade; to illustrate, if you have a reasonable doubt as to whether he is guilty of murder in the first degree or second degree, you should find him guilty of second degree; if you have reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, you should find him guilty of manslaughter; if you have a reasonable doubt as to whether he be guilty at all, you must resolve that doubt in favor of the defendant and acquit him.

withdrawn

INSTRUCTION NO. N

In order to convict the defendant of murder in the first degree the burden is upon the Commonwealth to prove beyond a reasonable doubt that the killing was wilful, deliberate and premeditated with malice; and unless the Commonwealth has proven these elements beyond a reasonable doubt, then the defendant cannot be guilty of murder in the first degree.

INSTRUCTION NO. 0

While it is not necessary for the Commonwealth to prove a motive for the killing, nevertheless the presence or absence of a motive is a question for consideration by you as bearing on the guilt or innocence of the defendant.

withdrawn

INSTRUCTION NO. P

In order for the killing to amount to murder in the second degree, although it is not necessary for the Commonwealth to prove wilfulness, deliberation and premeditation, it is incumbent upon the Commonwealth to prove that the defendant acted with malice, and unless you believe from the evidence beyond a reasonable doubt that he did act with malice, you cannot find the defendant guilty of second degree murder.

included in 10

INSTRUCTION NO. Q

Voluntary manslaughter is the unlawful killing of another without malice, upon sudden heat of passion, upon reasonable provocation, or in mutual combat.

INSTRUCTION NO. R

In order for the killing to amount ~~of~~ to voluntary manslaughter, such killing must have resulted from an intentional act, without malice, either upon sudden heat of passion, upon reasonable provocation, or in mutual combat, and if the Commonwealth has not proved such beyond a reasonable doubt, then the defendant cannot be guilty of that crime.

INSTRUCTION NO. R

In order for the killing to amount to voluntary manslaughter, such killing must have resulted from an intentional act, without malice, either upon sudden heat of passion, upon reasonable provocation, or in mutual combat, and if the Commonwealth has not proved such beyond a reasonable doubt, then the defendant cannot be guilty of that crime.

included in # 11

INSTRUCTION NO. 5

Involuntary manslaughter is the killing of one accidentally, contrary to the intention of the defendant, while in the prosecution of some unlawful, but not felonious, act; ~~or in the unlawful performance of a lawful act, accompanied by such carelessness~~ or ~~recklessness on the part of the defendant as is incompatible with a proper regard for human life~~.

Withdrawn

INSTRUCTION NO. I

The gist of the crime of involuntary manslaughter is criminal negligence; it must be shown that the negligence of the defendant was gross or culpable negligence; culpable or gross negligence is that which indicates a callous disregard of human life and of the probable consequences of his act; criminal liability cannot be predicated upon every act carelessly performed merely because such carelessness results in the death of another, but in order for criminal liability to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death; and unless you believe from the evidence beyond a reasonable doubt that the defendant was guilty of negligence so culpable or gross as to indicate a callous disregard of humand life and of the probable consequences of his act, you cannot find him guilty of involuntary manslaughter.

INSTRUCTION NO. U

Where, as in the case at bar, the defense is that the killing of Francis Greene was an accident, the defendant is not required to prove this fact, beyond a reasonable doubt, or by a preponderance of the evidence, but the burden is upon the Commonwealth to prove beyond a reasonable doubt that said killing was not accidental; therefore, if, after hearing all the evidence, you have a reasonable doubt whether said killing was accidental, or that it was intentional, then you should find the defendant not guilty of killing Francis Greene.

INSTRUCTION NO. U

Where, as in the case at bar, the defense is that the killing of Francis Greene was an accident, the defendant is not required to prove this fact, beyond a reasonable doubt, or by a preponderance of the evidence, but the burden is upon the Commonwealth to prove beyond a reasonable doubt that said killing was not accidental; therefore, if, after hearing all the evidence, you have a reasonable doubt whether said killing was accidental, or that it was intentional, then you should find the defendant not guilty.

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	
	)	
v.	)	CRIMINAL NO. F-22363
	)	
LEROY H. BAKER,	)	
	)	
Defendant	)	

NOTICE OF APPEAL

The Defendant, Leroy H. Baker, by counsel, hereby gives notice that he appeals the Judgment of Conviction in the above styled case on grounds set out below.

ASSIGNMENTS OF ERROR

1. The trial court committed reversible error in granting Commonwealth's Instructions 4, 5, 6, 7 and 9 in that such instructions violated the due process of law concept announced in Mullaney v. Wilbur, 421 U.S. 684.

2. The trial court committed reversible error in granting Commonwealth's Instruction 8 in that such instruction states that the intention (referring to premeditation) can exist at the time of the killing, which concept appears to be in direct contradiction to the word "premeditation."

3. Any errors properly preserved which appear in the transcript of the trial.

STATEMENT OF INTENTION OF
FILING OF TRANSCRIPT

The Defendant, Leroy H. Baker, by counsel states that a transcript of the trial and other incidents of trial will hereafter be filed.

Respectfully submitted,

LEROY H. BAKER

By /S/
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Counsel for Defendant

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