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- Testimonials -

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STATE OF FLORIDA, VS. CLARENCE EARL GIDEON

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IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA, IN AND FOR BAY COUNTY.

STATE OF FLORIDA,

PLAINTIFF,

VS

CLARENCE EARL GIDEON,

DEFENDANT.

BE IT REMEMBERED That this case came on for trial in the Regular Fall Term of Circuit Court in and for Bay County, Florida, on the 5th day of August, 1963, before the Honorable Robert L. McCrary, Jr., one of the Judges of the above styled Court, presiding, and a Jury drawn from the Regular Venire.

A P P E A R A N C E S

FOR THE PLAINTIFF, State of Florida,

J. Frank Adams, Esquire
State Attorney in and for the
Fourteenth Judicial Circuit of Florida
and
William E. Harris, Esquire
Assistant State Attorney in and for the
Fourteenth Judicial Circuit of Florida
and
J. Paul Griffith, Esquire
Assistant State Attorney in and for the
Fourteenth Judicial Circuit of Florida.

FOR THE DEFENDANT, Clarence Earl Gideon,

W. Fred Turner, Esquire
900 Florida Avenue
Lynn Haven, Florida

A Jury was called, examined, accepted, sworn and seated.

The witnesses were called, admonished by the Court, and put under the rule.

Mr. Harris, Assistant State Attorney, read the Information on file in this case to the Jury and told them what he expected the evidence on behalf of the State to show.

Mr. Turner, Counsel for the Defendant, announced he would waive an opening statement to the Jury.

Thereupon, the State's first witness was called.

Henry Cook, called as a witness on behalf of the State, being first duly sworn by the Clerk of this Court, Honorable Bruce Collins, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Will you state your name for the record, please.

A. Henry Cook.

Q. Where do you presently live, Mr. Cook?

A. 108 Southeast Avenue.

Q. That is in Panama City, Bay County, Florida?

A. Yes, sir.

Q. How old are you, Mr. Cook?

A. Twenty-two.

Q. Mr. Cook, do you know Clarence Earl Gideon, seated next to Mr. Turner, at the Counsel Table?

A. Yes, sir.

Q. Did you know Clarence Earl Gideon on June 3, 1961?

A. Yes, sir.

Q. How long had you known him prior to that time?

A. About six months before that.

Q. Now, did you see - do you know where Bay Harbor Pool Room is, Mr. Cook?

A. Yes, sir.

Q. Did you see Clarence Earl Gideon there, in that area or vicinity, on that day, the 3rd day of June, 1961?

A. Yes, sir.

Q. What time did you see him that day?

A. Between five and five-thirty, in the morning.

Q. Where did you see Mr. Gideon, when you first saw him?

A. He was inside the Pool Room.

Q. Now, when you say 'he was inside the Pool Room,' which Pool Room are you referring to?

A. The Bay Harbor Pool Room.

Q. How is it, Mr. Cook, that you happened to see Mr. Gideon in the Pool Room?

A. Well, I saw someone in there and I just stepped up to the window where I could see better.

Q. How did you come to notice someone was in there?

A. I just walked by there and looked in the window.

Q. And when you looked in the window you saw him?

A. Yes, sir.

Q. When you saw Mr. Gideon in the Bay Harbor Pool Room what was he doing?

A. He was standing up by the Cigarette Machine.

Q. Could you tell what he was doing?

A. He was just standing there when I first saw him.

Q. Could you see the Cigarette Machine?

A. Yes, sir.

Q. Will you describe the Cigarette Machine's condition when you saw it?

A. I didn't pay much attention to it at first, I just saw him.

Q. Did you notice anything unusual about the Cigarette Machine?

A. It had been broken into, the face was off of it.

Q. When you say the 'face,' do you mean the front of it?

A. Yes, sir.

Q. It was open?

A. Yes, sir.

Q. Did you see anything else of that nature in the Pool Room?

A. Well, all the bags and 'stuff' was laying on the table, facing the Cigarette Machine.

Q. You say the bags were laying on the table?

A. The Money Bags that come out of the Cigarette Machine.

Q. Now, how do you know they came out of the Cigarette Machine?

A. Well, I presume they did.

Q. You just presume they came out of the Cigarette Machine?

A. Yes, sir.

Q. Now, tell me just what you saw on the table.

A. There was some rags, some bags, and.....

Q. Are you saying 'rags,' or 'bags'?

A. Both - there was some rags and some bags and some Cigarettes.

Q. Did you see any money there?

A. No, sir.

Q. Did you see anything in Mr. Gideon's hands?

A. No, sir.

Q. What did you do, after looking in the window and seeing Clarence Earl Gideon there?

A. I walked on up to the corner - up to the corner of the street.

Q. How far is the corner of the street you walked to from the Bay Harbor Pool Room?

A. I don't know exactly, about fifty or sixty feet - maybe more.

Q. What did you do when you got up to the corner, Mr. Cook?

A. I walked back down there.

Q. You walked back to the Pool Room?

A. Yes, sir.

Q. And did you see Clarence Earl Gideon again after you walked back to the Pool Room?

A. Yes, sir, he was coming out the back door.

Q. Where did he go from there?

A. Down to the corner of Henderson's Grocery Store.

Q. Down where?

A. Henderson's Grocery Store, on the corner.

Q. Did you see what he did there?

A. Yes, sir.

Q. What did he do?

A. He made a 'Phone call.

Q. Go ahead and tell the Jury what happened from there on.

A. He made a 'Phone call and a Taxicab come up and picked him up and he left.

Q. Now, when you saw Mr. Gideon come out of the Pool Room did you see anything in his hands?

A. He had a pint of Wine.

Q. Could you tell if he had any other merchandise of any kind on him?

A. He had something in his pocket - I didn't know just what it was in his pocket.

Q. Did you see any other person, or persons, in that area during that time?

A. Only a lady that was sitting up on the corner up there at a rooming house.

Q. Do you know her name?

A. Yes, sir - Irene Rhodes.

Q. You say she was sitting on the corner?

A. The corner, where she lives at - she lives at that rooming house on the corner up there.

Q. Was she sitting on the porch, on the street, or where?

A. On the porch.

Q. Is that the only other person you saw there?

A. Yes, sir.

Q. Besides Gideon?

A. I didn't understand you, sir.

Q. That's the only other person you saw there besides Gideon?

A. Yes, sir.

Q. Did you say anything to Mr. Gideon when you saw him there?

A. No, sir.

Q. Did he say anything to you?

A. No, sir.

Q. After Mr. Gideon got in the Cab what did you do?

A. I went back up there to the corner, where Mrs. Rhodes was.

Q. You testified, Mr. Cook, that you saw Clarence Earl Gideon come out of the Pool Hall through the back door?

A. Yes, sir.

Q. Now, just where were you standing, where were you when you saw that?

A. I was standing by the side of the building when he come out.

Q. Could you see the back door from where you were standing?

A. Yes, sir.

Q. On which side of the building were you standing?

A. I was standing on the side facing the Bar, the right-hand side.

Q. As you face the Bar, you were on the right-hand side

of the building?

A. Yes.

Q. Will you describe what is next to the Bay Harbor Pool Room building, on that side?

A. The Bay Harbor Bar is right next to the Pool Room.

Q. You stated you saw Mr. Gideon coming out of an alley?

A. Right back of it.

Q. Is there an open area between the Pool Room and the Bar?

A. Just a dirt street there - no, not between the Pool Room and the Bar there's not, it's just a little opening.

Q. Well, on this side of the building, where you were standing when you saw Mr. Gideon come out the back door, how much open area is in there?

A. About fifteen feet.

Q. And how close to the back of the building were you when you saw him ?

A. I was the whole length of the building, it must be about forty foot long.

Q. Allright, how close to the back were you when you saw him come out the door?

A. Well, I was on one end of it and he was on the other end.

Q. Where is this door that you referred to?

A. It's on the back - right on the back.

Q. The door opens on the back of the building, not on the side?

A. Right.

Q. In relation to the center of the building, in the back,

where is the door?

A. Right on the right-hand side of it.

Q. On the same side that you were on?

A. "Uh-hu."

Q. Now, will you tell the Jury, Mr. Cook, if the door opens out the back of the building, and you were on the side of the building, how did you happen to see him go out the door. Did you actually see him come out the door?

A. Well, I looked through the window and I could see the door was open, and when I walked to the side he was coming out, coming around the corner.

Q. Then, from the side of the building you could see this door you were referring to?

A. No, not from the side I couldn't - I seen it open when I looked through the window, and I walked around to the side and he come around the side.

Q. How long did you watch the Defendant while he was in the building?

A. About a minute, I guess.

Q. How long?

A. About a minute - maybe more.

Q. During the time you saw him in there he was just standing by the Cigarette Machine?

A. Yes, sir.

Q. You didn't see him do anything, he was just standing there?

A. Not that I recall.

Q. How did you happen to be there in that area at that time of the morning, Mr. Cook?

A. I had stayed out all night - I had just come from Apalachicola, with some more boys, we went to a dance down there.

Q. You stated, Mr. Cook, that you had known Clarence Earl Gideon some six months prior to this date of June 3, 1961?

A. About that.

Q. What was your acquaintance with him?

A. I just knew him, that's about all.

Q. At the time you saw Mr. Gideon in the Pool Hall was it dark, daylight, breaking day, or what?

A. It was kinder dark.

Q. Were there any lights on inside the Pool Hall?

A. No, sir.

Q. Were there any street lights around this Telephone Booth that you referred to?

A. It was pretty light outside - it was kinder dark inside the building, but it was pretty light outside.

Q. You had no difficulty recognizing Mr. Gideon?

A. No, sir.

Q. Where is the Bay Harbor Pool Room located, Mr. Cook?

A. On that road going into the 'Paper Mill,' I believe it's Everett Avenue.

Q. Is that a section of Panama City called Bay Harbor, Florida?

A. Yes, sir.

Q. Is that in Bay County, Florida?

A. Yes, sir.

Q. You said, Mr. Cook, that you went up to Irene Rhodes' place after Mr. Gideon left in a Taxicab?

A. Yes, sir.

Q. What did you do then? Now, don't tell anything Irene Rhodes told you.

A. Berryhill came by.

Q. Who is Berryhill?

A. Berryhill is a City Policeman - he came by and stoppped and started talking to me.

Q. Did you tell him what you had seen?

A. Yes, sir.

Q. Now, Mr. Cook, did you go back around to ^{the} back of the Pool Hall?

A. No, sir.

Q. You never did go back there?

A. I went when Mr. Pitts came up.

Q. When Mr. Pitts came up?

A. Yes, sir.

Q. You did go back to the rear of the Pool Hall?

A. Yes, sir.

Q. How much time expired from the time you saw Mr. Gideon leave until Mr. Pitts came up and you did go behind the Pool Room?

A. It wasn't very long - I guess, maybe ten minutes.

Q. Now, this Pitts that you refer to, is that Duell Pitts?

A. Yes, sir.

Q. From the City Police Department?

A. Yes, sir.

Q. What did you find when you went to the rear of the Pool Hall?

A. It had been broken into.

Q. How did you determine that?

A. There was a large can on the side, and a window broke out and the back door was wide open.

MR. HARRIS:

You may inquire, Mr. Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Cook, did you ever work at Bay Harbor Pool Room?

A. No, sir.

Q. Did you hang around there quite a bit?

A. Some.

Q. Back in 1961 did you hang around there quite a bit?

A. Yes, sir.

Q. You say you had known Clarence Earl Gideon for about six months prior to that time, June 3, 1961?

A. About that time I guess.

Q. Have you ever played any Poker with him?

A. No, sir.

Q. Have you ever gambled with him?

A. No, sir.

Q. Now, on this morning that you came back from Apalachicola who was with you?

A. Wayne Vincent, a boy that lives in Apalachicola, and a boy named Charles, I don't know his other name.

Q. Charles?

A. Yes, sir.

Q. Now, wasn't his name Gary Shiver?

A. Charles is all the name I know him by.

Q. Do you know Gary Shiver, from East Point?

A. Not that I know of, I've heard of him, but I don't know him personally.

Q. Now, where do you live, in relation to Bay Harbor Pool Room?

A. I live right near Cherry Street, the street that runs right down side of the building, two blocks down.

Q. Now, there's a dirt road that runs right beside the Pool Room?

A. Almost right side of it.

Q. And just two blocks down that dirt street, or road, is your home, is that right?

A. "Uh-hu."

Q. Now, how far is Apalachicola from that Pool Room?

A. About sixty miles, I guess.

Q. Now, tell the Jury this: Why did the boys put off the car two blocks from your house?

A. I didn't want to go home, because I was afraid my parents would 'get on me' about coming in drinking.

Q. Oh, you had been drinking, eh?

A. Yes, sir.

Q. About how much had you had to drink?

A. Not too much.

Q. Well, how much is that?

A. Well, a beer, or two, I guess.

Q. Hadn't you been drinking all night with those boys?

A. No, not all night.

Q. What kind of car were you traveling on?

A. An old model Chevrolet - I don't know the year model of it.

Q. Do you know what happened to the beer they said was missing out of the Bay Harbor Pool Room?

A. No.

Q. Did you see any beer at the back of the Pool Room when you went around there? Mr. Harris asked you if you went back there.

MR. HARRIS:

There's no testimony in this case at all about any beer, Mr. Turner. You are the first to mention beer.

THE COURT:

There has been no testimony so far about any beer, Mr. Turner.

MR. TURNER:

I just asked him if he saw any beer when he went to the back of the Pool Room, your Honor.

MR. HARRIS:

Yes, but before you asked him that you asked him what happened to the beer 'they said was missing out of the Bay Harbor

Pool Room.'

MR. TURNER:

Read the question back, Miss Nelle.

MR. HARRIS:

Read the last two questions, Mrs. Heath, the very last one and the one before that.

REPORTER: (Reading back questions and answer)

"Q. Do you know what happened to the beer they said was missing out of the Bay Harbor Pool Room?" Answer: "No."

"Q. Did you see any beer at the back of the Pool Room when you went around there. Mr. Harris asked you if you went back there." This question was not answered.

MR. TURNER:

I apologize to the Court for the first question there, it 'slipped by me,' I withdraw it, and ask the Court to instruct the Jury to disregard it.

THE COURT:

Gentlemen of the Jury, you just heard Mr. Turner's request with regard to that disputed question, he has withdrawn that question from the record and you are instructed by the Court to disregard it altogether, as though it had not been asked.

BY MR. TURNER:

Q. Now, Mr. Cook, you may answer my last question, please.

A. What was it?

Q. I had asked you if you saw any beer at the back of the building, the back of the Pool Hall, when you went back there?

A. Not when I first went around there I didn't.

Q. Where did the boys let you off, there on the corner?

A. In front of Hill's Grocery Store.

Q. That would be across the street from the Pool Hall?

A. On the corner, across the street, yes, sir.

Q. Now, how long did you stand there before you saw somebody in the Bay Harbor Pool Room?

A. I don't know exactly.

Q. Where were you going to go?

A. I was going to hang around there until the Pool Room opened up.

Q. What time did they open up?

A. At seven.

Q. Seven o'clock - and this was about five-thirty?

A. Yes, sir.

Q. Where did the boys go when they let you off?

A. I guess they went home, I don't know.

Q. Where did they live?

A. Well, they lived over there in Springfield somewhere, they was stay~~ing~~ing over there, I don't know just where.

Q. Now, this building is about how long?

A. About forty or fifty foot long.

Q. How wide is it?

A. 'Twenty-five or thirty.'

Q. You mean twenty-five or thirty feet wide?

A. Yes, sir.

Q. It's an oblong building, right?

A. Yes, sir.

Q. And it lies East and West, is that correct?

A. Yes, sir.

Q. And the front of it is facing the East, is that right?

A. Yes, sir.

Q. Now, the back door we're talking about is on the West side, facing your house?

A. "Uh-hu."

Q. It's the nearest to your house?

A. "Uh-hu."

Q. Now, that back door, does it swing out or in?

A. I don't know.

Q. You don't know?

A. No, I don't know how it swings.

Q. Allright, you said you saw somebody in the Pool Room - did you walk across the road to see who it was?

A. Yes, sir.

Q. You had to walk across the street to see inside the Pool Room didn't you?

A. I walked across the street there in front of the Pool Room.

Q. And you saw Gideon there?

A. "Uh-hu."

Q. Now, where is the Cigarette Machine, if I was in the building, is it on the right or left side of the building?

A. It's on the right.

Q. On the right side of the building?

A. Yes, sir.

Q. Now, are there any signs, or anything like that, in the window?

A. Yes, there's a beer sign of some kind in the window, I'm not sure what kind it is.

Q. The window is painted on the outside up to about chest high isn't it?

A. Yes, sir, something like that I guess.

Q. And you can't see through that sign, or that paint, can you?

A. "Nope."

Q. So you looked through this window and saw Gideon on the right-hand side?

A. Yes, sir.

Q. About how far back was he from the front window?

A. About six or seven feet, I guess.

Q. How did you know it was Gideon, did you ever get a full view of his face?="

A. Yes, sir.

Q. He was looking at you?

A. That's right.

Q. And you were looking at him?

A. That's right.

Q. Was the front door open or closed?

A. I didn't see it - I don't know.

Q. Did you think there was something wrong about him being inside the building?

A. I thought there was, yes, sir.

Q. You thought there was something wrong in there?

A. Yes, sir, I did.

Q. Did you know that he had worked in that place before?

A. I knew he worked in there, or stayed around there a lot.

Q. In which direction did you walk, after looking at Gideon in the front of that store?

A. To the right, and went to the corner.

Q. That would be toward Joe Hutchison's Filling Station, is that right?

A. That's right.

Q. That would be toward Irene Rhodes', is that right?

A. Yes, sir.

Q. Irene Rhodes was sitting on the porch, at the old Prescott Boarding House?

A. That's right.

Q. That's across the street from the Pool Hall, and down a block, toward Joe Hutchison's Station, coming - what direction would that be - North - is that right.

A. From Joe E. Hutchison?

Q. Toward Joe E. Hutchison's, in a Northerly direction, is the Pool Hall, is that right?

A. That's right.

Q. Allright, how long did you stay up there at the Pool Hall - and how long did you stay up there at the corner?

A. A couple of minutes, I guess.

Q. What did you do?

A. I was puzzled, I didn't know what to do.

Q. What do you mean, you 'didn't know what to do?'

A. I figured he was up to something, but I didn't know what he was doing.

Q. Where was the nearest Telephone Booth from you?

A. Down on the corner.

Q. Which corner?

A. On the corner of Craft Avenue and First Plaza, I believe.

Q. Now, is that the corner diagonally across from Irene Rhodes?

A. It's across from where she was living, right straight across.

Q. Right straight across from where she was living?

A. Yes, about a half-a-block, a half-a-block down, there's a "V shape" in the road there.

Q. Are you talking about Henderson's Store?

A. Yes, sir.

Q. That would be another half-block to the left wouldn't it?

A. Yes, sir, it's right straight down from where she was living.

Q. And she could sit on her front porch and see that Telephone Booth?

A. That's right.

Q. The road comes up and 'dead-ends' right there doesn't it?

A. That's right.

Q. Now, where did you go after contemplating what was going on around there?

A. I beg your pardon.

Q. What did you next do, after you went up to the corner, did you go back to the Pool Hall?

A. Yes, sir.

Q. On what street?

A. The same side of the street I walked back over.

Q. Allright, did you go to the front of the building?

A. Yes, sir, and looked in again.

Q. Allright, what did you see?

A. He was going out the back door.

Q. Who was going out the back door?

A. Mr. Gideon.

Q. Now, you saw that through a darkened building, forty to fifty feet long?

A. That's right.

Q. Was there not a partition in there at that time?

A. No, sir.

Q. There was not?

A. I don't believe so.

Q. What do you mean by you don't believe, aren't you sure?

A. I could see the back door, it was open.

Q. You could see the back door, it was open?

A. That's right.

Q. That's from the front?

A. That's right.

Q. And that's where you saw Gideon go out the back door, right?

A. Right.

Q. Did you go around to the back?

A. No, sir.

Q. You saw him from the front of the building, go out the back door?

A. That's right.

Q. Now, next to the Pool Hall, on the right-hand side, there is another building is there not?

A. Yes, sir.

Q. And that's called what, Bay Harbor Bar?

A. That's right.

Q. And the alley-way in between those two buildings is about twelve or fifteen feet wide, is that right?

A. Right.

Q. Now, where did you see this large can?

A. On the side of the building, right by the window.

Q. Well, now if I should look into the building from the front would it be on the right-hand side of the building or the left-hand side?

A. The right-hand side.

Q. On the right-hand side - in the alley - between the Pool Room and the Bay Harbor Bar?

A. That's right.

Q. Down by the window?

A. That's right.

Q. Is that also the side you saw the broken window on?

A. Yes, sir.

Q. Those windows are rather high on that side aren't they?

A. Yes, sir.

Q. A normal man - unless he was eight feet, or so, tall - couldn't see in one of those windows could he?

A. They're not quite that tall I don't think.

Q. Well, say, seven feet - could a man less than seven feet tall see in one of those windows?

A. About six.

Q. Six?

A. About, I'd say.

Q. Do you mean to say a man standing over there could look in one of those windows?

A. I can.

Q. On the side?

A. Yes. Some of them is not that high.

Q. What about the windows in the rear of the building, how high are they?

A. About six foot, I guess.

Q. Now, did you go down that alley between those two buildings?

A. No, sir.

Q. How many of those red cans did you see around that building?

A. Just one.

Q. Just one?

A. "Uh-hu."

Q. And that one was up by the building?

A. That's right.

Q. Now, actually, Mr. Cook, didn't you see three or four of them there in the alley?

A. Just one.

Q. Did you look in that alley?

A. No, sir.

Q. Now, from the front of the Bay Harbor Pool Room that dirt road going to your house is on the left-hand side of that building isn't it?

A. Yes, sir.

Q. The right-hand side is the alley?

A. "Uh-hu."

Q. Now, when did you next see Gideon after you saw him, as you say, going out of the back of that Pool Hall?

A. I walked on up to the corner and he.....

Q. Wait a minute, now, which corner, the same one you had been to before?

A. Yes, sir.

Q. Up toward Irene Rhodes'?

A. Yes, sir.

Q. Allright, what did he do up there?

A. He turned around the corner of the 'Old Fish House' just as I turned the corner.

Q. Now, is that the alley-way that run back of the Bay Harbor Pool Room?

A. The alley that runs behind it, yes, sir.

Q. And that would be right at the Telephone Booth and

Henderson's store, is that right?

A. It comes out across the highway from Henderson's.

Q. Just across the street there from Henderson's Store, right?

A. That's right.

Q. Alright, what did he do?

A. He went in the 'Phone Booth and called a cab.

Q. Now, where did you see him have the pint of wine in his hand?

A. He had it in his hand.

Q. Is that the first time you saw the pint of wine?

A. Yes, sir.

Q. That was when you had seen him come out of the back of the store and go down the alley-way, right?

A. Back of the Pool Room?

Q. Yes.

A. Yes.

Q. Alright, you said there was something in his pocket?

A. Yes, sir.

Q. Now, what do you mean by 'something in his pockets?'

A. They was 'all bulged out' I didn't know what was in them.

Q. Do you mean by that, that the jacket he had on didn't hang straight down, had (gesturing with hands) something like this in the pockets?

A. He didn't have on no jacket.

Q. How was he dressed?

A. He had on pants and shirt.

Q. With no jacket?

A. That's right.

Q. What pockets are you talking about that were bulged?

A. His pants pockets.

Q. Rear or front?

A. Front.

Q. How were they bulged?

A. They were just 'bulged out' like he was 'toating' something in them.

Q. Now, after he called the cab, how long was it before the cab got there?

A. About three or four minutes.

Q. Who came for him?

A. Preston Bray.

Q. Do you know Mr. Bray?

A. Yes, sir.

Q. How long have you known him? At that time, I mean.

A. I don't know, a couple of years I guess.

Q. Did Gideon say anything - did you see him do anything, or hear him say anything before he got in the cab?

A. No, sir.

Q. Did you stay up there at the corner and watch him all that time?

A. Yes, sir.

Q. Could he see you?

A. Yes, sir.

Q. And he could see Irene Rhodes?

A. Yes, sir.

Q. You didn't use the Telephone at all?

A. No, sir.

Q. Now, when you looked in the front of that Pool Hall how far from the front, where you were standing, was the first Pool Table?

A. It was about six foot.

Q. From the front door?

A. "Uh-hu."

Q. And what did you see on that Pool Table?

A. I seen the front of the Cigarette Machine, some rags and some bags.

Q. Did you say the top of the Cigarette Machine?

A. The front of the Cigarette Machine.

Q. The front of it?

A. "Uh-hu."

Q. What do you mean by 'the front of it?'

A. The glass front.

Q. You mean the glass front was off the machine and laying on the table?

A. "Uh-hu."

Q. Where was it laying on the table?

A. Just about the middle of the Pool Table.

Q. Alright, what else did you see on the Pool Table?

A. Some rags, bags and 'stuff' like that.

Q. What kind of bags are you talking about?

A. Canvas bags.

Q. What?

A. Canvas bags - Money Bags - I suppose that's what they was.

Q. How large were they?

A. About six or seven inches deep, I guess.

Q. How wide were they?

A. (Measuring with fingers, approximately four inches) - About like that, I guess.

Q. About eight inches in diameter?

A. About that.

Q. Had you ever seen those bags before?

A. Yes, sir, I had seen them before.

Q. What kind of bags are they?

A. Money Bags.

Q. Money Bags - did they have a zipper across the top?

A. No, sir.

Q. They were open across the top?

A. "Uh-hu."

Q. What kind of money bags are these?

A. They fit a Cigarette Machine.

Q. And how do they fit in there?

A. I don't know how they fit in there.

Q. And they are Canvas Bags, to hold coins, is that right?

A. I believe they're canvas.

Q. Well, they are cloth of some sort?

A. "Uh-hu."

Q. How many of them did you see?

A. I don't know - a couple.

Q. A couple?

A. "Uh-hu."

Q. Now, you are sure they were bags, as distinguished from a Money Box, a metal box?

A. These were bags.

Q. Can you be sure of that?

A. Yes, sir.

Q. Were they bags?

A. Yes, sir, I believe they were bags.

Q. Where did you see Mr. Berryhill?

A. He come by and stopped.

Q. Why did he stop?

A. Well, he knowed me and stopped to talk to me.

Q. He stopped and talked with you?

A. Yes, sir.

Q. And when he stopped to talk with you what did you tell him?

A. I told him 'about it.'

Q. Told him about what?

A. About the Pool Room being broke into.

Q. You told him about the Pool Room being broken into?

A. I told him it ^{looked} like it had been.

Q. You didn't tell him that you had seen Clarence Earl Gideon inside of it - you told him the Pool Room had been broken into?

A. I told him it looked to me like it had.

Q. Was the back door still open?

A. Yes, sir.

Q. When did you tell him that you had seen Clarence Earl Gideon inside?

A. I didn't tell him.

Q. You didn't tell Berryhill?

A. No.

Q. Was Berryhill in Uniform?

A. Yes, sir.

Q. Why didn't you tell him, he was an Officer of the law?

A. I just didn't.

Q. Did he ask you if you saw anybody in there?

A. No.

Q. You didn't feel it was your duty to tell him what you had seen?

A. He just went and checked it and called Mr. Pitts.

Q. Well, until Mr. Pitts could get there, did you talk to Mr. Berryhill?

A. No. He went inside and looked around, I didn't talk to him a bit.

Q. You didn't go inside?

A. Not with him I didn't.

Q. Now, when Mr. Pitts got over there did you tell Mr. Pitts?

A. Yes, sir.

Q. You told him who you had seen inside?

A. Yes, sir.

Q. How long did it take him to get there?

A. About ten minutes.

Q. Did you tell Irene Rhodes you had called the "Cops?"

A. I didn't call the "Cops."

Q. But didn't you tell Irene you had called the "Cops?"

A. No.

Q. Didn't you go over there and talk to her before Mr. Berryhill got there?

A. "Uh-hu."

Q. Before Berryhill got there?

A. Yes, sir.

Q. Did you tell her that you had seen anybody inside that store?

A. Yes, sir.

Q. Who did you tell her you saw in there?

A. I asked her if that wasn't Mr. Gideon, and she said 'yes.'

Q. You asked her 'wasn't that Mr. Gideon?'

A. Yes, sir.

Q. Where did you and she see Mr. Gideon, in order for her to identify him?

A. When he come out of the alley, he went to the 'Phone Booth, we seen him then.

Q. You saw him at the Telephone Booth?

A. "Uh-hu."

Q. But you had said you had already identified Gideon.

A. I did, but I wanted to make sure that was him.

Q. Then you weren't sure that it was Gideon?

A. Yes, I was sure.

Q. Didn't you go down there to Henderson's Store and tell Mr. Henderson that you were not sure it was Gideon?

A. No, I didn't tell him, he wasn't even open, he hadn't opened the store then.

Q. Nevertheless, didn't you tell Henderson that day, that morning, within an hour, that you were not sure it was Gideon at all?

A. No, sir.

Q. You didn't tell him that?

A. No, sir.

Q. You didn't tell Henderson that you saw someone in there that 'looked like' Gideon?

A. No, sir.

Q. You didn't make that statement to him?

A. I don't believe I did - I know Mr. Gideon.

Q. Well, do you know Mr. Henderson?

A. Yes.

Q. How long have you known Mr. Henderson?

A. About five or six years.

Q. Mr. Henderson runs a store there doesn't he?

A. Yes.

Q. Right there where the Telephone Booth is, that's where Mr. Henderson's Store is, isn't it?

A. Yes.

Q. Now, didn't you stay around Henderson's Store after

the Police left?

A. I stayed up at the Pool Room.

Q. Didn't you go back to Henderson's Store then?

A. I "might-a" did.

Q. Didn't you go back in there and have a conversation with Mr. Henderson, and he asked you if you could identify Mr. Gideon, and you said 'it looked like Mr. Gideon?'

A. I don't believe I said that.

Q. Well, now, Henry, is that true, or not?

A. I don't think it is.

MR. HARRIS:

If it please the Court, Mr. Turner is arguing with this witness, he has answered that question at least six times, and he just keeps asking him the same question. I object to him arguing with the witness.

THE COURT:

Mr. Turner, I want to be as liberal with you as possible, but I believe he has answered that question.

MR. TURNER:

Allright, your Honor, he has not answered it to my satisfaction, but if the Court thinks he has answered it, he has answered it.

BY MR. TURNER:

Q. When was the last time you had a drink of beer before you got off the car there on that corner, Henry?

A. Well, it was sometime before, the stores had already closed down at "Apalach" before we got there.

Q. Did you and Wayne Vincent and Gary Shiver go into the Bay Harbor Bar?

A. No.

Q. Did you all get a six-pack of beer out of there, and some wine?

A. No.

Q. Did you see Mr. Gideon coming down the alley from the back of the Bar?

A. I saw him when he walked by, yes, sir.

Q. Could you see him, when you were walking up to that corner, could you see him in the alley-way between those buildings?

A. Between the buildings I could see him.

Q. Were you there when the Police investigated this breaking and entering?

A. Yes, sir.

Q. Did you see Gideon with a six-pack of beer in his hand, six cans of beer?

A. No.

Q. Did you see him with six cans of beer in his pocket?

A. No.

Q. Did he set any beer down at that Telephone Booth?

A. No, he set some wine down.

Q. Did you see him at any time while you were over there, from the time you first got there until he went away in a Cab, did you see him with any beer in his hand, or in his pocket, did he take anything out of his pocket that looked like beer?

A. No, sir.

Q. Did his pockets bulge, and look like they had a can of beer in them?

A. He had something in them, I didn't know what it was.

Q. Did it look like a can of beer?

A. They just bulged out.

Q. They bulged out?

A. "Uh-hu."

Q. When were you there with the Officers - did you go in the building with Mr. Pitts when he was there?

A. Yes, sir.

Q. Did you see any cans of beer out on the Pool Tables, or anywhere around in the store?

A. There was some empty cans on the Counter.

Q. Pardon.

A. There was some empty cans on the Counter.

Q. Did you see any full cans on the Pool Tables, or on the Counter?

A. Not that I remember.

Q. Did you see any full cans of beer at the back door?

A. No.

Q. Did you see any in the alley-way?

A. No.

Q. Did you see any at the Telephone Booth, or at Henderson's Store?

A. No.

Q. Have you ever been convicted of a felony?

A. I 'stoled' a car one time and got put on probation for it.

Q. That's what I'm talking about. The last time you testified in this case you denied that didn't you?

MR. HARRIS:

Now, if the Court please, that is not proper Cross Examination by Mr. Turner and the State objects to it.

THE COURT:

Re-phrase your question, Mr. Turner.

BY MR. TURNER:

Q. The last time you testified in this case were you not asked the following question:

MR. HARRIS:

I object to that your Honor, that's not the proper way to cross examine this witness.

MR. TURNER:

I submit, your Honor, that he did testify certain things the last time he testified in this case and I'm only going to prove to this Jury, by this witness' own testimony, that he did so testify.

THE COURT:

You can ask him if he testified to what is in the record, read the question to him and let him state what he did, or did not, testify to.

MR. TURNER:

That is exactly what I started out to do, your Honor.
Shall I proceed?

THE COURT:

Yes, you may proceed.

BY MR. TURNER:

Q. At the prior trial of this case, Mr. Cook, were you asked this question:

MR. HARRIS:

That is not the proper way to cross examine this witness, and the State objects to it, if the Court please.

MR. TURNER:

I can point out his prior inconsistent testimony any time, Mr. Harris.

THE COURT:

You can ask the question, Mr. Turner, if you will do it properly, lay the proper predicate for the question, then ask the question, if you will do it properly you may proceed.

MR. TURNER:

Well, your Honor, I'm trying to do it that way.

THE COURT:

If you are going to argue about it let's not do in the presence of the Jury.

Mr. Sheriff, will you take the Jury out, please.

At this point the Jury retired from the Court Room.

THE COURT:

Now, Mr. Turner, what is it you are trying to get in the record. Read the question.

MR. TURNER:

This is the question that I was about to read, your Honor.

The Defendant asked this witness the following question:
"Q. Have you ever been convicted of a felony?" Witness: "No, sir, never have." I proffer to prove that by this witness.

MR. HARRIS:

Now, Judge, all I want Mr. Turner to do is comply with the rule. He knows the proper procedure to try to impeach a witness. He must first ask that witness if he did that, before he can use that record, that record has not been certified to by anybody.

MR. TURNER:

There is someone present, your Honor, who can certify to this record, the Court Reporter, Mrs. Nelle F. Heath, is the Court Reporter who reported the prior trial in this case, Mrs. Heath is the Court Reporter who is reporting the proceedings in this trial, she can certify to her own record, and if the State insists I'll put 'Miss' Nelle on the witness stand and have her certify to this record. Do you want me to use that method of certification, Mr. Harris?

MR. HARRIS:

No, that is not necessary here, not at this time.

MR. TURNER:

Well, your Honor, I asked him if he had ever been convicted of a felony and he said 'I stoled a car and was put on probation for it.' Then, I asked him if, at the prior trial in this case he denied that, he said 'no,' all I want to do is prove what he did say at the prior trial in this same case, how am I going to prove it if I can't ask him the question.

MR. HARRIS:

He was not convicted, he plead guilty.

MR. TURNER:

How do you know he plead guilty?

MR. HARRIS:

I understood him to say he plead guilty.

MR. TURNER:

No, he did not say he plead guilty, he said 'I stoled a car and was put on probation for it,' he never said one word in this world about pleading guilty.

If your Honor please, I will read you the whole transcript of the record dealing with this matter at the prior trial of this case and that will settle the whole thing.

Reading from record.

"By the Defendant:

"Q. How long have you lived here?

"A. About five years.

"Q. Have you ever been arrested?

"Mr. Harris:

"The State objects to that question, if the Court please, that is an improper question.

"The Court:

"Objection sustained.

"You may ask him if he has ever been convicted of a criminal offense. That would be a proper question if you want to prove whether he has ever been convicted of a criminal offense. Then;

"Q. Have you ever been convicted of a felony?"

"A. No, sir, never have."

Now, your Honor, that is the entire record of the prior trial of this case dealing with this witness' denial of his prior conviction. Now he says he has been convicted of car theft.

MR. HARRIS:

Another objection the State wants to interpose ~~at~~ at this time is, that Mr. Turner has asked him if he had been convicted of a felony and he has answered yes, and told what it was, and that's the end of it, you cannot go any further into that.

MR. TURNER:

I can prove that he has made five inconsistent statements to go to his credibility, I can sure do it.

THE COURT:

Just a minute now, let's get just one thing at a time, talk to me and not to Mr. Harris, or Mr. Adams.

MR. TURNER:

I'm having to contend with both of them, your Honor.

THE COURT:

Allright, I'll hear you now, Mr. Adams.

MR. ADAMS:

The question was 'Have you ever been convicted.' Of course, that's an incomplete question. The question should have been 'Have you ever been convicted or plead guilty,' and he ^{had} said 'no, I have not been convicted,' that would have been a true statement, he has not been convicted, I am reliably informed that

he plead guilty and was placed on probation. The question itself, asked at the former trial, was incomplete, and so was Mr. Turner's, he asked him if he had ever been convicted, and he can truthfully say right now, 'no, I have never been convicted.'

MR. TURNER:

Mr. Adams, you are arguing a 'distinction without a difference.' A conviction at law contemplates either a Jury verdict of guilty or a plea of guilty. That is a conviction, and he is convicted when the Court adjudges him guilty of the crime.

MR. HARRIS:

Will the Judge please rule on my objection, and let's make our argument to the Court and not to each other.

MR. TURNER:

Just a minute, please, let me make my argument to Mr. Harris about this business of proving a prior inconsistent statement. I can prove by any witness, particularly on cross examination, and it goes to his credibility, its testing his credibility, whether he had, under oath, at a prior trial, denied the fact that he had been convicted of any criminal offense. It goes to his credibility if he has made a prior inconsistent statement. How far I can go in proving his criminal record is absolutely true, but I am abandoning trying to prove any further criminality on the part of this witness, but I am simply attacking his credibility because he testified under oath at a prior trial contrary to what he is testifying to here today, and I think the Jury has got a right to know that, its testing his credibility, it goes purely to that.

THE COURT:

What does the State have to say on that?

MR. HARRIS:

I thought I had made myself clear on that, Judge. There is a proper way for him to do what he says is proper for him to do, the State says he has not done it the proper way, he can't 'grab that little brown book he's got there' every time some witness comes up here and testifies and ask them 'didn't you testify so-and-so' at the prior trial in this case, he must first lay a proper foundation in order to have the witness deny that 'he did so-and-so' in the other trial, then, he may take his record, if he has a proper record, and attempt to impeach him, but he just 'picks his book up and says, didn't you testify at a prior trial that you had never been convicted of a crime;' that is highly improper. Mr. Turner knows how it should be done.

MR. ADAMS:

I would like to add this, your Honor, to what Mr. Harris has said: If the State should make a mistake, or error, as it is, that the Defendant's Attorney has made, it would be grounds for a mis-trial.

MR. TURNER:

I disagree with that statement, your Honor.

THE COURT:

Let's don't go into that. I think you can proceed, if you will proceed properly to show a prior inconsistent statement.

Bring the Jury back, Mr. Sheriff.

At this point the Jury returned to the Court Room and

resumed their places in the Jury Box.

THE COURT:

Do you Gentlemen concede the presence of the Jury?

MR. ADAMS:

The State does, your Honor.

MR. TURNER:

The Defendant does, your Honor.

THE COURT:

You may proceed.

BY MR. TURNER:

Q. Mr. Cook, have you ever denied, under oath, that you had been convicted of a felony? Prior to today, I'm speaking of.

A. Yes, I did.

Q. Where, and when, was that done?

MR. HARRIS:

Now, if the Court please, I object to any further questioning along that line.

THE COURT:

I think he can go further. Go ahead and ask the question, Mr. Turner.

BY MR. TURNER:

Q. When and where did you deny your criminal record, Mr. Cook?

A. Right here, the last time he was tried, two years ago.

Q. By 'he' you said 'the last time he was tried, you mean the last time this Defendant, Clarence Earl Gideon was tried?

A. That's right.

Q. Before I leave you, could you tell me, if you remember, how much alcoholic beverages you had to drink that night?

A. No, I couldn't tell you that, I didn't measure it, so I don't know exactly how much.

Q. Approximately how much, and when was the last you had to drink, what time did you take your last drink before you were put off the car in Bay Harbor, Florida?

A. About twelve o'clock was the last, I drank ^{about} two beers then, that was the last I had.

Q. You drank two beers?

A. About that.

Q. At Apalachicola?

A. Yes, sir.

Q. Was that all you had to drink that night, just those two beers?

A. I believe it was.

Q. Did you have anything to eat that night?

A. I don't remember whether I eat anything or not.

Q. What time did you leave the dance?

A. Well, we took some girls out down there about twelve o'clock.

Q. You left the dance at twelve o'clock?

A. "Uh-hu."

Q. And where did you spend the rest of that night?

A. We stayed with some girls.

Q. Stayed with the girls?

A. "Uh-hu."

Q. The morning that you say you saw Gideon over there in the Bay Harbor Pool Room, you had known him six months before?

A. Approximately that.

Q. You knew his normal walking gait, how he walked?

A. Yes, sir.

Q. Did you see anything peculiar about the way he walked that morning?

A. Acted kinder drunk, I guess.

Q. Was that the impression you got when you saw him?

A. "Uh-hu."

Q. Was that based upon the way he walked?

A. The way he acted.

Q. Except for the time when you say you were looking through that front window at him you didn't get within forty feet of him did you?

A. Yes, he was standing there by the Cigarette Machine about seven or eight feet inside the door.

Q. I say except for that one time there, you say you saw him later going out the back door, that was about as close as you got to him that morning, is that right?

A. Yes, sir.

Q. The alley-way that he was going down, and the street that you were going down, they parallel don't they, they both come out up there at that corner where you say you saw him?

A. That's right.

Q. When you walked across there and talked to Irene Rhodes

was that before or after she went to the Telephone Booth?

A. Before.

Q. Before?

A. "Uh-hu."

Q. Did she go down to the Telephone Booth while you were there?

A. Yes, sir.

Q. And you waited on the porch until she got back?

A. "Uh-hu."

Q. That was before Berryhill got there?

A. Yes.

Q. Did she bring anything back with her?

A. She brought a pint of wine.

Q. How much was in the bottle?

A. About half.

Q. It was about half full?

A. "Uh-hu."

Q. What did she do with it?

A. She drank it.

Q. She drank it?

A. I guess she did, it was open.

Q. Did you get a drink out of it?

A. No, sir, I don't drink wine.

Q. Did you wave Berryhill down or did he just stop and talk with you?

A. He just stopped and talked with me.

Q. You made no attempt to stop him?

A. No, he just stopped, he knew me and just stopped to talk with me.

MR. TURNER:

That's all at this time for this witness.

RE-DIRECT EXAMINATION

BY MR. HARRIS:

Q. Mr. Cook, did you see anyone else in the Pool Room other than Clarence Earl Gideon?

A. No, sir.

Q. Do you know Ira Strickland, Jr.?

A. Yes, sir.

Q. Do you know what he was, he was doing at that time, what kind of work he was doing?

A. He was running the Pool Room.

MR. TURNER:

Just a minute - I object to that, if the Court please. I would like to cross examine this witness on that one point before he makes a flat statement here that Ira Strickland, Jr., was running the Pool Room.

THE COURT:

Let him finish his examination, Mr. Turner, you can come back then and cross examine him.

MR. TURNER:

Your Honor, this is something that should have been brought out on direct examination, he has left it here for rebuttal, or something, I would have cross examined him before if he had brought it out in his direct examination.

THE COURT:

You will have a right to cross examine him.

You may proceed, Mr. Harris.

BY MR. HARRIS:

Q. Mr. Cook, how do you know Ira Strickland, Jr. ran the Pool Hall?

A. Well, I know him pretty good.

Q. You didn't see him in there when you saw Clarence Earl Gideon?

A. No, sir.

Q. You testified on cross examination by this Defendant there that you had previously testified in this case that you had not been convicted of a felony. You have also testified here today that you had plead guilty to stealing an automobile, is that what you said?

A. Yes, sir.

Q. Do you place any distinction between a conviction and a plea of guilty?

MR. TURNER:

I object to that, if the Court please, it's a matter of law.

THE COURT:

The objection will be over-ruled.

BY MR. HARRIS:

Q. What did you mean when you said you had not been convicted of a felony, and yet, you say you plead guilty to stealing an automobile?

A. Well, I didn't quite understand what a felony was then.

MR. TURNER:

I object to this, and move to strike it.

THE COURT:

Motion will be denied.

MR. TURNER:

Your Honor, I would like to be heard on that, if you will hear me.

THE COURT:

Allright, I'll hear you.

Take the Jury out, Mr. Sheriff.

At this point the Jury retired from the Court Room.

THE COURT:

Allright, Mr. Turner, you may proceed.

MR. TURNER:

Now, if the Court please, whether a man has been convicted of a felony or not is not for him to say, depending upon the 'nicety of the language' used, it is a matter of law whether a man has been convicted of a felony or not; now, to allow him to say 'well, I didn't understand about that,' he didn't have to understand it, as a matter of law, if he pleads guilty or is convicted by a Jury certain penalties attach to that thing that makes it a felony, depending upon the punishment, therefore, if he has been convicted of a felony, whether he understood it or not, it stands, and I am going to request the Court to charge the Jury that stealing an automobile is a felony under Florida law. Now, this is a matter of law for the Court to move on, he

cannot be heard to say 'well, I didn't understand it,' if that be true we could never prove prior inconsistent statements; this witness in not telling the Court what the law of the State of Florida is, the Statutes tell the Court that, in addition to case law; if he has been convicted of a felony, whether he understood it or not, he was asked that question, it's not for us to determine whether he has or not, it's for him to find out, and if the Court has operated on it it is a fact beyond which there is no dispute any more, conviction is like having a Driver's License, you have got one or you haven't. Now, he has either been convicted or he hasn't, and any testimony to the contrary should not be allowed to go to this Jury. It's a 'telling point' to his own credibility, is he going to say at another trial, if there should be one, 'that I didn't understand the first and second one.' This is a matter of law whether he has been convicted or not, and if he has he ought to go before that Jury without any explanation on the part of this witness. It's a 'telling point for credibility' and it ought to be allowed without him being able to explain to the Jury whether he understood what was meant by a felony or not. I would be glad to let this point go, except that you instructed this Defendant before the proper procedure to go by and he went by that procedure, and now, to allow the witness to 'back out of it' is just absolutely unfair.

Listen to this, please, your Honor, I'm going to read from the record of the prior trial in this same case: Reading from transcript of previous trial:

"The Court:

"Objection sustained.

"Mr. Gideon, you can ask him if he has ever been convicted of a criminal offense.

The witness was on the stand, listening to the Court's instructions to Mr. Gideon.

"That would be a proper question if you want to prove whether he has been convicted of a criminal offense.

"By Mr. Gideon:

"Q. Have you ever been convicted of a felony?

"A. No, sir, never have."

What could be clearer than that? Nothing. And to allow the witness to say 'I don't understand it today' is wholly and totally unfair to this Defendant. This question was asked by the Defendant, who was conducting his own defense in the trial of the former case, the first case that was tried, this Defendant asked that question under specific instructions by the Court. I contend, your Honor, that this witness should not be allowed to excuse away his ignorance in this matter, it's a matter of fact, an established fact, and a matter of record. I think it's highly improper and highly prejudiced to allow him to explain away that he didn't understand this thing, it's a matter of law. How could there be any question of fact about whether or not I have been convicted, if I had, or this man has been convicted, how can it be questioned in another Court? It cannot, it's a matter of fact, and on that fact it becomes a question of law, that's the reason I don't think it should go to

this Jury with any embellishments, any excuses, or to withdraw from it the damaging testimony that it carries, this witness has denied what he said, and denied it under oath, and I think this Defendant is entitled to that touching his credibility, because the Court knows that this is the most damaging testimony against the Defendant to allow this witness to explain away his conviction, his conviction is a matter of law, it's also a matter of record and that record can be produced in this Court. If he 'can't understand the Kings English' that's one thing, but to allow him to say 'I don't know the difference between being convicted and pleading guilty' is a matter of law, that's a matter of law and the Court is aware that it is matter of law. I will ask the Court "is there a difference?" If there is, then, I will withdraw my objection. There is no difference in a plea of guilty and being convicted by a Jury.

THE COURT:

Allright, I will hear the State now.

MR. HARRIS:

By Mr. Turner's very argument he, I think, defeats what he says, he says it doesn't make any difference whether this man knows what a felony is or anything about it, but yet, if he's asked the question he must know about it and give the right answer; it just doesn't make sense. This Court is well aware, and I think can take judicial knowledge of the fact that many people come before this Court, and other Courts, which you can ask 'have you ever been convicted of a felony, and they will say no, but I plead guilty to so and so.' This man had a perfect right

to rebut what Mr. Turner is saying here; in this trial he admits that he has not been convicted of a felony, he says he plead guilty, he admitted what he said at the prior trial, he admits that he said he had not been convicted of a felony at the prior trial; at this trial he said he plead guilty to stealing an automobile. Now, Mr. Turner, I know, in his summation to the Jury is just going to 'raise Cain,' and that's why he just keeps on about the man 'trying to hide something from the Jury,' etc. He told this Jury, when he was asked if he had been convicted of a felony, that he had plead guilty to stealing an automobile and was placed on probation, and he meant 'no, he had not been convicted, but that he did plead guilty.' And the law itsself makes a distinction between the two in civil cases, if you have a criminal case and you are attempting to get in a conviction of reckless driving involving a negligence suit, if a man enters a plea of guilty you can get it in the civil suit, if he's convicted by a Jury you cannot.

MR. TURNER:

May I be heard further, your Honor?

THE COURT:

Yes, I will hear you.

MR. TURNER:

Mr. Harris knows the rules in a civil case is 'you must prove your negligence in the first place,' then, you can introduce any plea of guilty, but you must first prove the negligence. Now, as to this, Mr. Harris is arguing that ignorance of the law is excusable for this witness. It is not. Whether

he has been convicted or not is a matter of law. I don't care if he's ignorant of it, or if I'm ignorant of it, that still don't 'change the spots on that leopard,' he's a convicted felon. Now, I'm saying that Mr. Harris is saying that he should be allowed to explain to this Jury his ignorance of the law, and I say there is no excuse in this Court.

MR. HARRIS:

Judge, your Honor, do you remember your charge to a person when they come up before you for sentencing, if they have plead guilty you begin by saying, "You, Uohn Doe' having entered a plea of guilty,' etc., and if they are convicted by a Jury you begin by saying, "You, 'John Doe,' having been convicted by a Jury," etc., I say there is a distinctive difference in a plea of guilty and being convicted by a Jury.

THE COURT:

I'm going to over-rule your objection and let him answer the question.

MR. TURNER:

He has already answered the question, your Honor, but I wanted to be heard on it.

THE COURT:

Bring the Jury back, Mr. Sheriff.

At this point the Jury returned to the Court Room and resumed their places in the Jury Box.

THE COURT:

Do you Gentlemen concede the presence of the Jury?

MR. ADAMS:

The State does, your Honor.

MR. TURNER:

The Defendant does, your Honor.

THE COURT:

You may proceed.

MR. TURNER:

Your Honor, would you kindly rule on my Motion to Strike this testimony? I made a Motion to Strike before this argument set in.

THE COURT:

Motion to Strike will be denied.

You may proceed.

BY MR. HARRIS:

Q. Mr. Cook, at the prior trial, when you were asked that question you didn't know what a felony was?

MR. TURNER:

I object to the question as repetitious. He has already answered the question.

THE COURT:

The objection will be over-ruled, let him answer the question.

BY MR. HARRIS:

Q. Now, answer my question, Mr. Cook.

A. That's right.

Q. Do you mean by that answer, 'that's right,' that you did not know what a felony was?

A. No, I didn't know what it was.

Q. Do you now know what it is?

A. Do I know what it is?

Q. Do you know what a felony is now?

A. Yes, sir.

Q. Do you know where Irene Rhodes is?

A. No, sir.

Q. When was the last time you saw her?

A. The last trial day, about two years ago.

Q. You mean at the time this case was tried before?

A. Yes, sir.

Q. You testified you saw Irene Rhodes with a bottle of wine?

A. Yes, sir.

Q. Where did she get that wine?

A. Out of the 'Phone Booth, down at the store.

Q. Who put the wine there, if you know?

A. Gideon.

MR. HARRIS:

That's all. You may inquire, Mr. Turner.

RE-CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Cook, did you see Mr. Gideon put the wine there?

A. Yes.

Q. Now, how old were you when you plead guilty to this felony, Mr. Cook?

A. Seventeen.

Q. Seventeen?

A. Yes, sir.

Q. Were there other people involved in this?

A. Yes, sir.

Q. Did you have legal Counsel at the time?

MR. HARRIS:

Your Honor, don't you think Mr. Turner has gone a little too far in this? The State objects to it.

MR. TURNER:

Now, your Honor, Mr. Harris has established he didn't know what he was doing, I have a right to inquire about it.

THE COURT:

Objection sustained.

MR. TURNER:

Has the Court ruled that I cannot inquire about whether he knew or not?

THE COURT:

You can inquire whether or not he had legal Counsel, he has answered the question.

MR. TURNER:

That would bear upon whether or not he knew what felony was. Mr. Harris asked him, and the Court allowed him to answer over my objection, that he didn't know what a felony was when he did it, so I want to find out if he knew.

THE COURT:

The objection will be over-ruled - I mean the objection will be sustained - the State's objection.

BY MR. TURNER:

Q. Mr. Cook, how much education did you have, how far did

you advance in school?

A. I went about half-way through the eleventh grade.

Q. The eleventh grade?

A. Yes, sir.

Q. Was that your first criminal offense?

A. Yes, sir.

Q. You had never been in the Court Room before?

A. No, sir - well, I might have ^{been} in the Court Room, but not because I had to go.

Q. That was the first time you had been in the Court Room as a Defendant?

A. Yes, sir.

Q. Did the Judge explain to you about your rights when you plead guilty?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. Did he read you twenty-two different questions for you to answer?

A. I don't remember whether he did all that or not.

Q. Was that Judge E. Clay Lewis, Jr., Circuit Judge?

A. No, sir.

Q. Which Judge was it?

A. The Juvenile Judge.

Q. Pardon?

A. The Juvenile Judge.

Q. The Juvenile Judge?

A. Yes, sir.

Q. Which Juvenile Judge?

A. Well, I don't know what his name was, but he was the Juvenile Judge.

Q. You don't know which one it was?

A. No, sir.

Q. For what period of time were you placed on probation?

A. He put me on Indefinite Probation, I stayed on/about a year and a half, 'or so.'

MR. TURNER:

That's all.

RE-DIRECT EXAMINATION

BY MR. HARRIS:

Q. Was that here in Bay County?

A. Yes, sir.

Q. Was Judge Bert Davenport the Juvenile Judge?

A. I believe so.

Q. And that was in Juvenile Court?

A. Yes, sir.

Q. Have you ever plead guilty, Mr. Cook, to any offense that has been in this Juvenile Court you referred to?

MR. TURNER:

I object to that, if the Court please, he's leading the witness, his witness, that's his witness.

THE COURT:

Objection will be sustained.

BY MR. HARRIS:

Q. Don't you know, Mr. Cook, that you can't be convicted, or plead guilty, to a felony in Juvenile Court?

MR. TURNER:

I object to that, if the Court please. That's the State's own witness.

THE COURT:

The objection will be sustained.

MR. HARRIS:

I have nothing further.

RE-CROSS EXAMINATION

BY MR. TURNER:

Q. How old did you say you were, Mr. Cook, at the time?

A. Seventeen.

MR. TURNER:

No further questions.

THE COURT:

Anything further from the State?

MR. HARRIS:

Nothing further from the State, your Honor.

THE COURT:

Anything further from the Defendant?

MR. TURNER:

Nothing further for the Defendant, your Honor.

THE COURT:

You may step down, Mr. Cook.

This witness then left the stand.

Ira Strickland, Jr., called as a witness on behalf of the Plaintiff, State of Florida, being first duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. ADAMS:

Q. State your name, please.

A. Ira Strickland, Jr.

Q. Where do you live, Mr. Strickland?

A. Route Two, Box 8188, Panama City.

Q. That is Panama City, Bay County, Florida?

A. Right.

Q. What kind of work do you do, Mr. Strickland?

A. I'm Stock Clerk for Bay Manufacturing.

Q. Do you know where the Bay Harbor Pool Room is located?

A. Yes, sir.

Q. Do you know who operates that place?

A. I don't believe I know who operates that place now.

Q. Do you know who operated it on June 3, 1961?

A. Yes, sir, I know that, I did.

Q. Do you own that property?

A. No, sir.

Q. Did you own it at that time?

A. No, sir.

Q. You were renting it?

A. I was renting it, yes, sir.

Q. Do you know the Defendant, Clarence Earl Gideon?

A. Yes, sir.

Q. Did you know him in June, 1961?

A. Yes, sir.

Q. Was he in your employ on June 3, 1961?

A. No, sir.

Q. He had, or had he, prior to that time, been employed by you there around the Pool Room?

A. No, sir, I wouldn't say he was employed by me, he 'hope' me on different occasions, such as sweeping and things like that.

Q. Just helped you out there around the Pool Room generally, not regularly employed?

A. That's right. He 'hung around there' quite a lot of the time and if I happened to need somebody to do odd jobs I let him do them, but he was not on the payroll, I just paid him for the job he did when he finished it.

Q. On June 3, 1961, you were operating Bay Harbor Pool Room?

A. Yes, sir, I was.

Q. Did this Defendant, Clarence Earl Gideon, have any authority, as your employee, or otherwise, to be in the Bay Harbor Pool Room early in the morning of June 3, 1961?

A. No, sir.

Q. He was not working for you at that time?

A. No, sir.

Q. Had he been working for you immediately prior to that time?

A. No, sir. Let me clarify this by saying again, he was never on the payroll.

Q. And you mean by that, that he was just a frequent visitor

there and sometimes helped out?

A. Yes, sir.

Q. Allright, sir, now on the 3rd day of June, 1961, were you notified that something unusual had happened to your Pool Room?

A. Yes, sir.

Q. Did you go down there?

A. Yes, sir.

Q. Will you tell the Jury, please, sir, just exactly what you found when you arrived at the scene?

A. If I recall correctly, I believe it was a fifteen-gallon-drum which was used for garbage purposes at the back had been moved from directly back of the building to along the side of the building to a window that didn't have any bars installed in it, it was just a plate glass window, and this window glass was broken out, and from all appearance it had been broken from the outside, because the biggest part of the glass from the window was on the inside.

Q. When you arrived at the scene was the back door open?

A. Yes, sir, it was.

Q. That back door, how was it fastened, when you normally closed it, how did you fasten it?

A. Well, at that time, and as long as I stayed there, I always closed the back door first, closed it from the inside with a bar across it.

Q. In other words, in order for the back door to be opened the bar would have to be lifted from the inside, is that right?

A. That's right.

Q. Did you have, at that/^{time,}a Cigarette Machine in that place of business?

A. Yes, sir.

Q. What was the condition of the Cigarette Machine when you arrived at the scene, or the Bay Harbor Pool Room?

A. The money box was prized out from the machine, and from all indications had been emptied of any change that might have been in it.

Q. Did you also have a music machine in there, a Piccolo, or coin operated music box?

A. Yes, sir.

Q. What, if anything, had happened to that?

A. The same thing that had happened to the Cigarette Machine had happened to it also, the box where the money fell into had been prized out and the change that might have been in there had been removed.

Q. Did you see the lids, or the lid to the Cigarette Machine anywhere?

A. The lid?

Q. The lid that you have testified about being prized out.

A. Yes, sir.

Q. Whereabouts was it?

A. If I remember correctly, it was laying on the floor by the machine.

Q. By the machine?

A. Yes, sir.

Q. How far was that from the Pool Table, from where the Pool Tables were located in the room?

A. It wouldn't've been more than two or three foot.

Q. Just a short space?

A. Yes, sir.

Q. Now, let me ask you about the coin box to the Cigarette Machine. That is a metallic box is it not?

MR. TURNER:

Don't lead the witness too much, Mr. Adams. I object to the State Attorney leading the witness, if the Court please.

THE COURT:

The objection will be sustained.

BY MR. ADAMS:

Q. What kind of a box is it that the money falls in, when you'd put a quarter in the machine and get a package of Cigarettes out of it?

A. I believe it's a form of metal, some kind of a metal box, I couldn't tell you what kind of metal it is, but it's metal, I believe.

Q. How does that fit into the machine itself, is it locked in, or how is it attached to the inside of the machine?

A. Yes, sir - the front of the machine, if I remember correctly, of course, it has been sometime back since this happened, but the front of the machine opens up to install the Cigarettes, and once you get to this point, opened up to put in the Cigarettes, the box that catches the money is placed underneath the Cigarettes that are stored in the machine.

Q. Then, when the face of the machine is removed you have access to the box in which the coins fall when you get Cigarettes out of the machine?

A. That's correct.

Q. Allright, now let me ask you about the box the money goes into in the music box, is that a metallic box, or some other kind?

MR. TURNER:

Allright, Mr. Adams, please don't put the answers in the witness' mouth, let him tell you what kind of a box it was, not you tell him.

BY MR. ADAMS:

Q. Now, Mr. Strickland, answer my question, please, sir.

A. Let's see, sir, you asked me what kind of a box it was in the music box that took care of the money deposited in it?

Q. Yes, sir - in substance, that was it.

A. Well, sir, I believe that was a canvas type bag, not a box.

Q. Allright, sir, when you went to the Pool Room on the morning of June 3, 1961, and found the place had been broken into, did you see the canvas bag that come out of the music box anywhere around?

A. Yes, sir, I believe so.

Q. Where do you recall having seen it?

A..It was either on the floor, or on one of the Pool Tables, I can't say positively which one it was, it has been so long.

Q. It was somewhere in the vicinity of the machine?

A. Yes, sir.

Q. Do you know how much money was in the Cigarette Machine?

A. No, sir, I don't know how much was in there, I have no way of knowing.

Q. Do you have any way of knowing how much money was in the music box?

A. No, sir.

Q. Do you know of your own knowledge that there was some money in there, in both machines?

A. Yes, sir.

Q. These machines had not been emptied, or the money removed from them in sometime?

MR. TURNER:

If the Court please, I object to the State Attorney leading the witness.

THE COURT:

Objection sustained.

BY MR. ADAMS:

Q. When do you recall the money having been taken out of the machines prior to this date, June 3, 1961?

A. The Gentleman that serviced the Cigarette Machine always come on Thursday, I believe, and he would have emptied the Cigarette Machine on Thursday before. Now, the "Juke" Box, he would usually come on Friday afternoon, or maybe Saturday, or in case I might need some change I would call him and he would come any time I called him.

Q. You know there was some money in both of these machines?

A. Yes, sir.

Q. Mr. Strickland, did you sell wine in your place of business at that time?

A. Yes, sir.

Q. Did you sell beer?

A. Yes, sir.

Q. Did you make an Inventory, or were you able to make an Inventory, to tell whether or not any beer or wine had been removed from the place?

A. There had been some removed, but I couldn't tell you the specific amount.

MR. TURNER:

I move to strike the answer as not responsive.

THE COURT:

He asked him if any had been moved.

MR. TURNER:

No, sir, your Honor, I beg your pardon, he asked him if he made an Inventory to determine whether any was missing or not.

BY MR. ADAMS:

Q. Mr. Strickland, will you answer this question, 'yes, or no,' was there an Inventory made?

A. Yes.

Q. From that Inventory did you learn that some beer and wine had been removed?

A. Yes, sir.

Q. The night before you were called down to examine this place that had been broken into, who closed the place that night?

A. I did.

Q. This window that you have already testified about being broken out was it broken out when you closed up the night before?

A. No, sir.

Q. This door in the back that you have testified was open when you arrived at your place of business, was it open when you left that establishment the night before?

A. No, sir.

Q. Are you in position to testify that they were both closed when you left there that night?

A. Yes, sir.

Q. The place we have been talking about, Mr. Strickland, Bay Harbor, Florida, is that in Bay County, Florida?

A. Yes, sir.

Q. and the date we have been talking about is June 3, 1961?

A. Yes, sir.

Q. Now, after you discovered the place had been broken into did you see Mr. Gideon, the Defendant?

A. I didn't discover the place had been broken into, myself, I was not the first one to discover the place had been broken into, I was called at home and asked to come down there, after it was discovered by someone else.

Q. Did you see Mr. Gideon that morning?

A. I saw him later that morning, yes, sir/

Q. Where was he when you saw him?

A. Over in town - in Panama City proper.

MR. ADAMS:

You may inquire, Mr. Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Strickland, who owned that building, that you were operating your business in?

A. Arthur Widincamp.

Q. Who owned the equipment?

A. Arthur Widincamp.

Q. Are you related to Arthur Widincamp?

A. He's my Father-in-law.

Q. Your Father-in-law?

A. Yes, sir.

Q. How much rent did you pay?

A. Seventy-five (\$75.00) a month.

Q. Did you pay it by check or cash?

A. Usually by cash.

Q. And your Father-in-law also has a bunch of rental houses doesn't he, or did at that time?

A. Yes, sir.

Q. Let's see, now, I believe you married Mr. Widincamp's daughter Betty?

A. That's right.

Q. Who operated the Bay Harbor Pool Room before you?

A. I believe it was closed up - I believe I opened it up.

Q. Didn't Arthur operate that place before you did?

A. Possibly so - I was in South Florida and I don't think this has ever been discussed between he and I.

Q. Were you not in partnership with him over there?

A. I'm sorry, Mr. Turner, I didn't quite understand you.

Q. Weren't you and Arthur in partnership over there in that business, the operation of the Bay Harbor Pool Room?

A. His and my name were both on the License.

Q. That's what I'm talking about. Did Arthur Widincamp operate that business?

A. No, sir.

Q. Was he there sometimes?

A. Yes, sir.

Q. Didn't he operate it sometimes?

A. Occasionally.

Q. Occasionally?

A. Yes, sir.

Q. When you were not there?

A. Yes, sir.

Q. Even this Defendant, Gideon, operated it sometimes didn't he?

A. Well, occasionally.

Q. And your and his names were both on that License?

A. Yes, sir.

Q. How was the rent paid, was it paid out of the proceeds you got out of that business?

A. Yes, sir.

Q. And what was done with the rest of it, the money, I mean? Was it divided between you and Arthur?

MR. ADAMS:

If the Court please, I object, he's just trying to put words in the witness' mouth.

THE COURT:

He's talking about leading the witness.

MR. TURNER:

Well, if this "aint" cross examination "there 'aint' a cow in Texas."

THE COURT:

He's talking about leading the witness, that is what he's objecting to.

MR. TURNER:

I can lead him, your Honor, on cross examination I can lead him "all over the lot."

MR. ADAMS:

You can't put words in his mouth, though, Mr. Turner.

MR. TURNER:

I sure can. Does the Court want to hear some law on that?

THE COURT:

Proceed with your examination.

MR. TURNER:

Thank you, sir.

BY MR. TURNER:

Q. What was done with the rest of that money, did you and Arthur divide it up?

A. No, sir.

Q. What was done with it?

A. It come to me.

Q. It come to you?

A. Yes, sir.

Q. Did you have any Articles of Partnership between you and Arthur?

A. No, sir.

Q. Who paid the for the lights?

A. I did.

Q. And who paid for the water?

A. I did.

Q. How much money was in that Cigarette Machine?

A. I don't know.

Q. Mr. Strickland, sitting up there where you are on the witness stand, can you tell me the number on my Driver's License here in my wallet? (Holding wallet up for witness to look at.)

MR. HARRIS:

Now, if the Court please, this is ridiculous, the State objects to it.

THE COURT:

Objection sustained.

MR. TURNER:

Now, just a minute, if the Court please. What is he objecting to?

THE COURT:

The question.

MR. HARRIS:

The question you asked this witness is wholly unrelated to this trial. Whether or not he can read the number on Mr. Turner's Driver's License has nothing to do with this trial.

MR. TURNER:

Allright, sir, I'll connect it if you will give me an opportunity, I was 'cut down' there before I got started.

THE COURT:

Go ahead, we'll see if you are going to connect it to anything.

BY MR. TURNER:

Q. Now, Mr. Strickland, can you tell me whether there was any money in that Cigarette Machine or not?

A. Yes, sir.

Q. Can you swear that?

A. Yes, sir.

Q. How can you swear that?

A. I bought a pack of Cigarettes out of it, out of that machine.

Q. When did you do that?

A. On Saturday.

Q. Just before you closed the place up?

A. Yes.

Q. Now, who made the Inventory of the beer?

A. I did.

Q. And the wine?

A. Sorry, sir.

Q. I said who made the inventory of the wine?

A. I did.

Q. And now, tell me how many beers were missing, can you do that?

A. No, sir, I can't.

Q. Why can't you do that, Mr. Strickland?

A. Well, I can't give you the specific amount?

Q. Well, why can't you give us the specific amount?

A. I just can't give you the specific amount.

Q. Surely, there must be some reason why you can't give the Jury the specific amount. Did you know the amount you had on hand?

A. Not exactly.

Q. Well, who made the inventory? What kind of an inventory was this you made?

A. Well, let's say that

Q. No, no, let's not say anything. What was it?

A. Well, if I had four cases of beer and sold one case.....

MR. TURNER:

If the Court please, I move to strike his answer, it's not responsive to the question.

THE COURT:

Let him answer the question, he hasn't finished it yet, you stopped him.

MR. TURNER:

He started out on a hypothetical answer, your Honor, I didn't ask him for that kind of answer, what I'm trying to find out is what kind of an inventory was this he made.

THE COURT:

Well, let him answer it in his way, let him proceed.

MR. TURNER:

Allright, sir.

THE COURT:

Go ahead and answer the question, if you can, please.

WITNESS:

A. (Continuing answer) And I returned the next morning and only found two and one-half cases, I knew - well, it would be obvious that a half-case was gone.

BY MR. TURNER:

Q. Are you telling us that that is the kind of inventory you took?

A. Yes.

Q. And you're telling us that you knew how much was in that box the night before?

A. Roughly.

Q. Well, 'how rough is roughly?'

A. To the extent that I explained there just now.

Q. Well, how close does that get us, are you within a half-case accurate, or a case accurate, or six cans accurate, or what? Just how accurate are you on that?

A. I couldn't tell you the specific amount that was missing.

Q. Well, within what lee-way can you tell us?

A. Well, I can't say specifically.

Q. Could you give, or take, ten cans, or how accurate can you be?

A. I would say, maybe, a half-case.

Q. How many cans are in a case?

A. Twenty-four.

Q. What would you say was missing out of the beer box now, taking all of that into consideration, how many cans were missing would you say? Give us your 'best educated guess.'

A. I would say a half-case.

Q. Twelve cans?

A. Yes, sir.

Q. Allright, now tell this Jury how much wine was missing?

A. I believe there was four bottles of wine.

Q. Now, what leads you to believe that?

A. Well, I knew how much wine there was there the night before?

Q. How much? Did you know exactly how many bottles of wine were there the night before?

A. Yes, I did.

Q. Well, fine. How many were missing?

A. Four bottles, I believe. That has been a long time back and I don't remember it as well as I did at first, of course, but I believe there were four bottles of wine missing.

Q. When was the last time you talked with Henry Cook about this case, Mr. Strickland?

A. Pardon?

Q. When was the last time you talked with Henry Cook about this case?

A. I saw Henry Cook Friday afternoon, I believe.

Q. Did you talk to him about this case?

A. Yes, sir.

Q. Did you and Arthur Widincamp ever Register your names, Bay Harbor Pool Room, down here with the Clerk of the Circuit Court, Mr. Collins?

MR. HARRIS:

If it please the Court, the State objects to that, it's totally unconnected with this trial.

THE COURT:

I'm going to let him answer it.

MR. HARRIS:

The State objects to it, your Honor, it's not in cross with anything brought out on direct examination, and it has nothing to do with this case, it's terrible.

THE COURT:

The objection will be over-ruled, I'm going to let him answer the question.

BY MR. TURNER:

Q. Did you all Register the name of the business down here with Mr. Collins, in the Clerk's Office?

A. I didn't.

Q. Do you know whether Arthur Widincamp did or not?

A. No, I don't.

MR. TURNER:

I have nothing further.

THE COURT:

Does the State have anything further for this witness?

MR. ADAMS:

Yes, your Honor, we do.

BY MR. ADAMS :

Q. Mr. Strickland, on the evening before this Pool Room was broken into, did you clean up the place before you closed up and left?

A. No, sir - I usually swept up in the morning, before I opened up - prior to opening I'd do my cleaning.

Q. Did you leave any beer cans on your counter when you left that night?

A. I don't remember whether there were any left on the counter that night or not.

Q. Do you remember whether there were any on the counter the next morning?

A. Yes, sir, there was some beer cans on the counter that morning when I went in, I remember that.

Q. But you don't remember whether they were left on there that night?

A. No, sir, I don't.

MR. ADAMS:

That's all.

MR. TURNER:

No further questions.

THE COURT:

You may step down, Mr. Strickland.

This witness then left the stand.

THE COURT:

Gentlemen, it's lunch time. Shall we take a recess at this time?

MR. ADAMS:

I think so, your Honor, it's almost twelve o'clock.

MR. TURNER:

I suggest we do that, your Honor.

THE COURT:

Court will be recessed until one-fifteen, this afternoon.

Gentlemen of the Jury, we are going to take a recess for lunch at this time, and you may go and get your lunch, the same instructions I have given you in the past will be in effect; you will not have to stay together during the noon recess, but you are not to discuss this case among yourselves or with anyone else, if anyone approaches you and tries to talk to you about this case tell them you are serving on the Jury and you can't discuss it, and if they persist in talking to you, you are authorized to take them into custody and bring them before the Court when you come back, or report it to the Court; you are not to form any opinion in this case until you have heard all of the evidence and the Charge of the Court. Just go wherever you want to go for lunch, and be back here at one-fifteen this afternoon.

Court now stands recessed until one-fifteen this afternoon.

One-fifteen, p. m.

Court called to Order.

Judge McCrary on the Bench.

Counsel for the State, the Defendant and his Counsel all seated at the Counsel Table.

The Jury in the Jury Box.

THE COURT:

Do you Gentlemen concede the presence of the Jury?

MR. ADAMS:

The State does, your Honor.

MR. TURNER:

The Defendant does, your Honor.

THE COURT:

You may proceed.

MR. TURNER:

If the Court please, may we have Mr. Strickland return to the witness stand, I need to ask him a couple more questions on Re-Cross, then, I'll be through with him.

THE COURT:

Yes, you may have him come back.

Call Mr. Ira Strickland, Jr., please, Mr. Sheriff.

Ira Strickland, Jr., re-called to the witness stand, testified further, as follows:

RE-CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Strickland, I just want to ask you a couple of questions about the building over there, the Bay Harbor Pool Room, at the time of this breaking and entering, in June, '61, is that correct?

A. Yes, sir.

Q. The building was approximately what size, sixty-by-twenty-five, something like that, it was an oblong building wasn't it?

A. Yes, sir, the building is oblong, I wouldn't be able to say the size of the building, I know it was longer than it was wide.

Q. And as you go in the front door the Pool Tables were in the center of the building, right?

A. That's right.

Q. Far to the left in the front was the Cigarette Machine?

A. Yes, sir.

Q. Now, where was the partition in that building?

A. When I first opened there, there was a partition in there, but it has been so far back I don't remember whether that partition was in there or not.

Q. In '61, June 3rd? That was two years ago.

A. I would be afraid to say.

Q. There was a partition in there?

A. At one time, yes, sir.

Q. And what did it partition off, what was in the back room?

A. Mostly, it was just a Stock Area back there for various odds and ends, parts, Pool Tables, and 'what have you.'

Q. Was there a door in the partition?

A. Yes, sir.

Q. Was it a solid partition?

A. Across the back at that time.

Q. And you would have to go through a door to get in there?

A. Yes, sir.

Q. And from the front, to go out the back door, you would have to go through that partitioned area?

Q. Was that door usually kept open, or was it closed?

A. It was kept open.

Q. It was kept open?

A. There was no swinging door there, there was a place that was cut out for a door.

Q. Now, was that in front, or in line, of or with the back door, or where was it?

A. It was not in line with the back door, it would be kinder off-center to the back door.

Q. Your best memory on June 3, 1961, you don't know whether that partition was there or not?

A. No, sir, I don't - I know that thing was taken out, but I don't remember whether it was taken out prior to that date or afterward.

Q. Was the partition from the floor to the ceiling?

A. Yes, sir.

Q. A solid wall?

A. Yes, sir.

MR. TURNER:

That's all I wanted to ask him.

THE COURT:

Would the State like to ask this witness any questions?

MR. ADAMS:

The State has no further questions for this witness, your Honor.

THE COURT:

You may step down, Mr. Strickland.

This witness then left the stand.

Duell Pitts, called as a witness on behalf of the State, being first duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. State your name, please.

A. Duell Pitts.

Q. Mr. Pitts, where are you now employed?

A. City of Panama City Police Department.

Q. Were you employed by the City of Panama City Police Department on June 3, 1961?

A. Yes, I was.

Q. In what part of the Police Department are you employed?

A. The Detective Department.

Q. On June 3, 1961, in your capacity as a Police Officer, did you investigate a breaking and entering in the Bay Harbor Pool Room?

A. Yes, sir.

Q. Do you recall who was there when you arrived on the scene?

A. There was Officer Berryhill and Henry Cook, they are the two that I recall being there.

Q. Did you make an examination of the building there?

A. Yes, I did.

Q. Did you make a determination as to how entrance was gained?

A. Yes, I did - it was through a window on the Northwest

side of the building.

Q. Now, what do you mean by 'on the Northwest side of the building?'

A. It was on the North side, on the West end of the building.

Q. Would that be to the rear of the building, the side of the building, or where?

A. To the rear of it.

Q. Tell the Jury what you found there.

A. The window had been broken, the glass broken out, reached in and unlatched.

Q. Was the window casing up or down when you got there?

A. It was down.

Q. What else did you find there?

A. The window had been broken out and most of the glass had fell on the inside of the building.

Q. Did you go into the building?

A. Yes, I did.

Q. What did you find then?

A. I found the "Juke" Box had been broken into and also the Cigarette Machine had been broken into.

Q. The Cigarette Machine, did you determine how it was broken into?

A. The front part of it, it's built in two sections, and about half of it comes off of the machine, and it had been pulled off, forced off.

Q. Did you find that part of the machine?

A. Yes, sir, it was in the Pool Room.

Q. Where, in the Pool Room was it?

A. I don't remember where it was.

Q. Did you find any other items having to do with the Cigarette Machine?

A. There was a coin box from the Cigarette Machine and the bag from the "Juke" Box laying on the Pool Table when I got there.

Q. The bag from the "Juke" Box and the coin box from the Cigarette Machine were on the Pool Table when you got there?

A. Yes, sir.

Q. They were just laying on the table as if they had been thrown there, or laid there on the Pool Table?

A. They were lying there on the Pool Table, I couldn't tell by looking at them whether they were laid there or thrown there, they were just there.

MR. HARRIS:

You may inquire, Mr. Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Pitts, was Henry Cook under arrest at that time?

A. No, he wasn't.

Q. What did he say about the breaking and entering, Cook?

A. Well, Officer Berryhill told me that he had witnessed the man being in the building, and when I talked to him about it he told me that he had seen Clarence Gideon in there.

Q. Officer Berryhill told you that Cook had seen someone in the building?

A. That's right.

Q. Did he say who?

A. Mr. Berryhill?

Q. Yes.

A. Yes, he told me who it was.

Q. He told you it was Gideon?

A. Yes, sir.

Q. How did you get notified to go over there, by Telephone, Radio, or how?

A. I don't remember whether I was working that night or whether I was at home, I believe I was on duty at that time, I'm not sure.

Q. Did you see either Mr. Gideon or Irene Rhodes there at that time?

A. Mr. Gideon wasn't there - at that time?

Q. Yes.

A. Mr. Gideon wasn't there - and I don't remember seeing Mrs. Rhodes there.

Q. Did you later talk to this Ira Strickland, Jr.?

A. Yes. He was notified that the place had been broken into and he came right on down there.

Q. What did he tell you was missing out of the place when he got down there?

A. Money from the Cigarette Machine and the "Juke" Box,

some "Cokes" and some wine.

Q. What about beer?

A. And some beer.

Q. How much beer did he say was missing?

A. Can I look at this folder I have here?

Q. Yes, if it's your record that you wrote down on the spot at the scene. Is that what it is?

A. Yes, sir, it's my notes that I made there when I was investigating the breaking and entering.

Q. Allright, you may look at it to refresh your memory.

A. (Reading from paper removed from folder) - Approximately sixty dollars (\$60.00) from the "Juke" Box, approximately five dollars (\$5.00) from the Cigarette Machine, twelve (12) bottles of "Cokes", twelve (12) cans of beer and four-fifths of wine.

Q. Four-fifths or four pints?

A. Four-fifths.

Q. Four-fifths of wine?

A. Twelve bottles of "Cokes," twelve cans of beer - approximately five dollars (\$5.00) from the Cigarette Machine, approximately sixty dollars (\$60.00) from the "Juke" Box.

Q. Did you later that morning come in contact with Clarence Earl Gideon?

A. Yes, I did.

Q. Where did you come in contact with him?

A. At the Bayshore Bar.

Q. Here, in Panama City?

A. Yes, sir.

Q. Did you arrest him?

A. Yes, I did.

Q. Did he have on his person any wine?

A. No, he didn't.

Q. Did he have any "Cokes?"

A. No.

Q. Did he have any beer?

A. No.

Q. How much money did he have on him?

A. He had twenty-five dollars and twenty-eight cents (\$25.28), in quarters, nickels, dimes and there was a few pennies in it, I believe.

Q. 'Twenty-five-twenty-eight?'

A. Yes, sir.

Q. All in change?

A. Yes, sir.

Q. Now, in investigating that building over there, did you determine whether or not there was a partition in that building?

A. What kind of partition are you referring to?

Q. Was the building just 'wall-to-wall' or was there some partitions in the building?

A. I believe, at that time, there was a partition between the back room and the front part of the building, the Pool Room.

Q. Do you have any independent recollection of that, that partition being there?

A. I don't remember exactly whether it was or not.

Q. You've got a slight suspicion that it was there?

A. It seems like at one time there was a partition in there, and, I believe, at that time, there was.

Q. You say most of the glass from the broken window was on the inside of the building?

A. Yes, sir.

Q. The back to that building, on the rear, faces the alley, is that right?

A. Yes.

Q. Was MR. Gideon intoxicated when you arrested him?

A. Yes, he was, he had been drinking quite a bit.

Q. Was he able to stand on his feet?

A. He could stand on his feet, but not too steady.

Q. If he attempted any locomotion, walking, or standing on his feet, was there evidence that he was under the influence of intoxicating beverages?

A. Yes.

Q. Did he talk coherently?

A. What?

Q. Did he talk coherently, intelligently?

A. Reasonably so, yes.

Q. Did he say he had broken into the Bay Harbor Pool Room?

A. No, he did not.

Q. Did he say he did not?

A. He said he didn't know anything about it.

Q. He didn't know anything about it?

A. That is exactly what he said, 'that he didn't know

anything about it.'

Q. Do you know how he got to Les Gilbert's Bar, the Bayshore Bar?

A. On a Taxi-Cab - he was supposed to have come to town that way, I don't know whether he got to the Bayshore Bar that way or not.

Q. Didn't you investigate it?

A. Yes.

Q. You talked with the cab driver didn't you?

A. Yes.

Q. Was that Preston Bray?

A. Who?

Q. Preston Bray - wasn't he the cab driver that brought Mr. Gideon to town?

A. Yes.

Q. What time was it when you saw Mr. Gideon at the Bayshore Bar?

A. Around ten, or ten-thirty, I believe.

Q. Was that in the morning or at night?

A. In the morning.

MR. TURNER:

That's all I have. You may inquire.

RE-DIRECT EXAMINATION

BY MR. HARRIS:

Q. This twenty-five dollars and twenty-eight cents (\$25.28) you found on Mr. Gideon, which was in quarters, nickels, dimes and a few pennies, was that all the money he had on him?

A. That's all.

Q. He had no bills?

A. I don't remember any.

MR. HARRIS:

That's all.

THE COURT:

Anything further for this witness, Mr. Turner?

MR. TURNER:

No, your Honor, we have nothing further for Mr. Pitts.

THE COURT:

You may step down, Mr. Pitts.

This witness then left the stand.

Preston Bray, called as a witness on behalf of the State, being first duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. State your name, please.

A. Preston Bray.

Q. Mr. Bray, how old are you?

A. Thirty-eight.

Q. Do you know Clarence Earl Gideon?

A. Yes, sir.

Q. Did you know him on the 3rd day of June, 1961?

A. Yes.

Q. Do you know where the Bay Harbor Pool Room was on June 3, 1961?

A. Yes, sir.

Q. Did you see Mr. Gideon there?

A. Not at the Pool Room, no, sir.

Q. Did you see him on that day?

A. Yes, sir.

Q. What is your vocation, Mr. Bray?

A. My 'what?'

Q. Your vocation - what do you do - how do you make a living?

A. I'm a cab driver.

Q. Were you a cab driver in June, 1961?

A. Yes.

Q. Where did you see Mr. Gideon on that day?

A. At the Telephone Booth, in Parker, at his instructions.

Q. Now how far is that Telephone Booth from Bay Harbor Pool Room?

A. About a half-block.

Q. Do you recall what part of the day you saw Mr. Gideon?

A. No, sir, I don't, it was in the morning part of the day.

Q. It was what?

A. In the morning is all I know.

Q. Do you know that it was before six o'clock in the morning?

A. No, sir, I don't know.

Q. You have no idea what time it was?

A. It was the early part of the morning, I know that.

Q. Was it daylight or dark?

A. Daylight.

Q. Did Mr. Gideon get in your cab there at the Telephone Booth?

A. Yes, sir.

Q. Where did you take Mr. Gideon to?

A. Town.

Q. You mean to Panama City proper?

A. That's right.

Q. And where did he get out of your cab?

A. Fourth and Harrison.

Q. Fourth and Harrison?

A. Yes, sir.

Q. When you picked Mr. Gideon up there in Bay Harbor, Mr. Bray, did you see anyone else there that you knew, on the street?

A. No, sir, I don't remember seeing anybody.

Q. Do you know Henry Cook?

A. Yes, sir, I know Henry Cook.

Q. Did you see him there?

A. No, sir.

Q. How about Irene Rhodes, did you see her?

A. I seen Irene Rhodes sitting on the porch at Prescott's Apartments.

Q. What was she doing?

A. Sitting in a chair, that's all I seen her doing.

Q. Did you see anybody else there that you knew?

A. No, sir, I didn't.

Q. Do you know Velva Estelle Morris?

A. Yes, sir, I know her.

Q. Did you see her there anywhere?

A. No, sir, I didn't.

Q. Mr. Gideon paid you your fare when you put him out did he?

A. Yes, sir.

Q. Do you recall how much he gave you, and what denomination it was?

A. Yes, sir - he gave me six quarters.

Q. He gave you six quarters?

A. Yes, sir.

MR. HARRIS:

You may inquire, Mr. Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Bray, did Mr. Gideon give you six, or seven, quarters?

A. He give me six, or seven - I believe it was six - I'm pretty sure it was six.

Q. Do you remember having a conversation with me recently?

A. Yes, sir.

Q. About this case?

A. Yes, sir.

Q. Do you remember me asking you how much he paid you and you said seven quarters?

A. Yes, sir, I did.

Q. Do you remember me advising you at that time that you

had previously said six quarters, and you said you were certain it was seven?

A. No, sir, I remember you telling me that I said it was half-dollars, not quarters, and I told you that if I said that I was mistaken, for it was quarters.

Q. You got six quarters now - is that your best recollection today?

A. Yes, sir.

Q. What was his condition as to sobriety?

A. As to 'what?'

Q. Was he drunk or sober?

A. He was sober.

Q. Could he walk allright?

A. Yes, sir, he walked allright.

Q. He told you where he wanted to go when he got in your cab, right?

A. He told me he wanted to go to town.

Q. And you brought him over to Fourth and Harrison?

A. When we got to Fourth and Harrison he says 'I'll get out here.'

Q. And you stopped and he got out?

A. That's right.

Q. Did he have any packages with him?

A. No, sir, he did not.

Q. Did he have any wine with him?

A. No, sir, he did not.

Q. Did he have any beer with him?

A. No, sir, he didn't.

Q. Did he have any Coca-Colas with him?

A. No, sir, he did not.

Q. Did his pockets bulge?

A. No, sir, they did not.

Q. Which way did he go when you let him out of the cab?

A. I didn't notice, to tell you the truth.

MR. TURNER:

That's all. You may inquire, Mr. Harris.

RE-DIRECT EXAMINATION

BY MR. HARRIS:

Q. Mr. Bray, you stated that his pockets didn't bulge, that he didn't have any beer, didn't have any Coca-Colas, he didn't have any wine. Now, are you saying that he did not have these things, or that you did not see them?

A. I answered the question like he asked me.

Q. He asked you if his pockets bulged.

A. His pockets didn't bulge.

Q. You know his pockets didn't bulge?

A. I know they didn't bulge.

Q. How do you know they didn't bulge?

A. Because he had on a regular sport coat and it hung on him just like it would on you, or anybody else, it was perfectly straight.

Q. He did have on a sport coat?

A. Yes, sir.

Q. How long have you known Mr. Gideon?

A. Several years.

Q. You couldn't see his pants pockets could you, you were referring to his coat pockets?

A. I couldn't see his pants pockets, no, sir.

MR. HARRIS:

That's all.

MR. TURNER:

I have nothing further.

THE COURT:

You may step down, Mr. Bray.

This witness then left the stand.

MR. HARRIS:

The State rests.

MR. TURNER:

May we have about ten minutes, your Honor?

THE COURT:

Yes. We will take a ten-minutes recess. Will that be enough time, ten minutes?

MR. TURNER:

I believe so, your Honor. Then, I have a Motion to make out of the hearing of the Jury.

THE COURT:

Would you like to make your Motion now?

MR. TURNER:

No, sir, not at this moment, please, I would like to 'get

my brain collected' before I make my Motion.

THE COURT:

Allright, let's take a ten-minutes recess.

Gentlemen of the Jury, we are going to take a ten-minutes recess; the same instructions I have heretofore given you are still in effect.

The Court will be at ease.

At the end of the ten-minutes recess:

Court called to Order.

Judge McCrary on the Bench.

The Jury in the Jury Box.

Counsel for the State and the Defendant and his Counsel all seated at the Counsel Table.

THE COURT:

Do you Gentlemen concede the presence of the Jury?

MR. ADAMS:

The State does, your Honor.

MR. TURNER:

The Defendant does, your Honor.

THE COURT:

You may proceed.

MR. TURNER:

I am ready to present my Motion now, if the Court please.

THE COURT:

Take the Jury out, Mr. Sheriff.

At this point the Jury retired from the Court Room.

THE COURT:

You may proceed, Mr. Turner.

MR. TURNER:

The Defendant now moves the Court to direct a verdict of not guilty in his favor, on the following grounds:

The State, in this case, is relying upon Circumstantial evidence to prove its charge of breaking and entering with intent to commit a misdemeanor.

If I understand the law correctly, the rule of law to be applied to such cases is that the circumstances, taken as a whole must be of a conclusive nature, showing, on the whole, that the Defendant and no other person committed the crime.

The circumstances relied upon by the State are:

1. The witness, Cook, testified that he saw the Defendant inside the building, but the witness testified that he wasn't doing anything anything when he saw him.

2. The witness, Cook, testified he saw this Defendant leave the building through a back door.

3. The witness, Cook, testified that he saw his pockets bulged, when he called a cab.

4. The witness, Cook, testified he saw him with a bottle of wine.

By the testimony of the Arresting Officer the Defendant was apprehended with twenty-five dollars and twenty-eight cents (\$25.28) in pennies and other coins on his person; that the music box and the Cigarette Machine had been rifled.

Now, it's a rule of law that the circumstances must be

conclusive. Am I correct to say - - - I wouldn't want to misstate it - - - If circumstances on the whole must be of a conclusive nature, pointing to the unerring guilt of this Defendant and no other person, then, I think the State has failed to prove its charge.

Now, they have got some strong suspicions here, but I submit to the Court that that building could have been broken into before. But assuming the evidence produced here by the State is true, the most it shows is that the Defendant was inside that building, that his pockets bulged, and he had some change in his pockets when he was arrested, after he was seen in the place where the machines had been broken into and rifled.

The evidence further shows that the machines were supposed to have yielded a total of fifty-five dollars (\$55.00) in cash, four-fifths of wine, twelve cans of beer and twelve bottles of Coca-Cola.

Now, taking the evidence at its worst, it shows the Defendant inside the building, doing nothing. The only evidence the State has, and this is responsible, good testimony, given by the Arresting Officer, the man who apprehended the Defendant, testified that when he arrested him he had on his person twenty-five dollars and twenty-eight cents (\$25.28), in silver, no bills, just quarters, nickels, dimes and a few pennies.

Conversant with the rule that a person found in possession of recently stolen goods can be convicted of the theft, but the goods have to be identified, and of course, there is no serial number on coins, so how can it be said that these coins found

found on the Defendant at the time of his arrest point unerringly to the guilt of his taking the money out of those machines.

At this stage of the game, there is an open question, and the circumstances on the whole do not prove conclusively, nor are they of a conclusive nature, that this Defendant, and no other person, committed this crime, and the State has failed to make out its charge, and I am respectfully urging the Court to direct a verdict of not guilty in favor of the Defendant.

THE COURT:

The Motion will be denied.

Bring the Jury back, Mr. Sheriff.

At this point the Jury returned to the Court Room and resumed their places in the Jury Box.

THE COURT:

The Jury is in the Box, Gentlemen, you may proceed.

MR. TURNER:

Call Mr. Henderson, Sheriff.

At this point the Defendant, to sustain his plea of not guilty to the charge contained in the Information on file in this case, offered the following testimony.

J. D. Henderson, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. TURNER:

Q. State your name and where you live, please, sir.

A. J. D. Henderson, I live at 3810 Baldwin Road, Hiland City, or Hiland Park, it's call^{ed} either one.

Q. Mr. Henderson, do you operate any business?

A. I operate Henderson's Grocery & Market, at 109 Craft Avenue, in Bay Harbor.

Q. Both of those places are in Bay County, Florida, are they not, Mr. Henderson?

A. Oh, yes, they are.

Q. Will you, for the benefit of this Jury, Mr. Henderson, tell them where that place is located in relation to the Bay Harbor Pool Room?

A. Well, 'Sirs,' First Court and Craft Avenue come to a point approximately one hundred feet from Everett Avenue, which is the street on which the Pool Room is located, approximately one-half block down, if it was diagonally across from it, I would say three hundred feet, approximately.

Q. Is there an alley between Everett Avenue and your place of business?

A. Yes, sir, there is, it should be Olive Avenue, but I believe they have closed it up.

Q. That alley would run in a generally North-South direction, is that right?

A. Paralel - North and South - it should be right in front of my store and right back of the Bay Harbor Pool Room.

Q. It goes on down back of the Pool Room?

A. Yes, sir.

Q. How far back?

A. It goes on over to Cherry Street, and that's a dead end, International Paper Company's property is beyond that.

Q. Now, Mr. Henderson, did you operate that business, in that same location, in June of 1961?

A. Yes, sir, I have been there five years, going on six years.

Q. Do you have a Public Telephone Booth outside your building there at your place?

A. Yes, sir.

Q. Do you know Henry Cook?

A. Yes, sir, I know him.

Q. Did you know him in the year 1961, in June, 1961, to be specific?

A. Yes, sir.

Q. Do you know Clarence Earl Gideon?

A. Yes, sir, I know Mr. Gideon, too.

Q. Did you know him in June of 1961?

A. Yes, sir, I did.

Q. Did you have occasion to see either one of those men on the morning of June 3, 1961?

A. I saw Henry Cook, at approximately, or between eight and nine o'clock.

Q. Is that the morning that it is said the Bay Harbor Pool Room had been broken into?

A. Yes, sir, that was the talk at that time, I didn't know anything about it, but I was told that it was broken into.

Q. Did you see Mr. Cook, Mr. Henry Cook, that morning?

A. I did see him that morning, yes, sir.

Q. Where did you see him?

A. He came into my place of business, my store, between eight and nine o'clock that morning, at that time he was trading some.

Q. How far did he live from your store?

A. Approximately four blocks - three blocks down, and one over, on East Avenue - yes, approximately four blocks, that is West three blocks and one block South from my store.

Q. Did you have any conversation that morning with him about the alleged breaking and entering of the Bay Harbor Pool Room?

A. Well, he had one with me.

Q. Just tell the Jury what he said to you.

A. He said that someone had broke in that bar, the Bay Harbor Bar, and he thought he knew who it was, and I says 'well, why don't you tell the law,' and he said the law had picked him up for questioning.

Q. The law had picked who up?

A. Henry Cook. Now, that's the story he told me, that the law had picked him up for questioning, and I says 'what did you tell them,' and he says 'I told them I went to Apalachicola, or some place down there, to an all-night dance' and two boys brought him back and dropped him off at Riley Hill's Store.

Q. Will you explain to the Jury where Riley Hill's Store is?

A. Riley Hill's Store is directly across from the Bay Harbor Pool Room, 'oblong, like,' it would be East-Southeast, about fifty to seventy-five feet - there's an old Service Station, it's abandoned now, down on the corner of Cherry Street and Everett Avenue, right by Johnnie Ward's Barber Shop, he said they dropped him there at five o'clock, or approximately that, in the morning, and he walked by the Pool Room and he said he thought he knew who was in there, and I says 'who was it,' and he says 'I'm not sure who it was,' and I says 'well, I wouldn't talk too much about it if I wasn't sure who it was, unless I knew what I was saying I'd just keep quiet.'

Q. Was this after he had seen the Officers and talked to them?

A. He said he had seen the Officers, I don't know whether he had or not, that was somewhere around eight or nine o'clock - it could have been eight, eight-thirty, or nine, I didn't check the time then, I really didn't think much about it at the time.

Q. Allright, that's close enough - what else did he say?

A. He said 'it looked like,' those were his words, 'it looked like Mr. Gideon,' he said 'to his opinion, it looked like him,' I says 'what was he doing,' he said he didn't know. I was kinder busy, as I usually am on Sunday morning, and the conversation just kinder 'wondered off,' there were other people in the store and I just kinder ignored him at the time, because I had no interest in it whatsoever so I let it drop.

MR. TURNER:

You may inquire, Mr. Adams.

CROSS EXAMINATION

BY MR. HARRIS:

Q. Was anyone else present when that conversation was had between you and Mr. Cook?

A. Yes, sir, there quite a few people present, I have tried to remember, Mr. Harris, some of the people who were there at the time, but I'm so busy there on Sunday morning, that is the only store in that neighborhood open on Sunday morning and lots of people come in as soon as it's opened, and they just keep coming in, for that reason it's hard to carry on a conversation and wait on customers, and a bunch of people standing around drinking cold drinks, they were not in the conversation, no, they were not, but they were present in the store when we had the conversation.

Q. This conversation took place on Sunday morning?

A. Yes, sir.

Q. Do you remember what the date of the month was?

A. No, sir, I don't ^{know} what the date was, I know it was the morning after the robbery, because they were all talking about it there afterward. My store, Mr. Harris, is just a 'gathering place' for people on Sunday morning from all around that community, I know everybody in the community, I've been there a long time and just about everyone in that community trades with me; and, too, I have been working at the mill for thirteen years and they all know me.

Q. But you can't remember the names of any of these people you've known all these years that were in the store there while this conversation between you and Mr. Cook was going on?

A. No, sir; because, as I said before, I took no particular interest in it at the time. I told him if he thought he knew that he should notify the Police.

Q. You took no particular interest in the conversation or the robbery?

A. In what he was saying. I didn't bring up the conversation with him, he brought it up with me.

Q. How long have you known Mr. Gideon?

A. About three and one-half or four years, I've been seeing him around the store, he traded with me a lot and was in and out of the store all along, practically every day and sometimes several times a day.

Q. Now, have you ever had any trouble with Henry Cook?

A. No, sir, not in particular.

Q. Has he paid you for the groceries he got from you?

A. Are you interested in whether he paid me or are you just asking?

Q. I'm interested, I want to know.

A. Well, he owes me a grocery bill now, but he did pay for a while. I think the bill now pending is forty-nine dollars and 'something,' I'm fixing to turn it over to the Small Claims Court.

Q. How long has he been owing you that bill?

A. Approximately a year. He traded with me all the time,

and paid me good up until about a year ago.

Q. Now who was the first person you told about this conversation you had with Mr. Cook?

A. I have no way of telling, Mr. Harris, it was discussed and talked about frequently, especially when it first happened, I would have no way of knowing who was the first person I discussed it with.

Q. When was the first time you discussed it with Mr. Turner?

A. One day last week - Mr. Turner came over to the store and asked me if I knew anything about it and I told him exactly what I told you.

Q. Have you ever discussed it with Mr. Gideon?

A. No, sir, I have never talked to Mr. Gideon about it whatsoever.

Q. You knew that Mr. Gideon was placed under arrest for this charge?

A. I did later in the day, I heard it, but I did not know it at that time.

Q. Did you ever go and volunteer any information to the Police Department, or anyone else?

A. I did not, Mr. Cook told me that he gave the Police that information, picked him up for questioning, that was his story that he told me. I do not volunteer information unless I know definitely what I am talking about, I'm not going to voluntarily cause anyone trouble, unless I definitely know what I'm talking about and I know it's something that needs my information to assist in setting something right that needs attention.

Q. Now, are you telling this Jury today that you have used the exact words of Mr. Cook?

A. Those are his exact words, those are the words he used in the conversation, and he was doing the talking, mostly; as I said before, I did not encourage the conversation, I never brought up the subject, he told me, and I mostly listened at him talk.

Q. Then, you are telling this Jury that these are the exact words that Mr. Cook told you?

A. 'Word for word,' 'that he thought he knew who it was in there,' and I said to him 'if you are positive why don't you go to the Police,' he said the Police had already picked him up and questioned him.

Q. Picked who up and questioned him?

A. Henry Cook.

Q. They had picked up Henry Cook, or had picked up Clarence Earl Gideon?

A. Henry Cook; he told me they had picked him up and questioned him in the matter.

Q. How many people were in your store that morning, Mr. Henderson?

A. I don't know exactly who was in there, Mr. Harris, there were three or four, or more, people in there at the time and it's pretty hard to remember these little details in something that was just merely routine, 'every-day' occurrences, just people in the store making purchases and you're not in conversation with them, more than to serve them.

Q. Were you waiting on customers at the same time you were talking to Henry Cook?

A. Yes, sir, I was, but Henry was talking to me, specifically to me; you see, Mr. Harris, I have a small counter, and I stand right behind it, the Cash Register sets right there, and Henry was leaning on the Cash Register talking to me, he placed himself there where he could talk to me.

Q. Do you do a lot of 'charge business' there?

A. Quite a bit.

Q. Some of those customers who were in the store at the same time Henry Cook was in there, were they 'charge customers?'

A. No, sir, I don't believe so - it's very seldom I sell much 'stuff on credit on Sunday, the 'charge customers' usually get their groceries on Friday and Saturday, when they pay me for what they've bought the week before, some of them get their week's supply on Thursday.

Q. Well, now you can't remember the names of any of these other people that were in there, can you remember whether they were men, women, both, or what?

A. There could have been both men and women, and perhaps children, too, we have a lot of children that come in the store.

Q. In fact, Mr. Henderson, they call that "Incubator Avenue" I believe.

A. That would be a good name for that street, there's so many children on it, and they're 'in and out' there all day long every day.

MR. HARRIS:

That's all.

RE-DIRECT EXAMINATION

BY MR. TURNER:

Q. You are here today under Subpoena aren't you, Mr. Henderson?

A. I am, yes, sir.

Q. You didn't just voluntarily come in here to testify did you?

A. No, sir, I did not, I came on a "Special Invitation of the Court," I assure you.

MR. TURNER:

That's all.

You may come down, Mr. Henderson.

This witness then left the stand.

Clarence Earl Gideon, the Defendant, called as a witness on his own behalf, being first duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. TURNER:

Q. You are Clarence Earl Gideon?

A. Yes, sir.

Q. Mr. Gideon, I'm going to ask you to keep your voice up so that you can be heard by every member of this Jury, if Mr. Hallman, the Gentleman down here on the end of this Jury Panel, holds his hand up you will know he is not hearing you and you speak louder. Will you do that?

A. Yes, sir.

Q. Mr. Gideon, on June 3, 1961, did you break and enter the Bay Harbor Pool Room?

A. No, sir.

Q. On that morning what were you doing, where were you living, on that morning, June 3, 1961?

A. I lived in the Bay Harbor Hotel.

Q. And where is that in relation to the Bay Harbor Pool Room?

A. Directly across the street from it.

Q. Did you leave the hotel that morning?

A. Yes, sir.

Q. Approximately what time did you leave?

A. It was early in the morning, it was before seven o'clock.

Q. Did you look at the time as you went out?

A. No, sir, I didn't.

Q. Where did you go?

A. I went across the street, into the alley, went through the alley down to Henderson's Store, to use the Telephone down there.

Q. Who did you call?

A. I called me a cab.

Q. What cab came to you?

A. I called Preston Bray, because he's a friend of mine.

Q. Where did you go to on the cab?

A. I had him take me to town.

Q. Where did you go to 'over town?'

A. Well, primarily, I went to the Trade Winds, to get a bottle of beer.

Q. Trade Wind?

A. Yes.

Q. What condition were you in as to sobriety, were you drinking, or drunk, or sober?

A. I had been drinking lots, but I wasn't drunk.

Q. You were 'just drinking?'

A. Yes, sir.

Q. What was the purpose of coming over town?

A. To get me 'another drink.'

Q. Now, did you have any money on your person at that time?

A. Yes, sir, I had quite a bit of money.

Q. Where did you get the money from?

A. Well, I worked when I could, I gambled when I could.

Q. What type of gambling did you engage in?

A. Around there, around the Pool Hall and places like that, I played Rummy.

Q. Gin Rummy?

A. No, just straight Rummy.

Q. Do you have any explanation of the change in your pocket?

A. I had lots of change - I always carried lots of change.

Q. For these gambling games you engaged in?

A. Yes, sir. In a poker game you've 'gotta' have change.

Q. Have you ever gambled with Henry Cook?

A. Yes, sir. At one time I run a game in this Pool Hall -

I have gambled with all these boys.

Q. What about Mr. Strickland, did you ever gamble with him?

A. I have gambled with him, yes, sir.

Q. What about Mr. Widincamp, the owner of the place?

A. I used to run a game for him, too, but it was in another house, not in that place.

Q. Did you have anything about your person that morning, except your money, when you went over town?

A. That's all I had, just money, I didn't have nothing else, I had no drink, I went to town to get a drink.

Q. Did you have any beer, wine or whiskey about your person?

A. No, sir. I don't drink wine, if I had a bottle of wine I throwed it away.

Q. Did you take any wine, beer or Coca-Colas out of the Bay Harbor Pool Room on that morning?

A. No, I didn't.

Q. How long have you known Henry Cook?

A. I've known him - 'knowed of him' and known him personally ever since I've been in this town, I guess.

Q. How long have you been here in Bay County?

A. I imagine five years now, counting from the time when I first came here.

Q. Did you see Irene Rhodes on this morning of June 3rd, 1961, when it is said Bay Harbor Pool Room was broken into?

A. Yes, sir, she was sitting on the porch at the hotel, I always waved at her when I went by her.

Q. Where did you stay between the Telephone call and the

cab's arrival?

A. I stayed right there at the Telephone Booth.

Q. All the time?

A. Yes, sir, I stood right there and waited, after I made the call, until the cab got there, I told him where to pick me up, and he come right on in just a few minutes, I didn't have to wait long, Preston was on the cab stand and he come right down and got me.

Q. During the time you were in town, from the time you left here, left the Telephone Booth and come to town, until the time when you were arrested what did you purchase?

A. I didn't purchase nothing but something to drink.

Q. Well, that's what I'm talking about. How much did you purchase to drink?

A. Well, I don't know exactly, I probably drank four or five beers, and I bought a half-pint of Vodka.

Q. Where did you get the half-pint of Vodka ?

A. At the Bay Shore Bar.

Q. Now, that's just diagonally across the street from the Trade Winds is it not?

A. Yes, sir.

Q. What do you say to this charge that you broke and entered the Pool Hall?

A. I didn't understand you.

Q. What do you say to this charge that you broke and entered the Bay Harbor Pool Room on June 3, 1961?

A. I'm not guilty of it, I know nothing about it.

MR. TURNER:

You may inquire, Mr. Harris.

CROSS EXAMINATION

BY MR. HARRIS:

Q. You say you left your hotel that morning before seven o'clock?

A. Yes, sir.

Q. Do you know what time Mr. Henderson opened his grocery store?

A. I don't know the exact time he opens his store, he wasn't open that morning, I know that.

Q. His store was not open when you left there in that cab?

A. No, sir, it wasn't.

Q. You said you called Preston Bray?

A. Yes, sir.

Q. You talked to Preston Bray himself when you called the cab?

A. I did, yes. That's the cab service I always used, there's only two cabs up there.

Q. Where were you working at this time?

A. Where was I working?

Q. Yes. Where were you employed on June 3, 1961?

A. I wasn't employed no place.

Q. When was the last time you were employed prior to June 3, 1961?

A. About a month before that I worked for The Delta Construction Company, in Baton Rouge, Louisiana.

Q. Did you do that work here?

A. No, sir, it was on a Drag Line, "Spud Barge."

Q. Where were you working for them?

A. In Louisiana.

Q. How long did you work for them out there?

A. When I was forced out of the hospital over there, I went to work and worked three months over there for them, then the Health Department found out I was working for them over there and put a complaint in against me and got me fired off the job, because I was a cook on there.

Q. The Health Department?

A. Yes.

Q. Then, you worked for this outfit three months?

A. I worked for them three months, yes, sir.

Q. When did you go to work for them?

A. I went to work the latter part of August, or the first part of September.

Q. In 1960?

A. Yes, sir.

Q. And you worked for them three months, and was out of work for one month before you come over here to this hotel?

A. I was not out of work all the time.

Q. Did you work all the time?

A. No, I didn't work all the time, I worked at odd jobs around this town.

Q. Didn't you just tell me, Mr. Gideon, that the last job you had was with a construction company, in Louisiana?

A. The last regular job I had was there, yes.

Q. And when I asked you when was the last time you worked prior to this date June 3rd and you told me a month, didn't you?

A. The last actual work I done I painted the Bay Harbor Hotel there, inside.

Q. When did you do that?

A. I done it at various times, 'off-and-on.'

Q. You mean you painted the whole hotel at various times?

A. The biggest part of it, yes.

Q. How many times did you paint it?

A. How many times did I paint it?

Q. Yes.

A. I only painted it once, and I didn't paint the complete building, either.

Q. That building is owned by Mrs. Morris?

A. I think she owns it, yes.

Q. You worked for her, then?

A. Yes.

Q. And you painted it one time?

A. I didn't say I painted it one time, I said I worked in there; I painted all the rooms upstairs and part of the downstairs.

Q. When did you do that?

A. 'Off-and-on' for a month or two.

Q. Well, did you do that during, or just before this robbery there in the Bay Harbor Pool Room?

A. No - just before the robbery of the Bay Harbor Pool Room

I was arrested on a complaint up here, I was arrested in my bed up there, and charged with vagrancy, and held for investigation for robbing the Bay Harbor Bar, directly across the street from there, and I was held up there for eighteen days at that time.

Q. "OK," Mr. Gideon. You were not employed on June 3, 1961?

A. I was not employed - I was gambling.

Q. I beg your pardon.

A. I was gambling.

Q. Gambling?

A. Yes, sir - actually, I did work for Mr. Strickland - I run a Poker game in the Bay Harbor Pool Hall and that's the reason we were at fault.

Q. Were you doing that on June 3, 1961?

A. No, I wasn't doing that on June 3rd.

Q. When was the last time you had a game in the Pool Room?

A. The last time I had a game in there, I think, was the Saturday before they had this 'big shake-up' in this town.

Q. 'Big shake-up?'

a A. Yes.

Q. What 'big shake-up?'

A. When the State Beverage Department come in here and arrested forty-two people, something like that.

Q. What did Mr. Strickland pay you for the game, running the gambling game?

A. What did he pay me?

A. Yes.

A. Whatever we made, we 'split it.'

Q. How do you make money out of that game?

A. How did we make money?

Q. "Uh-hu," how did you make any money?

A. By gambling.

Q. Were you gambling against everybody else, whose money did you 'split' with Mr. Strickland?

A. Whatever we won.

Q. Who won?

A. Me.

Q. You?

A. Yes, me.

Q. Whatever you won?

A. Yes.

Q. Suppose you lost money, what happened then?

A. I just lost money, then.

Q. Mr. Gideon, tell me when was the last time you had a job prior to June 3, 1961?

A. The last time I had anything that was akin to a regular job was in January, when I was out at Tyndall Field with an Air Force Sergeant by the name of Strickland when they were building a club out there, he put me to work out there, he was in Private Service out there for the Service Men, and I was arrested on investigation.

Q. Now, when was this?

A. In January.

Q. And when did you work for him?

A. I didn't actually work, he was going to put me to work,

they was building a club out there, and he had already hired me to go to work as soon as the club was completed, and just before it was completed I was arrested for investigation and held up for eighteen days, and shortly after that, then, I was arrested and charged with this breaking and entering at the Bay Harbor Pool Room - I don't have to tell you, I'm sure, Mr. Harris, where I have been since that time, since you were the one who put me where I've been all this time.

Q. Allright, Mr. Gideon, when was the last time, prior to June 3, 1961, that you had a regular job that you were paid for your employment?

A. Sometime in January, 1960.

Q. Where?

A. Delta Construction Company, Baton Rouge, Louisiana.

Q. That was in January, 1960? I thought you said that was in August.

A. I told you I went to work the latter part of August, or the first part of September, 1960, and I worked until December, or January, and I was 'let out' on account of my health, I won't say definitely whether it was January or December, but I think it was January, and my reason for thinking that is because I came back here shortly after that and I came back here in January, I'm pretty sure of that.

Q. Were you involved in a Poker game on the night of June 2, 1961?

A. No - the last Poker game I was in before that was on the Sunday before, out at Southport.

Q. That was a week before then?

A. I don't think it was a week.

Q. Do you remember the day of the week the Bay Harbor Pool Room was broken into?

A. I certainly do.

Q. What day was that?

A. Saturday morning.

Q. Saturday morning?

A. Yes, sir.

Q. Saturday morning or Saturday night?

A. Saturday morning, according to all the testimony.

Q. And it's your testimony that you had not been involved in any kind of gambling for some five days before that, since Sunday?

A. I played Rummy all the time, any kind.

Q. Had you played Rummy, then, that night?

A. No, not on that night, I was too busy drinking.

Q. You mean the night before?

A. Yes.

Q. Were you drunk?

A. No, I wasn't drunk, but I was too busy drinking to play Rummy, I know I didn't play no Rummy that night.

Q. How much money did you have on you when you were arrested?

A. How much money did I have?

Q. Yes, sir.

A. The man said I had twenty-five dollars (\$25.00).

Q. Was all the money you had on you in coins?

A. That's what he said.

Q. Well, is that true?

A. I suppose it was true, he was under oath when he said it.

Q. Why do you, or why did you, carry so much money in coins?

A. How's that, now?

Q. Why were you carrying twenty-five dollars (\$25.00) in coins?

A. I make a practice of carrying change.

Q. Twenty-five dollars (\$25.00) worth?

A. I've had as high as a hundred dollars (\$100.00) worth.

Q. Change?

A. Yes, sir, change.

Q. Carry it around in your pocket?

A. Have you ever run a Poker game?

MR. TURNER:

Don't argue with Counsel, Mr. Gideon, just answer his questions.

BY MR. HARRIS:

Q. And you walk around with a hundred dollars in change in your pockets?

A. I've had as high as six hundred dollars (\$600.00) in change.

Q. In your pocket?

A. Not in my pocket, no.

Q. But you have had a hundred dollars worth of it in your pocket?

A. I have had a hundred dollars in change in my pocket, yes.

Q. And carry it around for a couple of days at the time?

A. Yes, sir; I sure wouldn't leave it in a sleeping room in the Bay Harbor Hotel.

Q. Mr. Gideon, have you ever been convicted, or plead guilty to a felony?

A. Yes, sir.

Q. How many times?

A. Five times, counting this one.

Q. Mr. Gideon, when Mr. Bray picked you up in Bay Harbor and drove you to Panama City did you make any statement to him in regards to yourself?

A. I don't know that I understand your question, Mr. Harris, would you mind repeating the question, please, sir?

Q. Listen closely, now, Mr. Gideon, this is what I said: 'When Mr. Bray picked you up in Bay Harbor and drove you to Panama City, did you make any statement to him in regards to yourself?'

A. I don't remember making any statement to him at all.

Q. Allright, let me ask you this: Did you tell Mr. Bray this, 'if anybody asks you if you have seen me, tell them that you haven't seen me.?''

A. No, I don't remember making any statement like that.

Q. Do you deny that you told him that?

A. Yes, I deny it.

Q. Now, did I understand you to say you purchased you a half-pint of Vodka at the Bay Shore Bar?

A. I was drinking it when the man arrested me.

Q. In the Bay Shore Bar?

A. Yes, sir.

Q. Mr. Gideon, this Rooming House, where you stayed, is directly across the street from the Bay Harbor Bar?

A. It's almost directly across the street from the Bay Harbor Bar, yes; it's a little "Catty-cornered," but not much, it's almost straight across the street.

Q. Now, Henderson's Grocery, just where is it located from the Bay Harbor Hotel where you stayed?

A. Well, you can come out of the Bay Harbor Hotel and go directly across the street, to the right of the Bay Harbor Bar, right straight through that path-way there, the alley, go down the alley to the end and there's Henderson's Store, you're at Henderson's Store, across the alley there.

Q. You can also go to Henderson's Store by coming out of the Bay Harbor Bar and walking down the street to the corner, turn right and go directly to Henderson's Store, can't you?

A. I always went the other way, on account of it's better walking that way.

Q. Better walking?

A. Yes.

Q. In what respect?

A. You've got a bad sidewalk ~~and~~ ditch the other way.

Q. You've got a bad sidewalk and ditches?

A. Yes.

Q. Are you referring to that paved street where you turn to the right?

A. Yes, sir. There's a drop-off on the sidewalk there.

Q. That street is the one that goes in to the paper mill?

A. Everette Avenue, yes, sir.

Q. It's paved isn't it?

A. It's black-topped, paved, or some other sort of hard surfacing, I don't know just what it is.

Q. This alley you referred to, is it paved?

A. No, it's not paved.

Q. How much did Mrs. Morris pay you for painting all the rooms upstairs in the hotel?

A. She took it out in rent.

Q. Well, if she took it out in rent, how much rent did she take out?

A. I guess approximately six months, about that.

Q. Six months rent, approximately?

A. Yes, sir.

Q. Approximately six months, or six months?

A. Six months - about six months.

Q. How much was your rent per month?

A. It was not very much.

Q. How much is 'not very much,' Mr. Gideon?

A. It would run twenty-four to twenty-five dollars a month, something like that.

Q. Now, did it run twenty-four dollars, twenty-five dollars, or just how many dollars?

A. It was six dollars (\$6.00) a week, and it depended on how the month come in, how many days in the month, etc., all

months didn't run the same, some months it was more and some months less than twenty-four dollars.

Q. Some months less than twenty-four dollars, is that what you said?

A. I meant twenty-five dollars, less than twenty-five, it was always twenty-four dollars, four weeks, at six dollars a week.

Q. Did you paint any part of the hotel other than upstairs?

A. Yes, sir, I painted part of the downstairs.

Q. You painted part of the downstairs?

A. Yes, sir.

Q. Alright, how much did she pay you for that?

A. I just told you what she paid me, Mr. Harris.

Q. Well, then, for all the painting you did at the hotel you had six months rent paid?

A. Approximately.

Q. At six dollars per week?

A. Yes, sir.

Q. Didn't you also tell me that you run a game for Mr. Widincamp when he had the Pool Room, the Bay Harbor Pool Room?

A. I did - but I didn't run it in the Pool Room, I run it down there in one of his houses.

Q. Did you ever work for Mr. Pittman, other than running this game you referred to?

A. Mr. Pittman?

Q. Mr. Strickland, that's what I intended to say.

A. Mr. Strickland - that's all the work I ever did for him.

Q. That's the only work you ever did for Mr. Strickland?

A. That's right.

Q. Had you earned any money, anywhere, Mr. Gideon, in the month prior to June 3, 1961, at anything other than gambling?

A. I don't know, I can't say positively about any dates.

Q. Why can't you say about any specific dates?

A. Well, there's not too many dates that have any significance to make me remember.

Q. Well, can you name me one specific date that is significant enough in your mind and memory for you to remember?

A. New Year's night, 1961.

Q. What is so significant about that night?

A. I went to the N. C. O. Club and won \$160.00. I remember that night.

Q. Well, for the month of May, through June 3, 1961, did you earn any money other than gambling?

A. They had me in jail up here, I think, the biggest part of that month.

Q. They had you in jail in May, 1961?

A. I think so, it was somewhere along in there.

Q. You don't know when you were in jail?

A. I don't recall the dates, no, sir.

Q. Do you know when you got out of jail prior to June 3, 1961?

A. Not the date I got out, no, sir, it wasn't too many days before they locked me up again and charged me with this crime, which I knew nothing about, and I still don't know

why they charged me with that breaking and entering when I knew absolutely nothing about it.

Q. You didn't know anything at all about it, eh?

A. I sure didn't.

MR. HARRIS:

That's all.

MR. TURNER:

The Defendant rests, your Honor.

You may come down, Mr. Gideon.

This witness then left the stand.

MR. HARRIS:

The State has a short rebuttal, if the Court please.

THE COURT:

Allright, you may proceed.

Preston Bray, re-called as a witness on behalf of the State, having been duly sworn by the Clerk of this Court, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. You are the same Preston Bray who testified in this case earlier today?

A. Yes, sir, I am.

Q. Mr. Bray, on the morning of June 3, 1961, when Clarence Earl Gideon called you to go to Bay Harbor and pick him and bring him to Panama City, did he make any statement to you?

A. Yes, sir, he did.

Q. What did he say to you?

A. He said 'if anyone asks you where you let me off at, you don't know, you haven't seen me.'

Q. 'If anyone asks you where you let me off, you don't know, you haven't seen me?'

A. That's right, that's what he said.

Q. Did he say anything further to you in that regard?

A. No, sir.

MR. HARRIS:

That's all. You may inquire, Mr. Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q. Mr. Bray, had you ridden Mr. Gideon to Panama City before that morning?

A. Not that morning, no, sir.

Q. What I mean is, had you carried him to Panama City numerous times before that date, not before, on that same morning?

A. Oh, yes, sir, I had carried him to town many times.

Q. Had he ever made that same statement to you at other times when you let him out of your cab?

A. Yes, sir.

Q. He had told you that same thing before?

A. Yes, he had.

Q. Do you know why?

A. I don't know exactly, in fact, I don't know, but I figured it was on account of his wife, they had had lots of

trouble, and they were separated at that time.

MR. TURNER:

That's all.

RE-DIRECT EXAMINATION

BY MR. HARRIS:

Q. But you do know that he told you that on that morning?

A. Yes, sir.

MR. HARRIS:

That's all.

THE COURT:

Anything further from either side?

MR. TURNER:

The Defendant has nothing further, your Honor.

MR. HARRIS:

Nothing further for the State.

The State rests.

MR. TURNER:

Your Honor, we renew our Motion - the State has announced they have closed - we renew the Motion made by the Defendant at the end of the State's case.

THE COURT:

On the same grounds?

MR. TURNER:

Yes, sir.

THE COURT:

The Motion will be denied.

THE COURT:

There has been some discussion, 'off-the-record,' about Special Charges. Does either the State or Defendant have any Special Charges they would like to discuss?

MR. TURNER:

Yes, sir, the Defendant has some. Are you going to adjourn to Chambers to discuss those?

THE COURT:

Yes, I had planned to, if you had something to wanted to discuss.

MR. TURNER:

Well, we have some Special Charges we would like to discuss.

THE COURT:

Gentlemen of the Jury, we are going to adjourn to Chambers to discuss the Special Charges in this case, at this time. It probably will take us about fifteen or twenty minutes, you may walk around here in the Court Room, or even go downstairs if you like, but the same instructions I have given you in the past are still in effect, you don't have to stay together, but just don't let anybody talk to you about this case and don't discuss it among yourselves until you hear the Charge of the Court.

The Court will stand recessed for fifteen minutes.

At this point his Honor, Judge McCrary, Counsel for the State, the Defendant and his Counsel, and the Court Reporter retired to Chambers to discuss the Special Charges to the Jury requested by the Defendant.

At the end of the fifteen minutes recess:

Court called to Order.

Judge McCrary on the Bench.

The Jury in the Jury Box.

Counsel for the State, the Defendant and his Counsel, all seated at the Counsel Table.

THE COURT:

Do you Gentlemen concede the presence of the Jury?

MR. ADAMS:

The State does, your Honor.

MR. TURNER:

The Defendant does, your Honor.

THE COURT:

Allright, you may proceed.

At this point the case was argued to the Jury.

Argument opened by Mr. Griffith.

Followed by Mr. Turner.

Closed by Mr. Harris.

After which came:

THE CHARGE OF THE COURT

Gentlemen of the Jury, I want you to consider the importance of your function as Jurors in this case, you are the sole judges of the facts and your decision on these facts is final, thus your position is of grave importance in the proper function of the Court in the administration of justice; your primary desire must be to reach a fair and just conclusion only from facts and circumstances in evidence. A consideration of facts and circumstances in evidence excludes sympathy or prejudice in reaching a conclusion, it includes, however, careful application by you of all the law contained in these instructions; thus, it would be your duty to consider these instructions after you retire and use them as a guide in your deliberations. Let your judgment reflect a deliberate judgment, free from any influence, other than the law and all the facts and circumstances in evidence.

You, Gentlemen of the Jury, are the sole judges of the credibility of the witnesses and the weight to be given their testimony. In determining the weight the testimony of a witness is entitled to receive you should take into consideration their interest in the results of this case, if any, their conduct and demeanor while testifying, their apparent fairness, or bias, or relationship to the parties, if any such appears, their opportunity for/seeing or knowing the things about which they have testified, their ability to remember and relate accurately the occurrences referred to in their testimony, the extent to which they are

corroborated, if at all, by circumstances of the testimony of credible witnesses, the reasonableness or unreasonableness of their statements and ^{all} other evidence, facts and circumstances proved tending to corroborate, or contradict, such witnesses insofar as there may be any conflict in the evidence, it is your duty to reconcile those conflicts if you can, if you cannot, then, you are to determine which is true and which is untrue and give such weight to the testimony of any witness as in your judgment you should ~~use~~ under all the circumstances in the case, because it is your duty to say who is and who is not speaking the truth in this case, and base your verdict solely upon that testimony that you believe to be true.

Now, the Defendant in this case, as in every criminal case, is presumed to ^{be} innocent of any offense until the State has by competent evidence shown his guilt to the exclusion of and beyond a reasonable doubt; before this presumption of innocence leaves the Defendant every material allegation of the Information must be proven by the evidence to the exclusion of and beyond a reasonable doubt, and this presumption of innocence accompanies and abides with the Defendant as to each and every material allegation contained in the Information through each stage of this trial until it has been so met and overcome by the evidence to the exclusion of and beyond a reasonable doubt. The burden of such proof is on the State of Florida and it is to the evidence introduced upon the trial, and to it alone, that you are to look for such proof; if any one of the material

allegations contained in the Information is not proven to the exclusion of and beyond a reasonable doubt you must give the Defendant the benefit of such a doubt and acquit him; but if you find from the evidence beyond and to the exclusion of every reasonable doubt that the Defendant is guilty of the crime charged in the Information then you should find the Defendant guilty of such offense.

I mentioned to you reasonable doubt; I will now define to you what a reasonable doubt is, within the meaning of the law of the State of Florida: As Jurors, charged with the solemn duty at hand, you must carefully and conscientiously consider, compare and weigh all of the testimony that you have heard here today; if, after doing this, you think that your understanding, your judgment and your reason are well satisfied and convinced by it to the extent of having a full, firm and abiding conviction to a moral certainty that this charge is true, then, the charge has been proven to the exclusion of and beyond a reasonable doubt, and it is your duty to convict. A doubt which is a mere possible doubt, or a speculative, imaginative, or forced doubt is not a reasonable doubt, but an unreasonable doubt, and for the reason that everything relating to human affairs is open to doubts of this character, such a doubt ought not to control or influence the Jury to return a verdict of acquittal, where they have an abiding conviction of the truth of the charge as I have stated herein. On the other hand, if, after carefully considering, comparing and weighing all the testimony there is

not an abiding conviction to a reasonable and moral certainty of the truth of the charge; or, if having a conviction, it is yet one which is not abiding, or stable, but wavers and vacillates, or is one which there is not a moral certainty, then, the truth of the charge is not made out beyond a reasonable doubt and there must be an acquittal because the doubt is reasonable; a doubt which is not suggested by, or does not arise from the testimony, or from the like of testimony, is not a reasonable doubt and should never be considered, or, in other words, if the testimony produces a conviction of the character which I have indicated as being sufficient to prove a charge to the exclusion of a reasonable doubt the Jury has no right to go outside of the testimony for doubts of any kind.

When circumstantial evidence is relied upon in a criminal case, the circumstances when taken together, must be of a conclusive nature and tendency, leading on the whole to a reasonable and moral certainty the accused and no one else committed the criminal offense. It is not sufficient that the facts create a strong probability of and be consistent with guilt, it must be inconsistent with innocence.

The Court charges you that under the laws of this State a Defendant may become a witness and testify in his own behalf, and in consideration of the testimony of such Defendant, the weight and credibility which should be given the same, it is proper for you to take into consideration the interest that such Defendant has in the trial and in its results, and all the cir-

cumstances by which he is surrounded at the time he testifies, also the reasonableness or unreasonableness, probability or improbability of what he says, just as you would the testimony of any other witness.

You are instructed that the evidence in this case as to the former conviction of crime of the accused is not evidence of the guilt or innocence of the Defendant in this case, and raises no inference or implication of guilt, but is to be considered solely by you as to the bearing it may have, if any, upon the credibility of the Defendant as a witness.

You are further instructed that the evidence in this case as to former conviction of crime of a witness is to be considered solely by you as to the bearing it may have, if any, upon the credibility of the testimony of that witness, and under the laws of the State of Florida a person cannot plead guilty or be convicted of a felony in the Juvenile Courts of this State.

There are certain material elements in this case that the State of Florida must prove:

The first one is that the crime, if any, was committed here, in Bay County, Florida.

The second one is that it was committed within two years prior to the filing of this Information, which was filed on June 19, 1961.

The third one is that this Defendant, Clarence L. Gideon, is the one that committed the crime.

Now, to sum that up for you: If you should find from the evidence, that you have heard from the witness stand here, that Clarence Earl Gideon did, at any time within two years prior to the filing of this information on June 19, 1961, in the State of Florida and County of Bay, did unlawfully and feloniously break and enter a building of another, to wit, the Bay Harbor Pool Room, the property of Ira Strickland, Jr., the Lessee, with intent to commit a misdemeanor within said building, to wit, Petit Larceny, then, it would be your duty to return a verdict of guilty as charged.

If, however, you fail to find this state of facts, or if after a full and fair consideration of all the testimony in the case you have a reasonable doubt as to the guilt of this Defendant, then, it would be your duty to give the Defendant the benefit of that reasonable doubt, as defined to you by the Court, and return a verdict of not guilty.

If you should find from the evidence that the Defendant, Clarence Earl Gideon, is guilty, the form of your verdict would be 'We, the Jury, find the Defendant, Clarence Earl Gideon, guilty as charged, so say we all,' and one of your number would sign that verdict as Foreman.

If you should find the Defendant, Clarence Earl Gideon, not guilty, then, the form of your verdict would be, 'We, the Jury, find the Defendant, Clarence Earl Gideon, not guilty, so say we all,' and one of your number would sign that verdict as Foreman.

Any verdict reached by you must be concurred in by all of your number, and must be signed by one of your number as Foreman of this Jury.

Any objection to the charge as given, or request for additional charges by the State?

MR. ADAMS:

None for the State, your Honor.

THE COURT:

Any by the Defendant?

MR. TURNER:

None for the Defendant, your Honor.

THE COURT:

You may take the case, Gentlemen, and render your verdict.

At this point the Jury retired from the Court Room to consider their verdict.

STATE OF FLORIDA,)
JACKSON COUNTY.)

I, Nelle P. Heath, do hereby certify that the case of the State of Florida, Vs Clarence Earl Gideon, was tried on the 5th day of August, 1963, that I was authorized to and did report in shorthand (and by means of a mechanical voice recording machine, to wit, a Dictaphone Time Master) the proceedings and evidence of said trial, and that the foregoing pages, numbered 1 to 141 inclusive, constitute a true and correct transcription of my shorthand report of the proceedings of said cause.

In Witness Whereof, I have hereunto affixed my hand, at Marianna, Jackson County, within the Fourteenth Judicial Circuit of Florida, this the 12th day of October, 1963.

(Signature) Nelle P. Heath
Reporter.