CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
OCT 17 1978
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 780524

HOWARD EUGENE JORDAN
Appellant

v.

COMMONWEALTH OF VIRGINIA
Appellee

JOINT APPENDIX

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Richmond, Virginia 23224

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TABLE OF CONTENTS

	Appendix Page
Summons dated 8-6-77	1
Warrant of Arrest dated 8-6-77	2
Indictment dated 11-7-77	3
Excerpts of Transcript of Testimony Heard 1-17, 18, 1978 Before the Honorable J. Randolph Tucker, Jr.	
Testimony of John H. Barrett, Jr.	4
Testimony of Patrolman David E. Nagle	11
Testimony of Samuel L. Jackson	14
Testimony of John Bledsoe, Jr.	23
Discussion between Court and Counsel	32
Testimony of Howard Eugene Jordan	34
Discussion between Court and Counsel	54
Instruction No. 1-A filed 1-17-78	58
Order dated 1-17-78	59
Order dated 1-18-78	61
Assignment of Error filed 4-17-78	63

CS 140111-A

COMMONWEALTH OF VIRGINIA
City of Richmond { To-Wit:

№ 10404

TO ANY POLICE OFFICER:

WHEREAS, David E. Nagle has this day made complaint and information on oath, before me, the undersigned, a Magistrate of said city, that Howard Eugene Jordan did on the 6th day of August, 19 77:

Unlawfully

and feloniously assault and wound one John H. Barrett, with a pistol, with the intent to maim, disfigure, disable or kill.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Richmond General District Court, Criminal Division of the City of Richmond, the body of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon

David E. Nagle & Sgt Earl G. Barry	PC	Address
John H. Barrett		Address 518 Bacon St.
		Address
		Address
		Address

as witnesses.

Given under my hand and seal, this 6th day of August, 19 77.

Marion A. Lee (SEAL)
Magistrate

1

001

COMMONWEALTH OF VIRGINIA,
CITY OF RICHMOND

Howard Eugene Jordan (Name of accused) and Ellen Goffney, 2331 Seldon St. (surety)

each (if more than one) acknowledges himself indebted to the Commonwealth of Virginia in the sum of Five Hundred (Cash)

($ _____)and waives all benefit under the homestead exemption laws of the State of Virginia as to this obligation.

The condition of this obligation is that if Howard Eugene Jordan (accused) shall appear personally before the Richmond General District Court, Criminal Division on the Howard Jordan day of 8th September, 19 77, at 9:30 AM

and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart without leave of the court and shall keep the peace and be of good behavior, then this obligation shall be void when final disposition of the charge is made; otherwise, this obligation shall remain in full force and effect until declared void and released by order of a competent court.

Whenever the context so requires, the masculine shall be deemed to refer to the feminine or neuter and the singular to the plural.

Given under our hands and seals this 6th day of August, 19____. 77

_____ (Name of corporate surety) _____ (SEAL) (Accused)

by _____ Attorney-in-fact (or title of signing officer) _____ (SEAL) (Individual Surety) Mrs. Ellen Goffney

Acknowledged before me in my County (City) on the date last above written. Nancy A. Lee (Signature of acknowledging official)

Bond $ 500 Surety Yes (X) No ( )

Court Date 8-25-77 Docket No. 1511

COMMONWEALTH

vs.

WARRANT OF ARREST

Howard Eugene Jordan

4015 North Ave., Apt #4

Attorney John Mann

BM 30

STATISTICS

Executed this the 6 day of August, 19 77 by arresting the within named party, and, by summoning the within named witnesses to appear in Richmond General District Court, Criminal Division

Upon examination of the within charge, I find the accused

COSTS

Warrant	$
Trial	3.00
Bail	
Arrest	2.00
Clerk, Circuit Ct.	
Issuing Search War.	
Witness Attendance	
Commonwealth Atty.	
Total Costs	$
Fine	
Total	$ 25.00

$10.00 Court
$10.00 CICF

8/23/77

8/25/77

CERTIFIED TO GRAND JURY OF THE RICHMOND CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

November 7, 1977
(Date)

City of Richmond, to-wit:

The GRAND JURY charges that:

On or about August 6, 1977, in the City of Richmond, Howard Eugene Jordan did feloniously and unlawfully and maliciously cause bodily injury to John H. Barrett with intent to maim, disfigure, disable or kill,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-51

David E. Nagle, PC ✓
Earl C. Barry, PC
John H. Barrett ✓

1-17-78

INDICTMENT
FOR
A FELONY

NOV 7 1977

A TRUE BILL

FOREMAN

Witnesses sworn and sent by the court to the Grand Jury to give evidence.

Clerk

003

1 A I sat back at the table, and they
2 were still gambling. So, Jordan said, "I'm going to call
3 my wife. I'm going out of here." So, he told Mr. Jackson
4 to let him out. Mr. Jackson opened the door and let Mr.
5 Jordan out the door. Mr. Jordan left and went outside, came
6 back approximately three or four minutes later, came back
7 through the basement door and ran up right up to me with a
8 pistol in his hand.
9 Q How did you know that, sir?
10 A I seen it. He told me he was going to
11 blow my "mother fucking head off."
12 Q When he came back and pointed the gun
13 at you, what part of your body did he point it?
14 A At my head.
15 Q How far was the pistol from your head?
16 A About like that (witness indicating).
17 Q Twelve to eighteen inches?
18 A Yes.
19 Q What did he say when he pointed it at
20 your head?
21 A When he pointed it at my head, he said
22 he was going "to blow my mother fucking head off."
23 Q What did you do?
24 A I backed up. I said, "I didn't know you
25 were that mad about this." I said, "it ain't worth hurting

1 nobody for, just an argument for words. It ain't worth
2 killing for."
3 Q Did you have a gun in your hand at that
4 time?
5 A No, I didn't have nothing in my hands.
6 Q Did you have a knife?
7 A Nothing at all. No kind of weapon at
8 all.
9 Q What happened then?
10 A That's when he came down on the trigger
11 twice.
12 Q After he pulled the trigger the first
13 time, were you hit from that shot?
14 A I was hit on my arm, right here across
15 the arm (witness indicating).
16 Q Okay, when he pulled this trigger the
17 second time, what happened then?
18 A He hit me right in the mouth in the
19 tongue.
20 Q What did you do when you were hit?
21 A Fell on the floor.
22 Q Do you know of anything Mr. Jordan did
23 at that time?
24 A He left and went out the door.
25 Q Did you have occasion to go to the hospital,

Q Well, the man in the green shirt?

A Right.

Q So, they were there and they would have seen him point that gun?

A There were so many in there; I don't know.

Q You don't know?

A No, I don't.

Q You're testifying you never got up out of that chair before you were shot; is that right?

A Never got up out the chair?

Q Did you get out of that chair and approach Mr. Jordan before the first shot?

A When I got up, I tried to get up when he shot the first one. I tried to get up.

Q After he shot the first one?

A Right, and the second one hit me in the mouth, and he put me down.

Q All right.

Now, he had this gun twelve to -- based on your testimony -- twelve inches from your face, and yet he shot you in the arm?

A The bullet hit me in the arm.

Q Hit you in the arm?

A Uh-huh.

1 Q Now, you never went up, got up out of
2 that chair and approached Mr. Jordan, did you, before you
3 were shot?
4 A (No answer)
5 Q Would you answer the question?
6 A No, sir.
7 Q Where was Mr. Bledsoe when you were shot;
8 do you know?
9 A Over at the table.
10 Q He was over at the table. He wasn't
11 standing beside Mr. Jordan; was he?
12 A He was at the table.
13 Q He was at the table?
14 A As far as I know. I can't remember
15 whether he was standing by Mr. Jordan or not.
16 Q Do you recall him talking to Mr. Jordan
17 with this weapon?
18 A The thing happened so quick, I really
19 didn't get a chance to see who was talking to anybody about
20 it. It happened so quick.
21 Q So, he walked in.
22 How long was it between the time he
23 walked in and he fired the first shot?
24 A When he walked in and stood over me
25 with the gun?

Q Right.

A He cracked down on it.

Q He walked in and pointed the gun at you and fired that quick?

A That's right; pulled the gun.

Q Excuse me?

A That's right.

Q That quick?

A That's right.

Q Have you ever had any previous confrontations with Mr. Jordan?

A No more than (pause) --

Q Run-ins?

A No more than in a crap game, gambling.

Q At these other crap games, have you?

A Well, gambling, you know, you say words to guys gambling. It's not a disturbance or argument or anything. It's just words, one trying to beat the other one's mind and trying to win his money.

Q So, in other words, you have said things to Mr. Jordan previously in a crap game?

A That's right. I would say so.

Q Have you ever been convicted of a felony?

A Yes, sir.

Q Would you speak up?

1 A Right.
2 Q You have?
3 A Right.
4 MR. MANN: That's all the questions I
5 have.
6 I have one other question. Excuse me.
7 Q (Continuing) How much did you weigh
8 before you were shot?
9 A 201 pounds.
10 Q And how tall are you?
11 A Five feet eleven and a half.
12 MR. MANN: That's all the questions I
13 have.
14
15 REDIRECT EXAMINATION
16
17 BY MR. GARRETT:
18 Q Mr. Barrett, how much do you weigh now,
19 sir?
20 A 172 pounds.
21 Q 172.
22 You said that at other crap games you
23 have been involved in, other games, you had words with
24 Mr. Jordan that don't mean anything? It's just words in
25 a card game?

1 Would you explain that?
2 A Explain the words?
3 Q Yes.
4 A Well, I say I'm going to break you, and
5 he told me he was going to break me, things like that.
6 Q By "breaking" what do you mean?
7 A He tries to win my money and I'm trying
8 to win his.
9 Q Okay.
10 Was the subject of those conversations
11 about the cards that you were playing and the dice that you
12 were using, or were they about something else?
13 A No. Just about regular gambling. It's
14 a gambling game. One trying to break the other.
15 Q In other words, the confrontations were
16 directed solely to the game, not anything outside the game?
17 A That's right.
18 MR. MANN: Objection, Your Honor. He's
19 leading the witness.
20 THE COURT: Objection is sustained.
21 Q (Continuing) What was the subject matter
22 of these arguments?
23 A They weren't arguments. Just words you
24 use in a crap game, one trying to win another ones money.
25 MR. GARRETT: All right, thank you.

1 this morning?
2 A Yes, sir, I did.
3 Q Where was Mr. Barrett located at that
4 address when you arrived?
5 A At 2304 Venable Street in a downstairs
6 basement, and Mr. Barrett was like on the floor.
7 Q Would you describe what it was he was
8 near?
9 A If he was near --
10 Q Where he was in the room.
11 A He was in the north end of the room.
12 There's a small table and a chair. He was lying with his
13 feet towards the chair with his head towards the center of
14 the room. His head would have been approximately eight feet
15 from the back wall.
16 Q Okay, and how far were his feet from
17 that particular chair?
18 A One to two feet.
19 Q Did you have occasion to see a table
20 utilized as a crap table?
21 A The table I assumed it was. Yes, sir.
22 Q How far was that table from where you
23 observed Mr. Barrett lying on the floor?
24 A It would have been probably another
25 eight to ten feet to the table from his head.

I have no further questions.

Thank you, Officer.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. MANN:

Q Officer Nagle, you arrived at 1:46 a.m.?

A Yes, sir, on Venable Street.

Q All right, the position you found Mr. Barrett in, you don't know if he had been moved or not by any other individuals; do you?

A I, I was told he had not been moved by any other police officer.

Q I'm not talking about police officers; I'm talking about people that were there.

A Oh, no. I don't believe so.

Q You don't know how long he was lying there or anything?

A The call had first come in at 1:44. I was only about two and a half blocks away at the time.

Q All right, and the blood you found was in this eight to ten feet area from his chair I believe you said?

A No.

1 Q His head was eight to ten feet from this
2 chair and he was lying in the pool of blood?
3 A The eight to ten feet was the distance
4 from his head to the crap table. I said his feet were one
5 to two feet from the chair.
6 Q The blood was on the floor under his
7 head?
8 A Yes, sir.
9 Q That's where you found the blood in this
10 room; is that correct?
11 A Yes, sir.
12 Q You didn't find it any other place?
13 A No, sir, just that one pool.
14 Q Just that one spot?
15 A Yes, sir.
16 Q Not on a chair or any other place?
17 A No, sir, not to my recollection.
18 Q You went to this address on North Avenue.
19 That's Mr. Jordan's residence; is that correct?
20 A Yes, sir, it is.
21 Q Did he answer the door?
22 A Yes, sir, he did.
23 Q Was he cooperative with you? Did he
24 resist arrest or anything like that?
25 A No, sir.

1 opened the back door to the basement and let him
2 out the back door, him and some more fellows. It
3 was dark. Somebody ran by me. I closed the back
4 door and came back in there, and when I looked up,
5 Moose was standing there by the icebox with the
6 pistol down by his side.
7 Q (Continuing) It was down by his side?
8 A Yes, sir. Barrett was --
9 Q Just a second. Let's stop here.
10 Where was Barrett in relationship to
11 where Moose or Mr. Jordan was standing?
12 A He was sitting about six to eight feet
13 away.
14 So, Moose told Barrett, "say what you
15 said awhile ago." Barrett stood up and walked towards him,
16 charging him. He didn't run. He was walking.
17 Q But he "charged" him?
18 A Yeah. He was coming all the time.
19 When the first shot fired, they was almost kissing each
20 other.
21 Q They were this close (indicating)?
22 A He blocked the first one, and I was
23 standing beside there, and the next one hit him right in
24 the mouth. If he had been sitting six or eight feet away
25 and that bullet which I never --

took place?

A I would say anywhere from three to five minutes.

Q He was there three to five minutes before Mr. Barrett came towards him?

A Right.

Q Mr. Barrett testified that Mr. Jordan got up and fired that shot at him. It didn't happen that way?

A No, it didn't.

Q You are friends with both of these men; aren't you?

A Yes, sir, and I'm telling you the truth about this.

CROSS-EXAMINATION

BY MR. GARRETT:

Q Mr. Jackson, I'm going to ask you some questions and I want you to answer exactly the question I ask, nothing else; okay?

A Okay.

Q After Mr. Barrett was shot and fell down on the floor, did you move his body before the police officers

1 got there?
2 A No, I did not; just turned him over.
3 Q Other than turning him over --
4 A Just turned him over.
5 Q Now, you said that when you opened the
6 back door to the basement to let the person who was suffering
7 from an asthma attack out, several other people left.
8 Who were they?
9 A Well, guys called by different names.
10 Q What are their names?
11 A My name?
12 Q What are the names of those people who
13 left?
14 A Well, the guy who left, he was, it was,
15 I can't think of the fellow right now because a lot of people
16 I don't know by name, just by nicknames.
17 Q What were their nicknames?
18 A Charlie Brown and Joe Turner.
19 Q Charlie Brown and Joe Turner?
20 A Yes, sir.
21 Q How many left?
22 A Four.
23 Q Who were the other two?
24 A John Bledsoe was there.
25 Q John Bledsoe.

1 A Yes, sir.
2 Q And you saw Mr. Barrett at the small
3 table?
4 A Yes, sir.
5 Q Who said something first, Mr. Barrett or
6 Mr. Jordan?
7 A Well, I came back, when I locked the door
8 and came back, he was standing there. He said, "say what
9 you --
10 Q Who said that?
11 A Moose.
12 Q Mr. Jordan?
13 A Yes.
14 Q "Say what you said before"?
15 A Yes.
16 Q And where was the gun when he said that?
17 A Down by his side.
18 Q Did Mr. Barrett respond?
19 A Barrett got up and said, "all right."
20 He said, "you got me now." He got up and started towards him.
21 Q Started walking towards him?
22 A Started walking towards him.
23 Q Where did he walk?
24 A He walked over to him.
25 Q To where Mr. Jordan was standing next to

1 A No, I didn't see the second shot as fast
2 as it was going.
3 Q Did you see him pull the trigger the
4 second time?
5 A I just heard it.
6 Q My question was, sir: Did you see it?
7 A I didn't see it.
8 Q That's all I want to know. You did not
9 see the second shot.
10 Would you describe the speed that Mr.
11 Barrett utilized when he went from where he was sitting at
12 the table to the icebox? Did he walk slowly? Did he run?
13 Did he skip? Did he hop or did he jump over there?
14 A He was walking slow.
15 Q He was walking slowly, and would you
16 tell us what he had in his hand?
17 A I didn't see nothing in his hand because
18 he had his hand, gun, by his side when he was walking.
19 Q Did you see anything in his hand?
20 A Nothing.
21 Q At any time when the arm went to block
22 the shot, did you see anything in the hand?
23 A I didn't see anything.
24 Q In the other hand?
25 A I didn't see nothing.

1 Q (Continuing) Sir, have you ever been
2 convicted of a felony?
3 A No.
4 Q Have you ever been convicted of a
5 misdemeanor involving moral turpitude involving such as
6 lying,stealing or cheating?
7 A No, never.
8 MR. GARRETT: Thank you.
9
10 REDIRECT EXAMINATION
11
12 BY MR. MANN:
13 Q Mr. Jackson, at the time when John
14 Barrett was shot, he was quite a bit heavier than he was
15 now?
16 A John's always been big.
17 Q He's a big, strong man; isn't he?
18 A Yes, he's big.
19 Q Now, did Mr. Jordan say anything else
20 when he left?
21 A No, he didn't say nothing.
22 Q And both Mr. Barrett and Mr. Jordan had
23 argued before discussing one was going to kill the other one,
24 or something like that?
25 A That's right.

1 out which is the correct one.
2 Immediately before the shooting, you
3 said that the defendant came back in and said to
4 Mr. Barrett, "say what you said before." The first
5 time you said that Mr. Barrett got up and walked
6 slowly towards the defendant and said, "all right,
7 you got me now." Then a little later, when you were
8 describing what happened before the shooting, you
9 said Barrett walks slowly towards the defendant
10 and said nothing as he approached the defendant.
11 Which is the right answer?
12 THE WITNESS: When he got up and slowly
13 walked towards the defendant, he did not say
14 nothing. He said, when he was sitting in the
15 chair, he said, "all right, you got me."
16 THE COURT: And that was immediately
17 after the defendant said, "say what you said
18 before"?
19 THE WITNESS: Yes, that was before.
20 THE COURT: All right. That explains it.
21 Thank you.
22 THE WITNESS: All right.
23 MR. MANN: Can I ask one question, sir?
24 THE COURT: All right.
25 Q (Continuing) Now, you said he walked

1 slowly towards him?
2 A Yes, slowly towards him.
3 Q I believe you said he "charged over"?
4 A No.
5 THE COURT: Objection?
6 MR. GARRETT: I didn't hear the question.
7 THE COURT: You'd better listen because
8 he's asking a very leading question.
9 MR. GARRETT: I'll object.
10 MR. MANN: Judge, I object to the Court --
11 THE COURT: The object is overruled.
12 I'm simply, the Court can rule on a leading question
13 itself, Mr. Mann.
14 MR. MANN: All right.
15 Q (Continuing) What did he do? He walked
16 slowly over, directly toward --
17 A Towards him.
18 Q Towards Mr. Jordan?
19 A That's right.
20 Q In other words, when you say "walk,"
21 it's not like he ran over?
22 A No, he didn't run.
23 Q He walked?
24 A He walked.
25 Q Normal walk?

A Just slow walking.

Q Normal walk?

A A normal walk.

MR. MANN: That's all the questions I have.

THE COURT: All right, you may step down.

THE WITNESS STOOD ASIDE

THE COURT: Next witness.

MR. MANN: Your Honor, I would call Mr. John Bledsoe.

JOHN BLEDSOE, JR., a witness of lawful age called by the defense, having first been duly sworn, testifies and says, viz:

DIRECT EXAMINATION

BY MR. MANN:

Q State your name, please.

1 because if he was going to really shoot him then, he would
2 have shot him.
3 MR. GARRETT: Objection, Your Honor.
4 THE COURT: Objection sustained.
5 The jury will disregard the answer. It
6 was volunteered.
7 Q (Continuing) All right.
8 So, then Mr. Jordan turned over toward
9 your direction?
10 A Yes.
11 Q With the gun on his side?
12 A Right, and John was in front of him in
13 the chair.
14 Q Then what happened?
15 A Then when I was telling Moose that it's
16 not worth getting in trouble because you're getting ready to
17 get married, and everything, then John got up and did like
18 that out of the chair (witness indicating), and that's when
19 the gun went off and he fell right in front of him.
20 Q And how far was -- he got up out of the
21 chair. How far was Mr. Barrett from Mr. Jordan when the
22 shot fired? Do you recall?
23 A Well, Jordan was standing about right
24 there (witness indicating).
25 Q Right here?

1 A And like John was sitting about -- come
2 a little closer.
3 THE COURT: Just let him tell you where
4 to stand.
5 THE WITNESS: All right, he was standing
6 a little closer. Right there. John was just like
7 this here, and I was standing over on the right
8 of Moose.
9 Q (Continuing) You turned around like
10 that?
11 THE COURT: Would a proper estimate of
12 this distance be six feet, then?
13 THE WITNESS: Six feet, five feet.
14 Something like that.
15 Q (Continuing) And then Mr. Barrett got
16 out of the chair; is that correct?
17 A Mr. Barrett did like this (witness
18 indicating).
19 Q Toward Mr. Jordan?
20 A Toward Moose.
21 Q And that's when the gun went off?
22 A Yes.
23 Q Did you see where the first shot went?
24 A No. When it first went off, I couldn't
25 see nothing as scared as I was.

1 Q Right or left hand?
2 A Right.
3 Q How long did you and Moose talk?
4 A About three minutes.
5 Q About three minutes, and you were trying
6 to calm him down at this time?
7 A I had done calmed him down.
8 Q You calmed him down?
9 A Uh-huh.
10 Q And at this time Mr. Barrett was still
11 sitting back in that chair?
12 A Still sitting in the chair (witness
13 nodding head affirmatively).
14 Q All right, how did the two parties get
15 together?
16 A What do you mean?
17 Q When the shot was fired, did Moose move
18 anywhere from where he was standing, talking to him, or --
19 A He was turned towards me to my right.
20 Q Turned towards you?
21 A Uh-huh.
22 Q Did he walk to where Mr. Barrett was
23 sitting?
24 A No. He was turned to the right. He
25 was listening to me. He had just about taken his eyes off

Q And you say Mr. Jordan turned?

A Like this here (witness indicating).

Q He was facing to your right or left?

A To my right.

Q He was facing this way?

A He was facing Barrett like this (witness indicating).

Q And you were talking to him?

A So I was talking to him, and then he turned to his side like this (witness indicating).

Q And Mr. Barrett started to stand up?

A I don't know if he started. He come out the side like this (witness indicating).

Q All right.

A He come out of the seat towards him like this (witness indicating).

Q Tell me how the gun got from his side to the point where it shot Mr. Barrett.

A Say that again.

Q Describe how the gun, describe the travel of the gun from down by his side until the time he shot.

A He never moved. The gun was by his side.

Q Oh.

A I guess that's how he managed to --

1 Q I don't want you to reckon, sir. I
2 want you to tell us exactly what happened.
3 A Well, that's how it happened.
4 Q The gun never left his side?
5 A That's right.
6 Q What direction was the gun pointing when
7 you talked to him?
8 A The gun was still at his side pointing
9 this aways.
10 Q The gun was pointed --
11 A Towards --
12 Q -- Mr. Barrett?
13 A Yeah, towards Barrett.
14 Q How was he holding the gun? Like this?
15 Or was he holding it like you would normally?
16 A Normally, like you would hold a gun
17 normally, but by his side.
18 Q Pointing toward the floor or horizon-
19 tally?
20 A I told you it was pointed the way
21 Barrett was sitting.
22 Q Like this with the barrel parallel to
23 the floor?
24 A No.
25 Q Oh, it was pointed toward the floor?

1 A No. It was pointed straight this aways
2 towards where Barrett was sitting.
3 Q It was pointed like this?
4 A But his hand was like this, you know.
5 Q His arm was straight down and he had the
6 grip of the gun, he was gripping the gun?
7 A Yes.
8 Q And he was pointing it towards where
9 Mr. Barrett was?
10 A Yes.
11 Q And you said the gun just went off?
12 A No.
13 Q He pulled the trigger?
14 A I said when Barrett did like that, the
15 gun went off (witness indicating).
16 Q Okay, the gun went off.
17 How many shots did you hear?
18 A Two.
19 Q Two shots.
20 What distance are we talking about from
21 where Mr. Jordan was standing to where Mr. Barrett was
22 sitting? How about the distance between you and I now?
23 A Come a little closer.
24 Q Closer?
25 A Right there.

1 Q Right here?
2 A Right about there.
3 Q Would you say six feet? Eight feet?
4 A About six feet, around six feet.
5 Q And you were standing --
6 A Right here (witness indicating).
7 Q -- to his right?
8 A Uh-huh.
9 Q Did he turn towards Mr. Barrett?
10 A Never moved.
11 Q "Never moved"?
12 A Stood like that (witness indicating).
13 Q And he fired twice?
14 A Right. See, the floor is just like
15 this, set up high. That made him standing down low here,
16 just like that, when the floor is lower where you are standing
17 at, and there's a step up.
18 Q There is a platform there?
19 A Yeah, the floor is higher.
20 Q Between the distance representing Mr.
21 Barrett and where you're sitting as to where Mr. Jordan was
22 standing, where in this distance is that raised flooring?
23 A Right where I'm sitting.
24 Q Right where you are sitting?
25 A Uh-huh.

1 Q Did he try to get any aid for him?
2 A When he hit the floor, I called the
3 ambulance right away.
4 Q The question is: Did Mr. Jordan try to
5 give any aid to Mr. Barrett before he left?
6 A No, he just left.
7 Q Did he say anything at all before he
8 left?
9 A Nope.
10 Q What's the last word you heard Mr. Jordan
11 say to Mr. Barrett?
12 A I didn't hear him say anything to him.
13 Q Did you see Mr. Barrett get up from the
14 chair?
15 A Yep.
16 Q Did he have both hands on the arms of
17 the chair when he got up?
18 A He was sitting just like this on the
19 edge of the chair.
20 Q Did you see any gun in his hand?
21 A No.
22 Q Did you see a knife in his hand?
23 A Nope.
24 Q Did you see a beer bottle?
25 A Nope.

Q Did you see a stick of wood?

A Nope.

Q Did you see anything at all in his hand?

A No.

Q Did he say anything to Mr. Jordan as he got up?

A No. He just lunged toward him.

Q You are sure that Mr. Jordan had his hand down by his side?

A I'm sure.

Q Like this when the shots went off?

A Yes, because I was talking to him.

Q No question about that?

A No question in my mind.

MR. GARRETT: All right, sir, thank you very much.

That's all the questions I have.

MR. MANN: I have no further questions.

THE WITNESS STOOD ASIDE

MR. MANN: I would call James Alexander.

JURY OUT

Are you ready to proceed, gentlemen?

MR. MANN: Yes, sir.

MR. GARRETT: Yes, sir.

THE COURT: First of all, gentlemen, I want to rule on the question that was before the Court prior to the luncheon recess, and the question as to whether Mr. Washington as a witness could testify as to the character of the victim for turbulence and violence. The Court is incorrect in its statements that specific acts are not admissible in such a situation. The case of Barnes versus The Commonwealth, which was located here during the luncheon recess. That's 214 Virginia 24 which states that evidence of specific acts are admissible to show the character of a person and his reputation for turbulence and violence. However, the case also states that before this can be shown, the accused must adduce evidence that he acted in self-defense. The Court feels that at this stage of the case no such evidence of self-defense has been adduced by the defendant. Sufficient evidence has not been adduced to allow the testimony of acts of violence by the victim at this time.

MR. MANN: Your Honor, please note my

JURY OUT

exception on the grounds that on the basis of the evidence as shown, evidence is to go to the jury on the issue of self-defense, and I believe we could make this admissible at this time.

THE COURT: Your exception is noted for the record.

As I explained to you, Mr. Mann, I'm not precluding you from putting witnesses on after evidence of self-defense has been introduced.

MR. MANN: I understand.

Your Honor, also, I would bring up the point that I was informed by one of the jurors that there is a juror -- I believe this other juror -- somebody on the jury is taking notes. I would move for a mistrial on that basis.

THE COURT: Motion is denied.

MR. MANN: I would ask the Court to instruct the jury not to take notes. I don't believe that's proper.

THE COURT: The matter is in the discretion of the Court, but I will so instruct, and if he has taken notes, of course, the Court will ask him to tear them up.

Return the jury, please.

1 this whole line of questioning. I think it's
2 outside the scope of the relevancy of what occurred
3 on August 6th.
4 MR. MANN: My question -- let me rephrase
5 it.
6 Q (Continuing) Have you had confrontations
7 with John Barrett before?
8 A Yes.
9 Q When was that?
10 A In the past. It might have been about
11 eight, nine months ago.
12 Q All right.
13 A Might have been later than that.
14 Q Was this in a crap game also?
15 A Yes.
16 Q Did he threaten you at that time?
17 A He said that I was afraid and what he
18 would do, what he could do with his bare hands, you know,
19 and I know I'm not no match for him, so, you know.
20 Q What did he say he could do?
21 A He would tell people he could take his
22 fists and break people's jaws. They may not be the exact
23 words, but he just said something like that.
24 Q At the time -- on August 6 -- did you
25 feel there was an ill will between you and John Barrett?

1 A Not going to the house feeling like that,
2 but after all this happened and I tried to pull the pieces
3 together, "there must have been a reason for this," I said,
4 "because there ain't no call for this."
5 Q Previous to that had John Barrett come
6 to your place and talked about doing something at your place
7 of business?
8 A Oh, yes.
9 Q What did he want to do?
10 A He wanted to set up an illegal gambling
11 house. He wanted me to set it up. I know the people. I
12 gamble with different people. He wanted me to set it up and
13 to bring the people, and I said, told him, "no, I don't
14 want that around me," and "don't cross me like that no more,"
15 you know, and ever since then it looked like -- it was
16 several times after that -- it looked like we couldn't see
17 eye to eye. I even stopped putting money on his. We used
18 to bet real good. I stopped because I knew no good would
19 come from it, you know.
20 Q Now, after you got in this confrontation
21 with Mr. Barrett, what did you do then?
22 A After we had them words?
23 Q The words at this table.
24 A You know, I just walked out the house.
25 I was actually going on out, and something said to go back

1 and tell him. There's a reason for this. So, I said, you
2 know, just talking to myself, "John --
3 THE COURT: Speak up a little louder,
4 please. I can't understand what you are saying.
5 I doubt that the jury can.
6 THE WITNESS: I left the house. I was
7 going on about my business when all of a sudden
8 my mind told me to go back in there and to try
9 to straighten this out because it's going to start
10 somewhere else and somebody is going to get into
11 trouble. I had the pistol all the time. If I
12 had looked for trouble, I could have done it then
13 because I keep a pistol around my business until
14 I put my money on down home.
15 Q (Continuing) How much money did you
16 have?
17 A I had approximately, about $347.00.
18 Q This is money you had taken from your
19 business in receipts?
20 A Yes.
21 Q And that's why you were carrying this
22 weapon?
23 A Yes, you know, if something happens,
24 you know, with the money, a little protection with this
25 pistol, too. It's good to keep it. You know, you can never

1 tell.
2 Q Now, all right, you came back into the
3 place and what happened then?
4 A I came to the door that I went out.
5 The door was locked. I know the place --
6 Q Speak a little slower.
7 A I walked --
8 MR. GARRETT: A little louder, too, please.
9 THE WITNESS: They opened the back door.
10 Someone opened it. I don't know who. I couldn't
11 say who. So, I walked through the back door into
12 the place and kept the gun on my side, you know.
13 I'm hiding it because I don't want him to sure
14 enough, to get jumped, but I'm thinking about
15 protecting myself because, you know, if I come
16 down wrong, he's going to jump me, and when I go --
17 Q (Continuing) Speak a little slower.
18 "Jump you" and what?
19 A And tear me to pieces if he gets his
20 hands on me.
21 THE COURT: Mr. Mann, please stop
22 leading the witness. Mr. Garrett is not objecting,
23 but I think the witness ought to testify from his
24 own recollection.
25 MR. MANN: Well, I just asked; it was a

1 little garbled, and I wanted to explain his answer.
2 THE COURT: He's volunteering a lot of
3 things you're not asking. I think you're leading.
4 Q (Continuing) Now, Mr. Jordan, this is
5 why you had this weapon at the time? Tell the jury why you
6 had the weapon by your side.
7 A I had the weapon by my side because of
8 the fact that I know that if I go back in there talking to
9 John, I can't reason with him, but I want to try to reason
10 with him, and it's as simple as that. I'm not taking no
11 chances with him because I have bad nerves, and I know damn
12 near as well he's going to jump me. It's as simple as that.
13 When John Bledsoe talks to me, I don't have no intention to
14 shoot him. You understand?
15 Q You went back in there with the gun and
16 then who approached you?
17 A No one approached me at first. I was
18 standing at the refrigerator on the little step like this
19 one here (witness indicating), one leg up, and I had the gun
20 down by my side just like this here. So he said, John,
21 "man, who is you?" And "do you know what they call me?" I
22 said, "what is the purpose of this here?" Now, John Bledsoe
23 caught me on my side and said, "Moose, don't get in no trouble
24 because you are getting married in two weeks, and it ain't
25 worth it." I said, "John, this man is looking for trouble,"

1 and before I got that out of my mouth, he didn't walk out
2 the chair. He jumped out the chair. You know, he hit the
3 gun, you know. He jumped out the chair, you know, and some
4 kind of way got shot in his mouth, and I didn't know it was
5 two bullets shot myself until the police officer said, "did
6 you shoot so-and-so twice?" And I said, "I don't have no
7 comments until I see my lawyer."
8 Q Did you aim this weapon at Mr. Barrett --
9 A No.
10 Q -- at any time?
11 Stand up and show the jury how you had
12 that weapon.
13 A The step was like this here. I was
14 standing there. I had the left leg on the step here. It was
15 a step sitting up like that. I had my left leg on the step
16 bending over like this, talking to him, just like this
17 (witness indicating).
18 Q All right, have a seat back in there.
19 All right, and then Mr. Barrett -- did
20 you, when you were talking to Mr. Bledsoe, how were you
21 facing?
22 A I was looking dead at John. I really
23 didn't want to take my eye off John, and John Bledsoe tried
24 to keep me under control if anything happens, you know,
25 because he was that type of person who can stop that, and

1 before I said something to John, he done jumped, though. I
2 had said, "I'm tired of this man keeping on bugging me.
3 We've got to get some understanding." Then, before I got
4 the words off my mouth, he done jumped out the chair. He
5 didn't walk out the chair. He leaped for me, you know. It's
6 as simple as that, and that's how the accident happened, he
7 got shot like he did.
8 Q What happened to your hand when he leapt
9 out of the chair at you?
10 A When he leaped out the chair, he was on
11 me, you know. It just happened so fast. He was on me.
12 Q And then what happened to the gun?
13 A The gun went off. He just pulled the
14 trigger. It was lucky I slowed him down that way.
15 Q Did you aim the weapon at him at any
16 time?
17 A No. If I had aimed it point blank at
18 him, he would probably be in worse shape than that, you
19 know.
20 Q When did you feel the trigger pulling
21 twice?
22 A I didn't really feel the trigger pull
23 one time even.
24 Q After the trigger was pulled, where was
25 John Barrett?

1 please?
2
3 NOTE: At this point the jury retired to
4 their juryroom.
5
6 JURY OUT
7 THE COURT: All right, Mr. Mann.
8 MR. MANN: Your Honor, the Court has
9 heard --
10 THE COURT: I thought Mr. Garrett asked
11 them to be excused.
12 MR. GARRETT: That's all right.
13 THE COURT: All right.
14 MR. MANN: The Court has heard his
15 testimony at some length, and I believe, based on
16 that, that he be allowed to testify before the
17 jury, especially since it's already come in through
18 my client without any objection from the Commonwealth.
19 THE COURT: All right.
20 Mr. Garrett?
21 MR. GARRETT: Your Honor, the Court's
22 earlier ruling was that without any showing of
23 offense, the shooting of the victim was one of
24 self-defense. The testimony of Mr. Washington
25 would not be admissible. By the defendant's own

JURY OUT

words, his theory of the case -- and you can't rise any higher than his own testimony -- the shooting was an accident and not self-defense, and the testimony of this man is not relevant to this case.

THE COURT: Objection is well taken and sustained.

MR. MANN: Your Honor, I would except. I believe, on the evidence of Mr. Jordan, he armed himself for self-protection, in self-defense, and if in fact the gun went off accidentally, I believe it's still pertinent. We have established self-defense to go to the jury.

THE COURT: You can't have it both ways, Mr. Mann. You can't have an accident and self-defense, too. Your own client said not once but a number of times that it was accidental; that he believed that the victim leaning up against him caused the gun to go off. You can't have it both ways. Under the ruling in the case I cited a while ago, Barnes versus Commonwealth, you can't introduce evidence to show the character of the victim for turbulence and violence unless evidence has been adduced that the defendant acted in

JURY OUT

self-defense. I agree with the Commonwealth that you can't rise higher than the testimony of your own defendant.

MR. MANN: I would note my exception, Your Honor.

THE COURT: Your exception is noted. You may step down.

Return the jury.

NOTE: At this point the jury returned to the courtroom.

BEFORE A JURY

THE COURT: Does counsel waive polling of the jury?

MR. GARRETT: Yes, sir.

MR. MANN: Yes, sir.

THE COURT: Next witness, Mr. Mann.

MR. MANN: Your Honor, that's the defendant's case.

THE COURT: Any rebuttal?

MR. GARRETT: No, sir, that's all.

THE COURT: Ladies and gentlemen of the jury, I would ask you to retire again to your room while the Court considers instructions, please.

1 courtroom to deliberate at 5:15 p.m.
2
3 JURY OUT
4 MR. MANN: Your Honor, I would like to
5 take this time to vouch the record as to my
6 instructions.
7 THE COURT: Just a moment, please. I'm
8 marking them now.
9 Mr. Mann, have you got copies of these?
10 MR. MANN: Yes, sir.
11 THE COURT: If you would like to mark
12 these in the same way the Court has to refer to
13 any of them individually. I have marked A, B, C,
14 D, E, F, G. They are all self-defense instructions.
15 The only one that is not a self-defense instruction
16 that the Court refused is the one that says the
17 specific intent to maim, disfigure, disable, or
18 kill must be proven beyond a reasonable doubt, and
19 so forth.
20 MR. MANN: Yes, sir.
21 THE COURT: Now, all the others you can
22 refer to in a group as self-defense instructions,
23 if you wish.
24 MR. MANN: Your Honor, I would state, I
25 would move the Court at this time for a mistrial

1 JURY OUT

2 instruct the jury on the issue of self-defense
3 since it's clear from the cases in Virginia that
4 both issues of self-defense and accidental shooting
5 could be properly submitted to the jury in a
6 given case. It's not a case of one party having
7 an either/or situation or having to take two, but
8 both theories of the defense are properly submitted
9 to the jury at the same time. The jury can find
10 that the shooting was purely accidental; that
11 the man didn't intend to do it, or that he did
12 intend to do it but based on self-defense, based
13 on the fact that Mr. Barrett came toward him. I
14 say it was error on the part of the Court to
15 refuse to submit that issue of self-defense to
16 the jury.
17 THE COURT: Just for the record, so we
18 will have it on the record as to why the Court
19 refused these instructions, it was on the ground
20 that there was no evidence to support self-defense
21 instructions, including the defendant's own
22 evidence, and he quite clearly said the shooting
23 was accidental on a number of occasions. The
24 Court takes the position that there is no evidence
25 to support self-defense instructions.

INSTRUCTION NO. 1 A.

"Where, as in the case at bar, the defense is that the wounding 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 wounding was not accidental; therefore, if after hearing all the evidence, you have a reasonable doubt whether said wounding was accidental or that it was intentional, then you should find the defendant, Howard Eugene Jordan, not guilty."

Given

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 17th DAY OF January 19 78

COMMONWEALTH

vs Indictment for Maiming F-8127

HOWARD EUGENE JORDAN, Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sheriff of this City, and he was represented by Attorney John B. Mann, retained counsel, and the Commonwealth was represented by Stacy F. Garrett, III.

And being arraigned, the defendant pleaded not guilty to maiming as charged in the Indictment, after consultation with counsel. And the Sheriff of this City having returned a writ of venire facias heretofore issued by order of this Court, with the names of the persons summoned in pursuance thereof, and of the veniremen so summoned and attending, a panel of twenty qualified jurors, free from exception for the trial of the defendant was made up and completed. And the Attorney for the Commonwealth and the Attorney for the accused, having alternately, beginning with the Attorney for the Commonwealth, each stricken the names of four of the said veniremen, the remaining twelve constituted the jury for the trial of the accused, to-wit: Ann Z. Alexander, Rosa M. Belcher, William Irby, Carolyn W. Isaacs, James H. Johnson, Betty C. Kirby, Sarah E. Lewis, Gladys W. Oliver, Virginia P. Phillips, Fannie B. Reed, Bessie H. Ryan and Wayne P. Watkinson, who were sworn the truth of and upon the premises to speak.

And the witnesses having been sworn and the jurors having heard the evidence for the Commonwealth, the defendant, by counsel, moved the Court to strike the evidence of the Commonwealth as being insufficient for the finding of a verdict of guilty, which motion the Court denied and the defendant noted his exception. And having heard all the evidence and arguments of counsel, the jurors retired to their room in the custody of the Sheriff of this City to deliberate upon a verdict. And after some time, being unable to reach a verdict, the jurors returned into Court, and the hour being late, this case is continued to January 18, 1978, at 9:00 o'clock a.m., and the jurors are adjourned to said day and hour, having been duly cautioned by the Court.

And thereupon the defendant is released on continuing bond.

January 17, 1978 ENTER: J. Randolph Tucker, Jr.

J. Randolph Tucker, Jr., Judge

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 18th DAY OF January 19 78

COMMONWEALTH

vs Indictment for Maiming F-8127

HOWARD EUGENE JORDAN, Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sheriff of this City, and also came his counsel and that for the Commonwealth as of record, and the jurors sworn on January 17, 1978 for the trial of this case appeared according to their adjournment.

And the jurors retired to their room in the custody of the Sheriff of this City for further deliberation in this case. And after some time, the jurors returned into Court and presented a verdict in the following words and figures, to-wit:

> "We, the jury, find the defendant guilty of unlawfully causing bodily injury with intent to maim, disfigure, disable or kill, and fix his punishment at confinement in the penitentiary for 5 years." /s/ William Irby, Foreman.

And the defendant then, by counsel, moved the Court to set aside the verdict of the jurors as being contrary to the law and evidence and grant him a new trial, which motion the Court denied.

Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is the judgment of this Court that the said Howard Eugene Jordan be confined in the State Penitentiary for a term of Five Years, this being the period by the jurors ascertained.

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

And the defendant then moved the Court to suspend the execution of the said sentence for sixty days to allow him to appeal this case to the Supreme Court of Virginia for a writ of error and supersedeas, which motion the Court granted. And the execution of the said sentence is suspended for a period of sixty days from this day, and bond is set at $25,000.00.

And in default of said bond, the defendant is remanded to jail.

DOB: 4/4/47

January 18, 1978 ENTER: J. Randolph Tucker, Jr.

J. Randolph Tucker, Jr., Judge

ASSIGNMENT OF ERROR

1. The trial court erred when it refused to allow evidence of Barrett's reputation for violence.