

CROSS EXAMINATION

BY MR. BLOCH:

Q He appeared to be intoxicated?

A Beg your pardon?

Q James Brazier appeared to be intoxicated?

A He appeared to be, yes.

Q You may come down.

THE COURT: You may go down.

RECESS: 3:55 PM to 4:05 PM 2-5-63

THE COURT: Alright, who do you have next
for the Plaintiff?

MRS. HATTIE BELL BRAZIER

the Plaintiff and called as witness in
Plaintiff's behalf, being first duly
sworn, testified on

DIRECT EXAMINATION

BY MR. C. B. KING:

Q Will you state your name to the Court, please?

A Hattie Bell Brazier.

Q Where do you live?

A Albany, Georgia.

Q Where were you living during the calendar year 1958?

A Terrell County, address 312 Aash Street, in
Dawson, Georgia.

Q That is in Dawson, Georgia?

A Yes sir.

Q Would you indicate whether or not you were in Dawson, Georgia on April 20, 1958?

A Yes sir, I was.

Q What date was this?

A April 20.

Q What day was it?

A Sunday; on Sunday; on the third Sunday.

Q What did you do in the early hours of this day?

A Well, at 12:00 we went to church, I HOPE Baptist Church, my husband and my children and two of his sister's children.

Q How far is I HOPE Baptist Church in relation to where you were living at that time?

A About six miles.

Q What time did the services begin at I HOPE Baptist Church?

A From 12:00 until 12:30.

Q How long were you, as a matter of fact if you know, in church on this particular occasion?

A We were there until about 3 o'clock.

Q After the services were over what, if anything, did you do?

A We went to Mt. Zion Hill Baptist Church. The Rev. Reynolds was on the program there.

Q Now, when you say "we"?

A My husband, myself and my children and two of his sisters' children.

Q How far is it, this latter church that you named, from I HOPE Baptist Church?

A Oh, it's about 3 or 4 miles on the other side of Dawson.

Q What time did the services begin at this particular church?

A I don't know what time their service started. We was supposed to have been there at 3 o'clock that Sunday afternoon.

Q So, I take it that you got there a little after 3:00?

A About 3:20.

Q Were the services in session at the time that you got there?

A Not our program hadn't come in. They was on their service.

Q At what time were the services there over?

A Was over?

Q Yes?

A I guess we were there about 15 or 20 minutes before we started.

Q Before you started?

A Before we started our service.

Qq How long did your services last?

A We was there until almost about 5:30 or something to 6:00.

Q At the conclusion of the services, what did you do?

A Me and my husband and children came on back to the house and he put me out and told me to fix him something to eat, he was going to take his sister's two children home.

Q And when you say that he put you out, what do you mean?

A Put me out of the car at our house. And then, he went on to take his sister's two children home.

Q Where did his sister's children live?

A Across the bathing pool. That's the way they call it.

Q Is that beyond this intersection that you've heard testimony regarding?

A Yes sir.

Q As relates to Odell Brazier?

A That's right.

Q When did you see your husband again?

A Oh, he was gone about 10 minutes, I guess. He came back to the house in his father's car.

Q He had been gone about 10 minutes?

A About 10 minutes, something like that.

Q Now, are you saying that he attended the services with you?

A Yes sir, he was right there.

Q How was he attired? What was he wearing on this occasion?

A He was wearing a light suit, white shirt and tie and gray hat.

Q With reference to the description of the garments you've just given, your attention is called to EXHIBIT P-27, the list of items comprising that exhibit that I submit for your perusal is a coat, the tie, the trousers and what appears to be an undershirt?

A That's it.

Q Do you recognize these as garments that were worn by your husband on this particular occasion?

A Yes sir, I give him that suit about three years before he died for a Christmas present.

Q Now, you were saying that you saw your husband after he had put you out with instructions to prepare a meal about 10 minutes later?

A Yes sir.

Q And I believe you further testified that he came up a car, which you identified as that of his father?

A Yes sir, I was standing in the room and I looked through the window of the front. We had a big picture window in the front of the house, and he turned in the yard in his father's car; and a man by the name of Bill Roberts

was driving our car.

Q In what direction does the front of your home face or your home then face?

A It was facing the street.

Q And that would be in what direction?

A It was going towards the -

Q Is that north, south, east or west?

A It was east, I believe it was facing. It was east, I think, facing the front of the street. I don't know whether it was east or south or what it was but it was facing the front of the street.

Q When your husband drove up what, if anything, did you do at that time?

A Well, when he drove up in the yard, I run to the door and I asked him, I said, "What you doing in that car?" He say "I went down there and found daddy in trouble." I said, "Trouble?" He said "Yeah", he said the police had hit him in one of his eyes and looked like it was almost out. I said "You hush your mouth". He say "Yeah". He said "Close the door and come on go out to my sister's house and let me let them know what's happened." And just as I went to pull the door up, the patrol car come up in a hurry. I said "Uh, I wonder where they going in such a hurry." He say -

Q Now, when you say the "patrol car", what patrol car do you refer to?

A It was a gray Ford and black writing on it. It was a dark gray Ford with black writing on it.

Q Did you or did you not identify it as belonging to the City of Dawson?

A Yes sir, as I've seen it several times.

Q Did you identify those persons or that person or persons who were operating this particular vehicle?

A Yes sir.

Q Who was that person or those persons in it?

A That one sitting on the corner and Mr. Cherry right there (pointing).

Q That would be the gentleman sitting to the -

A On the end there.

Q Mr. McDonald?

A Yes sir. I don't know his name.

Q After coming to a halt, what then happened?

A After I run out, he said they may be coming to tell me daddy need a doctor; and then he said "And then again, they may be coming after me." I said "Coming after you for what, you aint done nothing, is you?" He said "No, I ain't done nothing" but said "You know how they is".

Q Now, where was Brazier at that time?

A He was standing in the yard with me.

Q He was standing in the yard with you?

A Standing up in the yard, yes sir.

Q Were the children about?

A Yes sir the children was out there too.

Q And then, what happened?

A And after the car drove up, they jumped out and run up in the yard and he started walking towards them a little.

Q Now, when you say - excuse me - when you say "they"?

A Mr. Cherry and Mr. -

Q McDonald?

A Mr. McDonald. They started walking up in the yard and he started walking towards them. And Mr. McDonald said, "James, what that you say you was going to do to me?" He said, "Mr. McDonald, you know I ain't said I was going to do nothing to you." And about that time Mr. Cherry had him in the back of his collar coat and give him a shove towards the road.

Q Now, I believe you said that your husband was toward the rear of the house talking with you immediately before Mr. Cherry and Mr. McDonald came in the direction of your husband?

A That's right; he was telling me what had happened to his father.

Q Now, at what point, in relationship to your house, was it that Mr. Cherry grabbed him in the nap of the collar?

A It wasn't too far from where we was standing; I reckon about 3 or 4 steps.

Q Thus far you've indicated that Mr. McDonald spoke

to him. Did Mr. Cherry say anything to him at that point?

A No sir, Mr. Cherry didn't say nothing.

Q Then, what happened?

A When he shoved him, Mr. McDonald had hold to one of these arms here and I guess if he hadn't had the arm, he might have would have fell when he pushed him.

Q You say that Mr. McDonald had hold of one of your husband's arms?

A He was on the side that the house was on. That's the side he was on.

Q All right, and where was Mr. Cherry?

A Mr. Cherry was behind him during that time because he give him the shove and that put him in front of him a little.

Q Did Mr. Cherry say anything at that point?

A When they got out to the car, Mr. Cherry, they had up back against, his back was back against the car; and Mr. Cherry goes to the front of the car and gets something out of the pocket and come back and put it on his hand, on his hand here.

Q What, if anything, did your husband do during this period?

A What did he do?

Q What did he do, if anything, during this period?

A Well, I didn't know him doing nothing but throwing

up this arm here and when they pushed him he would fall about.

Q Did he say anything?

A Asked them what had he done.

Q And what was the response coming from either Officer McDonald or Officer Cherry?

A I didn't hear them say anything. They was hitting him.

Q Then, you say that your husband had his back to the car?

A They had him up back against the car, like this; and when they put them things on his hand, Mr. Cherry pulled out his pistol and put it here, say "I ought to blow your Goddamn brains out, you smart son-of-a-bitch." He said "Well, go ahead on and shoot, I ain't done nothing for you all to treat me like this." And about that time he was hit up here somewhere (pointing).

Q Who hit him?

A Mr. Cherry.

Q What did he hit him with?

A I guess he hit him with that pistol he had in his hand, with the back end of it there.

Q Then, what happened?

A Well, when he did that --

Q When who did what?

A When Mr. Cherry, Mr. Cherry and Mr. Randolph over

there, when they opened the door and pushed him around, the door opened from the back; and he pushed him right in here and he went back like that (demonstrating), and his feet was on the outside of the car. And he slammed the car door and it bounced back because his legs was hanging out.

Q Now, just a moment ago, you said responsive to the question put, that question being what did he hit him with, and I believe your testimony was that "he hit him with that pistol, I guess"?

A That's the only thing I see'd in his hand.

Q Now, are you saying you are guessing that he hit him or did he hit him?

A That's what he had in his hand; yes sir, he hit him; he really hit him.

Q Then, your guessing is only as to what he hit him with?

A That pistol. That's the only thing he had. That's all I see'd.

Q All right, then what happened?

A And after he pushed him, the car, the door went on his leg and bounced back, he took his feet and kicked his feet up like that (demonstrating) in the car, Mr. Cherry did.

Q— Was there anything else? —

A And then he shut the door and he picked up his hat.

Q Now, when you say "he" ?

A Mr. Cherry shut the door, picked up his hat off the ground and throwed it back there in his face.

Q Are you saying shot or shut?

A Shut the door.

Q And at that point what happened?

A They drove on away. At first, a little bit before, when he first hit him with the gun, my little boy, my oldest little boy, he run up there, and said "Let daddy get in the car." That's after the licks was passed. And he knocked the little boy back on the lawn and he fell.

Q Now, when you say "he", to whom do you make reference?

A Mr. Cherry.

Q Now, who was driving the car?

A When they left?

Q Yes?

A Mr. Cherry.

Q Did you have an occasion to observe any other people who might have been in this area at the time of the transaction to which you testified took place?

A Well, the road was full of people and the yard too, if that's what you mean?

Q There were other people?

A Yes sir, there was a crowd.

Q That is, other people who observed the conduct which

you have testified to?

A Yes sir, 'cause there was a crowd of people around there.

Q Did you have any occasion to know any of these people?

A Yes sir, I knowed some of them.

Q Who were present?

A Yes sir, I know some of them.

Q Who were they?

A My sister, Annie Bell Lattimer, James Lattimer, Kate Alexander, my children and Jacob Minter and his wife, MaryHylick, James Lewis. And let's see, who else was down there?

Q Were these people generally persons who lived in the immediate community?

A Yes sir, lived right around inthe community.

Q Now, did you have an occasion later on during the day, that isApril 20, 1958, to see your husband again?

A I see'd him that Monday Morning.

Q Then, your testimony is that you did not see him onthe 20th anymore after the transactiontook place?

A No sir, after they left there with him, I didn't see him any more 'til that Monday Morning Iwent totown to the jail; and when I got there, his father told me, said he wasn't in there. I said "Well, they put him=in there last

night, where is he now?" He say "They told me they took him to the hospital." Well, I jumped in the car and went to the hospital.

Q What, if any, efforts did you make to see him?

A Well, I went --

Q After that time?

A I went to his boss man's house, Mr. Ragan Arnold, which he worked for.

Q That is Mr. Ragan Arnold?

A Mr. Ragan Arnold, yes sir.

Q And what time was this that you went to see Mr. Arnold?

A That should have been around - it was after 7 o'clock, about 10 or 15 minutes after 7:00, because I left time they did, time Mr. Cherry and them left.

Q What did you go to see Mr. Arnold about?

A I went to see Mr. Arnold, to see if he would go up there and get him out of jail.

Q And what else was done towards the efforts that you had then initiated?

A Well, when I got there, Mr. Arnold wasn't there. He was up to his father's house. And I went up there and told her - he wasn't there then - and I told her to tell him when he come, to come up there to the jail, for I went on back to the jail. And by the time, I reckon I was there

about 15 minutes before he come.

Q You were where about 15 minutes?

A To the jail house.

Q Then, it is your testimony that you left Mr. Arnold's home?

A That's right.

Q And went to the jail?

A Yes sir.

Q This then would have been in the neighborhood of 7:45 maybe?

A That's right, something like that. And I stayed to the jail 'til 5 minutes to 10:00 that Sunday night.

Q What transactions, if any, did you have with Mr. Ragan Arnold after getting to the jail? Did you see him later on?

A Yes sir, he come to the jail and he was standing up there talking to - Mr. Z. T. come to the side door around there to that porch, the same side Stonewall, I reckon that's the name of the street there by the post office - and Mr. Arnold then said, "I'm going to go in here and see what can I find out." And he went in there and he stayed so long, I went and sit back down in the car. The car was parked right in front of the window to the jail. And when he come back out -

MR. BLOCH: Your Honor, I object to the conversation between Mr. Ragan Arnold and the witness,

Mr. Bloch:

outside of the presence of any of the Defendants.

THE COURT: Yes, no conversation outside of the presence of the Defendants would be admissible.

Q Mr. King: You are familiar with the relationship of the Dougherty County jail - strike that, will you please - with the Terrell County jail to the Terrell County courthouse, are you not?

A Well, I could probably look at the side of it and tell.

Q You're familiar with the buildings around that area, is that correct?

A Yes sir.

Q I exhibit to you for your observation EXHIBIT No. 4 of the Plaintiff and ask you whether this is the area, the general area in which you were at the time that you -

A I was standing right back down here (pointing on P-4).

Q Yousee, here's the jail here?

A That's right. We was on the end of the jail down there by that last window as you got up on the porch.

Q That is the general area in which you were. What is the name of this street that runs by the jail?

A I don't know, sir. I think it's Stonewall, I believe it is.

Q Stonewall Street, to the best of your recollection?

A Yes sir, there's might few streets up there got a name that I knows of.

Q You said on this occasion that you talked to Mr. Ragan Arnold?

A Yes sir.

Q I believe you also mentioned that you saw Mr. Z. T. Matthews?

A He come to that side door and, after he come to the door, Mr. Arnold said "I'm going in here and see what can I find out."

Q Now, when you say you saw him at the side door -

A Yes sir.

Q - what side door is this you make reference to?

A The side I just showed you down there by that last window. There's a porch there, got up on a porch there and go on in.

Q Have you ever been into the office of the Sheriff at the jail-house?

A Yes sir.

Q Is that the doorway that leads out of the office of the Sheriff to what you have identified as Stonewall Street?

A That's right.

Q Now, you said on this occasion that you saw Mr. Z/ T. Matthews?

A Yes sir.

Q Did you have an occasion to say anything to him?

A No sir, I didn't say nothing to nobody but Mr. Arnold.

Q Did you have any occasion to observe him conversing with anybody else?

A No sir.

Q Were there others in the general area in which you saw Mr. Matthews?

A No sir, he didn't stay in there long. He just peeped out and went back.

Q You mean went back into his office?

A He just peeped out that door.

Q That is the door to the office of the jail, is that correct?

A Yes sir, that's right.

Q This occasion in which you went to the jail and having arrived there antecedent to the time at which Mr. Arnold came to the jail, were you in the company of anybody else?

A Yes, sir.

Q Who?

A It was Annie B. and his two sisters, Sarah and Clara, myself, my mother and my sister.

Q Were they with you at the time that you saw the Sheriff?

A Well, I was standing a little off from them because I was standing there to wait to speak to the doctor I see'd standing over there with that crowd.

Q Could they reasonably have seen him, in your opinion?

A Yes sir, they could have see'd him if they had looked.

Q From the position they were in?

A Yes sir.

Q What time was it when you saw the doctor?

A It was about - it was pretty close to 9 o'clock.

Q About 9 o'clock?

A About that.

Q Did you have an occasion on that particular occasion to talk to the doctor?

A After I see'd him standing over there with these other mens, I don't know who they were, but I called him off. I said, "Dr. Ward, can I speak to you a minute, please?" And he come over there and I said "Is you up here " --

THE COURT: Now, just a minute. Counsel has made an objection which need not be renewed every time.

MR. KING: I agree, Your Honor.

THE COURT: All right.

Q Mr. King: You will not tell us what the conversation was between you and the Doctor?

A You say, tell you?

Q I say, you will not tell us what you told the Doctor or what the Doctor told you. You did, however, indicate that you did talk with the Doctor?

A Yes sir, I talked to the Doctor.

Q And without being specific, generally what did the subject-matter of your conversation relate to?

A To the Doctor?

Q Yes, what did you - what was the subject of the conversation generally that you had with the doctor?

A I just asked him was he up there -

MR. BLDCH: Object to that, Your Honor.

Q Mr. King: Well, of course, you can't tell us what you said but without telling us -

THE COURT: Did you talk about your husband?

The Witness: Yes sir.

THE COURT: All right.

Q Mr. King: Thank you, Your Honor. Now, was the doctor at the jail at the time you got there or do you know?

A I don't know whether he was there when I got there or not.

Q Did you see where he went while you observed him?

A No sir, I didn't notice which way he went.

Q Did you observe him ever going into the jail?

A No sir, I didn't ever see him go in there.

Q Did you see him leave the jail?

A No sir, I didn't.

Q What did you do after the hour you have approximated as being about 9:00?

A That's right.

Q What did you then do?

A I went back and sit in the car then, waiting 'til Mr. Arnold come out to tell me what; and when he come out, he told me, he said "Hattie Belle - "

THE COURT: Just a minute! You can't tell about conversationsthat you have with people, unless it was the Defendants; that is, Mr. Cherry or the other Defendants were present at the time. That's the rule that we're trying to observe.

Q Mr. King: During the time that you were at the jail, did you out of all of your activities in that area get any indication from the doctor that he was going to see your husband?

A Yes sir.

Q Did he indicate that he was going to see your husbandthen?

A He didn't say he would see him then; he said he would see him after --

Q No, not that?—

A Well, I'm sorry, I didn't know; but he said he would

see him.

Q Did he go in there?

A Not then, he didn't.

Q Then, I believe that you indicated that you sat in your car?

A Yes sir.

Q And how long were you there approximately?

A I sit down until about 5 minutes to 10:00.

Q Until approximately 5 minutes to 10:00?

A That's right.

Q And for what purpose were you seated there?

A I sit there waiting on Mr. Arnold to come out.

Q Did Mr. Arnold, in fact, come out?

A Yes sir.

Q At about what time did he come out?

A It was about 10 minutes to 10:00, something like that.

Q About 10 minutes to 10:00?

A Yes sir.

Q And you did have occasion to talk to Mr. Arnold?

A Yes sir.

Q Responsive to your conversation with Mr. Arnold, what, if anything, did you do then?

A I went home then.

Q You went home?

A Yes sir.

Q Then, I take it that you left the jail?

A That's right.

Q And that was about 10:10 or 10:15, whenever you finished talking with Mr. Arnold?

A Out to the car.

Q How long would you say you talked with Mr. Arnold?

A Oh, I didn't talk with him too long; about 5 minutes, something like that.

Q Then, you went home?

A Yes sir.

Q Did you have any occasion to make any other efforts to see your husband?

A Not until that next morning.

Q Not until the next morning and what, if anything, did you do during the course of the night? Did you simply go to bed?

A Yes sir, I sit up half the night, until about 2 o'clock.

Q Then, you said that you saw your husband on the morning following?

A That's right.

Q Where did you see your husband?

A He was in the courtroom when I see'd him, where they have Council.

Q Was that the first occasion on which you saw him after April 20, 1958?

A That's right.

Q Would you indicate to the Court what your observations were with reference to his appearance?

A Well, after me and my sister come back from the hospital, we come back to the jail and they had gone; the police had gone from the jail with him to the little council room, the lady that cooks told me. And we went around there to the little council room where they have council, and we went upstairs, my sister - my two-sister-in-laws and myself, and when I got to the door, he was sitting in a chair, slung over like this here (demonstrating); and his tongue was hanging kind-of half-way out and a long sleet of white slobber was hanging out his mouth.

Q Just a moment ago, you indicated that when you returned from the hospital -

A Yes sir.

Q - How was it that you came to go to the hospital?

A In my car. Is that what you mean?

Q No. Why or for what purpose did you go to the hospital?

A Well, his father told me they told him he was in the hospital.

Q In other words, this was in pursuance of your desire

to see your husband, is that it?

A That's right, yes sir.

BY THE COURT:

Q I'm a little confused right there, Counsel: I'm not sure who she said it was told her -

A My father-in-law.

Q Your father-in-law told you that your husband was in the hospital?

A Yes sir, he said they told him he was in the hospital but he didn't say who.

Q Your father-in-law, is that Odell Brazier?

A Yes sir.

Q Who just testified here today?

A Yes sir.

Q Go ahead.

BY MR. KING:

Q Now, I believe you said that your husband was seated in a chair when you observed him?

A That's right.

Q And aside from the description you have given of the apparent stupor or lethargic appearance that he gave, did you make any other physical observations of his appearance?

A To him?

Q Yes, what about his head?

A I went up to him, when I see'd him I hollered and went up to him and grabbed him; and I said, "Lord, look-a-here"; and Mr. Lee told Mr. Chapman to put us out; and we went on to the outside and us stood out there in the hall; and he come and told us to get on the ground. And we went on downstairs. And a fellow by the name of Marvin Goshea, my grandfather and my father-in-law was bring him downstairs behind us.

Q Then, is it true that you did not stay in the courtroom very long?

A Nosir, they made us go out.

Q And when you saw your husband again, he was being ushered or aided by Mafvin Goshea?

A Yes sir.

Q Odell Brazier?

A That's right.

Q And was there a third that you mentioned?

A My grandfather.

Q Your grandfather?

A Yes sir.

Q What, if anything, was done then?

A Mr. Lee told me to take him home and put him to bed and bring him back that next Monday Morning for trial.

Q Now, who is Mr. Lee?

A Mr. Howard Lee; I think he was the Chief of Police.

Q This was the Chief of Police of the City of Dawson?

A Yes sir.

Q Responsive to what Chief Lee said to you what, if anything, did you do then?

A After they put him in the car, my father-in-law and my grandfather put him in the car and I took him to the Terrell County Hospital.

Q Now, when you say they put him in the car, whose car?

A My car, our car what we had.

Q All right, then you took him to the Terrell County Hospital?

A Yes sir.

Q Were there any other persons who went along with you?

A Yes sir, his father and his two sisters and my mamma was there and my sister, they was with me.

Q Did you in fact go to the Terrell County Hospital?

A Yes sir, I went there.

Q What, if anything, did you do upon getting there?

A Talking about did I take it on myself and go, is that what you mean?

Q No, what happened after getting there? What did you do?

A I went inside and Dr. Martin come to the door. There's a little room they got out there where people enter,

called the emergency room; and I asked him to come look after him, asked Dr. Martin.

Q I believe the Court has indicated that we can't tell what conversations we might have had with others ?

A Well, I didn't have a conversation with him because he wouldn't talk.

Q Well, I'm sorry, go right ahead?

A He went out to the car and opened the door, and say "There ain't nothing ail the damn nigger."

Q No, I believe that I indicated -

A Well, he wasn't talking to me then.

THE COURT: Well, just remember not to say what you said or what anybody said, unless one of the Defendants was present. Just tell what happened instead of conversations and things that were said. Go ahead.

A The Witness: Well, the ones took him in the hospital on the stretcher, I don't know they was but they was two colored boys.

Q Mr.King: They took him in the hospital on a stretcher?

A That's right.

Q Did you go inside the hospital with him?

A Yes sir.

Q What, if anything, was done for him then?

A Well, I guess he stayed back there about 30 minutes

before they come back and got him off of that stretcher.

Q They who?

A Two colored boys. I don't know who they were.

Q And what did they do?

A They carried him down the hall and they said they took an x-ray picture of him; but anyway, I paid \$15 for x-ray picture.

Q You were receipted for services?

A Yes sir.

Q For x-ray pictures having been made?

A That's right.

Q To whom did you pay it?

A Dr. Ward.

Q Dr. Ward; did you have occasion on that particular occasion to see Dr. Ward?

A He's the one took him down there, yes sir. He's the one sent me to Columbus with him rather.

Q Now, after the x-ray pictures were made, what then was done with your husband?

A He come out and I took him to Columbus, after them pictures was made; he told me to take him, that he was going to send him to a head specialist.

Q Then, when you say you took him to Columbus -

A Yes sir.

Q - what do you mean?

A After they put him back in the car, the two boys, I don't know who they were, I went and gassed up and took him to Columbus, to Dr. Mizzouri. That's who he told me to go to.

Q Could that doctor be Hazzouri? It sounded like Missouri?

A Yes sir, Dr. Missouri or something. I don't know what his name.

Q Now, I believe you indicated previously, or did you - maybe I ought to strike that -

Who, if any, were the persons who went with you?

A Clara Brazier, Sarah Brazier, Odell Brazier and myself and him, my husband, five of us.

Q Did the persons that you've named who accompanied you, did they accompany you all the way to Columbus?

A Yes sir.

Q Did you drive directly to Columbus?

A That's right.

Q Now, at about what time did you get to Columbus?

A I believe it was 1 o'clock, I believe it was, about 5 minutes to 1:00.

Q At about 5 minutes to 1:00?

A Yes sir.

Q All right, where did you take him upon getting to Columbus?

A I took him to the Medical Center in Columbus, hospital.

Q After getting there, what was done in his behalf?

A After we got there, two boys came out and got him on a stretcher and toted him, rolled him in; and they carried him in a little room somewhere, I don't know where; but when they brought him back, they put him in the bed.

Q Did you go with him?

A No, I went in the hospital but I didn't go in that room. I was in the hospital.

Q Was it something like a little emergency room of a sort?

A Yes sir.

Q Who, if anybody, was he attended by?

A Talking about the doctor that waited on him?

Q Yes?

A Doctor.

Q Did the doctor immediately come after he was taken into this little emergency room?

A No sir, I reckon - after they put him in the bed, they shaved all the hair off of his head; and about 3 o'clock that Monday afternoon, two doctors talked to me and asked me what was wrong with him.

Q What did they do to him, do you know?

A After they put him in the bed?

Q Well, yes?

A They put some needles in his arm and something hanging

up over the bed in a jug. I don't know what that was.

Q Are you aware of anything else that they might have done for him?

A Shaved his hair off of his head.

Q Were you able to observe his head after they shaved it off?

A Yes sir, because I hold one of his arms while this stuff was running in it, whatever it was.

Q Now, did you remain there with him while he was in the hospital?

A As long as he was in that bed, I did.

Q And how long was he there?

A 'til about 6 o'clock that Monday evening.

Q About when?

A 6 o'clock that Monday evening, that same day.

Q That same day?

A That's right.

Q Do you know whether or not he was operated upon?

A No sir, I don't know whether he was operated on right then or not.

Q Was he operated on later?

A Yes sir.

Q As a matter of fact, you gave permission for him to be operated on, is that correct?

A That's right.

Q Now, were you in constant attendance there to your husband?

A I didn't understand.

Q Were you in there with your husband for any length of time after the operation?

A I never did see him no more, after they carried him down for operation, in the operation. I didn't see him no more until that Thursday of that same week. They wouldn't let me.

Q Under what conditions did you see him then?

A That Thursday?

Q Yes?

A When I went in the room where he was, they had him in a little bed with iron things up on the side of it, and he had plasters all over everywhere, but you could see his eyes - you know, in here (pointing); and had these needles running in each arm; and had a little plastic something over the bed.

Q You say this was on Thursday, I believed?

A That's right.

Q Did you see him on the day following?

A No sir, they wouldn't let me see him.

Q Did you see him the day after that?

A No sir.

Q When did you see him again?

A When I see'd him again, he was in the undertaker's.

Q Then, when was the day on which he died?

A He died on a Friday night.

Q In other words, it was the day after you had seen him?

A That's right.

Q After the day in which you had seen him?

A That's right.

Q I exhibit to you PLAINTIFF'S EXHIBIT No. 28 and ask you do you recognize this document?

A Yes sir, that's my marriage certificate.

Q That is your marriage certificate?

A That's right.

MR. KING: And if your Honor pleases, I would like to -

MR. BLOCH: I have no objection.

MR. KING: - if there are no objections, to introduce it into evidence.

THE COURT: All right, it's admitted. (P-28)

Q Mr. King: What was the age of your husband?

A 31 at that time.

Q This was at the time of his death?

A Yes sir.

Q What was the physical condition of your husband: was he working every day?

A Yes sir, and night too.

Q Where did he work?

A Stevens Chevrolet place and he worked, me and him both worked at the Dawson Cotton Oil Company. He had two jobs.

Q What was the salary that your husband made at the Stevens Chevrolet place?

A It was from 45 to \$50 a week, something like that; sometimes he made overtime, be 55 and like that.

Q What was his salary at the Cotton Oil Company?

A It ranged from 29 to 31 and sometimes 34.

Q Then, you would say, cumulatively, he averaged between 75 and \$80 a week?

A That's right.

Q You indicated a moment ago that you and your husband both worked for the Cotton Oil Company?

A Yes sir.

Q Do you still work there?

A No sir, they fired me, in about - I guess I worked there about 3 or 4 days after - I'd say about a week after he died.

Q Was there any indication of the reason for that?

MR. BLOCH: I object to that as immaterial and irrelevant to any issue in this case.

MR. KING: If Your Honor please, I didn't ask

Mr. King:

what they were. I simply wanted to know were there any reasons for her having been fired.

THE COURT: You mean as to why she might have been fired?

MR. KING: That's right.

THE COURT: Well, what materiality would that have in this case? I don't see how it could possibly be material in this case.

MR. KING: We withdraw the question, Your Honor.

____Q Speaking of his physical condition, your husband was not a sickly man, was he?

A No sir.

Q— In other words, he was a good provider, he worked regularly?

A Yes sir, every day except Sunday. Well, we worked on Sunday too, 'cause we would go to work from 2:00 to 4:00 on Sunday Morning and would mop the office. We had to mop once a week.

MR. KING: She's with you.

MR. BLOCH: Your Honor, shall I proceed now?
I'm going to be rather long.

THE COURT: Well, I wanted to see if we couldn't finish with this witness today. That's what I had in mind.
Do you think we can get through with this witness today?

MR. BLOCH: If we went about an hour.

THE COURT: Well, go ahead and let's see how far we can go today. I'm not saying we'll stay that long. But let's see if we can't make some progress.

MR. BLOCH: I'll try to make it less than that.

THE COURT: Oh no, I'm not trying to put pressure on you. I was just hoping we might get through with her. I'm not trying to put any pressure on you. If you're not through, we'll just redress.

CROSS EXAMINATION

BY MR. BLOCH:

Q Going back now to the day, April 20, 1958, from 12:00 until 3:00 that day you had been at the I-HOPE Baptist Church?

A Yes sir.

Q Who did you go out there with?

A My husband and my children and two of his sister's children.

Q How many of you went in the car?

A It was about eight of us in there with the children.

Q What?

A It was 6 children and me and him.

Q Did James go out in the car, your husband go out in the car with you?

A Yes sir, he drove.

Q What kind of a car was it?

A A '58 Chevrolet.

Q Impala?

A That's right.

Q And how many of you were in the car?

A 4 children and me and him, which would have been 8.

Q 4 children, you and him -

A That's all.

Q Six?

A Six. No, it was 4 children, my 4 children, his sister's 2 children and me and him.

Q Oh, that's 8?

A That's right.

Q Where is the I-HOPE Baptist Church?

A It's about 6 miles from where I lived.

Q On what road is it?

A I don't know what you call that road but it's called Main Street running right through Dawson and you go on out and you get up there a piece and you turn off right.

Q Is it north of Dawson?

A Yes sir.

Q I-HOPE Baptist Church is north of Dawson?

A Yes sir, I think that's north.

Q Do you go right out North Main Street to go to the I HOPE Baptist Church?

A Well, you be coming through town, I don't know whether it's north, I don't know north, south and east when I see it but I know it's just straight out the highway opposite from where I lived at.

Q Where do you live now?

A I live in Albany now.

Q How long have you lived in Albany?

A I've been in Albany, be 5 years this coming September.

Q 5 years this coming September?

A That's right.

Q Isn't the I-HOPE Church on the road that goes between Dawson and Albany?

A No sir.

Q Where do you live in Albany?

A I live at 830 Gordon Avenue.

Q What avenue?

A Gordon Avenue.

Q On this occasion, on Sunday, April 20, was there a man named Walter Perkins a witness to it?

A A witness to what?

Q A witness to the arrest of your husband by Chief Cherry and Mr. McDonald?

A I haven't seen him around. I don't know.

Q ^{know}
Doyou Walter Perkins?

A Yes sir.

Q You know the man I'm talking about?

A That's right.

Q And he was not there?

A I didn't see him.

Q You didn't see him?

A No sir.

Q This Marvin Goshea that you spoke of, he's dead, isn't he?

A They say he is.

Q They say he's dead?

A Yes sir.

Q Do you know of your own knowledge how he died?

A No, I do not.

Q Well, going back to the Sunday now: the minister of the church at I HOPE church, Baptist Church, was Reverend S. A. Andrews?

A That's right.

Q Did he conduct the services there that day?

A That Sunday he did at I HOPE.

Q And you had services that lasted from 12 o'clock until 3 o'clock?

A That's right.

Q Is that the usual time for holding church, from 12:00 until 3:00?

A Yes sir, they just hold it and whenever they got ready to stop, they stopped.

Q And when you left there at 3 o'clock, you went to the Mt. Mary? Mt. Mary Church?

A It's called Zion Hill.

Q What?

A Yes sir, Zion Hill.

Q Where is the Mt. Mary Church?

A It's back on the other end of Dawson, not on the same side I HOPE is but back on the other end.

Q On the south end?

A Yes sir.

Q About how far below Dawson?

A I'd say about 4 miles, 3 or 4 miles.

Q And you were on the program there?

A Yes sir, I'm a choir singer.

Q What do you mean by being on the program?

A Well, we just had program of the church and invite different churches to come; just like we would invite their own program. We sing in the choir and the preacher preaches, and we have service. That's what we call a program.

Q And you stayed there until after 5:00?

A That's right.

Q It was probably going on 6:00 when you left there?

A Well, I would say it was nearer 5:30 than it was 6:00.

Q 5:30 or quarter to 6:00 when you left there?

A Yes sir, it wasn't --

Q When you left there, were you in the car with your husband?

A Yes sir.

Q Who else was in the car?

A My childrens and his sister's two children.

Q The same ones that you went out with?

A That's give.

Q His sister's children?

A That's right, and mine.

Q What are their names?

A One named Bobbie Jean Brazier and the other one named Phyllis Brazier. They was real small then.

Q I thought you said they were his sister's children, how did they get to be named Brazier?

A I said his sister's children, not mine.

Q His sister's children, named Bobbie Jean Brazier?

A That's right.

Q How did they get to be named Brazier, if they're his sister's children?

A I don't know, sir, how they get the name Brazier.

Q Who was her husband?

A She didn't have a husband.

MR. HOLLOWELL: If it please the Court, I understand

Mr. Hollowell:

that perhaps counsel is interested in genealogy, but I cannot see that there is any relevance to the questions that are now being asked.

THE COURT: Well, I presume counsel is just trying to identify everybody who was present. I don't think it has any other significance. Certainly -- well, that's as far as you intend to pursue it?

MR. BLOCH: That's right, of course, I was just trying to get names.

____ Q After you left the Mt. Mary Church around 5:30 or quarter to 6:00, you went on home?

A That's right.

Q - And he put you out at the house?

A That's right, me and the children.

Q Were you living at 312 Ash -

A Ash Street, yes sir, that's right.

Q And you went in the house?

A That's right.

Q Had he had anything to eat that day?

A No sir, he didn't eat at the church.

Q He hadn't had anything to eat all day, had he?

A No sir, he hadn't let.

Q Now, where were you when the car came up in which Officer McDonald and Officer Cherry were riding?

A We was in the yard then.

Q What?

A We was in the yard then, at my house, both of us.

Q You were in the yard?

A Talking about when the officer's car come up?

Q When Officer McDonald and Officer Cherry came,
where were you?

A I was standing out there talking to my husband in
the yard.

Q In the yard?

A Yes sir, on the side of the house. It was closer
to the back than it was to the front.

Q How far were you from the road?

A I'd say it was about as far from where I'm sitting
to back there where they is, to that table.

Q From you to the second counsel table?

A Yes sir.

Q We'll measure that later -

A It could have been not that far and it could have
been closer. I don't know. I wasn't noticing that 'cause
I was wanting to know where they was going in such a hurry.

Q ?Well, you and he both saw them coming?

A That's right.

Q And you knew it was a police car?

A Yes sir, I knowed it was a police car.

Q And he got up and started walking towards them to meet them, didn't he?

A Yes sir, after they had stopped and got out.

Q After they got out, got into the yard?

A After they stopped and was getting out of the car.

Q They stopped in the street?

A On the side. It was a big drive we had down side the house and they stopped on this side out there to the end of that driveway.

Q And he went out to meet them?

A He started walking after they started coming up in the yard; he started walking towards them.

Q Did you walk with him to meet them or did you stay where you were?

A No sir, I didn't walk with him.

Q You stayed where you were?

A Yes sir.

Q So, the whole time of the incident of the arrest, you were as far as from here to the second counsel table from the officers?

A When he pushed him, I walked on towards out there where they was.

Q Now, on direct examination you said you guess that Mr. Cherry hit with a pistol; you don't know that he hit him with a pistol?

A Well, he had the pistol. That's the onliest thing that he had in his hand, that pistol.

Q That was the only thing he had in his hand?

A That's the only thing I see'd.

Q Youdidn't see any slap-jack?

A No sir, I didn't see one. I don't know what that is.

Q Youdidn't see any handcuffs?

A He had them on his hand. I reckon that's what they was.

Q Did yousee some handcuffs?

A After he put them on, yes sir, I see'd them.

Q What kind of handcuffs do you call them, do you know?

A They're silver looking things and got two holes on each side and something inthe middle.

Q What they call "pistol-grip" handcuffs?

A I don't know what they call them, pistol or what kind but they had two holes in them.

Q All right now, slowly so I canwrite them down please -

A Yes sir.

Q - give me the names of the people who saw the arrest, known to you, the names of the people who saw your husband's arrest by Mr. Cherry and Mr. McDonald?

A I can call some of the peoples that was there. I know I can't callall of them 'cause there was so many.

But one was James Lattimer -

Answer:

Q Just a minute, James Lattimer, Annie Belle Lattimer

Q Annie Belle Lattimer?

A Yes sir. Jacob Minter.

Q Jacob Minter?

A That's right. And James Lewis.

Q James Lewis?

A Yes sir. Lucius Holloway.

Q Just a minute . . . All right?

A Lucius Holloway. Carrie Mae Lewis.

Q Carrie Mae Lewis?

A That's right. Kate Alexander.

Q What's the first name?

A Katie. Doris Minter; MaryHylick.

Q That's H-u-i-c-k (spelling)?

A It's H-y-l e-k (spelling), I think; and Elmer Anderson.

Q Who else?

A I can't call no more right now because I didn't talk with everybody that was there.

Q That was all?

A That's right, Rebecca Williams.

Q Who?

A Rebecca Williams, who I talked with. I talked with her. And Bud Tank. That's what I call him; I don't know what

his right name is.

Q Bud - how do you spell that last name? T-a-n-k?

A T-a-n-k (spelling). That's the way I would spell it.

Q Is that all?

A That's all I can remember right now. There might have been others, 'cause I left some of them standing there when I left.

Q Now, you had left the church, the last church you went to, about a quarter to 6:00?

A Well it was closer to 5:30 than it was quarter to 6:00.

Q All right, now how long did it take you to drive from there to your house where James let you out?

A Oh, it don't take long, about 15 or 20 minutes, something like that.

Q 15 or 20 minutes?

A It might have taken that long, according to how fast he drive.

Q How fast did he drive?

A I wasn't driving. He was driving. I didn't pay it too long no 'tention.

Q Have you any idea what time it was when you got to your house and he let you out?

A I'd say it was around 5:30 or quarter. It might have been a quarter to 6:00, but I'm not sure. But I know

Q What street?

A Ash Street, the same street I was living on.

Q Two doors from you?

A That's right.

Q What was the number of his house?

A I think it was 3--. I disremember what his house number was; I don't know, but it was 2 doors from where I was living.

Q Well, at the time the officers drove up and James went out to meet them, where was James Lattimore?

A He was coming up the road, I guess. By the time they got him -

Q Coming up the road, you guess?

A From his house.

Q Do you know where he was?

A No, I don't know where he was 'cause I didn't pay peoples no attention out there then because I was trying to keep up with what was happening there.

Q Did you know at that time what he was anywhere around?

A No, I did not know but when I got out to the end of the road, I see'd him; but what time he come up there, I don't know.

Q When did you see him?

A By the time they got my husband to the car good, the

road was just full of peoples. I don't know who come up first and what.

Q Annie Belle Lattimer, is she James' wife?

A Yes sir.

Q Where was she at the time your husband went out to meet the officers, wherewas Annie Belle Lattimer?

A When I see'd all of them, they was out in the road. I don't know what time they got there.

Q They were all out in the road?

A Standing along where that car was parked. Ther e was a ditch there on the side of my yard.

Q You mean by the road, out in Ash Street?

A That's right.

Q Out in the street?

A Well, my driveway run right on out in the road.

Q Jacob Minter, what kin was he to you?

A Not any.

Q No kin?

A No.

Q Where did he live?

A He lived next door.

Q Right next door?

A That's right, I could step off of his porch almost on mine.

s

Q James Lewis?

A He lived in the front of my house, just a little bit up from it, on the other side.

Q Is he kin to you?

A No sir.

Q And he lives on the other side?

A On the same street, the same street.

Q The same street?

A That's right.

Q How far, how many doors from you?

A There's not a house in between me and him.

Q Huh?

A There's not a house between where he live and where I live. It was just on the other side of the street and mine was on this side.

Q Lucius Holloway, is he kin to you?

A No sir.

Q Where did he live?

A He lived there too, over on the other side. His house sits side of James Lewis' house.

Q Carrie Mae Lewis?

A She live in that same house.

Q Is she James Lewis' wife?

A That's right.

Q And she lives in the same house with him?

A Yes sir.

it was good and 5:30.

Q Was the sun shining?

A No sir, it wasn't then.

Q Had the sun been shining that day?

A Yes sir.

Q It was a clear, sunshiny day?

A Yes sir, beautiful day.

Q Was it about dusk, twilight?

A It wasn't that dark, no sir.

Q Twilight?

A I don't know sir how the light was. It was just in the evening, late in the evening, I know that.

Q This James Lattimer now, what kin is he to you?

A That's my sister's husband.

Q Your sister's husband?

A That's right. We all was at church together.

We are all members of the same church.

Q Now, where was James Lattimer at that time?

A At what time?

Q At the time the officers arrested your husband?

A He come on up there to the house. He was living about - wasn't but two houses in between their house and our house. We was living almost in calling distance.

Q At that time where did he live?

A On Ash Street.

Q Katie Alexander, is she kin to you?

A No sir.

Q Where did she live?

A She lived with my mother.

Q With your brother?

A My mother.

Q What's his name?

A My mother, Hattie B. Williams.

Q Hattie B. Williams?

A That's right.

Q Where did Hattie B. Williams live?

A She lived on Center Street, the next street over.

It wasn't too far from where I lived, just had different name.

Q Where was Katie Alexander at the time the officers drove up?

A She was standing in Jacob Minter's and them's yard talking to Doris.

Q And Doris Minter, she's Jacob Minter's wife?

A Yes sir.

Q What kin is she to you?

A She't not any kind to me.

Q And where was she?

A She was at home. She lived next door there too.

Q Huh? Huh?

A She lived next door.

Q And Mary Hylick, where did she live?

A Well, she lived right across the field from where I was talking about James Lewis lived.

Q And where was she at the time the officers drove up?

A I don't know where she was when the officers drove up but when I see'd her, she was standing across the field, over there on the other side of the road.

Q When was that, after the officers drove off?

A No sir, that's after they got out to the car.

Q After they got out to the car?

A That's right, got out to the car with him.

Q Elmer Anderson, is he kin to you?

A No sir, she's not any kin to me.

Q Where was he at the time the officers drove up?

A I don't know where she was when the officers drove up but when I see'd her, she was in the road.

Q When did you see him in the road?

A After I got about - after they got out to the car; that's when I see'd all of them and I talked with all of them before they left.

Q Rebecca Williams, where does she live?

A She live on - she live a good piece up the street but she was in her truck when I see'd her coming down the road.

Q Is she kin to you?

A No sir.

Q How far from you does she live?

A You can't see her house from where I live.

Q Where was she at the time the officers drove up?

A I don't know where she was. When I see'd her she was in the truck coming from up the road. I don't know where she was -

Q When was that?

A When she come from up the road?

Q Yes?

A That was after I had got out to the car. That's when I paid 'tention --

Q After you got out of the house?

A After I walked to the car, near the car - I didn't go to the car, I went to the front, to my front lawn; and that's when I paid 'tention to who all was standing around.

Q Bud Tank?

A That's her husband. She was in the truck with him.

Q And she lives in the same house?

A That's right.

Q Now, at the time of the arrest by Mr. Cherry and Mr. McDonald, at the time they arrested your husband, you could see what they were doing and saying with him and at the same time seeing all of these people and where they were,

is that right?

A Say I can do what? Say that again, please?

Q I said at the time that the officers made the arrest, you could see what they were doing and at the same time see all of these people and where they were standing?

A I was paying more 'tention to what the officers was doing than I was the peoples.

Q You were paying more attention to what the officers were doing than you were the people?

A Yes sir.

Q So, the truth of the matter is you don't know who was there at that time, do you?

A I know they was standing there; after they had put him in the car, there was some of them still standing in the yard. I left some of them there when I left to go to Mr. Arnold's house.

THE COURT: All right, you've out-lastred me, Mr. Bloch.

MR. BLOCH: I sure am glad.

THE COURT: All right, we'll take a recess at this time until tomorrow morning. Members of the jury, you will remember the admonition that I gave you originally not to discuss this matter with anybody; don't read anything about it in any newspaper or television, don't listen to anything. You just let your verdict when

The Court:

it comes in be based only what you hear in this court-room and evidence that is admitted by the Court.

And you may withdraw at this time and be back in the morning at 9:30. Everyone else will remain seated until the jury has gotten their belongings and have left the jury-room and have left this floor of the building. You may withdraw.. . .

All right, we will stand in recess now until tomorrow morning at 9:30.

5:20 P. M., FEBRUARY 5, 1963: HEARING RECESSED

9:30 A. M., FEBRUARY 6, 1963: HEARING RESUMED:

THE COURT: I believe you had Hattie Brazier on the stand on cross-examination, Mr. Bloch. Do you wish her back on the stand?

MR. BLOCH: Yes sir, but I wanted to make one announcement first please. If the Court please, it has come to my attention during the trial of the case of two witnesses, who we may want to use. I have them subpoenaed and I thought we ought to call and see if they are here and, if so, have them sworn = One of them is a witness by the name of Vick Hammock, and the other is Oscar Will Nixon.

(Two named witnesses called in, sworn by Clerk, and put under sequestration rule).

MR. KING: If Your Honor please, I don't recall whether Mr. Bloch made the announcement or not but these two witnesses are not witnesses of which we were apprised.

THE COURT: I understand. All right.

HATTIE BRAZIER - Plaintiff

(Cross-Examination resumed)

BY MR. BLOCH:

Q Do you know Vick Hammock?

A Yes sir.

Q Where does he live?

A I don't know the street he live on. I say, I

doesn't know the street he lives on.

Q He lives in Dawson?

A Yes sir.

Q Do you know Oscar Will Nixon?

A No sir.

Q You never saw him before?

A If I did, I didn't know him. If I did, I didn't know who I was looking at.

Q You don't remember ever seeing him before?

A No sir.

Q How long did you live in Dawson, Georgia?

A I was born in Terrell County.

Q How long did you live in Dawson after April 20, 1958?

A I left Dawson on August 4 in '58.

Q August what?

A The 4th; the 4th of August?

Q Of '58?

A That's right.

Q Between April 20, 1958 and August of '58 when you left there, do you recall having an interview with a Mr. Jack Nelson, a reporter of the Atlanta Constitution?

A I talked with so many peoples, I don't know who all they was.

Q Speak a little louder?

A I say, I talked to so many peoples, I don't know who they were.

Q You talked to so many people?

A White people; yes sir, they come there.

Q In that time from April to August?

A That's right.

Q Well, whom did you talk to?

A I don't know their names.

Q You don't know exactly how many?

A No sir, and I don't know their names.

Q And you do not recall specifically Mr. Jack Nelson of the Atlanta Constitution?

A No sir, I don't know him.

Q You mentioned or there has been mentioned and you mentioned when your depositions were taken a colored man named Marvin Goshea?

A That's right.

Q He's dead, isn't he?

A That's what they say.

Q Do you know how he died?

A No sir, I don't.

Q You don't know that?

A No sir.

Q Coming to the occasion of the arrest of your husband by Mr. Cherry and Officer McDonald, didn't you on that occasion say to your husband, "Why don't you go on and behave yourself"?

— A — No sir, I did not.

Q You didn't say that?

A No sir, not as I remember, saying nothing. I didn't get a chance to do nothing but holler.

Q What's that?

A I didn't get a chance to do nothing but holler.

Q You didn't do nothing but holler?

A That's right.

Q Now, as I understood you yesterday, you said that you saw Mr. Matthews, Sheriff Matthews?

A That's right.

Q That's the gentleman sitting there?

A Yes sir.

Q That Sunday afternoon, about what time did you say?

A Oh, I don't know exactly what time it was, but it was night. We was at the jail then.

Q And what was he doing when you saw him?

A He was just standing in the door, just come to the door and peeped and went back.

Q Standing where?

A In the side door around there by the porch. He looked out and went back.

Q Of the courthouse?

A Of the jail-house.

Q Of the jail-house?

A On that porch 'r ound there.

Q And you were parked in your automobile?

A The car was parked and I was on the ground.

Q How long did you say you stayed there on that occasion?

A I left there around 10:00.

Q And you had been there how long?

A Oh, I guess it was about 8:00, something like that.

Q Who was with you?

A My husband's two sisters.

Q Your husband's two sisters?

A Yes sir.

Q And who else?

A And my mother.

Q Your mother?

A And my sister.

Q And who else?

A My sister.

Q What are their names?

A Clara and Sara and Annie Belle.

Q Now, you mentioned in your testimony yesterday that you talked to a doctor: What doctor did you talk to?

A Dr. Ward.

Q Is he the only doctor that you talked to on that Sunday night?

A Yes sir.

Q Do you remember an incident in November of 1957?

A Yes sir, I remember what my husband told me about it but I wasn't in town.

Q I just asked you -

A Yes sir.

Q - if you remembered an incident in November, 1957?

A That's right.

Q Wasn't it at that time that you saw the Sheriff at the jail, in November of 1957 and not April 20, 1958?

A That I saw the Sheriff, what did I do when I saw him?

Q You saw the Sheriff both times?

A I don't remember seeing him nary time. You say, what did I say when I see'd him in '57, what date was it, what happened then?

Q Did you see him at the time that your husband was arrested?

A Oh no sir, I didn't see nobody but Mr. Cherry and another officer but I don't know who he was.

Q Did you see the Sheriff?

A I see'd him that Sunday -

Q At the time that your husband was arrested -

THE COURT: Wait until he gets through asking the question now and then you answer it. Go ahead, Mr. Bloch.

Q Mr. Bloch: Did you see the Sheriff at the time your husband was arrested in November of 1957?

MR. HOLLOWELL: May it please the Court, we object to the testimony and to the question on several grounds: In the first place, the incident being referred to was over a year or not quite a year before the particular incident that is the subject-matter of this trial.

No. 2: In my opinion, it's an effort to prejudice the jury.

No. 3: ~~It is not relevant or material~~ who she saw at some time some 6 or 7 months prior to this particular situation; and, therefore, in my opinion, it is incompetent, immaterial and irrelevant and prejudicial.

THE COURT: Well, apparently counsel is - she says she saw the Sheriff on an occasion in April, 1958 - now, apparently counsel is suggesting that she may be confused, in that she may be recalling, since about $4\frac{1}{2}$ or 5 years have now passed, she may be recalling having seen him in similar circumstances on another occasion a few months separating them. That's the only purpose of it, as I understand it, which is to test her recollection about whether she is remembering this occasion or another occasion, separated in time by a few months.

Is that the purpose of the question?

MR. BLOCH: That's one purpose, Your Honor, but it goes further than that. She also testified on yesterday that the physical condition of her husband was good; and, if I am permitted, I want to prove by her what she told the Sheriff in November of 1957.

THE COURT: Concerning her husband's physical condition?

MR. BLOCH: Concerning her husband's physical condition, plus this - and we get right down to the gist of it on this also: If, and I say if, her husband had been previously arrested, the circumstances surrounding those arrests, if known to the arresting officers here, are admissible.

Now, Your Honor may recall that at the pre-trial

Mr. Bloch:

conference, one of the pre-trial conferences with Your Honor, before Your Honor, on the 7th of January in Columbus, that question was alluded to; and Your Honor asked for authority as to whether or not previous arrests, if any, were admissible. I came to the conclusion that the mere fact of a previous arrest was not admissible.

MR. HOLLOWELL: Excuse me - Your Honor, if it please the Court, if this is going to be some effort to make proof of a situation, I would suggest that it is possible that that show of proof should not be made in the presence of the jury.

THE COURT: Well, he's not making any show of proof right now.

MR. HOLLOWELL: Well, it appears that he is about to and I wanted to stop him before he did, because it appears to be one he wants to discuss, that which would be the subject-matter of a show of proof relative to the question that is before the Court; and I wanted to call the Court's attention to the fact that it would be improper for him to be permitted to do so in the presence of the jury, if this is what he is trying to do.

THE COURT: In other words, you're suggesting that you think the discussion should be had out of the presence of the jury?

MR. HOLLOWELL: If we're going to get into that.

THE COURT: All right, take the jury out.

(JURY WITHDRAWN FROM COURTROOM)

THE COURT: All right, Mr. Bloch:

MR. BLOCH: Your Honor please, in the case of Moody v. The State, 120 Georgia page 868, and it's typical of several cases, the 5th headnote is:

"There was no error in charging that" 1- and this is the principle of law which we invoke - "when an officer has a prisoner in his custody, he is authorized to use all the force necessary to make the arrest effectual; and if the prisoner resisted, the defendant would be justified in using such force as was necessary to compel submission."

Now, without belaboring that question, there are other cases to which I call counsel's and the Court's attention along the same line: Coleman v. The State, 121 Georgia 594, 7th headnote; Newkirk v. The State, 57 Ga. App. 803(1); Morton v. The State, 190 Georgia 792, 799; Mullis v. The State, 196 Ga. 569, the language particularly at page 577, the third head-note.

Now, Your Honor will notice the phrase in there "such force as is necessary to compel submission". Now, the force that is necessary varies, of course, with the particular individual and with the particular circum-

Mr. Bloch:

"-stances, and with the reputation or character of the person being arrested, and the experiences which officers have had with him in the past, known to the officer making the arrest.

To put it baldly, if a man or woman had been arrested on previous occasions, and on those occasions had resisted the officers and had assaulted the officers, an officer in making an arrest of that individual, whose experience was known to him, would be authorized to be on his guard, and perhaps use more force than he would with an individual with whom he had had no experience.

Now, that's illustrated by just one case. I'm not going to prolong this because I'm sure Your Honor sees the point. That's illustrated by the case of Dannenberg v. Berkner, 118 Ga. page 885, the second headnote. This was a case in which the plaintiff and the defendant were on a street car in Macon. The plaintiff was named Berkner. He was drunk and he used an opprobrious epithet to one of the Defendants, Dannenberg, and an altercation ensued. One of the Defendants cried out that the Plaintiff was armed and a bystander searched him and reported that he had no pistol. He was then put on the front platform of the car and while there, he turned

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and repeated the epithet. Whereupon the Defendants attacked him through the window. He was kicked and beaten and received wounds and bruises on the head and body. There was evidence that he was stabbed or jabbed with an umbrella.

Several witnesses testified that the Plaintiff had the reputation of being quarrelsome when drunk; some of them said dangerous if he had a weapon, though none of them knew of his ever having hurt anybody.

The Defendants testified that they knew of this reputation, knew he was dangerous when drinking and from his threats and epithets were apprehensive of personal injury from him.

Berkner sued the Dannenbergs for damages and they pled self-defense, as here the Defendants, the arresting officer defendants, aver that they used no more force than was necessary.

"Here where the Defendants' plea was self-defense, and that they had acted under the fears of reasonable men, and where it appeared that the battery was caused by opprobrious words spoken by the plaintiff, but there was no actual assault on defendants by him, it was not error to charge that the jury might consider the character of the plaintiff for turbulence, so far as known to the

Mr. Bloch:

"= defendants, in passing on the question whether they acted under the fears of reasonable men."

Now, in applying those principles to the case at bar, and while the jury is out, if I may, what I propose is to go ahead after the question that I have asked with this line of questioning:

Her testimony was taken by the Defendant in Albany on November 24 and in the course of the examination I asked her, "Now, during the time of your married life how many times do you know of that James was arrested? As far as I can remember about 5 times, about 5. Five times? Answer: As well as I can remember, yes sir.

Could you give us approximately the dates of those 5 arrests? No sir, I couldn't. Did you say "no"?

Answer: No sir, I don't think I could. Question: Well, could you give us for what he was arrested?"

And she answered, "Well, when he was arrested in November of 1957, of course, they say he was drunk coming through town driving 70 miles an hour. It was what he said.

That's what he told me. And he was arrested once before November when he had - let me see - he was arrested - let's see what month was that now - that was after

November. I went up there and was telling him about the trouble he was having with his head, Mr. Z. T."

Mr. Bloch:

I take that to Mr. Z. T. Matthews. "And he told me if he had that kind of trouble any more, come and let him know and they'd take him to the doctor. "

THE COURT: Now, that was when? When was that?

MR. BLOCH: That was in November. As I gather, it was November, '57.

"Well, I did; after he started worrying with it, then I went up there and told him, and they come out there and got him and put him in jail and made him pay a bond of \$25."

Now, under the cases which I have cited to Your Honor, I think that evidence is admissible.

If I may, while the jury is out develop another point that I would like to tender evidence on. I asked her this question: "Did you ever make complaints to the Police Department in Dawson about James' drinking?"

THE COURT: About what?

MR. BLOCH: "About James' Drinking". And she said "No sir." I want to ask her that same question now and go beyond it so far as another question is concerned: "Did you ever make complaints to the Police Department in Dawson about any conduct of his?" And she answered "No sir." "Threatening to whip you or anything of that sort?" Answer: "No sir, because ever

Mr. Bloch:

"when he be drinking he would lay down and go to sleep."

Now, I propose with the Court's permission, if permitted to do so, to ask her if she had not on at least one occasion called Mr. Cherry and other police officers, complaining of trouble that she was having with her husband.

I proposed, if permitted, to ask her if she ever had anyone else call the police and tell them of trouble that she was having with her husband.

THE COURT: What kind of trouble? What kind of trouble?

MR. BLOCH: His being drunk and disorderly around the place and threatening her safety.

THE COURT: Threatening her safety?

MR. BLOCH: Threatening her. That's what she said on that occasion, according to the information relayed to me.

THE COURT: In other words, what you're saying is that you intend to offer proof that she did do that?

MR. BLOCH: That's right.

THE COURT: And you intend to ask her and if she says she did, all right; if she says she didn't, then you intend to offer proof that she did?

MR. BLOCH: That's right.

THE COURT: That's the situation?

MR. BLOCH: That's the whole thing. That's our position.

THE COURT: And you intend to prove that she called Mr. Cherry or one of the Defendants in this case or had somebody else call him?

MR. BLOCH: Yes sir, Mr. Cherry or one of the living Defendants; and also that she had another person; to-wit, the witness who was just sworn, Vick Hammock, to call the police on several occasions, complaining of disorderly conduct of her husband. That's our showing.

THE COURT: All right, I'll hear from you, Mr. Hollowell.

MR. HOLLOWELL: Thank you, Your Honor. When Mr. Bloch started out, there was some question in my mind as to what his position was. Certainly the long list of cases which he cited have no relevancy to this point. The initial sentence and topic of his discussion was the "amount of force", whether or not it was proper for an officer to use the amount of force necessary to subdue a prisoner; and, of course, we know that this elementary in the law, reasonable force, if he is acting within the law, if that which he is doing is within the law.

But I say that that long list of cases which he has cited has no relevancy to this point; and the only

Mr. Hollowell:

case which he cited which seems to touch upon it is the last case, which was the case of Dannenberg v. Berkner; and I submit to you, Your Honor, that this case has a set of facts which is so vastly different from this case as to not make it at all important.

In that case, not only was the man drunk and turbulent, and not only did he use epithets, opprobrious words, giving indication of the fact that he was going to do something, in addition to the fact that someone indicated the presence of a deadly weapon, all of these facts are not cogent in this situation. There is no relationship at all to the facts of this case. As a matter of fact, that which has already come out is to the effect that the man was home and in his own yard, and the policemen came there.

There is no evidence that anybody has ever said that the deceased had any weapon. There is no evidence that the deceased threatened to take the life of, or to stab or to shoot or hit anyone. The only evidence there is here, and that was by Mr. Cherry, was that the defendant swung, and he swung with both arms; and it appeared that it was in the direction of - this was about as far as his testimony ever went - and that a cap somewhere along the

Mr. Hollowell:

line was knocked off; that he had a slap-stick, that he had handcuffs; that he had a pistol; that his associate had firearms. The facts are in no way related.

But Mr. Bloch for got still, I presume he forgot, to read the first headnote in that case. Now, let's see what it says: "In an action for damages for an assault and battery, the character of the plaintiff for turbulence of itself affords no justification." This is the case from which he cites.

Now, getting down to the real issue and some cases that are in point, I would respectfully submit to the Court these cases:

The case of Hanye v. The State, 99 Georgia 212, says the character of the deceased for violence offers no justification or mitigation for one who slays him without provocation.

And then, we step on to Guthrie v. Hendley, 8 App. 101. This is an old principle of law where it was held that the trial court did err in charging the jury, as follows: "The character of the deceased for violence and the character of the defendant for peaceableness, if the evidence discloses such, you will consider along with the other evidence in the case

Mr. Hollowell:

"in arriving at your verdict." And it was held that this was error.

Then, in *Jefferson v. The State*, 56 App. 383, it was held that evidence offered in a trial for murder to show the character of the deceased for violence will, as to the party named making the attack be confined to the reputation which the deceased had in the community, and will not extend to specific acts." This is what Mr. Bloch seeks to do.

And then, in the celebrated case of *Head v. The State*, 69 Ga. App. 843. The evidence there that the decedent was a man of violent character when drinking is not admissible, unless it appears from the evidence that he was the aggressor. I repeat that, sir: "Evidence that the decedent was a man of violent character when drinking is not admissible, unless it appears in the evidence that he was the aggressor."

Certainly there is no such evidence here.

THE COURT: Well, don't overlook the fact now in your discussion that just a few minutes before this arrest was made - what was it, 30 minutes or 45 minutes, I forget the testimony - but some short period of time before the arrest was made, the testimony is - of course, I'm not saying that you admit

The Court:

the truth of it - but I'm saying there is testimony before the Court by the Defendant, Mr. McDonald, who has already testified, that this man threatened him and told him that "I'm going to get you even if I have to do it in the dark". Now, I have that testimony before me; so, don't overlook that.

MR. HOLLOWELL: I have not, sir. Even in the light of that, under these circumstances in this case, there being absolutely nothing which this man had done, and when they came to his home, with him in his yard, and with there being no testimony that he had any weapon in his hand, about him or that they took any, and with there being no testimony by these two officers in this trial of a whole day's testimony that this man was drunk; there is not one shred of evidence in this case by this Defendant or by that Defendant, or by any other defendant, if Your Honor remembers the testimony, that this man was drunk;

I submit to you that the facts are so far removed from the Dannenberg case that the Dannenberg case would still have to be not in point.

And then, again ~~calling Your Honor's attention~~ to the first headnote, even in that case, that it offers no justification where there is no provocation.

Mr. Hollowell:

And under these facts, Your Honor, and with this in mind, and with a very conclusive set of cases dealing directly with the point, it would certainly be most improper for the Defendant to be able to ask this kind of question; particularly since they are seeking to have the specific acts related, as this has been held to be error, and it is almost elementary in the law that this is improper. And we submit that it would be inappropriate for the questions that have been propounded as being those that they want to ask of this witness or any other witness and that they should not be admitted.

MR. BLOCH: If the Court please, since it has been suggested that I did not read the first headnote in Dannenberg v. Berkner, let me read you just a few lines from the opinion by Mr. Justice Lamar, starting at page 888 in the giving of the opinion.

The first headnote, I'm not reading now, I'm interpolating, the first headnote is this: "In an action for damages for an assault and battery, the character of the plaintiff for turbulence of itself affords no justification." The words "of itself" are the important words, as is illustrated by the second headnote.

Mr. Bloch:

Now, Judge Lamar, and this is just about 10 or 15 lines, says this:

"It is unnecessary to consider whether under *Malone v. State*, 49 Ga. 218, and *Wall v. State*, 69 Ga. 766, the conduct of the plaintiff was such as to demand a charge on the subject of reasonable fears, because the court gave the defendants the full benefit of that principle, and repeatedly charged that they might consider whether, in making the battery, the defendants were acting under the fears of reasonable men.

"Nor was it error requiring the grant of a new trial to instruct the jury that they might consider the character of the plaintiff for turbulence, so far as known to the defendants, in determining whether they acted under such fears or maliciously.

"In *Williams v. Fambro*, 30 Ga. 232, there were no eye-witnesses to the homicide, and it was held that evidence as to the slave's character for insubordination might be considered, whether known to the defendant or not, for the purpose of mitigating the damages sustained, and showing the probability of the defense that the slave was killed in an act of insubordination.

"Here the character of the plaintiff and all of the

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"facts attending the battery were before the jury. He made no actual assault, but the defendants insisted that they thought he was going to make an attack, and gave as a reason for such belief that they knew and had heard of his turbulence when drinking. The plaintiff having himself made no assault, his character was immaterial, except insofar as their knowledge of his reputation for violence justified the fears of the defendants. As the danger was not in fact real, they could show that to them it was apparently so. If they did not know of his quarrelsome disposition, it could not explain their conduct; if they did know thereof, it might have illustrated the motive with which they acted."

MR. HOLLOWELL: If it please the Court, I am sure that counsel knows in this case that was made refernce to, this old 30 Ga., a case in which there were no eye-witnesses, that they were unable to put in thereputation; and here this is elementary that it has no relationship to this particular case. There were multiple eye-witnesses in this particular situation as the testimony has gone thus far.

And then, the other thing is that there is nothing in that case which refutes the necessity of preventing

Mr. Bloch:

the testimony relating to specific acts. And this is what is sought to be done here, to relate specific acts; and you have to take the character of the case as it has been made in this case, the facts and the evidence as they have been elicited in this case, and there is certainly no such evidence as to justify the admission of that kind of testimony; and, as a matter of fact, I say that the cases which have been cited by counsel for the Plaintiff are strong in showing that it should not be admitted, and we thus respectfully urge upon the Court.

THE COURT: Now, have counsel for both sides made all of the comments they wish to make?

MR. BLOCH: Yes sir, I have.

THE COURT: Have counsel for the Plaintiff?

MR. HOLLOWELL: Yes, Your Honor.

THE COURT: It's the Court's view that what we are eventually going to get to for determination by this jury, and the real crux of the case, is whether in the circumstances of the arrest which was made, whether the conduct of the arresting officers was such as to create liability on their part; and that leads directly to the question of whether the force which they used, if any, was reasonably related

The Court:

to the necessity for the use of force, presuming force of any degree was necessary.

And in order to reasonably interpret that and fairly interpret it - and, as I see it, this is a two-edged sword; it's not just a thing that could be of benefit to the Defendants in arguing the matter, but as I see it, it's a thing that could be of benefit to the Plaintiff in arguing the matter. But to get back on the point I was discussing: It seems to me that the jury would be entitled to have the overall picture of the situation, to determine, in the light of the overall picture, what a reasonably prudent arresting officer would or would not have done in the circumstances.

As I mentioned during the course of counsel's argument, counsel for the Plaintiff, in the course of his argument, we have here a situation where just a short time before this arrest a specific threat was made. Of course, as I say, that's controverted, but there is positive testimony to that effect. And the officers went back to make the arrest.

I think under the circumstances, the previous history of the person being arrested, as it was known to the arresting officers, his reputation for being a

The Court:

person who did or did not make trouble, previous experiences that they had had with him along that line, would certainly be a thing that any fair and impartial person, who is approaching determination of this situation, would be entitled to know.

As I say, that's a two-edged sword. It may be, and it would be a matter, in my judgment, of legitimate argument for counsel for the Plaintiff to make, that, because there had been some previous difficulty, if there had been, that maybe that was too largely in the minds of the arresting officers and led them to use more force than was necessary, because of the fact that they had had some previous difficulty. As I see it, that would be legitimate argument. As I say, it's a two-edged sword. It isn't just a one-way street. Though the arresting officers may offer it in justification, it might also be contended by the Plaintiff that the arresting officers were allowing those past experiences to loom up too large in their thinking and their consideration of what was necessary, and were not reasonably relating the force that was necessary at that moment to make that arrest; but were instead thinking about old grievances or old difficulties; and, of course, that alone would not be a justification.

The Court:

As I see it, it's something that the Plaintiff might want to get before the jury, just as well as the Defendant might want to get the other facet of it. And, in the over-all situation, I think it is an area of inquiry which should be gone into, in attempting to arrive at a conclusion on the fundamental question which is in the case.

And I am going to overrule the objection and allow the line of questioning; with the reservation of course, that, unless the testimony is connected up in the manner in which counsel for the Defendant has represented to the Court that it will be connected up, it will be excluded.

MR. HOLLOWELL: May I make this observation, if it please the Court: Your Honor has said that the Plaintiff might want to get in something and that the Defendants might to get in something. But what the Plaintiff wants to get in and what the Defendants want or might want to get in is not that which is controlling, Your Honor; but it's what the law permits to go in. And I submit to you, Your Honor, that the law under the cases in this State do not permit this kind of testimony in this kind of case; and Your Honor has indicated that, if it is not connected up, then the

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Court would rule it out; but the damage will have been done, the jury would have heard it. The jury are men of reason. How are they going to exclude that? They can't exclude this that they have heard in nice compartments and just remove it from their minds.

I submit that, where it is not legal to do so, and where it prejudices in this manner, then the least that could be done is that all of that testimony be taken outside of the jury, to see whether or not it is connected up; and then, if it is connected up, I would submit that they would be permitted to do it before the jury. But to let it go the other way I think would be damaging. It might have some salutary effect, I don't know, but I submit, as I see it, it would be prejudicial; and, if the Court is going to permit it, then it certainly should not be in the presence of the jury, because the law, as I believe it seems to indicate, is that it would be improper, that a charge to this effect would be error; and that, if it was admitted into evidence, it would be reversible error.

This case has been pending now for something like two years, almost three years, and we don't want to have to re-try this case unnecessarily;

Mr. Hollowell:

and, therefore, I would respectfully submit to the Court that, if it is going to be gone into, that we be permitted to have it outside of the presence of the jury. Excuse me, sir.

MR. BLOCH: Your Honor, I think maybe I can cut the cordon knot on that situation, by not asking this witness anything about the prior record, unless I know it can be connected up; and then later prove by the Defendants themselves what they know, instead of making the proof from here, make it from the Defendants and there the connecting up is done; and then, I wouldn't have the responsibility of tacitly saying to the Court when I ask her something, "I can connect this up."

MR. HOLLOWELL: May I say just one thing, Your Honor, as to that: I think that Your Honor may want to consider at this time as to whether or not the Defendants or others would be able to relate acts which were done as relates to this defendant - not the defendant, the deceased - because he is deceased, and this is his personal representative suing. This is his widow suing. And I would submit to you, sir, that under the laws of evidence, they would not be able under these circumstances to put in that testimony.

THE COURT: Well, I overrule the objection.

You may proceed as you have indicated, Mr. Bloch.

Bring the jury back.

(JURY RETURNED TO JURY BOX)

HATTIE WRAZIER

Cross-Examination Resumed

BY MR. BLOCH:

Q I am trying to limit it: Your husband was arrested in the City of Dawson in November '57, was he not?

A Yes sir, he was arrested.

MR. HOLLOWELL: Now, if it please the Court,

I want the record that - I want the record to recite

that we object on the same grounds that were enumerated

in the show of proof, and ask that the Court approve

the objection in this form, as distinguished from having

to make an argument on the objection.

THE COURT: Yes, the record will indicate

that you have a continuing objection.

MR. HOLLOWELL: Yes sir.

Q Mr. Bloch: Your husband was arrested on November 2, 1957, about 5 or 6 months before the April 20, 1958 incident by Officer Cherry and another officer for driving under the influence and speeding,--was he not?

A It wasn't --

MR. HOLLOWELL: If it please the Court, the record would be the highest and best evidence.

THE COURT: Well, of course, he's simply asking her whether she knows whether he was or not; if she doesn't know, why--

MR. HOLLOWELL: If it please the Court, he didn't ask her whether She knew, as I understood, but he asked her whether or not it was true; and I submit that the record would be the highest and best evidence.

THE COURT: Well, you may rephrase your question, Mr. Bloch. . . I say, I suggest you rephrase your question.

Q. Now Mr. Bloch: Do you have any knowledge of your husband's arrest on November 2, 1957, for driving under the influence and speeding?

A. Well, I wasn't in town that Saturday, but when I come back home -

MR. HOLLOWELL: If it please the Court, I submit that any further information would be a matter of hearsay.

THE COURT: She simply says she wasn't in town but she hasn't answered the question yet.

MR. HOLLOWELL: Well, I submit if she wasn't in town, that there wouldn't be any way for her to know it and testify, whether he was in fact.

THE COURT: I don't know whether there is not. Let's see what she says. All she's said so far is she wasn't in town, but she might know it without having been in town. I don't know. Let's see what she says.

MR. HOLLOWELL: What I'm saying is this, Your Honor. The matter of arrest and the circumstances surrounding the arrest would be matters that would come to her secondarily, if in fact she was not in town.

THE COURT: Well, I don't know. Let's see, she can say whether she knows or not; and if she says she doesn't know, that's it. But let's let her say whether she knows or not. All she has said so far is she was not in town on a certain day. Go ahead and answer the question.

A The Witness: I wasn't in town that Saturday night. I was here in Albany waiting on him to come and pick me and the children up. We were down there to a fair; and all I know about the arrest is what Mr. Cherry said when I went and asked him.

THE COURT: All right, you could not repeat that.

Q Mr. Bloch: I'll ask you if you know whether your husband was arrested on December 15, 1957

by Officer Hancock for being drunk and disorderly?

A No sir, I don't know of his being drunk.

Q Do you know whether he was?

A He wasn't drunk.

Q Do you know whether he was arrested?

A I don't remember him being arrested on that date.

Q Do you remember when your depositions were taken in Albany, in the courthouse there, the Federal court-

house, the post office building, before Mr. Joiner, on November 24, 1962?

A I don't -

A Yes sir, I remember that.

Q Do you remember, in response to a question of mine -

MR. HOLLOWELL: What page, Counsel?

Q Mr. Bloch:

- that you answered -

THE COURT:

What page, what page?

MR. BLOCH:

Oh, the page is blurred on

mine. I think it's page 7 about the middle of the page.

Q You answered a question of mine, which question was, "Well, could you give us for what he was arrested"

and you answered, "Well, he was arrested in November in

'57. They say he was drunk coming through town driving

75 miles an hour, is what he said; that's what he told me;

and he was arrested once before November when he had,

let me see, he was arrested, let's see what month was that

now - that was after November. I went up there and he was telling him about the trouble he was having with his head, Mr. Z. T., and he told me if he had that kind of trouble anymore, come and let him know, and they'd take him to the doctor. Well, I did. After he started worrying with it, then I went up there and told him, and they came out there and got him and put him in jail and made him pay a bond of \$25.00.

Q Did you testify that?

A Yes. That's my --

MR. HOLLOWELL: I would like to have my objection interposed at this point, so that the record will note each time that I want the objection to be made, though the argument pertaining thereto is a continuing argument; is that the understanding we had, Your Honor?

THE COURT: Yes, that's understood.

MR. BLOCH: I didn't hear all of what counsel said.

THE COURT: Well, counsel simply was making it clear for the record that he is objecting to each one of the questions of this type.

MR. BLOCH: I so understand it.

THE COURT: All right, what was the answer to that last question.

THE REPORTER: No answer.

THE COURT: No answer, yet; all right, read the question, Mr. Reporter?

THE REPORTER: "I think it's page 7, about the middle of the page. You answered a question of mine, which question was, "Well, could you give us for what he was arrested" and you answered, "Well, he was arrested in November, '57. They say he was drunk coming through town driving 75 miles an hour, is what he said; that's what he told me; and he was arrested once before November when he had, let me see, he was arrested - let's see what month was that now - that was after November. I went up there and he was telling him about the trouble he was having with his head, Mr. Z. T., and he told me if he had that kind of trouble anymore, come and let him know, and they would take him to the doctor. Well, I did. After he started worrying with it, then I went up there and told him, and they came out there and got him and put him in jail and made him pay a bond of \$25." Did you testify that?

THE COURT: Now, that's the question. Now, what is your answer to the question?

A The Witness: Now, my husband didn't tell me he was running 75. Mr. Cherry said that; he the

one told me that. I talked to him that Saturday night after I come back from Albany. Now, he told me he was running 75 and drunk. I wasn't here and I do not know.

____Q Mr. Bloch: The question was, did you testify that in Albany on November 24, 1962?

A I said that but he the one what told me that.

Q And it's true, sofar as you know?

A So far as I know, I wasn't there. And about this trouble with the head and him being arrested here in November, you say it was November? When I got back from Albany, I didn't see him that Saturday night at all. I went up there that next morning and he paid a fine of \$200, and when we got him out that morning, he had a knot sitting right here (pointing), right here, between his eyes; and he said Mr. Cherry hit him there.

Q He said Mr. Cherry hit him there?

A Hit him there.

Q And it was in December, in December he was arrested again?

A Well, the way that happened -

Q Wait just a minute!! In December he was arrested again, yes or no?

A Yes sir.

Q All right, any explanation you want?

A Well, the way that happened, I went up to Mr. Z. T.

to talk to him about the doctor bill. That's what I went for. Well, when it first happened we taken him to the hospital that Sunday afternoon, me and his father and my mother, and Dr. Sims waited on him; and we brought him back home and the next - that's when he was arrested in December; and he told me that week he had a slight headache. Well, I went and told him about it because he told me if the head hurt him again to let him know, that they would pay the doctor bill; and actually, if he would, I would have wanted him to pay it. And after they come out there and picked him up, they put him in jail, and I had to goup there that Monday morning and pay \$25. That's the way that was.

Q You were in town then, were you?

A I come back in town that Saturday night at 12 o'clock, but I wasn't here when he was arrested, in November.

Q All right, did you ever make complaint to either Mr. Cherry or Mr. McDonald about James' drinking?

A No sir, I haven't.

Q You did not?

A No sir, I didn't.

Q Did you ever get ~~Vick Hammock~~ to call Mr. Cherry or Mr. McDonald, telling them about James' drinking and conduct and threatening you?

A No sir, Vick Hammock hasn't never had his feet on the inside of my house since I've been there.

MR. HOLLOWELL: If it please the Court, let me see if I understand it? We have a continuing objection as relates to any specific indident of arrest involving James Brazier prior to this occasion, so that it is not necessary for counsel to continue to renew it with the argument as has been previously made or does the Court want counsel to stand and make it each time?

THE COURT: No, the record will indicate that you are making a continuous objection to that line of testimony.

MR. HOLLOWELL: Without the necessity of standing and making it each time?

THE COURT: That's correct.

MR. BLOCH: I concur; if it's necessary, I concur.

Q You said that Vick Hammock had never been in your house?

A No sir, he hasn't, but I have -

Q He has not?

A He haven't.

Q Where is his place of business?

A I have went to his cafe but not to his home and he

haven't been to mine.

Q Where is his cafe?

A I don't know the street it on but I know where it's at.

Q Have you ever been there?

A Yes, I have been there.

Q Did you ever call Mr. Cherry, did you ever have Vick Hammock call Mr. Cherry or Mr. McDonald from his place of business, because James was assaulting you beating you in that place of business?

A No sir, I haven't because I have a telephone myself.

Q Did you ever have anyone else call Mr. Cherry or Mr. McDonald complaining of James' misconduct?

A No sir, but I have had him to try to get me to make a call for him to Mr. Cherry to bring him 5 gallons of whiskey.

Q Let me get clear this: What time did you see Mr. Ragan Arnold on the Sunday night, April 20?

A I saw him at the jail.

Q What time?

A Oh, it was somewhere around 8:00 or 8:30.

Q About 11:30?

A No sir, 8:30, something like that, 8:30.

Q 8:30?

A Yes sir.

MR. BLOCH: I think that is all at this time for this witness.

THE COURT: All right, anything further from this witness, Mr. Hollowell?

MR. HOLLOWELL: I believe so, sir.

REDIRECT EXAMINATION

BY MR. C. B. KING:

Q I believe that you testified a moment ago with reference to a December arrest, 1957?

A That's right.

Q Would you testify or indicate what those circumstances were surrounding that arrest again, please?

A About him being hit right here (pointing) on the forehead, right here between his eyes, in November, right here (pointing).

Q How did this December arrest occur; what were the circumstances? How did it occur?

A Well, when he got hit in November, we taken him to the hospital and Dr. Sims waited on him; and I brought him back home, and he told me about, I reckon about 2 or 3 weeks later he had a slight headache; and I went up to talk to Mr. Z. T. about the doctor bill; and he told me if he had any more headaches to let him know and he would take him to the doctor; and when he said he had a headache, I

went up there and told him, and they came out there and got him, put him in jail, and I paid a bond of \$25 to get him out. And that's how that happened.

Q What was he doing at the moment when you called?

A Called who?

Q Well, you said a moment ago that you had come and gotten him or he was at home, is that right?

A He was at home; yes sir, we both was at home.

Q And you said who came and got him?

A Mr. Hancock and I don't know the other police what was with him.

Q Do you have any independent recollection of why they came?

A No sir, I don't.

Q Did it have anything to do with your requesting that medical expenses be borne by the police authorities?

A Well, I went to talk to him about it, because he said he had a headache; and this occurred.

Q And this occurred immediately thereafter?

A Yes sir.

Q Speaking about the headache, did it ultimately clear up?

A Yes sir, it cleared up but it wasn't enough to even stop him from work.

Q Oh, I see.

A But actually I was after getting the doctor bill paid because we didn't have anything to pay it with.

Q No further questions.

THE COURT: All right, you may go down.

MR. HOLLOWELL: Mr. Ragan Arnold, please.

RAGAN ARNOLD

witness called in behalf of Plaintiff,
being first duly sworn, testified on

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Will you state your name for the record, sir?

A Ragan Arnold.

Q Mr. Arnold, where do you live?

A Beg your pardon?

Q Where do you live?

A Dawson, Georgia.

Q How long have you lived there, sir?

A All my lifetime.

Q I'm sorry?

A Practically all my lifetime.

Q You are in business there, are you not?

A Yes.

Q Were you in business there in 1958?

A Yes.