6-21

DENNIS SHIFFLETT

ADS Indictment for a Felony

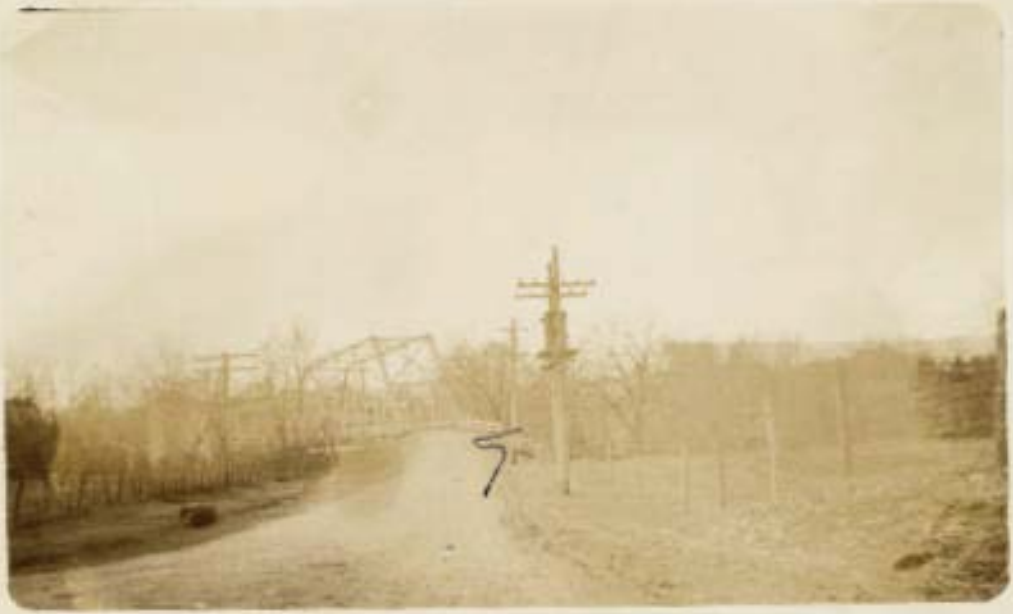
COMMONWEALTH

Set for
Hearing, 24

S. H. Gallender	2.00
Grover E. Spitzer	3.00
D. H. Listey	1.70
G. S. Cauthorn	2.80
Ernest C. Long	2.70
Geo. W. Listey	1.70
Jno. T. Miller	2.40
Henry R. Garber	3.30
Harry J. Garber	3.50
W. L. Showalter	1.70
J. N. Shumm	2.00
J. L. Coldwell	2.50

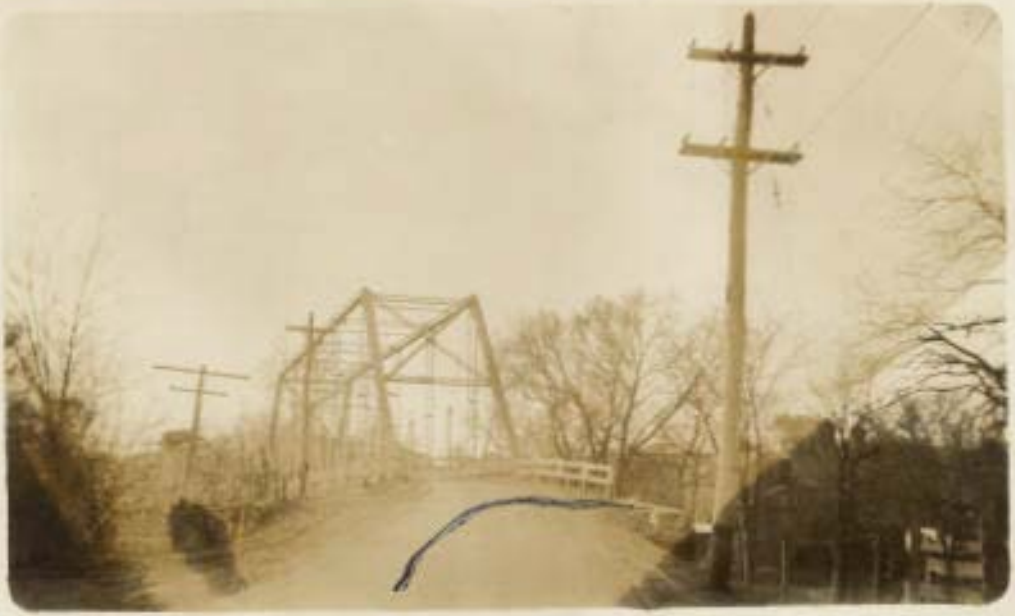
4/23/24

Guy W. Long	2.30
A. K. Clearwater	1.50
J. M. Hilbert	2.20
Jno. F. Wampler	2.50
E. A. Hilliard	2.70
C. H. Bury	2.40
J. P. Kinder	2.00
R. L. Cormenhaut	2.40
Hiram J. Wise	2.60
E. M. Minnick	3.50
E. C. Roloson	1.80
Jno. M. Showalter	2.30


5

Com. Exhibit "D"

Conc. "Exhibit A"



Com. Exhibit D

VIRGINIA:-

In the Supreme Court of Appeals, held at the Court House of Wythe County in the Town of Wytheville on Monday the 23rd day of June,1924.

The petition of Dennis Shiflett for a writ of error and supersedeas to a judgment rendered by the circuit court of Rockingham County on the 24th day of April,1924, in a prosecution therein by the Commonwealth against Dennis Shiflett for a felony whereby he was found guilty of unlawfully injuring W. E. Lucas and sentenced to be confined in the Penitentiary for a term of one year, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the circuit court of Rockingham County.

A Copy

TESTE: J. M. Kelly C.C.

IMMEDIATE:-

In the Supreme Court of Appeal, held at the Court House in the Grand Comoro in the year of Christ on Monday June 1st, 2000.

Before the Honourable Chief Justice Ahmed Zaki Ibrahim, Mr. Justice Mohamed Ali Ibrahim and Mr. Justice Mohamed Ali Ibrahim Jamaldine, Judges of the Supreme Court of Appeal.

Criminal Appeal No. 1/2000

Between:

Ali Mohamed Ali Ibrahim Appellant

and

The Attorney General of the Grand Comoro Respondent

Criminal Appeal against Conviction and Sentence for a Firearm Offence.

Mr. Ali Mohamed Ali Ibrahim, Appellant in person.

Mr. Ali Mohamed Ali Ibrahim, Attorney General of the Grand Comoro, for the Respondent.

Mr. Ali Mohamed Ali Ibrahim Jamaldine, Judge of the Supreme Court of Appeal, delivered the following judgment of the Court:-

Mr. Ali Mohamed Ali Ibrahim Jamaldine, Judge of the Supreme Court of Appeal, delivered the following judgment of the Court:-

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

VS.

DENNIS SHIFFLET

BE IT REMEMBERED, that upon the trial of this cause the Commonwealth to maintain the issue upon its part, introduced in chief, W.E. Lucas, who being duly sworn, testified as follows:

Direct examination by Mr. Harman.

Q What is your name?

A W. E. Lucas.

Q How old are you, Mr. Lucas?

A Fifty-one years old.

Q Where do you live?

A Elkton.

Q You were a deputy sheriff for Rockingham County during 1923?

A Yes, sir.

Q How long were you deputy sheriff?

A Seven or eight years.

Q Do you know the accused here, Dennis Shifflet?

A Yes, sir.

Q How long have you known him?

A Knowed of him about two or three years.

Q Where does he live?

A He did live south of Elkton.

Q At the time of this crime, the 18th day of May, 1923?

A South of Elkton.

Q How far?

A A mile and seven tenths from the bridge.

Q In Rockingham County?

A Yes.

Q From what bridge?

A The River bridge.

Q The Shenandoah River?

A Yes, sir.

Q Did you, Mr. Lucas, arrest Mr. Shifflet on a charge

of violating the prohibition laws on May 18 of last year?

A Yes, sir.

Q What time?

A At night.

Q What time at night?

A About three o'clock.

Q Three o'clock in the morning?

A Yes, sir; May 18.

Q How was he traveling when you made the arrest?

A He was in a Ford touring car.

Q What was the charge? Why did you arrest him?

A I had been having some letters, and some --

Objection.

A Well, I was in bed on May 18 and a man come and knocked on my door at 2 o'clock.

Mr. Hammer: I object to that. You needn't tell what happened there.

Q Where did you arrest him?

A South of Elkton. I was up there and he come in with his car. When his wife got out of the car she hollowed for her brother-in-laws, and I got in the car where she set and started towards Harrisonburg. That is the way we had to go because I couldn't get away without them people doing something to me.

Q Who was driving?

A Dennis Shifflet.

Q What kind of car was it?

A A five-passenger.

Q State to the jury what happened on the way to Harrisonburg.

A We come on around by the Harnsberger place - two roads there, and I told him to come to Harrisonburg, so he turned

on the left road towards the Elkton store, crossed the track and the little bridge at the creek back of the depot, towards the pike, towards Harrisonburg. About 100 yards before he got to the bridge - I never touched the man in my life except to search him - he said, "Are you going to take this car away from me for liquor?" I said, "They take it away from everbody." I never understood what he said, and he just turned the wheel around and down over the bank. I did not have a chance to get out. The car was going ten or twelve miles an hour. He was running the car all right. A suit case between me and him -- a suit case six inches thick, and it was between her and him. When she got out I got in and left the suit case set right where it was.

Q How far were you from the River when you were talking about confiscating this automobile?

A About 100 yards.

Q Do you recall whether you had the curtains on the car?

A Yes, sir.

Q All around?

A Yes, sir.

Q About how high is it at this point where the car left the abutment from where the crank case hit the rock?

A I measured it and it measures 10 feet to where it hit the ground.

Q How far is it to the point where it finally landed in the River?

A About ten feet to the rock.

Q What rock?

A The rock on the abutment. One of those large stones along the edge of the abutment.

Q How far?

A About 10 feet to the ground where the car first hit after it left the wall.

Q How far is it from the top of the abutment to the point in the River where it finally landed?

A I could not measure just exactly how far, but it was about ten feet from the ~~[illegible]~~ abutment to the ~~[illegible]~~ the car landed in the river to the bank, and about 22 or 23 feet from where the car first hit the ground to the water.

Q It was about 32 or 33 feet from the abutment.

A Yes, sir.

Q Describe to the jury just what happened after the car left the abutment that morning.

A As well as I could recall the crank case hung on the rock, and the car just went right over. When he swung it it hit the locust tree and it mashed right down the top and we went right over in the river. The back of the car was north and the front towards the bridge and the curtains was on. My leg was fast and I thought it was broke. My hand was fast. I reached around and got my knife and opened it with my teeth and cut the curtain. I could hear him (Sheffield) sorta gurgling like. I tried to get at him with my hands and I got him by the collar and held him up out of the water for 25 or 30 minutes. I called ~~somebody~~ and Mr. Louderbach was the first man to come, ~~to me,~~ and he taken hold of him and got him out, cut the balance of the curtains, and then they come back and got me. They taken him on to Harrisonburg and they taken me home, and then I come to the hospital.

Q What position was the car in when it finally landed in the water?

A It was on its wheels. Just same as before it started over. One of the lights was burning. When Mr. Louderbach got there it was still burning. I seen that myself. I taken notice of it. It was the left hand light.

Q How deep was the water?

A The water was about -- Where I was seated?

Q Yes.

A It was about -- I expect four or five feet deep.

Q This was about what time in the morning?

A About 3:30.

Q About 3:30?

A Yes, sir.

Q Were you conscious all the time?

A Yes, sir.

Q Knew all that happened?

A Yes.

Q Did you shout or hollow?

A Yes, sir. I hollowed and Mr. Louderbach come.

Q How long were you in the water before rescued?

A 30 or 35 minutes -- something like that.

Q Mr. Lucas, state to the jury what injury, if any, you received in that plunge into the river.

A I got a compound fracture of the leg and it is still running, and I had seven stitches put in my head, a piece of iron in my wrist, lot of glass in my back -- cut through my coat.

Q Were you taken to the hospital?

A Yes, sir.

Q How long were you there?

A 2½ or 3 weeks. I then went home and come back again.

Q I believe you are unable to get around now except by the use of crutches.

A I can walk with one crutch on the floor, but outside I have to use two.

Q Mr. Lucas, did you do anything in any way, shape or form, to cause Shifflet to drive that car off the abutment?

A No, sir. I had no time.

Q Do you know what his condition was with reference to being drunk or sober?

A I smelt the liquor, but I could not tell where it was. I thought if he could drive over the mountain from Simmons Gap -- over the mountain -- he could drive me to Harrisonburg.

Q This man's house at which you arrested him is located south of Elkton. Can you describe a little more definitely where that is?

A If any of you know where the wash is -- Kendall Flicks ore wash -- he was in one of the tenant houses on the Harnsberger road.

Q That is the road leading east from the river --

A Across the railroad by Kendall Flick's ore wash , on past the old Harnsberger place. One road goes this way - to the left and one straight ahead. One goes to the foundry and the other comes across the hill towards the hotel.

Q This is the town of Elkton (showing map to witness) here. That map was made before anything of this case was ever made, but it still has on it some of these old roads. Here's the River Road running along up here, and there is the road going up by the Harnsberger place coming back over here. Now, Mr. Lucas, that is the Shenandoah as it runs toward Elkton. Here's where Hawkesville Creek comes, and here's what's called "Harnsberger Switch" up here. After you cross the Norfolk & Western Railroad, the Harnsberger switch is further south than the wash. That's the Harnsberger switch.

A That's never there since I been there and I been there 21 years.

Q Is Conrad Long's place south of the wash?

A Yes, sir.

Q And then does Hawkesville Creek come in between Elkton and the Wash or south of the Wash?

A South of the wash.

Q It is between Hawkesville Creek and Elkton where this fellow lives. On the east side of the Norfolk & Western?

A East side going south, yes sir.

Q East side going north or south?

A Yes, sir.

Q I see here on this map a road running along practically parallel with the railroad and between the river and the railroad.

A Yes, sir.

Q You say the reason you did not take that road down there, or rather the river road, you said in so doing you had to pass by the houses of Shifflet's relatives.

A Yes, sir.

Q At any rate you did not come across the railroad. You come around the old Harnsberger place.

A Yes, sir.

Q This is the river and that the railroad and there is a crossing here. Here would be the wash, and this is south, and this is north, this east and this west.

A This is the route I took. I come toward Harnsberger's down the hill. This is Dennis Shifflet's house there -- one of them houses there.

Q The Harnsberger house is east of the wash?

A Northeast.

Q Northeast?

A Yes, sir.

Q He came out here at the Harnsberger house?

A Yes, sir.

Q Along here's where Dennis' people live. At the Harnsberger place you turn north.

A Northwest.

Q You crossed the hill toward the hotel.

A Yes.

Q You said something about coming up the hill at the Harnsberger place you told this man you wanted to go to Harrisonburg

A Yes, sir. Two roads there. One goes toward Mack's old iron shop and one towards the hotel.

Q There is one road that goes out to the east of Elkton.

A This one to the left cuts across zig-zag way across the hill and through the boom, went on over here and crossed the

Norfolk & Western Railroad.

Q Then to your right is another road?

A Yes.

Q Another main road?

A Yes.

Q Which runs north and south of the railroad?

A Yes.

Q Between that point and where you turn to the right and main pike to Harrisonburg, is there any river, or creek or bridge?

A Yes, Elk Run Creek is right there.

Q Is that an iron bridge or a small wooden bridge.

A Yes; one track.

Q You go further north into Main Street of Elkton.

A Right towards Stanardsville and left towards Harrisonburg, and straight ahead to the wholesale house.

Q He turned correctly?

A To the left.

Q That was the last turn you made?

A Yes.

Q Then you came on out the Main road to Elkton where this thing occurred?

A Yes.

Cross examination by Mr. Hammer:

Q Mr. Lucas, where you arrested Mr. Shifflet that night, his house is right along side the Norfolk & Western Railroad tract and within 30 or 40 yards of where the public road comes to the hotel in the town, and the road over which you went leads directly east, the same as if you were sitting here going out east Market Street. By the old Hammer blacksmith shop.

A I don't know anything about that.

Q Where Marshall's live?

A Yes, yes, it comes to the left of Marshall's house.

Q How far?

A Not a 100 yards.

Norfolk & Western Railroad.

Q Then to your right is another road?

A Yes.

Q Another main road?

A Yes.

Q Which runs north and south of the railroad?

A Yes.

Q Between that point and where you turn to the right and main pike to Harrisonburg, is there any river, or creek or bridge?

A Yes, the Sun Creek is right there.

Q Is that an iron bridge or a small wooden bridge.

A Two; one track.

Q You go further north into Main Street of Elkton.

A Right towards Stanardsville and left towards Harrisonburg, and straight ahead to the Shoemaker house.

Q He turned correctly?

A To the left.

Q That was the last turn you made?

A Yes.

Q Then you came on out the Main road to Elkton where this thing occurred?

A Yes.

Cross examination by Mr. Spencer:

Q Mr. Lucas, where you arrested Mr. Shiffler that night, his house is right along side the Norfolk & Western Railroad track and within 50 or 60 yards of where the public road comes to the hotel in the town, and the road over which you went leaves directly east. The same as if you were sitting here going out east Market Street. Is the old Hunter Blankenship shop.

A I don't know anything about that.

Q Where Marshall's live?

A Yes, you, it comes to the left of Marshall's house.

Q How far?

A Not a 100 yards.

Q That road goes out by what is known as the Charles W. Harnsberger place --

A I do not know what Harnsberger it is.

Q It is the place where Miller Jarman Dean owns now and where that grove is located --

A Passes right by --

Q Between that point and the grove there are two steep little hills.

A It is up the hill where you go up to Marshall's house, and a steep hill to go to Harnsberger's.

Q There is a dip where the cattle pass -- right beyond the barn?

A There is a dip when you cross the bridge right at the barn.

Q A water bridge?

A Yes, a water bridge. I don't know if stock goes under it or not.

Q As I understood you, you said there was a six inch suit case sitting between you and Shifflet?

A Yes, sir.

Q You mean six inches long, six inches wide and six inches thick?

A Six inches think, twelve inches wide and about twenty-four inches long.

Q How many jugs, if any, were sitting on the floor of that car?

A Three jugs there.

Q What else was on that floor?

A Jugs and cans.

Q What else was on the front seat between you and Mr. Shifflet?

A They weren't on the front seat. The suit case was on the seat between me and Mr. Shifflet.

Q The suit case was on the seat and the jugs on the floor?

A Yes.

Q You were on the seat and Shifflet on the seat?

A Yes, sir.

Q What size jugs were they?

A Three one gallon jugs.

Q Three one gallon jugs?

A Yes, sir.

Q Now this was an ordinary Ford car which the driver has to enter from the right side?

A Yes, sir.

Q There is no door or opening on the left side?

A No.

Q And the curtains were up?

A Yes, sir.

Q And you were seated on the right hand side and Shifflet on the left?

A Yes, sir.

Q Anything in the back part of the car?

A Yes, sir, that's where most of the liquor was -- in the back.

Q What kind of fixtures back there?

A Jugs, bottles and cans -- different kinds of cans. I did not have much time to examine them until I took a search light and looked in. The jug in the front had a corn cob stopper in it. I smelt of it. I never drank any. I was just told he was selling it.

Q You did nothing in the world to cause him to drive off that bridge.

A Nothing except arrest him the same as I do anyone else.

Q He did not resent it or make a fight?

A No, sir; he did not.

Q Went perfectly quietly along with you?

A Yes, sir.

/3.

Redirect examination by Mr. Conrad:

Q Mr. Lucas, I herewith hand you photograph marked "Exhibit A". Will you kindly examine the same and explain it to the jury.

A Now this fence has been put up since that time that fence along there. You see that white mark, that comes down that shady place and is about where the car hit just about where that post is, it hit this tree and straightened back up. It turned over just about where that post is and went down there -- about ten feet from the top of the wall to there. It hit this tree and straightened up, went over on its front, turned over and was penned under.

Q Mr. Lucas, about how far is it from the point where the car left the abutment to where it landed?

A About how many feet? About 22 or 23 feet, maybe as much as 25. The abutment runs back a right smart piece.

Q What are those two pictures? (handing pictures to witness.)

A Around just about where that pole is -- right this side the pole is where he asked me the question -- the big pole -- about a hundred yards from where he went over -- that is where he approached me about taking the car away from him. Now this picture here shows the end of the abutment, and if you can see it -- see that rock -- the abutment is sticking out a little bit up that way. The car had to bump. It was not perfectly level across. In coming toward the bridge he went on the left hand side. And this road is perfectly straight up to the bridge.

Q And this fence has been put up since?

A Yes, sir.

Q Mr. Lucas, stick a hole in the photograph where the car left the abutment. That is in "Exhibit A". Make that two holes.

Mr. Hammer: Q What did you indicate at that post?

A The rock wall that suck up. You know its about fonr or five feet of that rock wall sticks out there.

Q This telegraph pole is way back this side from the bridge?

A I am talking about the rock sticking out there. See the rock wall along that post is where the car went over. Part of the rock wall sticks out there.

Mr. Conrad: The Rock wall was higher than the road bed?

A No, it is down.

Q It is a fact or not, from that point up to where the fence begins the rock wall is higher than the roadway?

A No, the roadway is higher. The stone sticks out there.

Mr. Hammer: The stone comes on down and the wall extends out on the east of the bridge, but there is no stone on the top of the road.

Mr. Earman: What is in "Exhibit C"? The pen sticking in the photograph, what does that indicate?

A That is back 100 yards from the bridge. That's where he approached me about taking the car away from him.

Q About 100 yards back from the bridge?

A Yes, sir.

Q And between that place and the bridge there is another pole or two. The pole on "Exhibit B" is between where the conversation took place and the bridge, isn't it?

A That one right there is a telephone poll and that a electric light, and that a telephone.

Q Between the electric light pole and the bridge there is a telephone poll, and the telephone poll is on the east point of the abutment?

A It is about 30 or 40 feet from the abutment.

Q East or west of the gate where you enter Miller's place?

A East, just a little bit.

And further this deponent saith not.

E. P. LOUDERBACK, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Earman, deposes as follows:

Q Mr. Louderback, what are your initials?

A E. P.

Q Where were you living on May 18 of last year?

A West side of the Shenandoah River.

Q You live there now, I believe?

A Yes, sir.

Q Did you or not hear Mr. Lucas cry for help on this particular occasion?

A Yes, sir.

Q About what time of day was it? 3:30 in the morning?

A No, it was around 4:00 o'clock, close to 4.

Q Where were you at the time?

A I was in bed.

Q About how far away from where you found Mr. Lucas?

A I suppose it is 400 yards, may be 500.

Q You went over there, did you?

A Yes, sir.

Q Who went with you?

A There was some bridge men boarding at our house at the time. They went along with me.

Q Some men engaged at that time painting the bridge across the River?

A Yes, sir.

Q Can you tell who they were?

A Mr. Rye was one.

Q What did you find when you got there?

A I found the Ford car and Mr. Lucas and Shifflet in the river.

THE START:

I found the gold and the jewels in the chest. There was nothing else
left but the two food and water containers.

"Now, Sir Jack, which room has the chest,
and which one has the water?"

"Oh, the same one."

"But how will you tell which
one has food and which water?"

"Look at the labels."

"Oh, I see. Thank you."

Picking up the chest,
I noticed that it was heavier than I had
expected. Opening it, I saw that it was
full of gold and jewels.

"Wow! It's very heavy!"

"Yes, it is. Let's take it back to the
castle and put it in the treasure room."

"Yes, that's a good idea."

"Now, let's see what's in the other
chest."

Opening the second chest, I saw that it
was full of water.

"Look, Sir Jack, there is a note on the
chest."

"Read it aloud."

"Dear Sir Jack,
I hope you have found the chest of
gold and jewels. Now, you must choose
one of the two containers, one for
food and the other for water.
Choose wisely, for if you choose
the wrong one, you will die!
Yours, Sir Lancelot."

"Well, we have to be very careful."

"Yes, I know."

"Let's see, the chest is heavier than
the other one, so it must be the
treasure."

"Yes, I agree."

"Let's open the chest and see what
is in it."

Opening the chest, I saw that it was
full of food.

"Well, we have found the treasure."

"Yes, I agree."

"Let's open the other chest and see
what is in it."

Opening the other chest, I saw that it
was full of water.

"Well, we have found the water."

"Yes, I agree."

"Now, let's see which one is food and
which one is water."

"Look at the labels."

"Oh, I see. Thank you."

Looking at the labels, I read the
following:

"Water"

"Food"

"Now, let's see which one is food and
which one is water."

"Look at the labels."

"Oh, I see. Thank you."

Q About how far was the car in the River?

A It was out in the River about ten feet, eight or ten feet from the bank.

Q What were they doing -- Shifflet and Lucas?

A Mr. Lucas was holding on to Dennis Shifflet. Mr. Lucas was sitting in the car holding on to Dennis.

Q What position was the car in -- on its wheels or side?

A On its wheels, just like ir runs on the road.

Q Facing the bridge, was it not?

A Yes, sir.

Judge: Q Lucas was under the water?

A Shifflet was in the water, Lucas was holding his head up out the water.

Q Shifflet conscious or unconscious?

A No, he was unconscious.

Q Did you assist him out the water?

A Yes, sir.

Q Mr. Louderback, what, if anything, did you observe about the premises with reference to liquor?

A We found some liquor.

Q Where was it found?

A Right side the bank where the car went in the river.

Q How much?

A Half gallon.

Q What was it in?

A A half gallon fruit can -- glass can.

Q Did you not detect the odor of liquor?

A Yes, sir.

Q The odor slight or strong?

A Pretty strong.

Q You and these other gentlemen were the first people to arrive after this happened?

A Yes, sir.

Q What was Mr. Lucas' condition? Was he injured or not?

A Yes, sir; his leg was broken.

Q Do you know whether he was otherwise injured?

A He was bleeding about the head.

Q Mr. Louderback, you know Dennis Shifflet, do you not?

A I never knew him before that night.

Q Had you ever seen him before that night?

A He had been there to the mill, but I never knew who he was.

Q Did you recognize him when you saw him in the water, or after he was taken from the water, as being the same man you saw in the mill?

A No, I really did not.

Q Now Mr. Louderback, you got there early -- the first man to arrive, along with these other men working on the bridge. It was not day light yet.

A No.

Q Did you or not examine the road bed for tracks?

A Yes, sir; I looked at the tracks.

Q What time did you make that examination?

A After I had taken Mr. Lucas to the house.

Q What time in the morning was that?

A Close to five o'clock.

Q Close to sun-up?

A Yes, I think it was. Just about sun-up.

Q Had there been any other vehicles of any other description passing along the road in the mantime?

A No, there hadn't, so far as I know.

Q Mr. Louderback, will you please take this photograph, marked "Exhibit C" and trace the tracks for some 35 or 40 feet, if you are able to observe them for that distance, from where the

car left the abutment on the pike. Take this photograph and tract the tracks for some distance west of the point where the car left the abutment from the left. I will ask you first where the tracks started wabbley.

Judge: Q Before you examinedthe tracks, how could you itemtify the place?

A I first went back to the abutment.

Q Could you see?

A Yes, sir.

Q What?

A The plain track of the car. I traced in on back. It seemed to be on the south side of the road until it got where it made the curve.

Q The curve to go off?

A Yes, sir. It seemed to be on the south side. It wasn't even in the center of the road.

Mr. Harman:

Q Did the car run off on the south or on the north side?

A North side.

Q The right hand side as it came towards Harrisonburg?

A Yes, sir.

Q The tracks were on the south side?

A They seemed to be more on the south side.

Judge: Q Was there any difficulty at all about locating the tracks?

A No, sir.

Q How far did you run that track back?

A Just in a cruve. I did not follow it back any further on the pike than where it started to curve.

car left the abutment on the pier. Take this photograph and trace the tracks for some distance east of the point where the car left the abutment from the left. I will ask you first where the tracks started westbound.

Judge: Q Before you examine the tracks, how could you identify the planes?

A I first went back to the abutment.

Q Could you see?

A Yes, sir.

Q What?

A The plain track of the car. I traced in on back. It seemed to be on the south side of the road until it got where it made the curve.

Q The curve is on east?

A Yes, sir. It seemed to be on the south side. It seem's even in the center of the road.

Cr. Examn:

Q Did the car run off on the north or on the south side?

A North side.

Q The right hand side as it came towards Harrisonburg?

A Yes, sir.

Q The tracks were on the north side?

A They seemed to be more on the south side.

Judge: Q Was there any difficulty at all about locating the tracks?

A No, sir.

Q How far did you run that track back?

A Just in a curve. I did not follow it back any further on the pier than where it started in curve.

Mr. Harman: Q How far back before he went off the abutment was it that he began to curve?

A 25 or 30 feet.

Q Were those tracks of the car regular and uniform, or not? Was it a perfectly natural curve, or otherwise?

A It appeared to be a natural curve. No wiggle or wabble in it.

Q Take this photograph marked "Exhibit B" and pen, and mark as near as you can just the course the car took. (Handing photograph to witness.)

Judge: Q Did you measure the distance from the place where the car left the abutment to the wooden floor of the bridge?

A No.

Q About how far would you say it was.

A I did not catch that.

Q The distance from where the car left the abutment to the wooden floor of the bridge?

A About 12 or 15 feet, I would judge. I never measured it.

By Mr. Hammer:

Q Mr. Louderback, as I understood you, the car was 8 or 10 feet from the bank. It was facing south, or up toward your dam?

A Yes.

Q Did you tell the jury where Mr. Lucas was and where Mr. Shifflet was when you got there?

A Mr. Lucas was in the car upon the back of the front seat. Shifflet was outside the car in the water. He was on the side next to the bank.

Q And Mr. Lucas was in the car on the back of the front seat?

A Sitting on the back of the front seat.

Mr. Barnes: Q How far back before he went off the ship-
ment was it that he began to survey?

A 20 or 30 feet.

Q Have the marks of the car regular and uniform, or not? Was it a perfectly natural curve, or a deviation?

A It is said to be a natural curve. No slight or sudden in it.

Q Take this photograph marked "Exhibit 37" and yet, are more as close as you can just the course the car took. (Handing photograph to witness.)

Judge: Q Did you measure the distance from the place where the car left the abutment to the wooden floor of the bridge?

A No.

Q About how far would you say it was.

A I did not notice that.

Q The distance from where the car left the abutment to the wooden floor of the bridge?

A About 12 or 15 feet, I would judge. I never measured it.

Q Mr. Hamner:

Q Mr. Longerbeam, as I understood you, the car was 9 or 10 feet from the bank. It was facing south, or up toward your house?

A Yes.

Q Did you tell the jury where Mr. Lanes was and where the shirtfist was when you got there?

A Mr. Lanes was in the car upon the back of the front seat. Shirtfist was outside the car in the water. He was on the side next to the bank.

Q And Mr. Lanes was in the car on the back of the front seat?

A Sitting on the back of the front seat.

Q Which side? Right or left side?

A Left side, of course, holding to Dennis.

Q He was on the left hand side?

A Yes.

Q And Shifflet was outside the car entirely?

A Yes, sir.

Juror: Was Mr. Lucas fast?

A No, but Dennis was fast.

Mr. Hammer:

Q Dennis was fast and had to be raised up?

A No, he seemed to be raised up in the car. He had to be cut loose. One leg seemed to be under the running board, but we pulled him out.

Q How long is that fence that's shown on the photograph on the north side of the abutment.

A I do not know. I do not know that the fence comes down just where the car went over or just past it.

Q As a matter of fact that fence does not cross over the part of the abutment over which the car went, does it?

A It may be that it does.

Q The marks you have placed here should have been up within 12 or 15 feet of the entrance of the bridge.

A No, it doesn't show.

Q You said you believed that Shifflet was unconscious?

A Yes, sir.

Q And the road at that point is curved right as you enter the bridge on the public highway. A left hand curve coming towards Harrisonburg.

A It comes into the bridge there almost straight. There is a little curve there, I believe.

Q As you approach the abutment there don't you come up in this shape, like you are coming from Elkton, there you bear around to the bridge. It is right in this shape isn't it?

A There is not that much curve.

Q But there is considerable curve just before you enter the bridge. There is a curve, a considerable curve.

A It curves a little bit there.

Mr. Barman:

Q Mr. Louderback, just one question, please. Take "Exhibit C" and state to the jury whether or not this photograph shows the angle or curve where the car ran off the abutment as you approach the bridge?

A What do you want me to do?

Q That picture there shows the amount of curve?

A Yes, that looks pretty natural there as the road is.

Q And the car ran off the abutment on the right side as you approached the bridge?

A Yes.

Q The point where it ran off is 12 or 15 feet ~~after~~ before its entrance on the bridge?

A Yes.

Mr. Hammer:

Q Right at that point is the sharpest point of the curve?

A He had not got up to the sharpest curve.

Mr. Barman:

Q Mr. Louderback, I believe you stated this morning that you noticed-that you saw - a half gallon of moonshine liquor along the bank of the river some place, and that you detected the odor of whisky about the place. Did you not notice any glass jugs or broken vessels about there?

A Yes, sir.

Q Where were the broken pieces of glass, etc?

A Some in the car and on the bank where the car went over and where it rolled down the bank.

And further this deponent saith not.

MR. J. W. FISHER, another witness introduced on behalf of the State, being first duly sworn, examined by Mr. Barman, deposed as follows:

Q You are Mr. J. W. Fisher?

A Yes, sir.

Q You are an automobile mechanic, Mr. Fisher?

A Yes, sir.

Q Did you tow this car out the river?

A Yes, sir.

Q You are talking about the Shifflet car?

A Yes, sir.

Q The Dennis Shifflet car?

A Yes, sir.

Q About what time of day was it when you got it out the river?

Mr. Herbert:

Q Mr. Lowenfeld, I believe you stated this morning that you noticed-that you saw - a half gallon or something liquor along the bank of the river some place, and that you detected the odor of whisky about the place. Did you not notice any place jug or bottle vaguely about there?

A Yes, sir.

Q Where were the broken pieces of glass, etc?

A Some in the car and on the bank where the car went over and where it rolled down the bank.

Q Further this deponent saith not.

Mr. J. A. Flibert, another witness introduced on behalf of the State, being first duly sworn, examined by Mr. Herbert, deposes as follows:

Q You are Mr. J. A. Flibert?

A Yes, sir.

Q You are an automobile mechanic, Mr. Flibert?

A Yes, sir.

Q Did you tow this car out the river?

A Yes, sir.

Q You are talking about the Schiffler car?

A Yes, sir.

Q The Dennis Schiffler car?

A Yes, sir.

Q About what time of day was it when you got it out the river?

A Around 9 o'clock, or something like that. It might have been 10. I couldn't just tell.

Q Did you or not examine the steering apparatus of the car?

A Yes, sir. I pulled it up to the garage. I guided the car myself. It had one flat tire in front.

Q Did you have any trouble steering the car?

A No, sir.

Q Steering apparatus all right?

A Yes, sir, it was.

Q What did you do with it?

A Brought it on to Harrisonburg.

Q Brought it in on its own power, or towed it in?

A Towed in.

Q You live at Elkton?

A Yes, sir.

Q You were among the first to arrive at the accident?

A It was around 6 o'clock when I went down there.

Q Did you examine the road bed for tracts of Shifflet's car?

A Yes, I noticed where it had turned around off the fill there.

Q Did you have any trouble in locating the tracks of the car?

A No, sir.

Q Were those tracks regular or wabbley, or -- just describe the nature of the tracks.

A Looked as though he just came up there and turned over. The crank case hit the rock, then it skidded about a foot or foot and a half.

Mr. Conrad:

Q You mean the rear end skidded toward the bridge?

A Yes, sir.

Mr. Harman:

Q So the tracks were regular?

A Yes, sir.

Q What, if anything, did you observe about where you found the car with reference to liquor?

A Signs of liquor been in it.

Q What signs?

A Pieces of glass, pieces of jugs, and it smelt like it.

Q Were those in the car, or where?

A They were found on the running board, piece of jug between the fender and mud guard, some glass in the back end of the car. I believe there was a piece of jug in the back end of the car as well as I recollect.

Q About how far was it from where the curve begins until the car left the abutment?

A There was no curve there. The curve is up where it goes up to the bridge. The curve is just gradual. Around 15 or 20 feet from the end of the bridge, I guess.

Mr. Hammer:

Q You have had a good deal of experience as an automobile mechanic?

A Yes, sir, right smart.

Q I expect you have seen many a Ford that has gone off the road and left tracks just as this car went off?

A Yes, sir, I have seen them go off the road.

Q And you have seen them go off without intent to maim, disfigure disable and kill. You can't tell how they doit?

A I don't know whether he was trying to kill anyone or not.

Q You have seen other wrecks recently occurring the same way that this one occurred, along the same line.

A Yes, sir, I have.

Q And that was neither whisky, or any design to maim.

disfigure, disable or kill?

Question objected to.
Objection sustained.

Q Mr. Fisher, Ford cars frequently have trouble with the steering gears -- steering gears get locked and ditches you to one side.

A Yes, sir; they do that.

Q And for many other causes those things happen which you can't explain, or what does cause the ditching of a Ford car?

A Yes, sir, all of them get out the road if you don't hold to them.

Q And if a man's been out all night, if he is asleep, or been drinking a little bit, why the same thing would happen?

Question objected to.
Good objection.

Q I did not understand you to say that any other car had gone off at that particular point?

A No, sir, none that I recall. Twenty yards below there coming across below there one went over.

Q That was in the mill race?

A Yes, but I did not get that out.

Q So far as the Ford's looking, it looks from having been steered too far to the left or too far to the right, or a rough piece of road, or striking a rock will throw it around and do that?

A Yes, sir, if you haven't got the wheel tight.

Q And if you have these holes that work out in macadam roads and you drop in one, that will do it the same as a stone?

A Yes, sir; if you don't have hold of the wheel.

Q Just about the time this thing happened that road was full of holes, wasn't it?

A Yes, sir.

Q You see the guard rail in this photograph along that abutment there for some little distance from the bridge. Was that there at the time the car went over?

A No, that was put up last fall, or along in the winter. Just lately.

Q There was nothing there to keep anyone from going over until that was put up?

A No; there was something on the other side towards Harrisonburg.

And further this deponent saith not.

MR. BENJAMIN OFFENBACKER, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Conrad, deposes as follows:

Q You live at Elkton?

A Yes.

Q How long?

A About 30 years.

Q You are a father-in-law of Jim Armentrout?

A Yes, sir.

Q You know the accused, Dennis Shifflet?

A Yes, sir.

Q How long have you known him?

A I haven't knew him more than 3 years - something like that.

" Q Did you have any conversation with him in reference to moonshine shortly before the time the car ran off the abutment and injured Mr. Lucas? "

A Yes; several of us were talking there back of my place -- I live between the tannery and the railroad -- several of us standing there talking about liuqor and I thought he was under the influence of liquor -- I do not know for certain -- and we got to talking about liquor, and he said, "Well, before I would be taken

with liquor I would suffer death."

Mr. Hammer: I move to strike that out. I don't think it is permissible.

Judge: Motion denied.

Mr. Hammer: Exception noted.

Q When was it that this conversation occurred?

A Somewhere along about March -- in March.

Q It appears this thing occurred in May, and it was in March before?

A Yes, sir; yes, in March as well as I can remember.

Q You were discussing moonshine?

A Yes.

By Mr. Hammer:

Q What were you doing?

A We wasn't doing anything. This was on Sunday. We was talking about moonshine, and he said he would suffer death before he would be taken. He said before he would be taken on a liquor charge he would suffer death.

Mr. Conrad:

Q Are you in any way related to Mr. Lucas?

A Not in any way, no.

Q Any relation to Dennis Shifflet?

A No, sir.

Q Any ill-feeling?

A No, sir.

Q Any interest in this case in any way?

A No, sir.

Q No relation, blood or any other way?

A No, sir.

By Mr. Hammer:

Q Who were the others that were present when that conversation took place? You said there were several. Name one?

A There were three or four. I don't know who they were.

Q Name one?

A I do not know any.

Q Don't know one?

A No.

Q Can't you think now who it was?

A No.

Q Can't you think of a single man?

A No, sir.

Q You are not a drinking man at all?

A Sir?

Q You don't drink at all?

A No, sir.

Q Don't handle it in any way?

A No, sir.

Q Now what in the world was a man handling liquor or drinking it doing talking to you?

A Just as I stepped up to the crowd I heard them talking.

Q Now, do you know who the crowd was?

A No, sir.

Q Was there a crowd there at all? Or were you by yourself?

A I was with them. I don't know who all was there.

Q This case has been tried before; you knew it was going on; you knew it was at least the fourth investigation of what took place with Dennis Shifflet's conduct that night, and not in a single instance before today have you appeared in this case. Why didn't you come out before?

A I just happened to be in the barbar shop talking about this case. That is how it got out.

Q When?

A Since this trial has been.

Q Which trial?

A The one before.

Q Which one of the trials?

A The last one you had that it was a hung jury.

Q Who were you talking to?

A Mr. Lucas.

Q Who else?

A I do not know. Several in there, I guess.

Judge: What occurred at that time?

I do not know what occurred at that time.

Q What did you talk about? What did you say?

A Just what I was saying here. That is the way it got out, I guess.

Q That is how Lucas came to hear about the conversation that occurred between you and Shifflet ~~pp~~ the remarks you say you heard Shifflet make?

A Yes, then is when we was talking about the Shifflet case. He said it was a hung jury. That is the way they got to talking about it.

Q Mr. Offenbacker, how did you happen to hear this conversation of Dennis Shifflet's?

A It just happened as I came along there.

Q What was Dennis doing?

A Standing there talking with this crowd.

Q Was it on Sunday?

A On Sunday, as I just said a while ago.

Q You thought he was under the influence of liquor at the time.

Q. Since this trial has been.

Q. Which trial?

A. The one before.

Q. Which one of the trials?

A. The last one you had that it was a hung jury.

Q. The more you listen to

A. Mr. Lemon.

Q. Who else?

A. I do not know. Several in there, I guess.

Judge: What occurred at that time?

I do not know what occurred at that time.

Q. Just did you talk about. What did you say?

A. Just what I was saying here. That is the way it got out, I guess.

Q. Did it have been once to hear about the conversation that occurred between you and Shiffler or the remarks you had you heard Shiffler make?

A. Yes, then is when we was talking about the Shiffler case. We said it was a hung jury. That is the way they got to talking about it.

Q. Mr. Fitzsimmer, how did you happen to hear this conversation of Jessie Shiffler's?

A. It just happened as I were along there.

Q. What was Jessie doing?

A. Standing there talking with this crowd.

Q. Was it on Sunday?

A. On Sunday, as I just said a while ago.

Q. You thought he was under the influence of liquor at the time.

~~Mr. Conrad: You don't have to testify before the Court as to this matter.~~

Q This statement of yours about Shifflet did not get out until after the trial was over?

A After that trial was over.

Q You remember whether Mr. Marvin Long was in the barber shop at that time?

A I think Mr. Marvin Long was in the barber shop at that time.

And further this deponent saith not.

MR. J. F. LUCAS, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Barman deposed as follows:

Q You are Mr. J. F. Lucas?

A Yes, sir.

Q A brother of Mr. W. H. Lucas?

A Yes, sir.

Q Mr. Lucas, did you go to the river the morning your brother was hurt -- when the car ran off the abutment into the river?

A Yes, sir.

Q About what time of day did you get there?

A It was before day. It must a been around four or five.

Q Who did you find there?

A I found Mr. Lucas and the man that went over the abutment.

Q Shifflet?

A Shifflet, and several men there.

Q Who were they?

A Mr. Louderback was there.

Q Did you see any evidence of liquor about the place?

A Yes, sir.

Q Did you find any liquor yourself?

A Yes, sir.

Q Where?

A Side of a gate post.

Q How much?

A Half gallon jar.

Q Did you see any broken utensils?

A Not just at that time. I found them afterwards.

Q The same day?

A The same morning.

Q Where were they?

A Down along the river bank.

Q What odor, if any, did you detect about the place?

A When I got down there I walked in thegate, there was a man stooped on the ground, and I put my two arms down on his shoulder, and they said, "That is Mr. Shifflet."

Q What odor was about the place?

A Well, there was all kinds of odor -- on both of them.

Q W. B. Lucas your brother?

A Yes, sir.

Q Your brother is not a drinking man?

A No, I never knowed him to take a trink in his life.

Q The odor came from where?

A Off his clothes.

Q Did you observe those tracks of the car that ran into the river?

A Yes.

Q Just describe the nature of those tracks.

A The tracks of the car -- like this was the road -- the

car was on this side (left hand side) coming into the bridge, then it was on the right hand side. This track came up just iver the end, made a curve like that and over the abutment. As soon as I got Mr. Lucas home I looked at that track and went down around the side and looked at the car.

Q What was the distance of that track from the time it started to curve until it ran off?

A It was a straight line. It was a right straight line the same as if a man was going to run off the road some place.

And further this deponent saith not.

MR. HERMAN LONGLEY, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Conrad, deposed as follows:

Q You are Mr. Herman Longley?

A Yes, Longley is my name.

Q You live at Elkton?

A No, this side of Elkton.

Q What is your business?

A I run a garage down there at this time.

Q Were you running a garage at that time?

A No, sir.

Q Mr. Longly did you assist in pulling Dennis Shifflet's car out the river?

A Yes, sir.

Q I believe you and Mr. Bisher got it out?

A Yes, sir.

Q Pulled it out?

A Yes.

Q Did you examine the steering apparatus of that car?

A Not in particular. It seemed to be all right when we

pulled it out.

Q You guided the car?

A Mr. Bisher did.

Q Did he have any trouble keeping it in the road?

A Not a bit in the world.

Q Did you notice any liquor about the place?

A No, sir.

Q Smell any?

A Yes.

Q See any broken glass?

A Yes, broken glass jars.

Q Did you not observe the tracks of the Shifflet car as it ran off the abutment into the river?

Q I did not notice that.

Q You didn't observe that?

A No, sir.

Q But you brought Shifflet to Harrisonburg to the hospital

A Yes, sir.

Q Did you detect any odor from his clothes?

A Yes, sir. A

Q Did you have any conversation with him on his way to Harrisonburg?

A The only thing he said was over the top of the hill at Stonleigh Inn, I said, "Dennis, you know where you are?" and he said "Uh-hugh".

Q That is all the conversation you had?

A Yes, sir.

Q Who was with you?

A One of the bridge men.

Q Did he say anything when you reached the hospital?

A We started to take him out the car and he said, "Don't drop me."

By Mr. Hammer:

Q Were you a witnessat the last trial?

A Yes, sir.

Q You didn't say anything at that trial about Shifflet's statement about dropping him?

A I wasn't asked that.

Q You didn't say anything about him answering you?

A No, sir.

Q As a matter of fact the man was unconscious when he was put in the hospital?

A I did not think he was.

Q You didn't think?

A I didn't know. He might a been playing possum.

Q You had no idea that man was playing possum when you brought him to the hospital?

A I do not know about that.

Q You turned him over to what doctor?

A I do not know.

Q Why didnt you take him to the hospital?

A That was orders.

Q Who made those orders?

A They called me out of bed.

Q As a matter of fact, you know that man was unconscious when you brought him here and put him in the hospital?

A Well, I thought so until he said he thought he knowed where he was at.

Q How did you have him in the car?

A Sitting on the hind seat.

Q Who was holding him?

A A man painting the bridge at that time.

Q How was he holding him?

A Sitting in the corner of the car, sitting against him to keep him from falling over.

Q Daylight or dark?

A Just about day light.

Q In the night?

A In the night -- not when we got out here.

Q What time did you get him to the hospital?

A I did not have any watch -- near about sun-up.

Q Did you testify at all in the case before?

A No, I was not on the stand the other time at all.

Q You mean when the liquor case was tried?

A Yes, sir.

Q You didn't testify in the trial against him for felonious assault?

A No, sir.

Q The one with the hung jury you did not testify in at all?

A No, sir.

And further this deponent saith not.

MR. L. H. BRUCE, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Conrad, deposes as follows:

Q Mr. Bruce, you are Mayor of the town of Elkton?

A Yes, sir.

Q What time of night was it when you got over to the bridge where Mr. Lucas was hurt?

A Joe Lucas come there and called me just about -- I don't think it was hardly day light.

Q Did you make any observation in regard to tracks when you got there?

A Yes, sir.

Q Describe the tracks as you saw them to the jury?

A The road leading up to the bridge is pretty straight and wide at that point, and there is right smart incline. I suppose about 3 or 3½ degrees hill. The abutment on each side of the bridge is 15 or 18 feet, possibly, between that -- the abutment down to the water. The abutment runs up to the edge of the bridge and this track looked like he was bearing a little to the left, come right around on the lower side and went over that abutment. Didn't seem to be any wavering -- just like a man was going to turn around on that abutment. It was might near room enough to turn a Ford car on the abutment.

Q You mean on the abutment or road?

A It is part of the abutment.

Q You wouldn't like to try it.

A I have seen it done.

Q Does that photograph, "Exhibit C" fairly represent the appearance of the road leading from Elkton to that bridge, of the curve, etc. in it, and also a fair representation of the width of the road, and so on?

A Yes, a good representation, I would think. Not quite as much curve. I think the road is nearly straight.

Q You think the photograph is wrong? This photograph is taken from a point east of the bridge, between the bridge and the town, a short distance east of the bridge.

A Yes.

Q Is there any curve in the road between the town of Elkton and that point there?

A There is a very, very little curve, if any, looking west from Elkton.

Q Then, as you approach the bridge at this point here, about opposite where the electric light pole is shown on that picture, is there a slight curve going to the mouth of the bridge?

A Yes, sir.

Q Then this photograph "C" does fairly represent the width of the road at that point?

A Yes, sir; I think it does.

Q Are you familiar with that road that comes across from the Harnsberger place, or where Chap Lam lives, over through the boom land, across the Norfolk & Western Railroad, a short distance below the station there?

A Yes, sir.

Q Is that a regularly laid out county road, or just a zig-zag path made by cars?

A It is not a laid out road. Just kinda zig-zags around the hills, goes over hills and zig-zags. It whips around the hills and comes back and crosses the railroad.

Q It is not a state road?

A Not a state road at all. Just a zig-zag road made by people going over the boom land. It comes out on what is known as the Fort Republic road.

Q Did younotice any sign of broken jugs or these jars commonly used for moonshine?

A Yes, sir. I went down there that morning, got some parties to stay there, and called Mr. Dillard, and not to let them bother anything.

Q Were there any jugs?

A Yes, sir.

Q What evidence?

A I saw some broken fruit jars. The box cans come in also was there.

Q Notice any broken jugs or pieces?

A Yes, sir, broken jugs.

Q Any odor of liquor around the car or these broken jugs?

A Yes, the odor was strong, and was strong on the car when it was pulled out the river.

By Mr. Hammer:

Q How long had the car been in the river when it was pulled out?

A It was about half past eight when I pulled it out with the truck.

And further this deponent saith not.

MR. MARVIN LONG, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Barman, deposed as follows:

Q You are Mr. Marvin Long?

A Yes, sir.

Q You live near Elkton?

A Yes.

Q Were you over at the Shenandoah bridge on the Rockingham Turnpike when the Shifflet car ran into the river?

A Yes.

Q What time did you get there?

A It was about 8 o'clock, I think.

Q Did you observe the tracks of that car where it ran off the road down into the river?

A Yes, sir.

Q Just describe to the jury the nature of those tracks.

A From where I could locate the tracks, or follow it back where it went over -- I could follow it back possibly a distance of 15 feet -- it was just a natural track just like a man driving off the road into another track. I saw nothing peculiar about it. Just like you would be driving into another road.

Q Nothing irregular or wabbly about it?

A No, sir. I looked to see if the wheels had skidded

There seemed to be no evidence of it having skidded any. Just a natural turn.

Q Did you see any liquor?

A I did not see any. I smelt some. I reckon you have a right to believe your sense of smell as well as your sight and taste.

Q Did you see any?

A I picked up a jug with a corn cob stopper, - just a jug, and smelt it and taken it home. I taken it so if anyone asked me what he had I would have something to show them. You have to go by your nose or smell when you can't see a thing.

Q You said you followed the track back about 15 feet?

A Yes, sir; about 15 feet.

Q It was then turning at an angle of about 45 degrees?

A Yes, sir.

And further this deponent saith not.

MR. W. E. LUCAS, recalled, examined by Mr. Hammer, testified as follows:

Q Did you see George Herring and Luther Shifflet?

A Who?

Q Mr. George Herring and Luther Shifflet?

A No, sir. I saw Shifflet. I do not know whether it was Luther or who. There was two people appeared at my door. They said they was Shifflett's.

Q Did you make the statement that you had hold of the steering wheel?

A Absolutely not.

Q As a matter of fact, did you have hold of the steering wheel at the time it went over?

A No, sir; if I had had it it never would a went over.

And further this deponent saith not.

DR. J. L. WRIGHT, another witness introduced in the same behalf, being first duly sworn, examined by Mr. Conrad, deposes as follows:

Q Doctor, you are a practicing physician in Harrisonburg?

A Yes.

Q How long have you been practicing your profession, Doctor?

A Since 1914.

Q I believe you are a surgeon, and operate here and practice in the Rockingham Memorial Hospital?

A Yes, sir.

Q Before coming here you were at the University Hospital at Charlottesville.

A About six years.

Q You remember seeing this man, Dennis Shifflet, when he was brought to the hospital on the night the car went over the abutment?

A Do I remember seeing him at the hospital?

Q Yes.

A The University Hospital?

Q Rockingham Memorial Hospital.

A No, sir, I did not see him.

Q I thought you were there when he was brought to the hospital.

A No.

Q I was under the impression that Dr. Wright was there when Shifflet reached the hospital.

A No; I did not see Mr. Shifflet at all.

By Mr. Harman:

Q You did treat W. E. Lucas?

A Yes, sir.

Q Just describe to the jury the nature of Mr. Lucas' injuries.

A I saw Mr. Lucas sometime after he had been injured. He had been home and came in to see me. He had a compound comminuted fracture of the lower leg, and evidently a piece of bone had punctured the skin from which he had gotten an infection of the bone which is called osteomyelitis. Two pieces of loose bone had to be removed.

A Have you examined him lately?

A Last week. His wound has not completely healed.

Q His wound has not healed?

A No, it hasn't healed yet.

Q He received other injuries too, didn't he? A scalp wound?

A I did not see those.

Q Wasn't you present when he was first received into the hospital?

A No, sir.

And further this deponent saith not.

And this being all of the evidence introduced on behalf of the Commonwealth in chief, the defendant to maintain the issue on his behalf introduced

W. L. DILLARD, who, being first duly sworn, examined by Mr. Hammer, deposes as follows:

Q Mr. Dillard, at the time Mr. Lucas was injured, you were sheriff of Rockingham County?

A Yes, sir.

Q And he was your deputy?

A Yes, sir.

Q What time did you hear of the injury to Mr. Lucas?

A I suppose it was about 5 o'clock in the morning.

Q How did you hear it?

A They brought Mr. Shifflet to my home. It was break of day.

Q Who brought him? Do you know?

A No, sir, I do not recall just who brought him. Three men, I think.

Q What was his condition when there?

A He was in an unconscious condition.

Q What did you do with him?

A I sent them to the hospital with him, and I called Dr. Biedler to go out.

Q Do you know how long he was unconscious?

A No, sir, I do not.

Q You saw him frequently?

A I was in his room several times; yes.

Q When you learned what had happened, did you go to Elkton?

A Yes, sir; I went right away. I sent those men to the hospital with Mr. Shifflet, sent for Dr. Biedler, immediately got my car and went to Elkton.

Q Did you break the speed limit?

A No doubt I did.

Q Then what did you do?

A When I got to the bridge, I saw some parties there and I asked where Mr. Lucas was and they said he was home. I went on out where he was at his home and had a few words with him, and called back to Harrisonburg and got Mr. Higgs to come down with his ambulance and move Mr. Lucas to the hospital. I got a truck and some men to take the car out the river.

Q Did you have anyone to preserve the evidence around the place?

A No, sir, I did not.

Q You didn't put anyone there?

A No, sir, I did not.

Q In your investigation, Mr. Dillard, didn't you try to follow the tracks of the car that went over the embankment? If so, tell the jury in your own way about how the tracks were.

A I saw -- the tracks were visible to the eye.

Q Tell the jury how they were and how they were located?

A If I had a map, --

Q You made, I believe, at the last trial, a drawing yourself?

A Yes.

Q You was at that time introduced as a witness on behalf of the Commonwealth?

A Yes.

Q And the drawing I now hand you you made at the instance of the Commonwealth in answer to the question of the Commonwealth at that time?

A Yes, sir.

Q Now, Mr. Dillard, I want you to take the evidence introduced here, "Exhibit B", and indicate if you can with another pencil just how you saw that track. You better use pen.

A Here's the gate. Now, then, right beyohd that gate the abutment started going into that bridge, and right there that car was over onthis side near the edge of the abutment where you start in to the right side. That car come out from there into here, made a square turn in about six or eight feet from the mouth of the bridge, right into the river.

Q In other words, you have indicated on the map bearing from the north side to the south and then to the north, and off?

A It beared back to the south in this direction and made a diagonal turn and went right over.

Q Mr. Dillard, what words would you term the tracks?

A "Wavering" tracks. That's the way I stated it before. Wavery. I expresed it in "wavery".

Q You mean the wheel left a wavering track?

A I did not mean that the wheels left a wavery track. What I meant was that this car was down in here to the edge where you start in here at the edge of the abutment, and that it came from the edge, or beyond this gate where you approach into the bridge. It was over to the right, near the edge, and then it pulled back into the center of the approach and went up on the approach considerable distance, and then turned within six or eight feet of the mouth, and down into the river.

Q Made a sharp curve?

A Yes, sir, plain for anybody to see.

Q The pen marks on the face of "Exhibit C" is introduced by the witness to explain his statement.

You made careful, painstaking examination of the situation down there?

A I did, yes, sir.

Cross examination by Mr. Conrad:

Q In this picture, marked "Exhibit C", according to your drawing the car did run up to the abutment and cut straight up the road, which is impossible in the very nature of things in the operation of a car. You mean that is a general outline of the way the track ran. You have the gate away back here and your abutment comes way back here. "B" starts the curve near a telephone pole. You intentionally or unintentionally started the mark near the electric light pole. You start your mark back here at not a point opposite the gate, but a point near the electric light pole. Did you mean to start at a point opposite the electric light pole or the telephone pole?

A I am governed by the approach of the bridge.

Q There are two poles on photobraph "C" and only one pole on photograph "B". I want to know if he wants this mark to begin opposite the gate, or back down here at the electric light pole.

A The mark goes beyond that gate.

Q Then this drawing is an error that you have made. Start your line near the electric light pole. Your line should be started up there. You don't mean to say by this drawing that such a track as you say extended from the electric light pole, but the track you meant to put on here began at a point west of this telephone pole, didn't it?

A I was not governed by the telephone pole. I was governed by the approach to the bridge. There is a long approach going into that bridge. I mean the car went to the right of the approach as it entered, then pulled out to the center, turned a square turn, went right off within six or eight feet of the approach.

Q I want to point out the fact that the pen drawing does not correspond with your word description. It makes a sharp turn, apparently right at the beginning of the abutment, a sharp turn at right angles across the road, which a car couldn't do. Here's the gate, here's where the car went down. This is the river running south, this the road coming from Elkton toward the bridge, and this the gate as you approach the bridge.

A Yes, sir.

Q Now, what did this line mean?

A This shows the abutment of the approach going into the left.

Q The abutment does not stick out in the road.

A No.

Q That was not intended to be a drawing of the tracks of the car?

A Oh, no.

Q Nothing on this was intended to show the tracks?

A No, sir.

Q This represents the abutment and entrance to the bridge, and this the gate. Here's the center of the track. That

A The car's gone beyond that gate.

Q Then this drawing is an error that you have made. Start your line near the electric light pole. Your line should be started on there. You don't mean to say by this drawing that your a car as you say extended from the electric light pole, but the car you claim to put on here began at a point west of this telephone pole, didn't it?

A I was not governed by the telephone pole. I was governed by the approach to the bridge. There is a long approach going into that bridge. I mean the car went to the right of the approach as it entered, then pulled out to the center, turned a square turn, went right off within six or eight feet of the approach.

Q I want to point out the fact that the you drawing does not correspond with your own description. It shows a sharp turn, apparently right at the beginning of the abutment, a sharp turn at right angles across the road, which a car couldn't do. Here's the gate, here's where the car went down. This is the river running south along this road to meet the bridge, and this the gate as you approach the bridge.

A Yes, sir.

Q Now, what did this line mean?

A This shows the abutment of the approach going into the left.

Q The abutment does not stick out in the road.

A No.

Q That was not intended to be a drawing of the trance of the car?

A Oh, no.

Q Nothing on this was intended to show the trance?

A No, sir.

Q This represents the abutment and entrance to the bridge, and this the gate. Here's the center of the track. That

drawing indicated the way you thought the track went.

A This car was over here to the right. Now right in here was the edge of this abutment, and here was some posts and some wire fence. The car went out gradually like that within six or eight feet of the entrance of the bridge and made a turn like this.

Q You see this car couldn't do that?

A A Ford car can do most anything.

Q You have drawn that at right angle, right straight to the abutment. You can't run a car up to the edge of a thing like that. Your drawing does that. It couldn't have been as you have drawn it. It had to be on a curve. The track which you saw and which you are describing was on the right hand side.

A Yes, sir.

Q A portion of the way up the abutment it curved toward the north side, and when it reached this point it curved near the center of the road and when it got there it curved toward the north side of the abutment and went straight over.

A Straight over.

Q Yes, after it got curve enough. Did you see the car on the rock?

A No, sir, I did not see the crank case hit it.

Q When you came up to make that examination you parked your car some little distance from the bridge toward uptown?

A Yes. Uptown and to the left hand side of the pike. The right hand side as I went in.

Q Were there many cars there?

A Yes, some.

Q As many as 50 cars parked along there?

A No, not 50 cars. There were several there.

Q More than two or three cars? Nearer 50 and two or three?

A There were only two or three cars there when I went in.

evening indicated the way you thought the trace went.

A This car was over here to the right. Now right in here was the edge of this abutment, and here was some posts and some wire fence. The car went out gradually like that within six or eight feet of the entrance of the bridge and made a turn like this.

Q You was this car wouldn't do it by

A A fond car can do most anything.

Q You been drawn that at right angle, right straight in the abutment. The man's run a car up to the edge of a thing like that. Your drawing does that. It couldn't have been as you have drawn it. It had to be on a curve. The trace which you saw and which you are describing was on the right hand side.

A Yes, sir.

Q A position of the car by the abutment it curved inward the north side, and when it reached this point it curved under the county of the road and when it got there it curved toward the north side of the abutment and went straight over.

A Straight over.

Q Yes, after it got curve enough. Did you see the car on the road?

A No, sir. I did not see the crash when it it.

Q When you came up to make that examination you passed your car some little distance from the bridge toward upstown?

A Yes. Uptown and to the left hand side of the road. The right hand side as I went in.

Q Were there many cars there?

A Yes, some.

Q As many as 50 cars parked along there?

A No, not 50 cars. There were several there.

Q More than four or three cars? Nearer 50 and two or three?

A There were only two or three cars there when I went in.

As I cam back up from Mr. Lucas' there were a number of people there and some cars. I suppose 12 or 15 cars.

Q As far as you know nobody had blocked the road or prevented the cars from running back and forth across the track?

A No, sir.

Juror: Q Had the car skidded?

A No, sir.

Q At the point where the car went over the abutment was there any indication that the rear wheels skidded around the bridge?

A I didn't see anything to show that they had skidded.

Q Nobody called your attention to it?

A No sir.

Q You did not have any trouble seeing evidences of moonshine, did you?

A No, sir. I had no trouble in seeing it or in smelling it; it was visible both ways.

Q Did you talk to Dennis Shifflet afterwards about it?

A Yes.

Q I mean down there?

A No, sir, I never saw him down there. I saw him at the hospital.

Q How long was that after he had been taken to the hospital?

A I think it was the second day. I went in and set there and talked to him.

Q He appeared to be rational?

A At first I thought he was, but after talking to him I did not think he was.

Q When he was brought to your house in the car, of course he remained outside in the car until the fellow came in for you?

A Yes, sir.

Q Did you come out and get in that car?

A No, sir; I just came out and talked to the man and saw the condition Shifflet was in.

Q What was the condition you saw him in?

A He was in a state of unconsciousness.

Q What condition was he in? See any evidence of liquor?

A The car was saturated with whisky. I could smell it.

Q You mean car or clothes of Dennis Shifflet?

A I suppose it was his clothes.

Judge: Q You could smell the whisky?

A Yes, sir; plainly.

Q Who talked to you?

A One of the men driving the car?

Q Longley?

A There was three men with this man. I don't know which one.

Q Was there a fellow on the back seat?

A The three men was standing on my walk.

Q Where was Dennis?

A He was in the rear seat leaning over, groaning like.

Q Who talked to you?

A I talked to one of the men.

Q One of the men?

A Yes.

Q You did not talk to Dennis Shifflet?

A No, sir.

Q You don't know whether he would have responded to a question?

A I am sure he would not.

Q You judge of his consciousness solely by his appearance?

A The condition of that man was enough for me to know. You could see by looking at the man. I knew he was seriously hurt. I, of course, did not know, and I was very much interested about Mr. Lucas.

Judge: Q You did not address any remarks to him?

A That's all, your Honor.

Q You only saw him?

A Just saw him

Q Nobody else asked him any questions while there?

A No.

Q Did you go with him to the hospital?

A No: I got my clothes and car and proceeded to Elkton. I called the doctor to look after this man.

And further this deponent saith not.

A. The condition of that man was enough for me to know. I'm could see by looking at the man. I knew he was seriously hurt. I, of course, did not know, and I was very much interested about Mr. Cheney.

Judge: Q. You did not witness any fire where to that?

A. That's all, your Honor.

Q. You only saw that?

A. Just saw him

Q. Nobody else asked him any questions while there?

A. No.

Q. Did you go with him to the hospital?

A. No; I put my clothes on and followed it that.

I believe the doctor is here after this man.

MR. Cuminer this document matter not.

LUTHER SHIFFLET, a witness introduced on behalf of the defendant, being first duly sworn, examined by Mr. Hammer, deposed as follows:

Q Mr. Shifflet, where do you live? And what relation are you to Dennis Shifflet?

A I live in Albemarle, and a brother to him.

Q You live in Albemarle, and are a brother of the accused?

A Yes, sir.

Q Were you here to see him when he was in the hospital?

A Yes, sir, I were.

Q When did you come to see him?

A Sunday after this occurred.

Q It occurred Friday morning?

A I do not know what day it occurred.

Q But you came here on Sunday after this happened?

A Sunday after this happened.

Q Did you see him at the hospital?

A Did I see him?

Q Yes.

A My brother?

Q Yes.

A Yes, sir, I went in to see him.

Q Did he know you?

A He did not have anything to say.

Q Who was with you?

A His wife, my other brother and George Herring.

Q After seeing your brother, and you said nothing to him, did you see Mr. Lucas?

A Yes.

Q What did you say to Mr. Lucas?

A I did not say anything. I went in the room. Mr. Herring talked. He made mention of the wreck, claiming he had hold

the steering wheel when he went over the wall.

Q Who was he talking to?

A George Herring and myself.

Q Where was Kelley Shifflet?

A I don't know whether he was up in the room with my brother.

Q George Herring is the father of Dennis' wife?

A Yes.

Q You went into see Mr. Lucas while there at the Hospital?

A I went to see him the same as my brother.

Cross examination by Mr. Conrad:

Q You live in Albemarle?

A Yes, sir.

Q You came across the mountain with him the night he was arrested?

A No. I did not see him.

Q Did not see him while over there?

A No, sir.

Q How long had he been in the hospital when you went to see him?

A It was Sunday after it occurred.

Q You were not in the car?

A No, sire.

Q You did not see him in the afternoon he left over there?

A No, sir. He said he was in church.

Q What church?

A The church in the hollow.

Q There are a good many "churches in the hollow." Where was Mr. Lucas?

A Down stairs. I do not know what room.

A Good Spirits. I do not think any room.

Where are my friends.

I think she's a bad bunch "Spectacles is its position.

A The Church of the position.

I Sure Christ.

I Do' Why. Do Lady be and in church.

Protocols Take

I Not Sit Not Are it the Metropolis of Jesus Christ Christ Christ

A Do' Life.

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Are Christ Which Jesus Christ Are Christ Christ Are Christ.

Q When you went in the front door -- Did you go in the front door?

A I guess it was the front door.

Q When you went in the front door, you went through the hall and up the steps. Did you turn to the right and go out a hallway to get to Mr. Lucas' room?

A I went straight out the hall. As well as I remember it was to the right.

Q Who else went with you?

A George Herring.

Q How did he happen to be there?

A He went up with us.

Q Where did he get with you?

A Left his place with us.

Q What kin was he to Lucas?

A Well, I don't know.

Q What to Dennis?

A Dennis married his daughter.

Q His son-in-law?

A Yes.

Q Was that where you came to when you came across the mountain?

A I came to my brother's wifes.

Q Was that where George Herring lived?

A All lived pretty well together there.

Q Is that the first you heard of your brother being hurt?

A I heard they were both hurt before I left home.

Q You came to George Herrings?

A To my brother's wifes.

Q Whose car?

A My brother's. My brother and I come together.

Q Whose car?

A Kelley's, my brother's. Kelley's car.

Q Whose care did ybu come in?

A My own brother's car.

Q You never had known Mr. Lucas?

A No, sir.

Q How did it happen that you went int to see a stranger?

A Anybody gets to a place like that they wanted to see him?

Q Just wanted to see somebody hurt.

A To see how he was getting along.

Q Was there a nurse in the room?

A No, I don't think it was.

Q Was any other person in the room?

A Not that I know of.

Q Who did you get permission from?

A Well, the doctor, I guess, or the nurses.

Q Who got the permission?

A I went in with my uncle, George Herring. He was authorized to go in by someone in the hospital.

Q You were with him?

A Yes; he got the permission.

Q Who did he get the permission from?

A I guess that lady out there.

Q You say you were with him. I want to know whether it was a lady or a man?

A I guess it was a lady. He asked permission.

Q Why do you have to guess, Mr. Shifflet, when you were with him when he got it?

A I was along, but I did not pay any attention to his getting permission.

Q And you are unable to tell the jury whether it was a

Q. Have cars?

A. Daisy's, my brother's. Daisy's car.

Q. Where were all you going to?

A. My Uncle Percival's car.

Q. You never had taken it. Lucky?

A. Do, sir.

Q. How did it happen that you went out to see a miscarry?

A. Jeeves gets to a place like that they wanted to see

x-x-x

Q. Just arrived in new assembly hall.

Q. So you had he was getting along.

Q. Was there a nurse in the room?

A. No, I don't think it was.

Q. Was only other person in the room?

A. Not that I knew of.

Q. How did you get permission from?

A. Well, the doctor, I guess, or the nurses.

Q. Who got the permission?

A. I went to with my uncle, Cedric Travers. He was anxious to go in by nurses in the hospital.

Q. You were with Bill?

A. Yes; he got the permission.

Q. Who did he get the permission from?

A. I guess that lady out there.

Q. You say you were with him. I want to know whether it was a lady or a man?

A. I guess it was a lady. He asked permission.

Q. Why do you have to guess, Mr. Moffat, when you were with him when he got it?

A. I was alone, but I did not pay any attention to his getting permission.

Q. And you are unable to tell the jury, whether it was a

man or woman who gave that permission?

A As well as I know about it, it was that lady there that gave permission.

Q Lady where?

A In the hospital.

Q She was on the right hand side in a little office room?

A I think she was.

Q Did they send any nurse along with you?

A Not as I remember of.

Q What time of day was it when you went to his room? Morning or evening?

A Morning.

Q About what time?

A I do not know.

Q Nine o'clock?

A I could not just tell you. It was in the morning.

Q Can't you tell whether it was near 9 o'clock or 12? Can't you give the jury any idea of whether it was near 9 or 12 o'clock?

A It was a right smart little while in the morning.

Q Do you mean it was 11 o'clock?

A No, it was not 11 o'clock.

Q I mean when you went in to the Lucas room. You were not in there, as a matter of fact, at all, were you ?

A Yes, sir. I was in there.

Q Was it about 12 o'clock when you went in there?

A I have told you about all I can tell you.

Q You can't tell whether it was about 9 o'clock or 12 o'clock when you went in Mr. Lucas' room?

A I would not say it was 12 o'clock. It was a little while in the morning.

Q You could not tell whether it was a man or woman you got permission from, nor whether it was 9 O'clock or 12 o'clock when you

when you went to Mr. Lucas' room. Now can you tell anything about what was said in the conversation with Lucas?

A No, I do not know that there was anything said.

Q What was said between you and him?

A I don't know what was said.

Q Certainly you know what was said. I am asking you again what conversation took place in the room?

A I went in to see him and he got up the conversation. Said he thought he had hold the steering wheel when it went over the wall. I went in to see him and while I was in to see him he had conversation there, and in the conservation it was spoken of having the wreck, and claimed that he had hold the steering wheel when it went over the wall.

Q What else, if anything, was said by you to him, or by him to you except that he had hold of the steering wheel when it went over the wall?

A Nothing else said concerning it I know of.

Q How long were you in there?

A A very little while.

Q Five minutes?

A Yes, sir.

Q Did you sit down?

A Yes, sir.

Q I suppose it happens that there were chairs in the room.

A There were chairs in there.

Q At the time you and George Herring were in there you are certain that there were chairs in there and that you sat down -- as certain as he said he had hold of the steering wheel. How does it happen that you don't remember anything that was said while you were in there except that he said he had hold of the steering wheel when the car went over?

A I wasn't thinking anything was going to come of this at

A I remember thinking maybe multiplying each value by some of data it
would take one more card.

Q Did you do that?

A Positive data data comparing it I know of.

Q Don't-then not it ignore?

A = very little quite.

Q Another step

A Yes' sir.

Q And' sir.

Q Did you do it again?

A Yes' sir.

Q I suppose it problem that ignore data of the know?

A Ignore data of the know.

Q -- then the data ignore data of the know.

A Yes, sir, I do not know that data comparing data.

Q Do you know why you did not do that?

A I have never thought about it.

Q Do you know why you did not do it?

A I know it would take more cards.

Q Do you know why you did not do it?

A I know it would take more cards.

Q Do you know why you did not do it?

A I know it would take more cards.

Q Do you know why you did not do it?

A I know it would take more cards.

ell. I did not keep any remembrance.

Q After you had this conversation with him, where did you go then?

A I went home.

Q Did not go back up to your brother's room?

A I don't know that I did or not. We went home.

Q What time was it when you left town?

A I do not know the time we left.

Q The nurses ran you out of the room, didn't they?

A The doctors came in while we were there.

Q Do you know the names of the doctors?

A I do not know.

Q Was there more than one?

A I don't remember. They asked us to leave the room for a few minutes.

Q What time did you leave town?

A Just as soon as we come out of the hospital.

Q What time of day, could you give any idea, Mr. Shifflet , 2, 3, or 5 o'clock.

A I do not know what time they allowed us to stay in there.

Q You said a while ago about five minutes.

A In Mr. Lucas' room.

Q You then went home? But you don't know what time you went home, whether it was about 12 o'clock, 2, 4?

A I could not tell you because I do not know exactly. I have told you people all I know, and as far as I can remember about it, and that's all I can say.

Q Mr. Shifflet, don't you know that the truth about your visit to Lucas' room is this: the nurse brought you and your brother just to the door of Lucas' room, you asked how hefelt, that he replied that he did not feel so well, and that is all the conversation he had with you? You did not come in the room and sit down in the

room at all? Isn't the whole truth?

A No, sir.

Q Do you deny that is the truth?

A I have told you all I know. That is all I have to say about it, and that is all I can say, and that is the truth and nothing else.

And further this deponent saith not.

GEORGE HERRING, a witness introduced in the same behalf, being first duly sworn, examined by Mr. Hammer, deposes as follows:

Q Dennis Shifflet, I believe, married your daughter?

A Yes, sir.

Q Did you come to see him at the hospital?

A Yes, I was up here on Sunday.

Q What day of the week was he hurt?

A Friday morning, I think.

Q You came here on Sunday?

A Yes.

Q When you got here to the hospital, did he know you?

A No, he did not know me.

Q Were you here on Monday again?

A I do not know whether I was or not.

Q He was not conscious when you saw him, was he?

A No, sir.

Q Mr. Hyden Shifflet and Mr. Luther Shifflet came with you?

A Yes, sir.

Q And, what is your son's name -- the one not here?

A Kelley came with us on Sunday. All three of us came.

Q Whose care did you come up in?

A I think it was Kelley's car.

Q Did Mrs. Dennis Shifflet come with you too?

A Yes.

Q After you were up in Dennis' room, did you go down to Mr. Lucas' room?

A I came down going on out, and as I come down Mr. Lucas discovered me and called to me. I turned short, and he said come in, take a seat, and I set down by the bed.

Judge: Had you known Mr. Lucas?

A Yes, sir, ever since I been in the neighborhood, a good long while.

I asked him how he was feeling. He said "Pretty bad". He said "I don't know what got wrong when this car went over the wall I had my hand on the steering wheel. Just as he said that the doctors come in and said they wanted to dress him, so I got up and walked out the room.

Cross-examination by Mr. Harman:

Q Who were the doctors?

A I do not know none of the doctors in Harrisonburg.

Q What time of day was it?

A I do not know that. I taken no notice of the time of day.

Q About what time of day did you get to the Hospital?

A We started from home tolerably early, came straight to the hospital, started in the room.

Q Just estimate the time?

A It might have been 10 or 11 o'clock, as near as I can remember.

Q You were in the hospital about half an hour?

A I do not know that I was in there half an hour. I did did not stay in there long myself on account of the medicine made me sick and I hurried on out.

Q You are the father-in-law of Dennis Shifflet? He married

your daughter?

A Yes, sir.

Q Dennis was up stairs?

A Yes.

Q When you came down stairs and were passing out through the hall, Mr. Lucas called to you from his room?

A Yes, sir.

Q As a matter of fact Mr. Lucas was way back in that wing.

A He was moved after that, they tell me.

Q His room was not between the front door and the stair steps at all.

A As I come down he was laying back around on that side. They moved him after that. I never did see him.

Q Not on good terms with Mr. Lucas?

A Yes. If there is any ill feeling betwixt us it is Mr. Lucas.

Q As a matter of fact you haven't spoken to him since he arrested you for having a still?

A Yes, he has been to my place several times.

Q When was that he arrested you for having a still?

A This happened, I reckon, two years ago.

Q And he has been to your place since?

A Yes, he has been to my place several times.

Q What was he doing?

A He come there several times to see about some dogs.

Q So you have been speaking to him?

A Yes. I speak to him every time I see him. I am on just as good a terms as ever in my life.

Q He had some trouble with you some time ago?

A I do not know anything about that.

Q Some four or five men jumped on him?

A All I know is what I hear. I do not know who done it.

Your daughter?

A. Yes, sir.

Q. Jennie was at sixteen?

A. Yes.

Q. When you came down stairs and were passing out through the hall, Dr. Lumsey called to you from his room?

A. Yes, sir.

Q. As a matter of fact Dr. Lumsey was sat back in that window.

A. He was seated after that, they tell me.

Q. His room was not between the front door and the stair door at all.

A. As I came down he was leaning back around on that side. Dr. Lumsey did not after that. I never did see him.

Q. Did you have trouble with Dr. Lumsey?

A. Yes. If there is any ill feeling between me it is Dr. Lumsey.

Q. As a matter of fact you never appear to his mind as attracted you for having a child?

A. Yes, he has been to my place several times.

Q. Does one that is attracted you for having a child?

A. While lamented, I remember, two years ago.

Q. Has he been to your place since?

A. Yes, he has been to my place several times.

Q. What was he doing?

A. He came there several times to see about some farm.

Q. Do you have been speaking to him?

A. Yes. I speak to him every time I see him. I am on just as good a terms as ever in my life.

Q. He had some trouble with you some time ago?

A. I do not know anything about that.

Q. Some fear or fire was thrown on him?

A. All I know is what I hear. I do not know the more it.

Q Your son was shown to have been in it?

A Yes, he was shown in it, but I don't know who done it.

Q How long ago has that been?

A I never took no note of that. I expect two year ago; maybe a little over. I never took no note of it.

Q How did Mr. Lucas happen to tell you he had hold of the steering wheel and nothing else?

A The doctors came in and said they wanted the room and I got up and went out. Had no occasion for anything more between us.

Q That's all you remember about the conversation?

A I am on as good a terms with Lucas as with you. We have never had any difficulties to cause me to treat him bad.

Q You feel very kindly of a man who catches you with a still?

A Well, there's no hard feelings.

Q How long did you stay in Dennis' room?

A I was not in there half hour. I was sick. My arm was broke once and the medicine made me kinda sick.

Q Did anybody ask you to go out?

A I just got up and started myself.

Q Did Shifflet go with you?

A Yes, he just walked on too.

Q Was Hyden Shifflet with you?

A Not in Lucas' room.

Q Shifflet was with his son?

A And Luther Shifflet went down by me.

Q He went with you down the steps?

A Yes.

Q And you left Shifflet's father up with his son?

A Yes.

Q Did the doctors come in to dress Dennis' wounds?

A No, down in Mr. Lucas' room.

Q You know Mr. Leighton Hensley?

A Yes, sir.

Q Didn't you ask him just recently what room Mr. Lucas occupied in the hospital?

A No, sir, I did not.

And further this deponent saith not.

DENNIS SHIFFLET, a witness introduced in his own behalf, being first duly sworn, examined by Mr. Hammer, deposes as follows:

Q Dennis, how old are you?

A Thirty-four.

Q You are married and have a wife and how many children?

A Three.

Q Were they with you on that night?

A Yes, sir.

Q Your wife and children went on to the house and you went with Mr. Lucas?

A They went on to the house. Mr. Lucas throwed my wife out the car. I asked her to get out and he throwed her out.

Q About the children, he took them out?

A She had the smaller one in her arms. The boy was in the back seat asleep, and he throwed him out.

Q After he did that, what was said?

A I never opened my mouth. He jumped on the car and said "Drive me to Harrisonburg."

Q Was your car headed toward the Blue Ridge Mountain, east, or towards Elkton?

A Towards east, toward the Mountain.

Q You went on up that road. What was the next thing that occurred?

Q You know Mr. Leighton Donelaty?

A Yes, sir.

Q Didn't you see him just recently when I was Mr. Lucas convicted in the hospital?

A No, sir. I did not.

And further this deponent saith not.

MARIA SHIFFERT, a witness introduced in his own behalf, being first duly sworn, examined by Mr. Dagger, deposes as follows:

Q Maria, how old are you?

A Thirty-four.

Q You are married and have a wife and how many children?

A Three.

Q Were they with you on that night?

A Yes, sir.

Q Your wife and children went on to the house and you went with Mr. Lucas?

A They went on to the house. Mr. Lucas throwed my wife out the car. I asked her to get out and he threwed her out.

Q About the children, he took them out?

A He had the smaller one in her arms. The boy was in the back seat asleep, and he threwed him out.

Q After he did that, what was said?

A I never opened my mouth. He jumped on the car and said "Drive on to Fairlandburg."

Q Was your car headed toward the Blue Ridge Mountain, near or towards Bluford?

A Towards east, toward the Mountain.

Q You went on up that road. What was the next thing that occurred?

A We went on over the top of the first hill --

Q The first hill is where Mr. Marshall lives, then what?

A Started on up the other hill --

Q Where is it located?

A Near the Chap Lam place.

Q Chap Lam lives on the Harnsberger farm?

A Yes, sir.

Q Did you have any words?

A Yes. I said, "Don't talk to me. I never let my wife talk to me when I'm driving the car," and "smack" he took me. I don't know what it was, knucks, gun, billy, or what. I said, "What the devil are you doing," and he hit me again.

Q When is the next thing you remember?

A The next thing I remember was in the hospital and my brother Kelly walked up to the foot of the bed and says, "How you getting along?" and I said "Very well."

Q Do you know when that was?

A Don't know what day.

Q You have been on good terms with Mr. Lucas?

A Yes; I don't blames man for doing his duty.

Cross-examination

By Mr. Earman:

Q What did you have in your car, Dennis?

A You know what you proved up on me.

Q What was that?

A I put in the time you give me.

Q What was in the car?

A I give my time; that is all I am supposed to do. I pulled my time and paid my fine.

Q For what? Moonshine?

A That's what they say.

Q What do you say?

A I aint said nothing. That's what you said.

Q That's what you had in the car?

A I have paid my fine and pulled my time.

Q Did the jury make a mistake?

A If it did it was all right.

Q You don't mean to state Mr. Lucas threw your wife and child out of the car that morning?

A As well as I am setting in the chair, he did.

Q Pick them up and just put them out of the car?

A He didn't pick her up in his arms, nothing like that.

Q He told you to drive him to Harrisonburg?

A Yes, sir.

Q You know how to drive a car?

A Been driving one, but when a man gets knocked senseless--

Q When you reached Harnsbergers Hill, how far is that from the bridge?

A I do not know the distance. Have not measured it. Have not stopped it. It might have been a mile.

Q As much as a mile?

A Might be.

Q That was going up the Harnsberger hill?

A Yes, sir.

Q How fast were you going?

A I was going up on high.

Q And he was talking to you? What was he talking about?

A I don't know. I says, "Don't talk to me. I won't allow my wife to talk to me when running the car."

Q What did he do?

A He smacked me.

Q Where did he smack you? On the side of the head?

A On both sides.

Q You were sitting on the left hand side of the car?

A That's where I was setting.

Q He was on the right hand side?

A That's where he was.

Q He hit you going up the Harnsberger hill?

A Yes.

Q How fast were you driving up the hill?

A I did not have anything to show how fast I was oing.

Q How did he smack you?

A Just reached around.

Q How did he hit you on the left hand side?

A Maybe I turned around. I do not know.

Q You turned around and let him hit you?

A Maybe I did. Maybe he reached around.

Q You don't know how he hit you on the opposite side of the head?

A I don't. I couldn't jump out of the car.

Q There was a suit case, was there not, between you and Mr. Lucas?

A If it was a suit case it was in behind.

Q No suit case between you and the man?

A No.

Q Were there some jugs in there?

A He said so.

Q What do you say?

A I am just going by what he tells you.

Q Were the jugs there or not?

A If there were jugs there I --

Q Just tell us, Mr. Shifflet, whether or not there were any jugs there?

A I have done pulled my time on them.

Q Just tell us whether or not the jugs were there.

A I am fighting the other case now.

Q Don't you know what he hit you with?

A I don't know. I don't know if it was knucks, billy, gun, or piece of iron. If I knowed I would tell you.

"Yes." Pause.

"It is as if you had to make a sum in parallel."

"Then you have your memory also in parallel."

"No."

"Then what does it mean?"

"Well, I don't know. I don't know if it was intended, pretty dumb."

"Yes." Pause.

"Do you feel you can do it?"

"I don't know. I don't know if you would want it or not if you knew what it was."

"Well, I don't know." Pause.

"Do you feel as if you have an idea, some idea?"

"Well, I don't know. I don't know if it is some idea, pretty dumb."

"Do you feel as if you could do it?"

Q Did you have your hat on at the time?

A Yes. I had it on when I left home.

Q What is the character of the road from the point where Mr. Lucas hit you up to the bridge? Good or bad?

A About like all others.

Q Steep and rough?

A No, not rough. I have seen crookeder roads. I have seen straighter ones.

Q You say there are a good many curves in the road?

A All roads are curved. All roads I ever been over are curved.

Q If you were unconscious, how did you drive the car?

A I don't know who drive it. I might have drove it and he might have drove it.

Q You were drinking?

A I don't know if I was drinking. I was drinking the day before. I couldn't tell you whether I was or not.

Q You know, don't you?

A I have told you all I can tell you about it. I am telling you about this other matter.

Q When Mr. Lucas hit you side the head, did he break the skin?

A My skull was.

Q Who told you about that?

A I discovered it after I got in the hospital. I don't know what was the matter. I know they took an X-ray.

Q The road across the mountain where you got this car of booze -- good or bad?

A All mountain roads are bad.

Q You did not have any trouble keeping the car in the road?

A If I had I would have turned it loose and let it come itself.

Lizzie:

A Is I sure I could even pretend it looks like that it could

A not all for even the simplest remarks you do at the zoo.

A All mountain tombs are bad.

Phoebe -- book to bed?

A The tomb matches the mountain again for the last time we

Phoebe -- book to bed?

A Yes I know I don't know why I don't know

A I'm sorry.

Phoebe

A Mommy are

A Are there two apples there?

A I alternately is that I not in the moment. I don't

know where the apples. I know that look on E-mail.

A The tomb matches the mountain again for the last time we

Phoebe -- book to bed?

A All mountain tombs are bad.

A Not all for even the simplest remarks you do at the zoo.

A Yes I know I don't know why I don't know

Lizzie: A Mommy, I'll tell you what I am to say.

A Yes, I know.

Lizzie: A Mommy, I'm sorry.

A I don't know if I am alright. I am thinking the end

A Are there alright.

Lizzie: A Mommy, I'm sorry.

A I don't know why I'm alright. I other bear clear it not to

A If you were communicating, you'll then write the end.

Lizzie:

A Lil Lizzie's mommy. Lil Lizzie I have been back and

A Not one there's the a good memory mommy in the zoo.

Zoo mistrisses zoo.

A Yes? Yes tonight. I have been discovered tonight. I have

A Zoo's mommy

A Zoo's time all alone.

Lz: Lizzie's all you do to the zoo mistress. Zoo's be bad.

A Zoo's time all alone.

A Zoo's mommy

A Did you hear Zoo's bad to at the zoo?

A Lizz. I had to do about I talk zoo.

A Zoo's mommy to are bad zoo from the bright space

Lz: Lizzie's all you do to the mistress. Zoo's be bad.

Q The first time you turned it loose was when you got to the bridge?

A I don't know. I would not have run myself in there if I had known anything about it.

Q What was it you say you said to Lucas that caused him to strike you?

A I says don't talk to me that I don't allow my wife to talk to me when I am driving the car.

Q And then without saying anything else he hit you?

A He hit me.

Q Is that all you said?

A All I said.

Q You knew at the time Mr. Lucas was brining you to Harrisonburg that he had you underarrest for transporting whisky?

A That's what he claims he arrested me for.

Q You know that was what it was for?

A I pulled my time. He did not say what I was charged with. He said drive me to Harrisonburg.

Q Didn't you ask him why?

A No, I never opened my mouth.

Q Didn't you ask him why he wanted you to drive him to Harrisonburg?

A No, I never asked hi that.

Q You saw him extract the cork from one of those jugs and smell the contents?

A I could not watch the road and watch him too. All I saw was the gun drawed on me.

RE-DIRECT

By Mr. Hammer:

Q You heard Mr. Offenbacker's statement here that you made a statement on a Sunday near the tannery that you would not be taken alive.

Q The first time you turned it loose was when you got to the bridge?

A I don't know. I would not have run myself in there if I had known anything about it.

Q What was it you say you said to Jones that caused him to strike you?

A I guess he's talk to me that I don't allow my wife to talk to me when I am driving the car.

Q And then without saying anything else he hit you?

A He hit me.

Q Is that all you said?

A All I said.

Q You knew at the time Mr. Jones was driving you to Hartsburg that he had you imprisoned for transporting whisky?

A That's what he claims he arrested me for.

Q You know that was what it was for?

A I guilted my time. He did not say what I was charged with. He only drive me to Hartsburg.

Q Didn't you ask him why?

A No, I never opened my mouth.

Q Didn't you ask him why he wanted you to drive him to Hartsburg?

A No, I never asked him that.

Q You saw him extract the cork from one of those jugs and smell the contents?

A I could not watch the road and watch him too. All I saw was the jug turned on me.

RE-DIRECT

By Mr. Hammer:

Q You heard Mr. Gifenbaker's statement here that you made a statement to a Judge over the telephone that you would not be taken alive.

A No, sir; that's something I don't do on Sunday. I stay home.

Q Mr. Earman has asked you, I believe, what was Mr. Lucas' attitude when he arrested you. Was he angry or an excited man?

A Excited man.

Q Is Mr. Lucas when making an arrest, in the habit of treating his prisoners harsh?

Objection.

Good objection.

RE-CROSS EXAMINATION

By Mr. Earman:

Q Mr. Shifflet, at the point you say Mr. Lucas hit you there going up the Harnsberger hill, how close was it to Chap Lam's house?

A Just right over the top of the hill. Just at the gate you go into his place.

Q About as far as from here over to the Sipe Building?

A Just about. His yard runs down to the road.

Q The house is in perfectly plain view from where you were?

A Setting behind the shop.

Q That place on the road you say where you were when he hit you is in plain view of the Chap Lam or Harnsberger house?

A Some trees standing over there and some buildings over there. I was not quite to the top of the hill when he hit me. The shop is between the road and the house.

Q The place he hit you was near the gate going into the Chap Lam place?

A No indeed, we did not get to the gate. The gate's on top of the hill.

Q Was it down between Chap Lam's gate and the road you live on?

A No, I had done pulled one hill. The other hill is be-

tween us and the turn of the road. There is two hills between where I used to live and he hit me on the last hill.

Q This road where you turned off from the road you lived on, the road comes up between the Chap Lam and Harnsberger place - is that in plain view from the Harnsberger house?

Mr. Hammer: I object to that question. Mr. Barman has asked about that before and is simply repeating.

The Court: Good objection.

And further this deponent saith not.

At this point the defense rested with right waived to put Dr. T. C. Firebaugh on stand when he arrived. And thereupon the Commonwealth to further maintain the issue on its part introduced the following testimony in rebuttal.

Sweet on and the turn of the road. There is two miles between where I used to live and he sit on the last hill.

Q This road where you turned off from the road you lived on, the road comes up between the Jump Lam and Darnbarger Lane - is that in plain view from the Darnbarger house?

Mr. Hoover: I object to that question.

Mr. Strawn has asked that before and is simply repeating.

The Court: Good objection.

Mr. Fuller this document with not.

At this point the defense rests all right matter is yr. Mr. S. Hardy on stand when be arrives. And therefore the commonwealth to further maintain the issue on its part introduced the following testimony is rebuttal.

MR. L. P. LOUDERBACK, a witness recalled by the State, examined by Mr. Harman, deposed as follows:

Q You have testified already that you have lived at Elkton for somtetime?

A Yes, sir.

Q You know Mr. Lucas?

A Yes, sir.

Q You operate a flouring mill at the bridge in Elkton?

A Yes.

Q You come in contact with people in your trade?

A Yes, sir.

Q What is the general reputation of Mr. Lucas in that community?

A He is a truthful man.

Q Knowing him as you do, would you believe him on oath?

A Yes, sir.

Q I will ask you about Mr. Ben. Offenbacker. You have known him for some time. Is he not generally regarded among the people of that community as a man of truth?

A Truthful.

Q Knowing him as you do, would you believe him on oath?

A Yes, sir.

And further this deponent saith not.

MR. L. H. BRUCE, another witness recalled by the State examined by Mr. Harman, deposed as follows:

Q I believe you are mayor of Elkton?

A Yes, sir.

Q You know Mr. W. E. Lucas?

A We were next door neighbors until the fire.

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Mr. J. P. LAUGHLIN, a witness testified by the State, examined by Mr. [illegible] deposed as follows:

Q You have testified already that you have lived at Elgin for awhile?

A Yes, sir.

Q You know Mr. Lemmer?

A Yes, sir.

Q You operate a flagpole mill at the bridge in Elgin?

A Yes.

Q You come in contact with people in your trade?

A Yes, sir.

Q What is the general reputation of Mr. Lemmer in that community?

A It is a terrible one.

Q Supposing all as you do, would you believe him on oath?

A No, sir.

I am further this deponent saith not.

Mr. I. B. SUTTON, another witness testified by the State, examined by Mr. [illegible], deposed as follows:

Q I believe you are mayor of Elgin?

A Yes, sir.

Q You know Mr. W. J. Lemmer?

A We were next door neighbors until the fire.

Q How long have you known him?

A About 20 years.

Q You know his reputation for truthfulness and veracity?

A Yes, sir.

Q State to the jury whether it is good or bad.

A Good.

Q Would you believe him on oath?

A I would believe him on oath.

Q Do you know Mr. Offenbacker?

A Yes, sir.

Q Know his reputation?

A Never heard it questioned.

Q How far do you live from him?

A About a fourth of a mile.

Q What is his reputation for truthfulness and veracity?

A It is good.

Q Would you believe him in any matter on oath in which he might testify?

A Yes, sir.

And further this deponent saith not.

At this point Dr. T. C. Firebaugh, a witness for the defendant appeared and after being first duly sworn, was asked the following questions by Mr. Hammer and made the following answers:

Q You are a practicing physician, and in the last several years have been giving your attention especially to X-ray work.

A Yes, sir.

Q You have been giving special attention to that since the War?

A Yes, sir.

Q Did you make a picture of Dennis Shifflet when he was in the hospital?

A I did. I haven't my records with me. Did not have time

to get them.

Q He was in the hospital at the time?

A Yes, sir, it was while he was in the hospital.

Q Was he conscious at the time.

A He was unconscious.

Q What did that X-ray disclose?

A It showed a fracture of the outer plate of the skull on the right side. It was the outer plate.

Q Did you notice any other injuries to his person?

A I didn't notice any. That is all I was asked to do.

CROSS-EXAMINATION by Mr. Earman:

Q You likewise took some pictures of Mr. Lucas' leg?

A I believe Idid; yes, sir.

Q What did those pictures disclose?

A I do not have my records here, but I think it was a comminuted fracture of the leg. There were several pieces of loose bone. I took several X-ray examinations of his leg.

A I understood you to say it was a comminuted fracture of the bone?

A Yes.

Q His leg was broken in several places?

A Yes, sir.

And further this deponent saith not.

And thereupon the Commonwealth resumed her rebuttal testimony and HERMAN LONGLY was recalled by the Commonwealth, and examined by Mr. Hauserman, deposed as follows:

Q Mr. Longly you live at Elkton?

A Two miles south of Elkton.

to see them.

Q Do you in the hospital at the time?

A Yes, sir. I was while he was in the hospital.

Q Was he unconscious at the time.

A He was unconscious.

Q What did that jerky disclose?

A It showed a fracture of the outer plate of the skull on the right side. It was the outer plate.

Q Did you notice any other injuries to his person?

A I didn't notice any. That is all I was asked to do.

CROSS-EXAMINATION by Mr. Sarason:

Q You listened that some pictures of Dr. Lucas' leg?

A I believe that was, sir.

Q What did those pictures disclose?

A I do not have my records here, but I think it was a comminuted fracture of the leg. There were several pieces of bone here. I took several X-ray examinations of his leg.

A I understood you to say it was a comminuted fracture of the bone?

A Yes.

Q The leg was broken in several places?

A Yes, sir.

And further this deponent saith not.

And thereupon the Commonwealth rested her material testimony and RESTON LOMBOY was recalled by the Commonwealth, and examined by Mr. Sarason, deposed as follows:

Q Mr. Lomboy you live at Elkton?

A Two miles north of Elkton.

Q Do you know Mr. W. E. Lucas?

A Yes, sir.

Q How long have you known him?

A Fifteen or twenty years. As long as he has been in Elkton.

Q Qhite well, I presume?

A Yes.

Q Do you know his general reputation in that community?? for truth?

A Why, I think it is good. I don't think it is questioned.

Q Knowing that reputation as you do, would you believe Mr. Lucas on oath?

A Yes, sir.

Q Do you know Mr. Benjamin Offenbacker?

A Yes, sir.

Q Do you know his reputation?

A I never heard it discussed. I never heard anything especially against him.

Q Would you believe Mr. Offenbacker on oath?

A Yes, he would tell the truth.

And further this deponent saith not.

MR. W. E. LUCAS, a witness introduced on behalf of the State, being recalled, examined by Mr. Earman, deposes as follows:

Q Mr. Lucas, Dennis Shifflet testified yesterday that when you arrested him on the charge of transporting liquor you grabbed his wife, and one child, and possibly his children,- one child I believe he said, and threw them out of the car. Did you do that or not?

A No, sir, I never touched them.

Q I understood you to say yesterday that all you did was simply search the accused for weapons at that time and found he had no weapons on his person and you come on to Harrisonburg.

A Yes, sir. Never touched his wife and child at all. Never touched them at all.

Q He testified further that going up the Harnsberger hill a mile or such a distance from the Shenandoah River in front of Mr. Chap Lam's house that you beat him over the head -- hit him on the left hand side of the head, and in the other case he said the right hand side -- and knocked him into unconsciousness.

A No, sir, I never touched him. He never gave me no occasion to hit him. He had a suit case between us and even if I had wanted to hit him I could not have done it and grabbed the steering wheel. I could not have hit the man with a suit case setting up two feet high between us. You can't catch hold of the steering wheel that way.

Q You did not touch him?

A No, sir, absolutely. I had no occasion to hit him. He treated me all right until we got to the bridge.

Q He testified you were talking to him?

A I never said a word to him only when he spoke to me about taking the car away from him near to the bridge.

Q I believe the language he employed was this, "Don't talk to me when I am driving the car. I don't allow my wife to talk to me when I am driving the car."

A I never said a word to him.

Q Did he say that?

A No, sir, he never done it. I never talked to him only when he spoke to me.

Q Mr. Lucas, when you were a patient in the Rockingham Memorial Hospital the first time, were you in a room between the stairs and the entrance?

A No, sir, on back.

Q What room were you in?

A Room 18.

Q Where is room 18?

A Right straight back, about as far as from here to the wall. Right after your start to go up stairs.

Q You mean right at the office?

A No, sir. Room 18 is back where they have dirty laundry. On the left hand side is Room 18.

Q You were in the same room all the time?

A No, sir.

Q You were changed around?

A Changed to another room.

Q Anyone coming down from upstairs, passing out of the building by way of the front door, would that person in going out pass the room you were in? Would they see you? Could they see you?

A No, sir. I could not see anybody from that room.

Q Could you see such person from the room you occupied?

A No, sir.

Q Do you remember how many doors your room was from the stair case?

A It was on the left hand side where they get ice, water,

and stuff and another room between it and my room 18. Toward the laundry room where they have dirty laundry, take it and put it in baskets and take it to the laundry.

Q Was your room the one underneath the operating room?

A I don't know whether it was under the operating room. They moved me up stairs and I was right across from the operating room. Only I was on the right hand side in room 31.

Q Now on Sunday following the Friday you were hurt you were in Room 18.

Mr. Hammer: Q 18 or 19?

Q East end of the building, left hand side as you go east?

A Yes, sir, on the old part.

Q Now, Mr. Lucas, George Herring testified yesterday that he saw you on the Sunday just referred to?

A Yes, sir.

Q That he came to your room with one Luther Shifflet and that they had a conversation with you -- I have forgotten whether the conversation was had with you by Herring or Shifflet -- and that you told them you had hold of the steering wheel when this car left the road and ran into the river. Did you have a conversation like that?

A Never had any conversation. No, sir. Mr. Shifflet, Luther Shifflet, said it was his brother with him. I didn't know he had two brothers. They appeared there at my door, a nurse brought them there,-

Q Who appeared there?

A Mr. Shifflet's two brothers.

Q The man on the witness stand?

A Yes, sir. He is the man that says, "How do you feel?" and I said I did not feel very good. He stood there and said he was Dennis Shifflet's brothers. When he said that I never said nother word to them for I was afraid. I didn't know but what those

fellows had come there and worked a way to get at me. Mr. Herring was not there and he has never spoken to me since I arrested him with that still and he went right by my shop for ice.

Q How long has that been?

A About two years anyhow. Mr. Dillard arrested him.

CROSS-EXAMINATION

By Mr. Hammer:

Q You say this man has never spoken to you since you arrested him. Do you know, as a matter of fact, that this man has been in your barbar shop and talked to you?

A No, sir.

Q Don't you know as well that this man had a warrant issued against W. T. Harring and brought it to you to serve?

A No, sir.

Q He came to your house, don't you know, and had you serve that warrant?

A No, sir; I don't know.

Q Didn't you do this for him?

A No, sir.

Q Didn't you have the Will Herring warrant?

A No, sir.

Q Didn't you go to his house about dog tags?

A No, sir, absolutely I did not go there about dog tags or nothing else.

Q Have you been to his house since then and served a warrant on him there?

A No, sir, absolutely not. Mr. Bruce got all the warrants.

Q Mr. Bruce is a justice of the peace. He does not serve papers?

A He knows whether I served any papers or not.

Q Didn't you do that yourself, and you know it?

A No, sir. I did not.

Q Mr. Lucas, you did see Luther Shifflet there on Sunday after you were hurt?

A I seen Mr. Luther Shifflet. He said his name was Luther Shifflet, and the other man was his brother. He introduced himself. They stood in the door and never come inside.

Q And there is no question about those men being at the hospital, and whether your occupied room 18 or 31, that man coming in there asking how you felt?

A No. Shifflet asked me how I felt, but I never seen the other man. Mr. Herring was not with him.

Q You deny you saw Mr. Herring at the hospital? You mean Mr. Shifflet has come here and deliberately lied.

A Yes, sir, I say so.

Q And that he is altogether in the wrong and you are absolutely in the right in all these things?

A Absolutely so.

Objection. Overruled.

Q And you say you were frightened when he came to the door?

A Yes, sir, wouldn't you have been frightened?

Q Mr. Lucas, you are on the stand, and I am asking you what caused you, when this man came in the room, or came to the door, on a friendly mission, called on you as he called on his brother who was in the hospital, to be frightened. You knew from the question he asked you that he knew you were hurt. What was in that man's action or conduct that would lead you to think for an instant that you were in danger from that man?

A Any child could have come in there the way I was on Sunday.

Q Can you tell this jury here that any such idea came into your head -- you a big stalwart man, an officer who is proud of

Q Mr. Inman, you did see Luther Shiffler there on Sunday after you were hurt?

A I mean Mr. Luther Shiffler. He said his name was Luther Shiffler, and the other man was his brother. He introduced himself. They came in the door and never come inside.

Q And there is no question about Inman was being at the hospital, and another your assumed room is or 37, that was making in there asking how you felt?

A No. Shiffler asked me how I felt, but I never seen the other man. Mr. Barrine was out with him.

Q You didn't see Mr. Barring at the hospital? You mean Mr. Shiffler has come here and deliberately lied.

A Yes, sir, I may do.

Q And that he is altogether in the wrong and you are absolutely in the right in all these things?

A Absolutely so.

Objection. Overruled.

Q Did you say you were frightened when he came to the door?

A Yes, sir, wouldn't you have been frightened?

Q Mr. Inman, you are on the stand, and I am asking you what caused you, when this man came in the room, or even to the door, or a friendly mission, makes no you as he called on his brother who was in the hospital, to be frightened. You knew from the question he asked you that he knew you were hurt. What was in that man's action or manner that would lead you to think for an instant that you were in danger from that man?

A Any child would have come in there the way I was on Sunday.

Q Can you tell this jury here that any man that came into your head -- you's big stalwart man, an officer who is proud of

himself for his courage, were in a house surrounded not by one, but by dozens of people, in the heart of the town, you were afraid of this man when he came to this door and asked you how you were feeling? That you was afraid of him?

A Yes, sir, I was afraid of him, and you would have been the same.

Q No, sir, I would not have been. Mr. ~~Lucas~~ Lickas --

A ~~Lucas~~ Lickas is not my name. It's Lucas.

Q Don't get touchy. I don't suppose you flew off and got mad at Mr. Shifflet that night. As a matter of fact you are a very irritable and excitable person, and will strike a fellow for the least thing, and have done it?

A No, sir, I have not; only on certain occasions.

Q And you have not only done that, but you have shot at people?

Objection. Overruled.

Q You shot George Herring when you did not have a warrant?

A No. I went up there. I had a warrant and went up there. Mr. Herring was in there and had a pint of liquor in his pocket. I ran out after one of the fellows I had a warrant for, and Mr. Herring was in there and my brouther and him and a couple men got in a fight and I told them to place Herring under arrest and he throwed the bottle out. There was four of them on my brother, they was fighting and they had him down. Four of them was beating him.

Q That case was examined and you testified as a witness at Elkton. Don't you know as well as you sit in that chair that this man Herring ran from the house, and that the fight that took place between your brother Joe did not take place between four men, but happened out and out with that young man Raynes outside the house, and he was only only tried in the Justice's Court, but was tried here

and Raynes was convicted here and given six months, and you testified in the case to that fact.

A No, sir, they was all four on him.

Q I am asking you to what you testified to.

A I testified to just that.

Q Don't you know that in an effort to cover up that matter with George Herring you let him off and never had him charged with any liquor when you shot him?

A No, sir, I didn't.

Q Did you prosecute him?

A You was prosecuting. The magistrate had him.

Q Why didn't you desire it when you knew he had liquor on his person. You knew George Herring had liquor on his person. Why did you shoot him? What did you do about the case?

A Mr. Bruce tried the case, and I told Mr. Bruce just as I am telling it to the jury.

Q You never said four of them was on your brother in the house there?

A Yes, sir, I did.

Q You said in that case that you was in Elkton when somebody reported there as a drinking crowd up at Shifflet's and Raynes, and you went up there with your brother.

A I had the warrant,too.

Q Where did you get the warrant? Didn't you tell at that trial that you did not have any warrants?

A Mr. Bruce issued the warrant.

Q Don't you know you didn't have any warrants?

A No, sir, I did not say so.

Q What time did you go up there?

A About 10 or 11 o'clock.

Q When you got that message you did not see Bruce any more that night.

A You can ask Mr. Bruce.

Q You are on the stand.

A Yes, I seen Mr. Bruce. He was in the shop.

Q The warrant was issued there?

A Yes, sir.

Q Don't you know you swore differently at Elkton?

A No, sir, I did not.

Q Didn't you know that there was some drinking at that house. Somebody threw some liquor in the stove -

A Mr. Herring throwed it in. Some of them ran. He was on Joe.

Q Didn't you shoot him in the house?

A Out in the yard.

Q Your brother come along and Raines and Joe hooked up. Not Herring.

A No, sir. Mr. Herring was on him too.

Q Don't you know as well as you know you are sitting in that chair that Herring was not on him?

A He was on him. They was all four on him.

Q Just as you shot at Charlie Francis, another case you have tried in this Court. He was running away in the car. You shot at him. Shot through his shoulder through the car, and yet talk about not letting your temper get away off the handle.

A I never shot Francis. Never shot towards him at all.

Q You shot several times.

A Shot straight up in the air to scare him.

Q How did he get that hole through his coat and his windshield as he come over the top of the hill?

A No, sir, I never shot at him.

Q What was you shooting at?

A I never shot him. Never shot towards him at all.

Q Did you ever have any trouble with other men? You had a fight up there at Eaton's store.

A Yes, that man jumped me first. He jumped me first. I never did fight anybody unless he fought me. I never fought a man in the court room.

Q I suppose you are referring to me. Well, I am willing to say I have had my trouble. I am not stating that I never lose my head. Now, Mr. Lucas, you have had other fights with men. Who are they?

A I never fought anybody in my life, except people who fought me.

Q Never crossed any of them?

A No, sir.

Q There is no question about Luther Shifflet being out there?

A Mr. Shifflet and his brother evidently came to the door and a trained nurse brought them there, and he asked me how I felt, and I said not so good. He said we are Dennis Shifflet's brothers. They stood there a few mintues and then walked away. I never seen the men before.

Q What was your condition? Good shape at that time?

A I did not feel very good. And those two strange men standing there saying they was Dennis Shifflet's brothers.

Q How were you feeling physically? Were you suffering?

A I got seven stitches right there (Indicating), a hole in my wrist, and my leg broke.

Q And I suppose you were suffering about the third day?

A Yes, third day.

Q I believe the third day the bones begin to knit?

A My bone never knit and I went back to the hospital and was operated on.

Q You were suffering intense paine?

A No sir, I wasn't suffering much.

Q Do you know what you were talking about that day? Do you think you were conscious?

A Yes, sir, all the time.

Q Rational all the time?

A Yes, sir. Yes, I was rational when I held Mr. Shifflet up out of the water to keep him from drowning.

Q How did Mr. Shifflet get out of the car. It is funny that both of you didn't get out. You never did say in your testimony that he was out of the car.

A No, sir, I was never out of the car.

Q You never said Shifflet was out.

A Shifflet was turned up in the top. I took my knife and cut along side his head and pulled him up so he would not drown.

Q That suit case you spoke of was laying between you?

A It was setting up between us. The suit case -- Mr. Dillard seen the suit case.

Q You say it was setting upright. You mean to say that?

A Yes, sir, I told you that all the time.

Q You have left the jury on the impression that the suit case was right in that shape.

A No, sir, It was on the front seat setting up that way with jars of liquor in it. I looked at it.

Q With jars of liquor?

A Yes, sir, jars of liquor.

Q It was a shaped suit case, the color of that there? (indicating)

A Yes.

Q Did it wabble over against you?

A No, sir, it was pretty tight. With us in there it was pretty tight, but there was plenty of room.

And further this deponent saith not.

DR. J. M. BEIDLER, another witness introduced on behalf of the defendant, being first duly sworn, examined by Mr. Hammer, deposes as follows:

Q Doctor, you are a practicing physician in Harrisonburg?

A Yes, sir.

Q Been for a number of years?

A Since 1903.

Q This man, Dennis Shifflet, who sits here, was injured when his car went off the bridge at Elkton last May. Did you attend him when he came to the hospital that morning?

A I did.

Q Have you any idea what hour you saw him first?

A I was called out about 6 o'clock on the morning of May 16, I think.

Q State to the jury what his condition was so far as being conscious at the time.

A At the time I examined him he seemed to be in a semi-conscious state of mind.

Q Did you ask him any questions, and did he make any replies?

A Yes, he told me his name and where he was from.

Q Was his state of consciousness such as that he would have understood, for instance, if anybody had said the house was on fire you better get out, or anything like that. Was he conscious enough to have acted sanely?

A I think so. I feel pretty certain of it.

Q Did you attend him after that?

A For five days. He left for home May 23.

Q From that 6 o'clock A.M., May 16, until he left, did his condition improve or not?

A Improve, rapidly.

By Mr. Conrad:

Mr. J. H. [illegible], another witness introduced on behalf of the defendants, being first duly sworn, examined by Mr. Hamner, answers as follows:

Q. Doctor, you are a practicing physician in Fairmontville?

A. Yes, sir.

Q. Been for a number of years?

A. Since 1920.

Q. This man, Dennis Bailey, who sits here, was injured when his car went off the bridge at Dixion last May. Did you attend him when he came to the hospital that morning?

A. I did.

Q. Have you any idea what hour you saw his first?

A. I was called out about 6 o'clock on the morning of that 9.

Q. State to the jury what his condition was at the time you saw him at the time.

A. At the time I examined him he seemed to be in a semi-conscious state of mind.

Q. Did you ask him any questions, and did he make any replies?

A. Yes, he told me his name and where he was from.

Q. Was his state of consciousness such as that he might have delirious, for instance, if anybody had said the house was on fire rather out out, or anything like that. Was he conscious enough to have acted sensibly?

A. I think so. I feel pretty certain of it.

Q. Did you attend his after that?

A. For five days. He left for home Sep 5th.

Q. From that 9 o'clock A.M., May 5th, until he left, did his condition improve or not?

A. Improve, rapidly.

By Mr. Hamner:

CROSS EXAMINATION BY MR. CONRAD:

Q Was the X-ray taken the same day he went there?

A Yes. I told him that he probably had a fracture of the skull. I thought that the diagnosis was concussion of the brain.

Q You found he did have a fracture behind the left ear?

A Yes, sir. Not a depressed fracture, just three little cracks.

Q He was in a semi-conscious condition?

A I mean by that he would arouse when you would speak to him and seem to go off into a sleep. Behind the left ear a little blood oozed from an abrasion on the scalp.

Q It was over the left ear?

A That is the way my memory serves me. The skin was scraped.

Q Was struck by some instrument?

A Struck by something.

Q Could you say it did not occur from an automobile upsetting?

A I could not tell what caused it. It just came from striking that part of the head against something along behind this ear, according to my recollection.

And further this deponent saith not.

W. E. LUCAS, a witness on behalf of the state, being recalled, examined by Mr. Conrad, deposes as follows:

A Did this man, Dennis Shifflet, testify in his own behalf in this court on the indictment charging him with transporting liquor at the time you took him in charge.

A Yes, sir.

Objection.

Q Did he or not at that trial testify that these containers or jars, etc., in the car had canned fruit and preserves in them?

Objection. Objection sustained.

Q You have been asked by Mr. Hammer whether you were afraid or uneasy on account of these men coming to your door. What, if anything, did you do immediately after they were there?

A I called for the nurse and told her I wanted to see Mr. Dillard, that I wanted Mr. Dillard to give me some protection.

Mr. Hammer: I move to strike out the conversation that took place between Mr. Lucas and the nurse.

The Court: Objection overruled.

Q Mr. Dillard was sheriff and you were his deputy, and immediately after these men left you sent for him to come and afford you come protection?

A Yes, sir.

Q Did he come?

A Yes.

Q After you made your complaint to the head of the hospital, did you remain in the same room, or what occurred?

A Why I remained in the same room until Mr. Dillard come.

Mr. Hammer: I boject to that.

The Court: Objection overruled.

Q They what?

A Moved me upstairs.

Q How long?

A The next day. It was dark when Mr. Dillard come.

Q You were moved upstairs?

A Yes, sir.

Q Now the reason for your being moved upstairs was the fact that these two men had come there to your room -

A That's why. That's why I asked them to move me.

Q No other reason?

A No, the room was all right.

Q Since the former trial in this case, you have made an effort to ascertain which of the nurses it was who came to the door with these men.

A Yes.

Q Have you been able to definitely locate which it was?

A No, sir.

Q You have been unsuccessful in locating which nurse it was.

A Yes.

Q There are quite a number?

A Yes, sir, about 17 or 18, I think.

By Mr. Hammer:

Q When were you at the hospital to make such an investigation?

A When was I?

Q Yes, sir.

A I don't know, Mr. Hammer, I think it was before the other trial.

Q Then it wasn't since the other trial, as you told Mr. Conrad. It was before that.

A I made the investigation. The lady knows just exactly when I asked her. I don't just remember whether it was before the other trial or not, but I think the lady knows.

Q You told Mr. Conrad since the other trial. Did you ask the head nurse?

A I don't know her name. The little head nurse. The little lady.

A. Yes, sir.

Q. Now the reason for your being moved upstairs was the fact that there was some blood given there to your rods -

A. That's why. That's why I asked them to move me.

Q. Do other reasons?

A. No, the room was all right.

Q. Since the former trial in this case, you have made an effort to ascertain which of the nurses it was who came to the aid of the Dunne son.

A. Yes.

Q. Have you been able to definitely locate which it was?

A. No, sir.

Q. You have been unsuccessful in locating which nurse it was.

A. Yes.

Q. There are quite a number?

A. Yes, sir, about 17 or 18, I think.

By Mr. Dunnar:

Q. Then were you at the hospital to make such a investigation?

A. When was it?

Q. Yes, sir.

A. I don't know, Mr. Dunnar, I think it was before the other trial.

Q. Then it wasn't since the other trial, as you told Mr. Donnan. It was before that.

A. I made the investigation. The lady knows just exactly who I talked her. I don't just remember whether it was before the other trial or not, but I think the lady knows.

Q. You told Mr. Donnan since the other trial. Did you ask the head nurse?

A. I don't know her name. The little head nurse. The little lady.

Q You were removed from the room you occupied on the morning of the next day?

A I think it was, Mr. Hammer. I think I was moved up there in the morning. I won't say positive.

Q You were positive with Mr. Conrad a minute ago. You say it was the next day?

A I don't know really whether it was the next day or not. The books out there would show.

Q Now don't you know it is the custom for them to change people around in the hospital?

A If you will allow me, I will tell you why I wanted to be moved.

Q I am not asking you for your reasons. Were you moved at your own request?

A I did not want to be on the ground floor, people running in and out, cars around there all the time, and I didn't know whether they was coming to kill me or not.

Q They physicians ran their cars up in there. Mr. Lucas, you were very nervous and would scream out at night?

A No, sir, I did not.

Q Don't you know the doctors ran their cars in there?

A They did not have any cars at the back end of the hospital where my room was.

Q No delivery wagons back there?

A I don't know whether there was any delivery wagons. I could not see out.

Q You mean cars running around behind the hospital?

A I heard cars at all times and the nurse knows. She heard the same noise I heard.

Q Where do they keep the service cars? They keep them back there likewise?

A I don't know Mr. Hammer.

Q

Q As a matter of fact, you were in a very nervous excitable condition?

A I don't know Mr. Hammer. I did not feel very good with them people coming there, and did not know who they was. I did not feel very safe, I tell you.

And further this deponent saith not.

MR. W. L. DILLARD, a witness introduced on behalf of the State, recalled, examined by Mr. Conrad deposes as follows:

Q Mr. Dillard, I understood you to say you visited Mr. Lucas on the morning that he was taken to the hospital?

A Yes.

Q Can you state to the jury just what room he occupied relative to the entrance and first floor?

A He was back in the back end on the right hand side.

Q You enter the hospital from the west side of Main Street - Mason Street. The hospital is on the east side of Mason Street. It faces to the west. You entered the hospital into a hall running directly east, the hall running down east with the building.

A Yes.

Q What room was Mr. Lucas located in on that hall?

A At the back end of the eastern hall. I don't recall the number in my mind now. I did know the number, but can'trecall it

Q Was it the left hand side or right hand side?

A Right hand side as you go back.

Q South side of the hall?

A Yes.

A Yes. And he was moved later to a room on the north side in the east end.

Q Upstairs or down?

A Down, and later up.

Q Do you know what part of the hospital the accused roomed in?

A He was in a room on the second floor, right up over the entrance when you come in on the lower floor.

Q Please state to the jury whether a party coming from the room occupied by Shifflet and going to Mason Street could be observed from the room in which Mr. Lucas was?

A No, sir.

Q In other words, Mr. Lucas from the point that he was located at that time could not have observed a man through a doorway passing from the room above to the Main Street?

A No, sir.

Q Such person could not be seen?

A No, sir.

Q Please state to the jury whether or not you were sent for by Mr. Lucas on Sunday following the day that this trouble occurred.

A I were, yes, sir. I was called by the matron of the hospital.

Q Called by the matron to come there?

A Yes, sir.

Q Do you know whether or not Mr. Lucas, as a result of your visit there was removed from the lower floor to the second story of that building?

A Yes, sir, he was.

By Mr. Hammer:

Q Mr. Lucas was in a nervous, excitable condition?

A I can't say Mr. Lucas was nervous or excitable. He felt of course, an uneasiness.

Q And of a night he would lay there and groan and call out, wouldn't he?

A I don't know about that, Mr. Hammer. I do know this, the matron of the hospital seemed to be rather worried herself because she called me twice. I went up and she seemed to think, or rather thought there might be some trouble.

Q In other words, she was excited?

A I can't say she was excited.

And further this deponent saith not.

And this being all the evidence introduced on behalf of the Commonwealth and on behalf of the defendant, or either of them, the Court instructed the jury as follows (Here insert instruction), and the case, after argument of counsel, was submitted to the jury for determination, and the jury having retired, after sometime returned into Court with the following verdict:

(Here insert verdict)

And thereupon, the defendant, by counsel, moved the Court to set aside the verdict as contrary to the law and evidence, which motion the Court overruled, to which action of the Court in overruling said motion to set aside said verdict as contrary to the law and evidence and in entering judgment in accordance with the verdict of the jury, the defendant, by counsel, excepted, and prays that this, his first Bill of Exceptions may be signed, sealed and enrolled and made a part of this, which is accordingly done this 2 day of ~~May~~ June, 1924, and within sixty days from the rendition of judgment complained of.

T. M. Haas, Judge

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

VS.

DENNIS SHIFFLET

BE IT REMEMBERED that upon the trial of this cause and during the production of the testimony set forth in Bill of Exceptions No. 1, which is here referred to and made a part hereof, the Attorney for the Commonwealth propounded to the witness Benjamin Offenbacker the following question: "Did you have any conversation with him in reference to moonshine shortly before the time the car ran off the abutment and injured Mr. Lucas?" to which the witness replied: "Yes; several of us were talking there back of my place -- I live between the tannery and the railroad -- several of us standing there talking about liquor and I thought he was under the influence of liquor -- I do not know for certain -- and we got to talking about liquor, and he said, 'Well, before I would be taken with liquor I would suffer death.'"

Whereupon counsel for defendant moved to strike out the answer as inadmissible, which motion the Court overruled, to which action of the Court in overruling said motion and refusing to strike out said answer the defendant excepted, and prays that this, his Bill of Exceptions No. 2, may be signed, sealed and enrolled and made a part of the record in this cause, which is accordingly done this 7 day of ~~May~~ June, 1924, and within sixty days from the entry of the judgment complained of.

J. R. Haas (SEAL)
Judge.

IN THE CIRCUIT COURT OF COCKLEBURR COUNTY

COMMONWEALTH

vs.

HENRY SUTTON

It is RECOMMENDED that upon the trial of this cause and during the presentation of the testimony set forth in bill of exceptions No. 1, which is here referred to and made a part hereof, the attorney for the Commonwealth propounded to the witness Dorlamin: otherwise the following question: "Did you have any conversation with Mr. in reference to smuggling shortly before the time the murder of the deceased was injured is, Lamar" to which the witness replied: "Yes; several of us were talking there back of my place -- I did; between the tannery and the railroad -- several of us standing there talking about liquor and I thought he was under the influence of liquor -- I do not know for certain -- and he got to talking about liquor, and he said, 'Well, before I would be taken with liquor I would suffer death.'"

Whereupon counsel for defendant moved to strike out the answer as inadmissible, which motion the Court overruled, to which action of the Court in overruling said motion and returning to strike out said answer the defendant excepted, and prays that this, his bill of exceptions be, & may be signed, sealed and enrolled and made a part of the record in this cause, which is accordingly done this 7 day of May, 1934, and within sixty days from the entry of the judgment complained of.

J. M. Hale

Judge.

In the Circuit Court of Rockingham County, Virginia.

Commonwealth

v).

Dennis Shiflett.

BE IT REMEMBERED that at the June term, 1923, of the Circuit Court of Rockingham County, Virginia, the grand jurors, in and for the body of said county, returned the following indictment against one Dennis Shiflett, in the words and figures following:

"The grand jury in and for the body of said county of Rockingham and now attending said court at its June term, 1923, upon their oaths do present that Dennis Shiflett on or about the 18th day of May, 1923, in said county, while operating a certain Ford touring car, with deputy sheriff W. E. Lucas therein, feloniously and of malice aforethought did drive said car off of an abutment approaching the bridge crossing the Shenandoah River, at Elkton, Virginia, with intent him, the said W. E. Lucas, then and there to maim, disfigure, disable and kill, against the peace and dignity of the Commonwealth of Virginia."

Thereupon the accused having been arraigned and pled "Not guilty," appeared in Court, at its August term 1923, and, on motion of his Counsel, was permitted to withdraw said plea, which was accordingly done; and, thereupon, the accused, by Counsel, demurred to said indictment on the ground that it did not charge, or allege, that the accused did any act which amounted to personal injury to W. E. Lucas, or which maimed, disabled, or killed him, and is fatally defective and should be quashed.

Thereupon the Court sustained said demurrer, and on motion of the Commonwealth, by its attorney, permitted the said indictment to be amended, and the same was accordingly amended so as to read as follows:

"The grand jury in and for the body of said county of Rockingham and now attending said Court at its June term, 1923, upon their oaths do present that Dennis Shiflett on or about the 18th day of May, 1923, in said county, while operating a certain Ford touring car, with deputy sheriff W. E. Lucas therein, feloniously and of malice aforethought did drive said car off of a high abutment of a bridge crossing the Shenandoah River, at Elkton, Virginia, thereby wreckingthe said automobile and breaking the leg and otherwise doing bodily injury to the said W. E. Lucas, all of which was done by the said Dennis Shiflett with intent him, the said W. E. Lucas, then and there to maim, disfigure, disable and kill, against the peace and dignity of the Commonwealth of Virginia."

To which action of the Court in permitting the said indictment to be ammended the defendant objected, but the Court over-ruled said objection, and permitted said amendment to be made; to which action of the Court in overruling said ~~motion~~ objection and permitting said amendment, the accused, by Counsel, excepted, and prays that this his Bill of Exception may be signed, sealed and enrolled and made a part of the record of this case, which is accordingly done, this 21st day of September, 1923, and within 30 days from the date of the order of said Court permitting said amendment.

J. R. Haas Judge.

Cerr

Lennart Hoffdett

B.E. 11 Fr. de Kleist

N.S. 1.1.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

VS.

DENNIS SHIFFLET

BE IT REMEMBERED, that upon the trial of this cause the Commonwealth to maintain the issue upon its part, introduced in chief, W.E. Lucas, who being duly sworn, testified as follows:

Direct examination by Mr. Harman.

Q What is your name?

A W. E. Lucas.

Q How old are you, Mr. Lucas?

A Fifty-one years old.

Q Where do you live?

A Elkton.

Q You were a deputy sheriff for Rockingham County during 1923?

A Yes, sir.

Q How long were you deputy sheriff?

A Seven or eight years.

Q Do you know the accused here, Dennis Shifflet?

A Yes, sir.

Q How long have you known him?

A Knowed of him about two or three years.

Q Where does he live?

A He did live south of Elkton.

Q At the time of this crime, the 18th day of May, 1923?

A South of Elkton.

Q How far?

A A mile and seven tenths from the bridge.

Q In Rockingham County?

A Yes.

Q From what bridge?

A The River bridge.

Q The Shenandoah River?

A Yes, sir.

Q Did you, Mr. Lucas, arrest Mr. Shifflet on a charge

W. E. LUCAS, a witness introduced on behalf of the Commonwealth, being first duly sworn, deposes as follows:

Direct examination by Mr. Earman.

Q What is your name?

A W. E. Lucas.

Q How old are you, Mr. Lucas?

A Fifty-one years old.

Q Where to you live?

A Elkton.

Q You were a deputy sheriff for Rockingham County during the year 1923.

A Yes, sir.

Q How long were you deputy sheriff?

A Seven or eight years.

Q Do you know the accused here, Dennis Shifflet?

A Yes, sir.

Q How long have you known him?

A Knowed of him about two or three years.

Q Where does he live?

A He did live south of Elkton.

Q At the time of this crime, the 18th day of May, 1923?

A South of Elkton.

Q How far?

A A mile and seven tenths from the bridge.

Q In Rockingham County?

A Yes.

Q From what Bridge?

A The River bridge.

Q The Shenandoah River?

A Yes, sir.

Q Did you, Mr. Lucas, arrest Mr. Shifflet on a charge

A I could not measure just exactly how far, but it was about ten feet from the bank, and about 22 or 23 feet from where the car first hit the ground.

Q It was about 32 or 33 feet from the abutment.

A Yes, sir.

Q Describe to the jury just what happened after the car left the abutment that morning.

A As well as I could recall the crank case hung on the rock, and the car just went right over. When he swung it it hit the locust tree and it mashed right down the top and we went right over in the river. The back of the car was north and the front towards the bridge and the curtains was on. My leg was fast and I thought it was broke. My hand was fast. I reached around and got my knife. I could hear sorta gurgling like. I tried to get at him with my hands and I got him by the collar and held him up out of the water for 25 or 30 minutes. I called somebody and Mr. Louderbach was the first man to come to me, and he taken hold of him and got him out, cut the balance of the curtains, and then they come back and got me. They taken him on to Harrisonburg and they taken me home, and then I come to the hospital.

Q What position was the car in when it finally landed in the water?

A It was on its wheels. Just same as before it started over. One of the lights was burning. When Mr. Louderbach got there it was still burning. I seen that myself. I taken notice of it. It was the left hand light.

Q How deep was the water?

A The water was about -- Where I was seated?

Q Yes.

A It was about -- I expect four or five feet deep.

Q This was about what time in the morning?

A About 3:30.

Q About 3:30?

A Yes, sir.

Q Were you conscious all the time?

A Yes, sir.

Q Knew all that happened?

A Yes.

Q Did you shout or hollow?

A Yes, sir. I hollowed and Mr. Louderbach come.

Q How long were you in the water before rescued?

A 30 or 35 minutes -- something like that.

Q Mr. Lucas, state to the jury what injury, if any, you received in that plunge into the river.

A I got a compound fracture of the leg and it is still running, and I had seven stitches put in my head, a piece of iron in my wrist, lot of glass in my back -- cut through my coat.

Q Were you taken to the hospital?

A Yes, sir.

Q How long were you there?

A 2½ or 3 weeks. I then went home and come back again.

Q I believe you are unable to get around now except by the use of crutches.

A I can walk with one crutch on the floor, but outside I have to use two.

Q Mr. Lucas, did you do anything in any way, shape or form, to cause Shifflet to drive that car off the abutment?

A No, sir. I had no time.

Q Do you know what his condition was with reference to being drunk or sober?

A I smelt the liquor, but I could not tell where it was. I thought if he could drive over the mountain from Simmons Gap -- over the mountain -- he could drive me to Harrisonburg.

Q This man's house at which you arrested him is located south of Elkton. Can you describe a little more definitely where that is?

COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of said County:

The grand jurors in and for the body of said County of Rockingham and now attending said Court at its June term, 1923, upon their oaths do present that Dennis Shifflett on or about the 18th day of May, 1923, in said County, while operating a certain Ford touring car, with Deputy Sheriff W.E. Lucas therein, feloniously and of his malice aforethought did drive said car off of the abutment ~~approaches~~ the bridge thereby wrecking the said automobile and breaking the leg and otherwise injuring him, crossing the Shenandoah River at Elkton, Virginia, with intent him, the said W. E. Lucas, then and there to maim, disfigure, disable, and kill, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of W. L. Dillard, L. H. Bruce, and Walter Life, witnesses sworn in Court and sent before the grand jury to give evidence.

E S Landrosack

We the jury find the accused Dennis Shifflett, guilty
of malicious cutting W. E. Grace in manner from as charged
in the indictment with the intent to disable the victim
and we assess his punishment at one year in the
penitentiary for one year.

E. C. Rakestraw
Foreman

Felonious Assault

COMMONWEALTH

v.

DENNIS SHIFFLETT

A Felony

A True Bill

J. C. Staples
Foreman

D. W. Earman,
Commonwealth's Attorney.

And this being all the evidence introduced on behalf of the Commonwealth and on behalf of the defendant, or either of them, the case, after argument of counsel, was submitted to the jury for determination, and the jury having retired, after sometime returned into Court with the following verdict:

(Here insert verdict)

And thereupon, the defendant, by counsel, moved the Court to set aside the verdict as contrary to the law and evidence, which motion the Court overruled, to which action of the Court in overruling said motion to set aside said verdict as contrary to the law and evidence and in entering judgment in accordance with the verdict of the jury, the defendant, by counsel, excepted, and prays that this, his first Bill of Exceptions may be signed, sealed and enrolled and made a part of this, which is accordingly done this ___ day of May, 1924, and within sixty days from the rendition of judgment complained of.

_____

COMMONWEALTH

v.

DENNIS SHIFFLETT

Charge to the Jury.

If you find the accused, Dennis Shifflett, not guilty, then you will say so and no more.

If you find him guilty of maliciously injuring W. E. Lucas with intent as charged in the indictment, then you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than ten years.

If you do not find him guilty of maliciously injuring said Lucas, but guilty of unlawfully injuring him as charged in the indictment, then you will say so and ascertain his punishment by confinement in the penitentiary for a period of not less than one year nor more than five years, or, in your discretion, by confinement in jail not exceeding twelve months and a fine not exceeding Five Hundred Dollars.

If you do not find him guilty of either of the felonies aforesaid but guilty of assault and battery, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months or by a fine not exceeding Five Hundred Dollars, or both such fine and imprisonment.

Chopf

Commonwealth of Virginia, }
Rockingham County, } To-wit:

BE IT REMEMBERED that on the 23 day of May 1923,
Dennis Sheflett and J. H. Sheflett and James K. Sheflett
came before me Bail Commissioner
of the said county of Rockingham, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia, in manner and form following, that is to say: the said ~~each in sum of $1000.00~~ each in the sum of Five Thousand Dollars good and lawful money of the United States, ~~and the said~~ in the ~~sum of~~ Dollars ~~of like good and lawful money~~, to be respectively made and levied of their several goods and chattels, lands and tenements, and they severally waived the benefit of their Homestead Exemption as to this obligation, and also waived any claim or right to discharge any liability to the Commonwealth arising under this recognizance with coupons detached from the bonds of this State, to the use of the Commonwealth of Virginia if the said Dennis Sheflett shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound Dennis Sheflett do and shall personally appear before ~~the Circuit Court of Rockingham on~~ L. H. Bruce a justice of the peace or some other justice who may be due to try the case the 7 day of the June 1923 ~~Term next thereof,~~ in Harrisonburg Va ~~being the day of 192~~, at the Court-house ~~thereof,~~ and then and there answer the Commonwealth of Virginia concerning a certain felony whereof the said Dennis Sheflett stands charged, and shall not depart thence without the leave of said Court, then the above recognizance shall be void and of no effect, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the day and year first above written.

H. W. Leyburn B. C.

Henri Shoppell
Felony assault

COMMONWEALTH OF VIRGINIA,
ROCKINGHAM COUNTY } TO WIT:

To the Sheriff or any Constable of said County:

WHEREAS, W E Lucas a deputy Sheriff of the said county, has this day made complaint and information on oath before me, L H Bruce a Justice of the said county, that Dennis Shiflett of the said county, on the 18 day of May 1913, at in the said county, did unlawfully and feloniously with intent to maim disable and Kill the said W E. Lucas by Running one Ford Car over the bulkhead of Shenandoah River Bridge

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to summon to appear before me, or some other Justice of the said County, the said Dennis Shiflett to answer the said complaint, and to be farther dealt with according to law And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 18 day of May in the year 1913

L H Bruce J. P. [SEAL]

Executed the within warrant by arresting and delivering the body of Dennes Shiflett before H W Barton Bail Commoner of Rockingham County this the 23 day of May 1923 W L Dellard S.R.C.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY, GREETINGS:

We command you, that you take Dennis Shifflett if he be found within your bailiwick, and him safely keep, so that you have his body forthwith before the Circuit Court of Rockingham County, at the Court House thereof ~~on~~ _____ to answer us of a certain Felony whereof he stands indicted.

And have then and there this Writ. Witness J. F. Blackburn, Clerk of our said Court at the Court House the 19th day of Feby, in the 148 year of the Commonwealth.

J. F. Blackburn Clerk.

COMMONWEALTH

vs.

Henri Shifflett

Sheriff

Sheriff fee 1.50

32 miles @ 8 ¢

$2.56
1.50
4.06

Executed Feb. 19, 1924 by delivering the body of Henri Shifflett to the Jailor of Rockingham County.

1 Pris. Conveyed and
Fees & W. Dove S.P.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

George Henning S.
Thos. Kille r
Dr. F. J. Miller B.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House, at 10 o'clock, a.m., on the 25 *day of* Feb. *19*24, *to testify and the truth to say in behalf of the* **defendant** *in the prosecution of the Commonwealth, Plaintiff, against*

Dennis Shufflett *Defendant*

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 21 *day of* Feb. *, 19*24, *and in the 14*8 *th year of the Commonwealth.*

J. F. Blackburn *, Clerk.*

Executed Feb. 21, 1924 by delivering a copy of this summons to Thomas Phillips, one of the persons named therein and at the time and place of service this being a member of his family and the age of 16 years.

C. W. Shaw, S.R.C.

Dennis S. Shifflett
vs
Commonwealth

A. Hammer
atty.

Sheriff fee $1.20

1 to Burke
1 " Shifflett

Feb. 25, 1924

Executed Feb. 23, 1924. by having George Fleming & Mrs. J. F. Miller summoned by deputies Buck & Shiflet.

C. W. Shaw, S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

C. L. Simmons
Dr. T. C. Firebaugh

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House, ~~at 10 o'clock, a.~~ forthwith m., on the 25 *day of* Feb. *19~~4~~ 4, to testify and the truth to say in behalf of the* ***defendant*** *in the prosecution of the Commonwealth, Plaintiff, against*

Dennis Shufflett *Defendant*

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 25 *day of* Feb. *, 19~~4~~ 4, and in the 18~~4~~ 8 th year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

Dennis Shufflett

~~adv~~

Commonwealth

Sheriff fee 80

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

W. L. Dillard, Dr. J. L. Wright,
L. H. Bruce, Walter Life, W. E. Lucas,
Joe Lucas, Herman Longley, E. P. Lauderback,
Henry Dean, Randolph Huffman.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 25 *day of* Feb. 1924
to testify and the truth to say in behalf of the Commonwealth against

Dennis Shifflett

who stands charged with and indicted for a felony ~~misdemeanor~~.

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 21 *day of* Feb. *, 1924 and in the* 148 *th year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

News-Record, Harrisonburg, Va.

Executed Feb. 23, 1924 by delivering a copy of this summons to W. O. Williams, Sheriff of Tazewell Co., Virginia, and not found at his place of abode, executed on a member of his family over 16 years of age, and explaining purport thereof. Feb. 23, 1924

G. W. Dove, D.S.
by John Morris, D.S.

Executed Feb. 23, 1923 by having the following summons by delivering Sheriff Floyd W. Shifflett, L. G. Bruce, Walter Fife, W. O. Lucas, Joe Lucas, Herman Hughes, E. P. Lodebocker & Henry Dean, in person.

G. W. Dove, D.S.

Cam.

vs

Dennis Shifflett

Sheriff fee $4.00
1.20
1.00
.80
Total costs 7.00

7 to Shifflett
~~To Lincoln~~.

Feb. 25, 1924

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon W. E. Lucas, A. L. Dillard, J. H. Fisher, Att Brill, Marion Long, Ben Affenbacher, L. H. Bruce, E. F. Landerback, Mrs. Geo. Herring, Vernon Langley, R. Huffman, Samuel Baugher, Layton Wensley, J. F. Lucas

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 23d *day of* Apr. *1924, to testify and the truth to say in* ***behalf of the Commonwealth*** *against*

Dennis Shiflett

who stands charged with and indicted for a felony misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 21 *day of* Apr. *, 1924 and in the 148th year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

News-Record, Harrisonburg, Va.

Executed April 22. 1924 by delivering a copy of this summons to W. L. Dillon & R. Huffman in person.

C. W. Dove. S.R.C.

Ita Rivenant

Executed April 22/ 1924 by reading above copy in person

Ed J. W. Fisher Ed H. Brill
Jordan Long W E Jones
Ben Offenbacher Herman Gingly
L H Bence E P Sandersbach
Jerd George Herring & Samuel Baughn
Jay Tem Hensley & H. Jones

G. W. Shiffler Deputy Shiff
for C. W. Dove

Entered
Commonwealth
Shiff's fee 7.05
Samuel Shiffler

Commonwealth of Virginia, }
Rockingham County, } To-wit:

BE IT REMEMBERED that on the 7 day of June 1923, Dennis Shiflett and James H. Shiflett & Martin F. Shiflett came before me H. W. Beerbower Bail Commissioner of the said county of Rockingham, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia, in manner and form following, that is to say: ~~the said~~ each in the sum of One Thousand ~~Dollars~~ ($1000.00) Dollars good and lawful money of the United States, ~~and the said~~ ~~in the sum of~~ ~~Dollars~~ of like good and lawful money, to be respectively made and levied of their several goods and chattels, lands and tenements, and they severally waived the benefit of their Homestead Exemption as to this obligation, and also waived any claim or right to discharge any liability to the Commonwealth arising under this recognizance with coupons detached from the bonds of this State, to the use of the Commonwealth of Virginia if the said Dennis Shiflett shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound Dennis Shiflett do and shall personally appear before J. H. Bence, Justice of Peace for Rockingham County or some other Justice over any better to by the same, ~~the Circuit Court of Rockingham~~ on the 18 day of ~~the~~ June 1923 ~~Term next thereof, being the~~ at nine o'clock on the morning of said day ~~day of~~ 192 , at the Court-house ~~thereof~~ in Harrisonburg Va and then and there answer the Commonwealth of Virginia concerning a certain felony whereof the said Dennis Shiflett stands charged, and shall not depart thence without the leave of said Court, then the above recognizance shall be void and of no effect, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the day and year first above written.

H. W. Beerbower B.C.

Dennis Sheffett

Bail to June 19/23

Felony Charge

Ref

The law presumes the accused to be innocent of the charge alleged against him until he is proved to be guilty. And the burden rests upon the Commonwealth to prove the guilt of the accused beyond all reasonable doubt. Nothing is to be presumed or taken by implication against him. No mere preponderance of evidence will suffice, as in the trial of a civil case, nor is it enough that by conjecture or speculation he may be supposed to be guilty, but the jury must be satisfied by the evidence that heis guilty beyond a reasonable doubt.

91/751

Cum
privilegio.

Pennsylvania

Dual. reg. for
Botanical