UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

EDGAR JONES, JASON MOORE, GERMAN STUMBO, DREXIL HALL, TEDDY KINNEY, BENNY CAUDILL, KENNETH ROLLAND, a/k/a POSTMAN, RANNY BLANKENSHIP, EUGENE TACKETT, HAROLD MOORE, HERMIT NEWSOME, TIM MILAN, MOSE MEAD, DONAHUE HALBERT, AUSTIN "BO" MOORE, PEBO GAYHEART, LINVILLE MOSLEY, RAYMOND HALL, VAN B. PATTON

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 28, 1984

VOLUME FORTY-TWO

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

PLEASE CONTENT

I N D E X

PHILLIP DALE MOORE

Direct Examination By Mr. Kehrli: Pgs. 8-132

Cross Examination By Mr. Harwell: Pgs. 135-

A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
RANDY KEHRLI, ESQ.

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSON, ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

For the Defendant Drexil Hall and Austin "Bo" Moore:

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

For the Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

WILLIAM D. KIRKLAND, ESQ.

WILLIES FALLS
ERASE
COTTON COUNTY

REPORTER'S NOTE: The Court convened at 9:10 A.M. on this date the 27th of February, 1984.

THE MARSHALL OF THE COURT: All rise. Hear ye, Hear ye, all persons having business before the United States District Court of the Eastern District of Kentucky, draw nigh and give attention: You shall be heard. Order is commanded. Court is now in session. God save the United States and this Honorable Court.

Be seated and come to order, please.

Your Honor, all defendants and all attorneys are present, and the jury is not present.

THE COURT: Thank you. What is the problem, Gentlemen?

MR. KEHRLI: Your Honor, I don't believe there is any problem, I believe we are ready to proceed.

MR. MOORE: Mr. Moore, are you feeling all right, this morning?

MR. MOORE: Yeh.

MR. KEHRLI: Can you testify today?

MR. MOORE: I will try,yeh.

MR. KEHRLI: All right. We are ready to proceed, Your, Honor.

THE COURT: Let's get the jury.

MR. SELF: Your Honor, I requested that we bring the court in session until Mr. Moore was ready to testify.

THE COURT: That should have been done before we even got in the courtroom.

MR. SELF: I realize that, Your Honor, the Marshalls brought him in after we were already in the courtroom.

THE COURT: All right.

MR. WALBOURN: Your Honor, I recall Mr. Moore's testimony from the mini hearing, and we had a hearing problem; could you maybe remind him before we start to please talk into the microphone?

THE COURT: Would you do that?

MR. MOORE: I'll try.

THE COURT: Mr. Marshall, move that around to where it will be closer to him.

(The Marshall complies.)

THE COURT: Try that with one, two, three.

MR. MOORE: One, Two, Three, Four.

MR. ROWLAND: That's fine.

THE COURT: What about Mr. Jones and the gentlemen behind you, can you hear that?

MR. JONES: (Nod in the affirmative)

THE COURT: If you don't, Gentlemen, and we will make sure you hear it.

(Reporter's Note: The jury enters the courtroom at 9:12 A.M.; whereupon, following proceedings were held.)

THE MARSHALL OF THE COURT: Your Honor, all members of the jury are present.

THE COURT: All right, sir.

Madam clerk, will you administer the oath to the witness.

THE CLERK OF THE COURT: Yes, Your Honor. Please stand, and raise your right hand.

(The witness complies.) Okay.

PHILLIP DALE MOORE, called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

THE COURT: I think the Reporter needs to get his - - what does she need?

THE OFFICIAL COURT REPORTER: Address and full name.

THE COURT: Okay.

THE WITNESS: Philip Dale Moore, Box 33, Price, Kentucky.

THE COURT: Please proceed, sir.

MR. KEHRLI: Thank you, Your Honor.

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PLEASE DO NOT FOLD

MR. KEHRLI: Your Honor, and ladies and gentlemen of the Jury, the United States apologizes for the delay in the proceedings yesterday.

DIRECT EXAMINATION

BY MR. KEHRLI:

Q. Mr. Moore, I know you have a sore throat today, and your voice tends to be a little somewhat low in the first place and quiet; would you make sure you try and speak up during your testimony today so that the ladies and gentlemen of the Jury can hear your testimony as well as the other individuals in the Courtroom?

Will you try and do that for us, please?

A. Yeah, I'll try.

Q. Okay. Would you state your full name for the record, sir?

A. Phillip Dale Moore.

Q. Mr. Moore, where do you currently reside?

A. Price, Kentucky.

Q. All right. Are you - - do you live in Price now, or where?

A. I am incarcerated.

Q. Where are you incarcerated?

A. Sandstone, Minnesota, Federal Correction Center.

Q. And at this time are you currently incarcerated in Sandstone, Minnesota?

A. The Pike County Jail.

Q. You are in the Pike County Jail?

A. Yes.

Q. And you were brought here for the purposes of this trial; is that correct?

A. Right.

Q. All right. Mr. Moore, have you entered into a plea agreement with the United States?

A. Do what now?

Q. Have you agreed to plead guilty to a certain criminal offense with the United States?

A. I pleaded guilty, yeah.

Q. All right. Do you recall when that was?

A. It was over a year ago, February a year ago - - January or February.

Q. And is this guilty plea,

has that resulted in your incarceration at this time?

A. Pardon?

Q. Has that guilty plea - - has that resulted in your incarceration at this time?

A. That is the reason I am incarcerated.

Q. All right. Prior to your guilty plea, Mr. Moore, - - well, first of all - - strike that.

When you were arrested in connection with that offense, who arrested you?

A. Oh, it was about four of them, ATF men, I think.

Q. ATF agents?

A. And Agent McCallister was one of them.

Q. Agent McCallister was one of them?

A. Uh-huh.

Q. Prior to your arrest, sir, where did you reside at that time?

A. Price - - Box 33, Price, Kentucky.

Q. What was your occupation,

Mr. Moore?

A. I was a foreman of a coal mine - - coal miner.

Q. Who did you work for, sir?

A. Phillip Booth.

Q. And which of Mr. Booth's mines were you employed at?

A. Bryan Coal.

Q. And what position did you hold, sir?

A. Foreman.

Q. What did you do as a foreman for Mr. Booth?

A. Everything. Running a drill and shop, and prepared coal for the day shift. I worked third shift, 11:00 to 7:00.

Q. Do you recall the name of the other employees who worked with you on that shift?

A. Barry Moore, Morris Joe Hall, the Skenns boy, and Ed Tackett was over there.

Q. All right. Were you employed in this capacity during February of 1982?

A. No.

Q. What were - - how were you employed in February of 1982?

A. I wasn't working.

Q. Pardon me?

A. In February of '82?

Q. Yes.

A. I wasn't - - yeah. Yeah, '82, I was working.

Q. You were a foreman at Bryan Coal in February of 1982?

A. Yes.

Q. All right. Directing your attention to the week of February 15, 1982, are you familiar with some violence that occurred at the Ray-Mac Mine site in McDowell, Kentucky?

A. Yes.

Q. All right. When did you first hear about that, Mr. Moore?

A. It was on a Monday evening.

Q. All right. Would you tell the Jury what happened that Monday evening, sir?

A. The guy that worked second shift stopped at the house and told me there was no work; that they was coming out on a strike.

Q. All right. How did he tell

you that?

A. He just said all hell broke loose and there was no work down there and was going on strike.

Q. Do you recall what time Monday that was?

A. It was probably about 3:30 that evening.

Q. Okay. Did you go to work that evening?

A. No.

Q. All right. Did you hear anything else about that matter on Monday evening?

A. Yeah. I called Phillip Booth, and he said there was no work; that his mine was coming out on a strike.

Q. All right.

A. To be on a picket line.

Q. All right. What time Monday evening did you have this telephone conversation with Phillip Booth?

A. That's been 4:00, 4:30. It was after the guy stopped and told me.

Q. All right. And what did Mr. Booth say to you again, sir?

A. He said his mines - - he pulled his mines out to set up a picket line; they was going on strike.

Q. Did he say where that picket line was supposed to be?

A. Well, not right then he didn't, but later on that evening I found out.

Q. All right. During that phone conversation, did he tell you why the strike was taking place?

A. Yeah. He said something about Ray-Mac was underselling the orders three dollars a ton and that they was going to set them down.

Q. All right. Whose orders were they underselling?

A. Edgar Jones's orders.

Q. Did Mr. Booth say that to you during that phone conversation?

A. I think it was later on that evening when I went down to his house.

Q. All right. What time did you go to Mr. Booth's house?

A. Oh, must have been around 6:00, somewhere in there.

Q. All right. What conversation did you have - - strike that.

First of all, did you have any conversations with anyone when you went to Mr. Booth's house Monday evening at 6:00 o'clock?

A. Yes.

Q. Who did you talk to?

A. Phillip Booth.

Q. And what did Mr. Booth tell you at that time?

A. The same thing I just told you, that his mine was - - he pulled his mines out to go on strike; was going to set up a picket line against Ray-Mac.

Q. And did he tell you why he was doing that?

A. They was underselling orders - - Edgar Jones's orders three dollars a ton.

Q. Did Mr. Booth tell you how he knew that at that time?

A. He must have got it from Edgar. I don't know.

MR. HARWELL: If the Court please, I object unless this witness knows the answer. I think that is speculative.

THE COURT: Sustained.

Q. Did you have any other conversations with anyone that evening at Mr. Booth's house?

A. They said meet at the tipple at seven o'clock the next morning. Edgar Jones' tipple there at McDowell.

Q. Who said that, sir?

A. Phillip Booth.

Q. All right. Do you recall anyone else that was present during these conversations that you had with Mr. Booth on Monday evening?

A. His wife, Pearl, was there and I don't remember anyone else.

Q. Were there other people there?

A. Yeah, there was always somebody there, but I don't remember.

Q. How long were you there Monday evening, sir?

A. I don't recall.

Q. Pardon me, I didn't hear that.

A. I don't recall how long.

Q. All right. What if anything did you do as a result of those conversations with Mr. Booth on Monday evening?

A. What did I do -- he just said tell the men, you know, there was no work that night and to be out on the picket line there at the tipple the next morning.

Q. Did he tell you to be at the tipple the next morning?

A. Yes.

Q. Did you go to the tipple the next morning?

A. Yes.

Q. All right. Would you tell the jury about that, please? What did you do the next morning with regard to the tipple?

A. I went down there and I was -- there was a lot of men there, you know, everybody that works for Booth and a lot of other men there too.

Q. All right. What time did you report to the tipple, sir?

A. It must have been about seven thirty.

Q. What did you see when

you got there?

A. Just a crowd of men standing around talking.

Q. Approximately how many men?

A. Well, there was a lot of them, thirty, forty or fifty.

Q. All right. Mr. Moore, I'd like for you to look around the courtroom, please, and would you tell the jury whether or not you see anyone here in the courtroom that was there on Tueday morning there at the tipple at seven o'clock?

A. All the men that worked for Phillip Booth was there.

Q. All right. Are there any of those men here in the courtroom?

A. Yes, Hermit Newsome.

Q. All right. Would you describe what Mr. Newsome is wearing today?

A. Well, I can't see him, I know he's over there.

MR. WALBOURN: We'll stipulate Hermit Newsome, Hermit Newsome is in the corner there.

THE COURT: Let the record so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. Is there any other individual seated here in the courtroom that was there during that --

A. (Interrupting) Jason Moore.

Q. All right, do you see him here in the courtroom?

A. He's sitting on the end over there.

Q. On the end?

A. The second row.

Q. The back row?

A. Yes.

MR. KEHRLI: All right. Your Honor, may the record reflect that the Defendant has -- the witness has identified the Defendant, Mr. Jason Moore.

MR. KIRKLAND: No objection, Your Honor.

THE COURT: All right, let the record so reflect.

Q. All right. Do you see anyone else that was at that Monday -- Tuesday morning meeting at the tipple?

A. Benny Caudill.

Q. All right, where is Mr. Caudill seated today?

A. Right there.

Q. Is that Mr. Caudill?

A. Yes.

MR. KEHRLI: May the record reflect that the witness has identified Mr. Benny Caudill.

MR. WALBOURN: No objection.

THE COURT: Let the record so reflect.

Q. Do you see anyone else in the courtroom today that was present at that meeting on Tuesday morning?

A. I don't remember if anybody else was there or not.

Q. All right.

What were these men that you saw there doing Tuesday morning?

A. They were just standing around talking, you know, like a bunch of men talking.

Q. What were they talking about?

A. I don't know what they all were talking about.

Q. Did you have any conversations with anyone that morning, Tuesday?

A. Phillip Booth drove up and he said let's go on up on top of the hill where the coal trucks come in. I rode up to the top of the hill with Phillip Booth.

Q. All right. What hill are you referring to, sir?

A. John Hall Branch, sir, there in McDowell.

Q. Did anyone else hear this conversation that Mr. Booth had with you at that time concerning going to the top of the hill?

A. I don't know, but everybody went up there that was at the tipple.

Q. Did you go up there, sir?

A. Yeah.

Q. How were you transported to the hill?

A. I rode up with

Phillip Booth.

Q. In what vehicle?

In what vehicle?

A. The black Cadillac.

Q. What --

MR. KEHRLI: Your Honor, at this time, if I could, I'd like to have the Marshall show the witness what's been introduced into evidence as Government Exhibit 8 and 9, two aerial photographs.

(Reporter's Note: Whereupon the Marshall passes documents to the witness.)

Q. All right, Mr. Moore, have you had a chance to examine those photographs?

A. Yes.

Q. Do you recognize them?

A. Yes.

Q. What are they, sir?

A. That's a picture of McDowell, it looks like John Hall Branch and the tipple and everything. And the rode going up the hill.

Q. Is that the hill that you're referring to earlier that you said all

the men went to?

A. Yes.

MR. KEHRLI: Mr. Marshall, that's fine, we're through with those photographs at this time.

Q. Mr. Moore, what did you do when you arrived at the hill at the Ray-Mac mine site?

A. Well, we had to wait for the coal trucks to start coming in and loading coal and we were going to stop the coal trucks from hauling coal.

Q. Now, how did you know you were supposed to do that?

A. Well, that's the reason they went up there.

Q. Is that the reason you went up there?

A. Yes.

Q. And what happened when you got to the top of the hill?

A. Well, the coal trucks must have been a little late, I guess thirty or forty minutes late. We were just standing around waiting till they started coming.

Q. What time of day was this, sir?

A. It must have been getting 8:30 or nine o'clock in the morning.

Q. What happened when the coal trucks got there?

A. They told some of them what was going on and some of them went back, you know, just turned around and went back.

Q. All right. Would you explain that to the jury, what do you mean they turned around and went back?

A. They -- they told them they were on a picket line.

Q. And where were the coal trucks proceeding when this happened? Were they going up the hill or going down the hill?

A. They would come up the hill to go load coal at Ray-Mac mining site.

Q. All right. So they were stopped on their way into the mine, is that correct?

A. Correct.

Q. And what did some of the trucks do?

A. They turned around and went back.

Q. Did any of the trucks proceed up the hill?

A. Yeah.

Q. Now, who -- how many men were at the top of the hill when these coal trucks arrived that came up with you?

A. The same amount that was down there at the tipple, I think everybody went up there.

Q. Now, who did the talking, who actually stopped the coal trucks and talked to them?

A. It was Harold Stumbo, Jason Moore -- there was three or four that went up to talk to them. Phillip Booth was one of them.

Q. Do you recall anyone else other than those gentlemen?

A. No.

Q. Did you actually go up and talk to them?

A. No.

Q. All right. What

happened after these coal trucks -- some of them turned around and left --

A. (Interrupting) This one said he was going on the hill to get a load of coal.

Q. Did he go on the hill?

A. Yes.

Q. What happened after that?

A. Well, he was up there a while, then he came back off.

Q. All right. While that coal truck was up there, what were the men that was with you that came up from the tipple, what were they doing?

A. They were standing around talking and Phillip Booth gave me a pistol and said here, you might need this.

Q. All right. Before we get to that, other than talking were the men doing anything else?

A. No.

Q. Was there any drinking going on?

A. They might have been drinking a little, yes.

Q. Were you drinking?

A. No, I might have been, I don't recall whether I was or not. It was a little early in the morning.

Q. Now, at this time, were you a member of the United Mine Workers?

A. No.

Q. You were a foreman, is that correct?

A. Correct.

Q. After the coal truck proceeded up the hill, you testified you had a conversation with Phillip Booth concerning the gun. Would you tell the jury what that conversation was and when it occurred?

A. He just gave me a gun when the coal truck went up the hill. He gave me a gun and said here, you might need this.

Q. What kind of gun was it?

A. It was a Smith & Wesson .38.

Q. Was it a rifle or a

pistol?

A. A pistol.

Q. Did you keep the gun?

A. Yes.

Q. What did you understand him to mean by the statement here, you might need this?

A. I didn't know, really. I just took it.

Q. Did you keep -- strike that.

What happened after you took the gun?

A. Well, the coal truck, it was up there about thirty minutes I guess, and then it started coming back off the hill with a load of coal.

Q. And what happened when the trucks started coming off the hill?

A. Well, it got down to the highway and made a turn and got on the highway and the shooting broke out then.

Q. Who shot first?

A. I think Phillip

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Booth did.

Q. Where was the truck -- where were these trucks when the shooting first started?

A. They just come down the hill and turned right and got on the road and started down the other side of the hill.

Q. Did the coal trucks coming down off the hill shoot at you first?

A. No.

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Q. Did anyone other than the men that was with you that came up from the tipple start shooting at you first?

A. No.

Q. What did you do when the shooting started, Mr. Moore?

A. Well, the coal truck pulled off and then two guys got out and they started shooting back. It was Danny Blanton and I don't know who the other guy was driving the coal truck.

Q. What - - what kind of gun did they start shooting back with?

A. It looked like a sawed off shotgun.

Q. All right, what did you - - where were you at when this happened?

A. I got behind the jeep, Benny Caudill was driving.

Q. Were you shooting?

A. Not right then, after they started shooting back I shot five times.

Q. All right.

MR. ehrli: I would like to have the Marshall show the witness Government Exhibit 31. I would first like to see

it myself Mr. Marshall.

(Reporter's Note: The Marshall is passing documents.)

Q. All right, do you recognize the photographs in that exhibit Mr. Moore?

A. Yes.

Q. What are they?

A. The jeep Benny Caudill was driving.

Q. Is that the jeep you were behind when you were shooting?

A. Yes.

Q. Were any other people behind that jeep?

A. Yes.

Q. Who were they?

A. Drexil Hall, Hermit Newsome, Benny Caudill, Teddy Kinney, Ervin Collins.

Q. All right, of those men did any other men besides yourself have a gun?

A. Drexil Hall.

Q. Did anyone else have a gun behind the jeep?

A. NO.

Q. Was Mr. Hall shooting his

gun?

A. Yes.

Q. What kind of gun did Mr. Hall have?

A. A 24 automatic pistol I think.

Q. Did you see anyone else of the men that came up to the hill from the tipple that had a gun?

A. Phillip Booth and Jason Moore.

Q. All right, where was Jason Moore?

A. He was on the other side of the road.

Q. When you say he was on the other side of the road, where, precisely?

A. From where I was at, he was laying down beside his truck, I guess behind his truck or something.

Q. What kind of gun did he have?

A. He had a rifle.

MR. KEHRLI: Your Honor, I'd like to have the witness shown what's been introduced into evidence as Government's Exhibit 110, please. Mr. Marshal, if you would.

(The Marshal complied.)

THE MARSHAL OF THE COURT: The witness has been shown the exhibit.

Q. Mr. Moore, do you recognize that gun?

A. No. I don't know whether-- whether that was the rifle he had or not.

Q. All right.

A. No.

MR. KEHRLI: Thank you, Mr. Marshal.

Q. Now, you testified that Drexil Hall was behind the Jeep with you with a gun. Do you see Mr. Hall here in the courtroom?

(Defendant Drexil Hall stood up.)

MR. PAFUNDA: Your Honor, let the record reflect that that's Drexil Hall.

MR. KEHRLI: All right.

THE COURT: Just a moment. The record will reflect that that's Drexil Hall. Will the record reflect he has identified Drexil Hall?

MR. PAFUNDA: I guess he can ask him

that.

THE COURT: Sir?

MR. PAFUNDA: Yes.

THE COURT: All right. Let the record so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. Now, Mr. Moore, when you were behind that Jeep shooting what were you shooting at?

A. That coal truck--

Q. All right.

A. --of Danny Blanton's. I didn't shoot--I didn't shoot until he got out and started shooting back with a shotgun.

Q. Mr. Moore, when you--You started shooting after you were behind the Jeep, is that correct?

A. Pardon?

Q. You started shooting after you were behind the Jeep, is that correct?

A. Yeah.

Q. Did you have any problem in--in shooting at Mr.--at the coal truck or Mr. Blanton?

A. Yeah, he was shooting

back. You know I had problems. I just took the gun around the Jeep and shot.

Q. Did you shoot--did you shoot that Jeep?

A. I might have. I don't know.

Q. How long did this--

Strike that.

First of all, where--where was Jason Moore when he was shooting? What position was he in?

A. He was on the other side of the road from where I was at, right across the road. He must have been laying down beside his truck.

Q. He was laying down?

A. Yeah.

Q. Do you recall what he was wearing?

A. He had I think a pair of coveralls on. He put a ski mask on, if that's what you mean.

Q. And where--where was the ski mask? When you say he had it on, where was it?

A. Put it on his face, yeah.

Q. Was it over his face?

A. Yes.

Q. How long did the shooting last?

A. Not very long. I only had five shells.

Q. All right. You shot five times?

A. Yes.

Q. How long did the shooting in total last there at--at the bottom of the hill?

A. I'd say fifteen minutes.

Q. All right. What did you do after the shooting stopped?

A. Well, I was shooting-- I didn't have any more shells and everybody stopped shooting. We got up and was trying to get out of there, see.

Q. You stopped shooting because you ran out of shells?

A. Yes. I was looking for Phillip Booth. He was gone. He'd done left.

Q. All right. You say you were looking for him, what did you do when you looked for him?

A. Just looked around to see if I could see him. He'd done left. He'd left his car sitting there.

Q. How long did you look for him, Mr. Moore?

A. Oh, I'd say three or four minutes. You could just see all around the area there and see that he wasn't there.

Q. All right. You didn't find him?

A. No.

Q. What did you do at that point ?

A. Me and Hermit Newsome got in his car. I drove his car back down to the tipple. He was down there.

Q. All right. You got in whose car?

A. Phillip Booth's.

Q. All right. Hermit Newsome, what was he doing at the time? How was he employed?

A. He worked for Phillip Booth.

Q. In what capacity? Do you know?

A. He was a foreman, like myself.

Q. Anyone else ride with you and Hermit Newsome?

A. No.

Q. Where did you go?

A. Back down to the tipple--Edgar Jones' tipple, where we started from.

Q. Same tipple where you met in the morning?

A. Yes.

Q. All right. What did you see when you arrived at that tipple?

A. Well, Phillip Booth was there at the tipple. There was some more guys there too, but I don't recall.

Q. Who else was there, please?

A. I--

Q. Do you see any people today in the courtroom that were there?

A. I don't recall if they--who all was there.

Q. The people that were there, were they the same people that were there during the shooting--

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COMMON CONTENT

A. Yes.

Q. --and Mr. Blanton's coal truck?

A. Yes.

Q. Did you have any conversations with anyone when you arrived at the tipple this second time on Tuesday?

A. I asked Phillip where did he go. He said I--I'm like you, I shot out of shells. I--I was getting the hell out of there.

He said he got shot but--but I don't know whether he did or not.

Q. All right. How long were you at the tipple this morning?

A. We didn't stay there too long, about ten, fifteen minutes, I guess.

Q. All right. And what happened at that point?

A. Phillip told me to come go with him to the office, Edgar Jones' office.

Q. Why did you go to Edgar Jones' office, if you know?

A. I didn't then, no.

Q. All right.

A. He just wanted me to go

to the office with him.

Q. Did you, in fact, go to Edgar Jones' office?

A. Yes.

Q. Where is that office?

A. Oh, it's down there in McDowell. It's about--I'd say about a quarter of a mile below the tipple--down from the tipple.

Q. Did anyone go to Mr. Jones' office with you?

A. Phillip Booth.

Q. Anyone else?

A. Not with us, no.

Q. Approximately what time of day did you leave for Edgar Jones' office?

A. I don't know. It must have been ten-thirty, eleven o'clock, I don't know. Maybe ten o'clock, I don't know.

Q. When you arrived at Mr. Jones' office who was there?

A. It was Edgar and--and his secretary. Pearl Booth came. German Stumbo was there, Teddy Kinney, Jason Moore, Phillip Booth and myself.

Q. What did you do when you

first arrived at Mr. Jones' office, Mr. Moore?

A. We were just talking about--

Q. Well, before you started talking, where did you go? Where in the office were you when these conversations took place?

A. We were in Edgar's office.

Q. All right. Would you describe that office to the jury, please, the number of rooms and where Edgar's office is.

A. It's got three rooms. His is on the one end of the trailer. His secretary is in the middle. I don't know who was in the back one there.

Q. Do you recall-- Without saying what they were, do you recall any conversations that took place in that building?

A. Yes.

Q. All right. Where-- In which of these three rooms did this conversation take place?

A. Edgar Jones' office.

Q. All right. Does that office have a door on it?

A. Yes.

Q. When the conversations took place was the door open or shut?

A. Shut.

Q. All right. When the conversations that you recall took place who was present?

A. Phillip Booth, Pearl Booth, German Stumbo, Teddy Kinney, Jason Moore.

Q. They all were in Mr. Jones' office behind a closed door?

A. Yes.

Q. All right. AS best as you can recall, would you tell the jury who said what and what was said during these conversations in Mr. Jones' office.

A. Well, Phillip Booth was telling them he got shot, you know.

Q. He was telling who?

A. Edgar--Edgar Jones. And I told him that--that if I was going to go back up there and try to stop them we had to have bigger guns, more guns, you know, bigger and better guns. They had more guns and better guns than we did.

Q. When you told that to Mr. Jones what did he say to you.

A. He said if that's what we need then we'll get them.

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Q. Did everyone in that room hear those conversations?

A. Yes.

Q. What -- What else was said, if you recall?

A. Phillip come up there, and Phillip Booth was trying to show -- show her where he got shot, you know. He didn't get shot.

Q. Mr. Booth did not get shot?

A. I don't think. Maybe a BB hit him in the head out of the shotgun.

Q. Did you see any wounds that Mr. Booth had suffered?

A. No. He had a little red place on his forehead. You couldn't tell it was from being shot.

Q. All right. How long did this meeting in Mr. Jones' office last?

A. Fifteen, twenty minutes.

Q. And do you recall any other conversations that took place during that meeting?

A. No,

Q. Did everyone stay in the room at all times?

A. We got ready to leave and German and Edgar went in another room.

Q. German Stumbo and Edgar Jones?

A. Yes.

Q. How long were they in the other room?

A. I don't remember. Phillip Booth and me left. We left Jason and German and Teddy Kinney in there.

Q. All right. So you left while Edgar and German were in the other room?

A. Yes.

Q. Did you hear any conversations that Mr. Jones had with German Stumbo?

A. No.

Q. By the way, do you know how German Stumbo was employed at that time?

A. Do what?

Q. Do you know how German Stumbo was employed at that time? What did

he do?

A. He wasn't -- He wasn't employed then, I don't think.

Q. Okay. Was he --

A. He ran mines for Edgar Jones before, but it was shut down.

Q. His -- He was not operating a mine for Edgar Jones at that time?

A. No.

Q. But he had operated a mine for Mr. Jones prior to that time?

A. Yes.

Q. All right. Do you recognize German Stumbo here in the courtroom today?

A. Yes.

Q. Is that the same gentleman that was at this meeting?

(Reporter's Note: Defendant German Stumbo stood up.)

MR. KIRKLAND: We'll stipulate that, Your Honor.

THE COURT: Let the record so reflect.

MR. KEHRLI: All right.

Q. Is that the same

individual that was at these meetings with Mr. Jones?

A. Yes.

Q. Is that the individual that Mr. Jones took out of the room?

A. Yes.

Q. Do you recognize Mr. Jones here in the courtroom today?

MR. HARWELL: Stand up, Mr. Jones.

(Reporter's Note: Defendant Edgar Jones stood up.)

MR. HARWELL: The record may reflect that this gentleman knows Mr. Jones, and that Mr. Jones has stood up and he's identified him, Your Honor.

THE COURT: Let the record so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. Did you say that Teddy Kinney was at this meeting, too?

A. Yes.

Q. Do you see Mr. Kinney here in the courtroom today?

(Reporter's Note: Defendant

Teddy Kinney stood up.)

MR. KIRKLAND: We'll make the same stipulation on Teddy Kinney.

THE COURT: All right. Let the record reflect that the witness has identified Teddy Kinney.

Q. Is that the individual that was at this meeting?

A. Correct.

Q. Now, Mr. Moore, why did you make the statement to Mr. Jones that if we're going to stop them guys or if we're going to stop Ray-Mac -- why did you talk about stopping Ray-Mac?

A. I wasn't going back up there with five shells and a snub-nose .38 pistol, and then with rifles and shotguns and stuff.

Q. All right. I understand that you wanted bigger guns.

A. Correct.

Q. I'm not concerned about that. Why were you concerned about stopping Ray-Mac?

A. Well, I worked for Phillip Booth; Phillip Booth worked for Edgar Jones.

I was told if we didn't stop them we wouldn't have a job.

Q. Was there any discussion at this meeting in Edgar Jones' office about not having a job if you didn't stop them?

A. Not as I recall.

Q. All right.

THE WITNESS: Edgar said there was enough work for everybody to retire there, you know, if they stopped them. He had enough work for every man there in McDowell to retire.

Q. Edgar Jones made that statement?

A. Yes.

Q. When did he make that statement?

A. He made that that day in that meeting.

Q. When he was talking about there being enough coal there, what did you understand him to mean?

A. That he had enough coal to mine for everybody that worked for him to retire, but if he lost the orders nobody would have a job, see.

Q. Did he talk about losing the orders during that meeting?

A. Well, they was underselling him three dollars a ton. They'd lose their orders if they didn't -- you know.

Q. Did he make that statement during that meeting?

A. Yeah. They was talking about it, yes.

Q. Who did he tell that to?

A. I think Phillip Booth. He and Phillip Booth was talking about it.

Q. During this meeting behind the closed doors, you're speaking?

A. Uh-huh.

Q. Were these other individuals present that you identified?

A. Yes.

Q. Did they hear that statement?

A. Yes.

Q. Do you recall any other discussion that took place during the meeting?

A. No.

Q. What did you do after this -- when you and Mr. Booth left Mr. Jones' office?

A. He took me back to get my car, and we went down to his house. My car was parked at the tipple.

Q. All right. So, you went to the tipple again, first?

A. Yes, and then down to his house.

Q. Did you go down to Mr. Booth's house with anyone else?

A. Ed Tackett was with me.

Q. Now, where did you pick up Mr. Tackett?

A. That morning at -- at his house. He came down to my house and rode down there with me.

Q. How was Mr. Tackett employed at that time? Do you know?

A. He worked outside the mines for Phillip Booth.

Q. Was he a foreman?

A. No. He just worked

outside.

Q. All right.

A. Answering the phones, whatever.

Q. What did you do when you arrived at Mr. Booth's house that Tuesday?

A. We was just talking, you know, drinking, talking just about that incident, you know, that happened.

Q. What -- Do you recall any discussions about the incident?

A. No, I don't recall what was said.

Q. What -- How long did you stay at Mr. Booth's house?

A. I don't know. Not very long.

Q. Was it --

A. Not over an hour, I think.

Q. Who else was there besides yourself and Mr. Booth and Mr. Tackett?

A. I think his wife, Pearl. I think German -- German Stumbo, Teddy Kinney and Jason Moore came down there while I was

there.

Q. All right. What did Mr. Stumbo, Mr. Kinney and Mr. Moore do while they were there?

A. They talked to Phillip. I don't know what about.

Q. Did they bring anything with them?

A. I don't know. When they left they give Pearl a list of shells and stuff, kinds of shells that they needed.

Q. When did -- Did you see them give her this list?

A. She gave it to me later on and said they give it to her, yeah.

Q. Who did she tell you had given that list to her?

A. Jason and German.

Q. All right. She gave the list to you?

A. Well, later on they sent me to Donahue Halbert's to buy some shells.

Q. Now, who sent you to Donahue Halbert's?

A. Pearl Booth and Phillip

Booth.

Q. Did you go with that list?

A. Yes.

Q. And did you go to Mr. Halbert's on Tuesday evening?

A. Yes.

Q. What did you do at Mr. Halbert's?

A. I took the list they wanted for shells and a blank check signed by Pearl Booth on Calamity Coal, and I got the shells they had -- they needed.

MR. KEHRLI: Your Honor, if I could, I'd like to have Mr. Marshall show me, first of all, Government's Exhibits 112 and 114, and after I've looked at them to please show them to the witness.

(The Marshall Complies)

MR. KEHRLI: I'm asking the Marshall to show the witness Government Exhibit 112.

(The Marshall Complies)

Q. Mr. Moore, do you recognize that document?

A. Yes. That is a check on Calamity Coal that Pearl gave me to go get the shells.

Q. And who is that check - - to whom is that check made out to?

A. Donahue Halbert.

Q. All right. Did you complete any portion of that check?

A. No.

Q. When you got it, what - - what part of it was filled in?

A. Pearl Booth and Phillip Booth signed it and dated it.

Q. And dated it. Was the amount filled in?

A. No.

Q. When - - when was the amount filled in?

A. After I bought the shells.

Q. Who filled in the amount?

A. Donahue Halbert.

Q. Do you recall what kind of shells you purchased?

A. A lot of them, different

kinds.

Q. First of all - - strike that. Did you purchase anything other than shells?

A. 9 millimeter pistol.

Q. All right. Did you purchase any other guns other than that?

A. No.

Q. All right. Why did you purchase the 9 millimeter pistol?

A. I called Phillip Booth from over there, and he wanted a rifle - - had a rifle or something that he wanted to sell, and Phillip asked me what I thought about it; and I said that I wouldn't pay that much for it.

And then he talked to Donahue and asked him did he have a 9 millimeter pistol, and Donahue had one, and I looked at it and talked to Phillip, and he said, "buy it."

You know, he asked me how it looked, and I said that it was all right. He said, "Buy the 9 millimeter pistol and a box of 9 millimeter shells."

Q. Did you hear the conversation that Mr. Halbert had with Mr. Booth on the

telephone? Did you hear Mr. Halbert's end of that conversation?

A. He was just saying what kind of rifle he had, you know.

And then he handed me the phone, and Phillip wanted to talk to me. Donahue went and got the rifle, and I looked at the rifle.

I forget what he wanted for it, but I told Phillip it was too much - - you know, whatever he wanted, it was too much for the rifle.

Q. And at that point you decided to purchase the 9 millimeter?

A. Yes. Phillip told me to ask - - ask Donahue did he have a 9 millimeter pistol, and I asked him, and he said yeah.

Q. Okay. Did you have any discussions with Mr. Halbert about the ammunition or the types of ammunition that you wanted to purchase or perhaps to purchase?

A. I just had that list. You know, he gave me that list. It had two of these, two of that, you know, and three of these, different kinds.

Q. Did you tell Mr. Halbert what that ammunition was to be used for or why you

were purchasing that ammunition?

A. I told him that - - no, I don't think I did, not the first time. I don't think we discussed it.

Q. Do you know whether Mr. Halbert had any other conversations with anyone other than Phillip Booth?

A. No.

Q. Now, while you were there, did you do anything else other than purchase the ammunition and the 9 millimeter?

A. No.

Q. Did you fill out any forms?

A. I don't think I did. I don't remember if I did or not.

Q. By the way, what was the amount on that check that you paid?

A. Five hundred fifty dollars.

Q. Pardon me?

A. Five hundred fifty dollars.

Q. Is that the amount that is written on that check in front of you?

A. Yes. He just totaled up the shells and the gun and what it come to, and he filled it in. I okayed it that he filled in the

right amount.

Q. Did anyone go with you when you went to Mr. Halbert's store on Tuesday night?

A. Ed Tackett.

Q. Anyone else?

A. No.

MR. KEHRLI: Mr. Marshall, if you would, would you please show the witness what has been introduced into evidence as Government's Exhibit No. 91.

(The Marshall complies)

Q. Have you had an opportunity to look at that exhibit, Mr. Moore?

A. Yes.

Q. Do you recognize it?

A. No, I don't recognize it, but that - - I don't know whether I signed that - - whether it is my signature or not. It might be.

Q. Is that your signature on that document?

A. It might be. I can't say for sure.

Q. What is the date on that document, sir?

A. (No response)

Q. Next to your signature?

A. Second, 16th, '82.

Q. That would have been that Tuesday that you were at Mr. Halbert's store?

A. Uh-huh.

Q. And what does that document reflect as to the firearm that was purchased that evening?

A. Pistol, model fifty-nine, 9 millimeter Smith & Wesson.

Q. Is that the 9 millimeter you purchased that Tuesday evening?

A. Yes.

Q. Do you know who filled this document out?

A. I think Donahue did. He signed it there, Donahue Halbert.

Q. Did you take anything else with you back to Phillip and Pearl Booth other than the guns and ammunition?

A. I don't know whether I did or not. I might have or might not have.

Q. Did you take that document that you have there, Exhibit No. 91, back to Pearl

Booth?

A. It seems to me like I took something, a receipt or a letter or something.

Q. All right. After you left Mr. Halbert's store with the 9 millimeter and the ammunition, what did you do, sir?

A. Took it back to Phillip and Pearl Booth.

Q. And did you have any conversations with anyone at the time you took that ammunition and weapon back to Phillip and Pearl Booth?

A. I just gave it to them. It was getting kind of late, and I just gave them the ammunition and gun and told them I was going home. And Phillip said to be back down there the next morning at the tipple.

Q. Be back down where?

A. Edgar Jones's tipple the same time the next morning.

Q. Did you, in fact, go to Mr. Jones's tipple the next morning?

A. Yes.

Q. Was that the same time, approximately 7:00 o'clock?

A. Yes.

Q. This is Wednesday morning; is that correct?

A. Correct.

Q. All right. On Wednesday morning at 7:00 o'clock, who did you see at Mr. Jones's tipple?

A. Another crowd there.

Q. All right. Now, this is important. I would like you to - - as best you can recall, is there anyone here in the Courtroom that was there on Wednesday morning when you reported to Mr. Jones's tipple?

A. Hermit Newsome, Benny Caudill, Teddy Kinney, Linville Mosley, Jason Moore, about the same ones that was there the first time.

Q. Do you recall anyone else being there at the tipple?

A. (No response)

MR. KEHRLI: Your Honor, could we have the back row of Defendants stand, please.

THE COURT: Yes.

(Said Defendants complying)

Q. Of that back row, which of

those men were at that tipple on Wednesday morning?

A. Postman, Bo Moore, and that's about all.

Q. Was Drexil Hall there?

A. Yeah, I think. Yeah, Drexil was there.

Q. When you say "Postman", do you know him by another name?

A. I just know him when I see him, that third one from the end there, the gray headed one.

THE COURT: Is that all he knows? If it is, they can be seated.

MR. KEHRLI: All right.

THE COURT: Is that all you know?

THE WITNESS: Yes.

THE COURT: Okay.

(Said Defendants complying)

Q. And Postman is the third one from the left end in the back row?

A. Correct.

MR. KEHRLI: Your Honor, may the record reflect that the witness has identified the Defendant, Kenneth Rolland.

MR. KIRKLAND: No objection, Your Honor.

THE COURT: The record may so reflect.

MR. KEHRLI: All right. Your Honor, may the first row stand, please?

THE COURT: Yes.

(Said Defendants complying)

Q All right, Mr. Moore, of those gentlemen that are standing, which of those gentlemen were at the tipple on Wednesday morning?

A. Benny Caudill, Linville Mosley, the one in the orange shirt, Pebo, Raymond Hall, and that's about all.

Q Do you recall anyone else?

A. I think that's all.

MR. SELF: All right. You may be seated, gentlemen.

(Said Defendants complying)

Q What is Pebo's last name, do you know?

A. Gayheart.

Q What were these men doing at the tipple on Wednesday morning?

A. Just standing there around talking, you know, about the first thing - - about the same way they was the first morning.

Q Was Mr. Booth there - -

Phillip Booth?

A. Yes.

Q. All right. What did you do after you arrived at the tipple, Mr. Moore?

A. Just stood around there. And then Jason Moore started passing out guns; and he gave me a rifle.

Q. What kind of rifle?

A. First they decided to go up on the hill, you know, and shoot towards the Ray-Mac Mining site to scare - - to scare the men from working, see.

Q. Who asked - - who said that?

A. Well, I don't know exactly who said that, but it was the talk. And Jason Moore gave me - - found out who wanted to go, you know, up on the hill.

Q. All right. Who found that out?

A. After Jason found out who was going, he passed out the guns.

Q. Jason found out who was going on the hill.

A. Yeah. He passed out the guns.

Q. What kind of gun did he give you, sir?

A. He gave me a .243 rifle.

Q. Did Mr. Moore say anything to you when he gave you the gun?

A. He gave me that gun and a box of shells, and said, "Papa wants you to have a good one."

Q. All right. When he said "Papa", did you know who he was talking about?

A. Yes.

Q. Who was that?

A. Edgar Jones.

Q. And he said - - when he said, "Papa wants you to have a good one", what did he mean?

A. Good - - a good gun. Because I told them, you know, the day before that we wanted bigger and better guns.

Q. What - - did you see Jason Moore pass out guns to anyone else?

A. He gave Hermit Newsome one.

Q. Do you recall what kind of gun he gave to Hermit Newsome?

A. No, I don't.

Q. Did you ever have occasion to see Mr. Jones that morning at the tipple on Wednesday?

A. He stopped there early that morning before they passed the guns out.

Q. Before they passed the guns out?

A. Yes.

Q. All right. When you say he stopped there, would you please describe to the Jury what you saw, what Mr. Jones was doing when he stopped at the tipple on Wednesday morning?

A. He was in his vehicle, and he just pulled on the side of the road and stopped to talk to three or four of them there.

Q. Who did Mr. Jones talk to?

A. I think it was Jason and Phillip Booth.

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Q. Do you recall anyone else he talked to--you saw him talk to?

A. No. It was just two or three, you know, standing around his car talking to him.

Q. All right. Did you talk to Mr. Jones?

A. No.

Q. Did you hear the conversation that he had--

A. (Interrupting) No.

Q. (Continuing) --was having with those men?

A. No.

Q. What--what did you do after you received the gun from Jason Moore?

A. Went up Frasure's Creek up the hollow at the foot of the hill and got out.

Q. All right. And before you talk about going up to the foot of the hill, did you have any conversations with anyone else there prior to going up the hill?

A. No.

Q. These other gentlemen that you-- Did you speak with Hermit Newsome?

A. Yes. Hermit said that he would go if I go, you know.

Q. Would you tell--would you repeat that conversation as nearly as you recall as what was said?

A. He said, "I'll go if you'll go." He said, "We are both foremen." You know. He said, "If you"--

Q. (Interrupting) When--I'm sorry. Go ahead.

A. He said, "If you'll go, I'll go." And I said, "Well, let's go."

Q. When did this conversation with Hermit Newsome take place?

A. That was down at the tipple.

Q. Was that before or after Jason Moore passed out the guns?

A. Well, it was about the time--he must have been finding out--Jason was finding out who would go, you know, and who to give the guns to.

Q. Did Hermit Newsome go upon the hill with him?

A. Yeah.

Q. Did you go up on the hill?

A. Yes.

Q. All right. Of the men that were there, which ones left to go up on the hill?

A. Hermit Newsome, Teddy Kinney, Postman, Pebo Gayheart, Bo Moore, Raymond Hall, German Stumbo.

Q. Do you recall anyone else that went up with you?

A. Me and Jake Moore.

Q. You and Jake Moore?

A. Yes.

Q. And did Phillip Booth go with you?

A. No.

Q. Now, these gentlemen that went up with you on the hill-- Well, strike that.

Before we get into that, what hill were you talking about?

A. There was a hill on the other side of the Ray-Mac mining site. Ray-Mac mining site was on one side of the hill, and we were on the other.

Q. And is that the same hill you proceeded with the gentlemen to go to?

A. Yes.

Q. How did you all get up there?

A. Me and Hermit Newsome rode with Linville Mosley. Benny Caudill let somebody up, and somebody else let some of them ride up with them, I guess. I don't know.

Q. Do you recall what kind of vehicle Linville Mosley had that you rode up in?

A. A Jeep.

Q. Do you know what kind of vehicle Benny Caudill had?

A. He had a Jeep, too, I think. I don't know.

Q. And did any other vehicles take men up to this hill you are speaking of?

A. There was one, but I don't know what--who it was or what kind it was. There was nine guys went on the hill.

Q. These people that went on the hill, did you take--did you take that gun with you that Jason Moore had given you?

A. Yes.

Q. Now, these people--other people that went with you up on the hill, did they

have guns too?

A. Yes.

Q. Do you recall what kind of guns each of these gentleman had?

A. They were all high-powered rifles.

Q. Do you specifically recall what type of weapon any of them had as far as caliber or--

A. Jake Moore had a mini 14 and that is--shot a .222 shell, I think.

Q. Do you recall what type of weapon German Stumbo had?

A. No. It was a semi-automatic, had a 30-round clip.

Q. A rifle?

A. Yeah.

Q. What type of gun did Hermit Newsome have?

A. He had a bolt action. I don't know the brand.

Q. A rifle?

A. Yes.

Q. What about Bo Moore? What type of gun did he have?

A. He had a rifle.

Q. Do you recall what caliber?

A. No.

Q. How about Postman?

A. They all had rifles. Everybody that went up there had rifles.

Q. Did Raymond Hall have a rifle?

A. Yes.

Q. Teddy Kinney?

A. Yes.

Q. All right. Where did you proceed in these vehicles with Linville--in this vehicle with Linville Mosley? Where did you proceed to go after you left the tipple?

A. We went up to the bottom of the hill opposite from the Ray-Mac mining.

Q. What route did you take, do you recall?

A. Went up Frasure's Creek.

MR. KEHRLI: Your Honor, may I have a moment to consult with my cocounsel?

THE COURT: Yes.

(Government's counsel conferred.)

MR. KEHRLI: YOur Honor, I would like

MILLERS FALLS
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to have the witness shown what has been introduced into evidence as Government's Exhibit 6 and 7, please.

(The Marshal complied.)

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MILLERS FALLS
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CLIFTON CONTENT

Q. Mr. Moore, have you seen those photographs before today?

A. No.

Q. All right. I would like to take you - - have you take your time, and would you review those photographs, please, and tell the Jury whether or not you recognize what is depicted in those photographs?

A. That's a picture of Frasure's Creek, McDowell - - East McDowell.

MR. KEHRLI: All right, Your Honor, could the Marshall please post those photographs on the easel?

THE COURT: Yes.

MR. KEHRLI: I believe, Mr. Marshall, we have been clipping them to the top so that the Jury can see them better.

(The Marshall complies)

Q. All right, Mr. Moore - -

MR. KEHRLI: Your Honor, may the witness leave the witness stand and approach the easel?

THE COURT: Yes, sir.

Q. Mr. Moore, would you step off the stand, please; and would you tell us whether either one of those photographs shows the

route that you took up Frasure's Creek to this hill that you are speaking of?

(The Witness complies)

A. Right here at Hood's Creek.

Q. Could you trace that with your hand, please, and tell the Jury where you proceeded and where you walked up?

A. We went up the hill right here. (Indicating).

THE COURT: You will have to make an effort, Mr. Moore, to hold your voice up.

THE WITNESS: Yes, sir. We went up the hill about right here, and around the hill and back over here over the top of the Ray-Mac Mining site.

MR. KEHRLI: All right. You may resume the witness stand, Mr. Moore.

(The witness complies)

Q. Now, when you followed that route, I take it you proceeded on foot; is that correct?

A. Correct.

Q. And all the - - first of all, did you take your gun with you when you were doing this?

A. Yes.

Q. Did the other gentlemen that were with you take their guns with them?

A. Yes.

Q. Now, these men - - would you describe to the Jury how you proceeded up the hill?

A. On foot.

Q. Was there any particular order or - -

A. Single file up the hill and just, you know, a - -

Q. Who was leading you up the hill?

A. German Stumbo was in front, and Jake Moore. They knowed the hills better than anybody else.

Q. Did all these men that you have named go up to the top of the hill?

A. Yes.

Q. What did you do after you got there?

A. Oh, went up there. And after we got to the top of the hill - - we had to walk around the top of the hill to - - to get to Ray-

Mac Mining site.

We looked over across the hill on the other side of the hill, and we could see some shadows in the trees, men walking.

Q. All right. Is there a rock line over there where you were looking at that point where you saw the shadows?

A. Pardon.

Q. Is there a rock line over there at that point where you saw those shadows?

A. Yeah, there's some rocks there, yes.

Q. Were there shadows that you saw close to that rock line?

A. Yes.

Q. Do you know who those men were?

A. No.

Q. What happened after that?

A. Well, we let the two - - two of the guys that went with us stayed there to watch the guys on the other side while we walked around.

Q. And who were the two that stayed there?

A. Bo Moore and Raymond Hall.

Q. Now, how did they come to stay there?

A. Well, they just left two guys there.

Q. Did someone tell them to do that?

A. I guess everybody just decided German and Jake.

Q. All right. Did they, in fact, stay there?

A. Bo and Raymond Hall?

Q. Yes.

A. Yes, they stayed there.

Q. Did you hear any instructions that they were given as to what they were to do, why they were staying there?

A. They were to watch the guys on the other side of the hill there through their scope; and, you know, if anything suspicious went on, fire a warning shot in the air so we could come back.

Q. Did they have scopes on their guns?

A. Yes.

Q. After you left those two men there where did the rest of you go?

A. We proceeded to go around the hill above the Ray-Mac mining site.

Q. How far were you from the Ray-Mac mining site before you stopped?

A. I don't know exactly how far it was. It seemed like a long way.

Q. Approximately how far?

A. I can't say.

Q. Could you see the Ray-Mac mining site?

A. No, not from where we were at.

Q. What happened at that point?

A. We went on around to where could see the Ray-Mac mining site.

Q. All right, when you say you went on around would you describe to the jury where you went?

A. We went over the top of the Ray-Mac mining site so we could look down.

Q. When you could see the Ray-Mac mining site what did you do at that point?

A. Well, there was a tool shed

down there and somebody just decided to shoot at the tool shed you know, to scare the men down there working.

Q. At that time when started-- did someone start shooting?

A. Yeh, but we all did.

Q. All right. At that time when you started shooting how far were you from the Ray-Mac mining site?

A. I don't know, but we could see it, with a high powered rifle it shouldn't have been any trouble hitting it.

Q. Do you have any idea, can you give this jury an idea how far a distance from that mine site you were when you started shooting?

A. Fifteen hundred, two thousand feet maybe.

Q. About five hundred yards?

A. Yes, around there.

Q. What did you all do when you started shooting?

A. Well, these guys that we seen overthere they started shooting back. They were down below us, we were up over top of them.

Q. Are you sure it was those

men that started shooting back?

A. That's who we thought it was, Yes.

Q. All right, could you actually see them shooting back?

A. We never did see them anymore after the shooting started.

Q. So, you don't know whether it was those - - those persons that shot at you or not?

A. It was somebody down below us.

Q. This returned fire come after you started shooting first.

A. Yes.

Q. All right, of the men that were with you when you could see the rest of the Ray-Mac site and started shooting, which ones shot?

A. All of us.

Q. How long did you shoot?

A. I don't know exactly, we just shot - - Jake had a thirty round clip in his and German had a thirty round clip in his gun.

Q. What did you have in your gun?

A. A bolt action.

Q. What kind of ammunition did you have?

A. .243.

Q. How much ammunition did you shoot up?

A. I think I shot two shells, I had a box though but when those men started shooting back we left.

Q. How many - - where did you get that ammunition?

A. Donahue Halbert.

Q. All right, is that some of the ammunition you purchased the night before?

A. Yes.

Q. Did you carry that with you at all times, or did you - - if I recall your testimony you said you had given that ammunition to Phillip and Pearl Booth, when did you get it back?

A. Jason Moore gave it back to me.

Q. When?

A. That morning when he passed the rifles out.

Q. At the tipple?

A. Yes.

Q. You said you only shot two shells, did other people shoot more than that?

A. Yeh, them guns with thirty round clips and the semi-automatics you know, they shot more. Jake burnt the barrel up on his gun.

Q. Would you tell the jury about that, what happened to Jason Moore's gun?

EZERASE
COTTON CONTENT

A. He burnt the barrel up -- he had two 30 round clips taped together. He shot about sixty rounds and burnt the barrel up.

Q. Did you see that happen?

A. Yes, sir.

Q. How far was Jake Moore from you when you were shooting?

A. As close as I am from you.

Q. How close were the other men from you when they were shooting?

A. We were all right together, just like we are in this room.

Q. What position were you in when you were shooting?

A. Some of them were laying down behind rocks, some of them was behind trees standing up.

Q. Did you hear or see each person that was up there with you, each man that was up there with you shooting at that Ray-Mac mine site?

A. Yeah, everybody shot,

you could see it, we were all right there together.

Q. What happened after you stopped shooting?

A. When they started shooting back we left. We came back around there from where we left Bo and Raymond Hall.

Q. Did they say anything to you when you first saw them again?

A. No, they just decided to go on back off the hill.

Q. Who decided that?

A. Everybody.

Q. And how did you get off the hill?

A. We walked. We didn't take -- we took a different way than we come up.

Q. What time of day was this when you left the hill that Wednesday?

A. I don't know, it must have been getting up in the evening.

Q. What time had you left the tipple earlier in the day to leave for the hill?

A. It must have been about nine o'clock I guess, nine or ten.

Q. So, how long in total -- you were up on the hill all afternoon?

A. Yeah, it was a long way we had to walk.

Q. When you got to the bottom of the hill, what did you do then?

A. We got down to where we could see the highway and we waited for somebody to go by that knew us to pick us up.

Q. Did someone pick you up?

A. Yes.

Q. Who?

A. Benny Caudill.

Q. What was Mr. Caudill driving when he picked you up?

A. I don't remember exactly what he was driving, but he picked us up. He had to make two trips to pick everybody up.

Q. Two groups. Did you leave in the first or second group?

A. The second one I think.

Q. Where did you -- where did Mr. Caudill take you?

A. We went down to German Stumbo's father's place. He had a little store there and we went down there.

Q. And do you know Mr. German Stumbo's father's name?

A. Stiffy Stumbo.

Q. Who went down there with you?

A. Everybody that was on the hill.

Q. Did you all take your guns?

A. Yes.

Q. With you to Mr. Stumbo's?

A. Yes.

Q. It was a store you said?

A. It was just a little one-room store, they sold pop and stuff.

Q. What did you do while you were there?

A. Somebody sent and got some beer and some of them eat. We drank some beer. Phillip Booth stopped by there. We stayed

there I guess thirty, forty minutes, maybe an hour.

Q. Where did you go after you left Stiffy Stumbo's store?

A. I left with Phillip Booth.

Q. Where did you go then?

A. Down to his house.

Q. What did you do at Phillip Booth's house that Wednesday evening?

A. I got my -- let's see. Later on that evening he sent me back to Donahue's to get some more shells.

Q. Who sent you back to Donahue's?

A. Pearl and Phillip.

Q. Did you take anything with you when you to Donahue's on Wednesday?

A. What do you mean did I take anything with me?

Q. Did you take anything with you from Phillip and Pearl's when you went to Donahue's?

A. I took a check, a

blank check.

MR. KEHRLI: Your Honor, I'd like the witness shown what's been introduced into evidence as Government Exhibit 114.

(Reporter's Note: The Marshall passes document)

Q. Mr. Moore, do you recognize Government Exhibit 114?

A. Yes, that's the check on Calamity Coal signed by Phillip and Pearl Booth.

Q. Is that the check you took with you on that Wednesday night?

A. Yes.

Q. Did anyone go with you to Donahue's that night?

A. Yes, Lee Jones.

Q. Anyone else?

A. No.

Q. Now, that check that you've got in front of you, who sent the check, who filled the check out?

A. Pearl did I think.

Q. Did you complete any of it?

A. No, Donahue filled out his name and amount and Pearl dated it and signed it.

Q. What's the amount on that check?

A. Two hundred sixty dollars.

Q. What account is that check drawn on?

A. Calamity Coal.

Q. When you arrived at Donahue Halbert's on Wednesday evening, what did you do?

A. They gave me another list to get some more shells.

Q. So, you took a list with you that night as well?

A. Yes.

Q. Who gave you that list?

A. Pearl.

Q. Do you know where Pearl Booth got the list?

A. No.

Q. What was on that list,

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if you recall?

A. Just different types of shells that -- you know, she knew what kind of guns she needed shells for, and she just wrote them down. Different types of shells.

Q. What did you do when you arrived at Donahue's store on Wednesday evening?

A. Give him the list, but he was about out of shells.

Q. Did you have any discussions with Mr. Halbert that evening?

A. Yes, he said -- he said he had some kind of special shell, you know, he showed me. It was supposed to bust the block of a motor or something. It was a new type shell.

Q. Why did he show you that type shell?

A. Well, he didn't have the type I wanted, you know, he was showing me this trying to sell me this.

Q. Did you tell him what those shells were to be used for, or did you have any discussion about that?

A. He knew what they were

being used for, I told him they were shooting McDowell all to pieces.

Q. What did Mr. Halbert say, if anything, when you told him?

A. That's when he showed me these new shells and told me what they were good for and everything.

Q. Did you fill out any forms that evening at Donahue Halbert's?

A. I don't know whether I did or not.

Q. Did you bring any of the forms back to Pearl or Phillip Booth that evening?

A. I don't know.

Q. What did you do -- were there any other discussions that you recall at Mr. Halbert's store that evening?

A. No, I just bought what shells he had that was on the list and took them back to Phillip and Pearl.

Q. And did you take them back to the Booths' house?

A. Yes.

Q. Did you see any men

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there on Wednesday evening at the Booth residence?

A. There's all the time somebody there drinking, but I don't remember who they were at that exact evening.

I know I told Pearl that I was not going back up on the hill anymore being shot at and she said she'd give that rifle to somebody else.

Q. When did you tell her this?

A. That was that evening, that night.

Q. Did you do anything else that evening with regards to the incident at Ray-Mac?

A. No.

Q. Did you undertake any activity the rest of that week with regards to Ray-Mac Coal Company?

A. I don't know. There was some equipment -- there was shooting that went on all that week.

Q. Did you participate in it?

A. No.

Q. Did you have occasion to go to Lexington the next weekend?

A. Yes, me and Phillip Booth went.

Q. Do you know why you went to Lexington?

A. No, I just know what he told me after we got there.

Q. First of all, before we get to that, Mr. Moore, what time did you leave for Lexington?

A. Pardon?

Q. What time did you leave for Lexington?

A. I don't -- I don't know the exact time.

Q. Do you know what day it was?

A. I think it was on Saturday -- Friday, Friday I guess.

Q. How did you come to leave in the first place?

A. Phillip called me and wanted me to go to Lexington with him.

Q. Did you ride with Mr.

Booth to Lexington or did you go on your own?

A. I rode with him.

Q. Did you discover at any time during that weekend -- first of all, how long did you stay in Lexington?

A. Well, we went on Friday and stayed all night Friday night I think, and came back Saturday.

Q. Did you come back Sunday --

A. (Interrupting) Saturday I think, Saturday or Sunday.

Q. All right. You're not -- did you leave on Saturday?

A. I'm not for sure, it was either Friday, Saturday or Sunday. It was on the weekend.

Q. How many days did you stay in Lexington?

A. Just one.

Q. So the jury might understand, you left one night and came back the next day?

A. Yes.

Q. But you're not sure

whether it was Friday or Saturday?

A. It might have been Saturday we left and come back on Sunday.

Q. What time of day the next day did you return?

A. It was in the evening.

Q. While you were down there during this period, what did Mr. Booth tell you as to why you were there?

A. I asked him what was we doing down there and he just said Edgar Jones said --

MR. HARWELL: (Interrupting) May the Court please, Your Honor, we'd like the record to show an objection.

THE COURT: All right.

MR. HARWELL: Thank you, Judge.

A. He said Edgar Jones said get him a good witness and leave town, get out of town.

Q. Did Mr. Booth say why he'd need a good witness?

A. No. He said something was going to happen, but he didn't know what.

Q. Who said that?

A. Booth, he said something was going to happen.

Q. Where were you when this conversation with Phillip Booth took place?

A. Down in Lexington maybe. It might have been at his place -- he owns a place down there, a house.

Q. So, this conversation took place after you arrived in Lexington?

A. Yeah, I asked him what was we doing down there. What -- why we come down there, and he told me.

THE COURT: Now, this is tentative evidence. I think I've advised you about tentative evidence and this is tentative evidence.

MR. KEHRLI: Thank you, Your Honor.

Q. How did you come back to the McDowell area when you returned?

A. With Phillip Booth.

Q. With Phillip Booth?

A. Yeah.

Q. After this violence had occurred concerning the Ray-Mac site, did you have any discussions with any of the men in this courtroom about their activities concerning the Ray-Mac violence?

A. Well, just Ranny Blankenship.

Q. You had a conversation with Mr. Blankenship?

A. Yeah.

Q. Where was this conversation?

A. This was at Mr. Booth's house.

Q. Do you recall when it was?

A. No, it was after it was all over, you know, when we went back to work.

Q. All right, what did Mr. Blankenship say to you?

A. He just said it was like a young Vietnam up there.

Q. What did you understand him to mean when he said up there?

A. Upon the hill where they were shooting back and forth.

COTTON CONTENT
FEDERAL

Q. Was this-- Did you understand him to mean that this was the time when you were upon the hill--

MR. KIRKLAND: (Interrupting) Object, Your Honor. He's characterizing this man's testimony.

THE COURT: Sustained.

MR. KEHRLI: I'll withdraw the question, Your Honor.

Q. Did you recall any other statements that Mr. Blankenship made to you at that time?

A. No, that's the only one.

Q. Did you have any conversations with any of the other defendants?

A. Harold Dean Moore.

Q. When did you speak with Mr. Moore?

A. I think it was the same time, we were all down there at Phillip's.

Q. First of all, who else was there with you besides Mr. Moore?

A. It was Phillip Booth, Pearl, me. There were four or five-- See, a lot of guys go down there to Phillip's to drink. He kept a lot of beer and liquor and stuff around that worked

for him.

Harold Dean said he was behind a tree and he started to look down and the bark--they shot the bark off the tree and it hit him in the face.

Q. Was there any discussion concerning-- Strike that.

Do you know an individual by the name of Ed Panhandle Moore?

A. Yes.

Q. Was there any discussion concerning Mr. Moore?

A. Yes. He said Panhandle was the little general.

Q. Who said that?

A. Ranny.

Q. Ranny Blankenship?

A. Ranny Blankenship.

Q. Do you recall any other discussion with these defendants concerning their activities during the violence?

A. No.

Q. At any time, Mr. Moore, did you get paid for any of your activities during that week?

A. No.

Q. Did you expect to get paid?

A. Phillip Booth said his men would get paid just like they were working.

Q. When did Mr. Booth say that to you?

A. This was before it all started.

Q. Did you in fact get paid?

A. No.

Q. Did you hear him--did he tell that to anyone else besides you?

A. I think he told it to everybody that worked for him.

Q. Where did--where did he tell them this?

A. Well, he told me that two or three times. Up there at the tipple was the first time I heard it.

Q. At Edgar Jones' tipple?

A. Yes.

Q. Are you familiar with a restaurant called the Em Pack restaurant?

A. Yes.

Q. During this week in

question were you ever at the Em Pack restaurant?

A. Phillip Booth and I stopped-- Edgar Jones was there eating breakfast.

Q. Before you go on, when was this, sir?

A. This was earlier that week, I think, before, you know, all the shooting and stuff took place.

Q. All right. What-- Who was present when you went to the Em Pack restaurant?

A. Phillip went in to talk to Edgar. He'd seen his Blazer, four-wheel drive and he pulled in to talk to Edgar.

Q. What time of day was this?

A. I don't-- They were eating, it was either breakfast or dinner, or something, in the morning.

Q. It was in the morning?

A. Yeah.

Q. They were eating breakfast in the morning?

A. Yeah, they served breakfast and dinner and stuff.

Q. Did you go in with Mr. Booth into the restaurant?

A. He went in first and then I walked in. He was talking to Edgar--

Q. (Interrupting) Did you hear any of the conversations he had with Mr. Jones?

A. No.

Q. All right. What did you do after you left that restaurant that morning?

A. When he came back out I was in the car and he said get that case of whiskey out of Edgar's Blazer and put it in his car. A case of Jack Daniels whiskey.

Q. And what were you to do with it, get it out of Edgar's car and do what with it?

A. Put it in his car.

Q. What kind of vehicle did you remove it from?

A. It was a Blazer, a Chevrolet Blazer.

Q. And where did you take the Jack DAniels whiskey and put it?

A. I put it in Phillip Booth's car.

Q. Do you know what happened to that whiskey after you put it in Mr. Booth's car?

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A. He gave it out to the men that was on the picket line.

Q. Where did he give it to the men?

A. Some of it at his house, some of it at the tipple.

Q. Edgar Jones' tipple?

A. Yes.

Q. Was this passed out one of those mornings when you were there? One of those mornings that you testified about?

A. Yes, it was there some of them mornings, yes.

Q. Did you see--did any of the men drink this Jack DAniels whiskey?

A. Yes.

Q. During that week did you ever have occasion to attend a meeting at the union hall, Local 5967?

A. Yes.

Q. Do you recall when that was?

A. I don't recall what date--I think it was that night that we went upon the hill, that Tuesday.

Q. Now, was this the night you went on the hill when you shot at the coal truck or the night when you went on the hill with the men and shot at the Ray-Mac mining site?

A. The night we went and shot at the coal truck.

Q. What did you see, who was there at that meeting at the union hall?

A. There were just a bunch of men there. Some of them belonged to the union and some of them didn't. Me and Phillip--I went with Phillip Booth.

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Q. Of the people that are in the Courtroom today, who did you see at that meeting at the union hall?

A. Hermit Newsome - -

Q. Pardon me, I didn't hear that.

A. Hermit Newsome, Drexil Hall, Jason Moore.

Q. Was Mr. Newsome a member of the union?

A. No.

Q. Were you a member of the union?

A. No.

Q. Was Phillip Booth a member of the union?

A. No.

Q. Was he there?

A. Yes.

Q. Did you see anyone else there that didn't belong to the union?

A. Yeah. There was some people there that I didn't even know. I don't know whether they belonged to the union or not.

Q. Do you recall anyone else

that was there that didn't belong to the union?

A. No. We didn't stay long. We got up and left.

Q. All right. Did you see anyone talking while you were there at that meeting at the union hall?

A. Jason - - Jason Moore and Teddy Kinney. Hermit Newsome wanted to make a speech but he was about drunk. That was when we left.

Q. What were these men talking about at that meeting that took place?

A. They were talking about - - some of them organizing Ray-Mac, some of them was shutting them down; talk like that. I think there was more drinking going on than anything.

Q. Was there drinking going on at that meeting?

A. Yes.

Q. How much?

A. I - - I don't know. Two or three - - I was drinking, me and Phillip Booth. Hermit Newsome was drinking.

Q. Did you see any people who appeared to be intoxicated at that meeting?

A. I can't say whether they was intoxicated or not. I can tell when a man's...

Q. Of the men that were there, how many were drinking?

A. Hermit Newsome was the only one that I could say was - - he acted like he was pretty well lit.

THE COURT: Let's have a break at this point.

You are going to be in recess until 11:00 o'clock. During this recess the "not now" admonition is in effect.

MR. HARWELL: Judge, may we inquire before the Jury goes out if they're cold or if it's just me this morning.

A JUROR: We are.

MR. HARWELL: Could I respectfully ask the heat be turned up a little bit, Your Honor.

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: Yes, sir.

THE COURT: All right.

MR. SELF: Make that a joint motion, Your Honor.

THE COURT: Is there any objections or corrections to the form of the admonition?

CONCERTED VOICES: No.

THE COURT: All right. You may excuse the Jury until 11:00 o'clock.

THE MARSHALL OF THE COURT: You're excused until 11:00 o'clock.

REPORTER'S NOTE: The Jury left the Courtroom at 10:47 A.M.

THE MARSHALL OF THE COURT: The Jury is out of the Courtroom, Your Honor.

THE COURT: Gentlemen, the Court is of the opinion with regard to the conversations which were had by the witness and Ranny Blankenship and Harold Moore after the violence was over and they had gone back to work - - that the Court's going to admonish the Jury not to consider those.

MR. SELF: Your Honor, those are admissions admissible against the Defendants themselves.

MR. KEHRLI: Your Honor, we're not submitting them as coconspirator's statements. We are - - We are submitting them as admissions of the Defendant.

MR. ADAMS: Your Honor, I think the Court's position is well taken on that. This was done sometime after that. Moreover, they didn't

really lay much foundation as to when it was said, who said it and where, and we objected.

MR. WALBOURN: I join with Mr. Adams, Your Honor.

THE COURT: All right. Gentlemen, we'll be in recess until 11:00 o'clock.

THE MARSHALL OF THE COURT: All rise. This Court will be in recess until 11:00 o'clock.

REPORTER'S NOTE: The Court was adjourned at 10:50 A.M.

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(Reporter's Note: Court began at 11:04 A.M.)

THE MARSHALL: This Court is again in session. Be seated and come to order, please.

All Defendants, counsel and all members of the jury are present.

THE COURT: Thank you, sir. Now, ladies and gentlemen of the jury, you heard some tentative evidence regarding after these activities were over and the men had gone back to work with regard to a conversation between the witness Ranny Blankenship and Harold T. Moore. I think they made statements about their specific activities on the hill.

The jury's advised that those statements will only be considered as evidence against the person who made the statement and no one else, if in your opinion you do consider them as -- as being evidence against those persons. Do you understand?

I think by the nod of your head you do.

You may proceed, sir.

MR. KEHRLI: Thank you, Your Honor.

Q. Mr. Moore, you testified about an individual named Donahue Halbert. Do you see Mr. Halbert here in the courtroom?

A. Yes.

Q. Is that the individual you've been testifying about?

A. Yes.

Q. Mr. Donahue Halbert?

A. Yes.

MR. KEHRLI: Your Honor, may the record reflect that the witness has identified the Defendant Donahue Halbert.

MR. BRANSON: No objection.

THE COURT: The record may so reflect.

Q. You've also testified about a man named Linville Mosley. Do you see Mr. Mosley here in the courtroom today, Mr. Moore?

(Reporter's Note: Defendant Linville Mosley stood up.)

A. Yes.

Q. Is that the individual that just stood up?

A. Yes.

MR. KEHRLI: Your Honor, may the

record reflect that the witness has identified the Defendant Linville Mosley.

MR. SPENCER: We have no objection.

THE COURT: The record may so reflect.

Q. Mr. Moore, you've also given some testimony about an individual named Bo Moore. Do you see Bo Moore here in the courtroom?

(Reporter's Note: Defendant Bo Moore stood up.)

A. Yes, I see him.

MR. KEHRLI: Your Honor, may the record reflect the witness has identified the Defendant Bo Moore.

MR. PAFUNDA: No objection, Your Honor.

THE COURT: All right. Let the record so reflect.

Q. There's another individual you've testified about named Raymond Hall, Mr. Moore. Do you see Raymond Hall here in the courtroom today?

(Reporter's Note: Defendant Raymond Hall stood up.)

A. Yes.

MR. KIRKLAND: We'll stipulate that, Your Honor.

THE COURT: Let the record so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. One last individual that you testified about that you haven't identified, and that's Mr. Teddy Kinney. Do you see Teddy Kinney here in the courtroom?

A. Yes.

MR. KIRKLAND: We'll stipulate on him too, Your Honor.

THE COURT: The record will so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. Now, you -- you testified earlier that Jason Moore passed out some guns at the tipple on Wednesday morning. Who all did Mr. Moore give those guns to besides yourself, and I believe you said Hermit Newsome? Who else?

A. I think Bo -- Bo Moore and Raymond Hall, I think.

Q. Did they give guns to

anyone else?

A. I couldn't say.

Q. Do you know where Jason Moore got those guns?

A. No.

Q. When you purchased ammunition on Tuesday night and Wednesday night at Donahue Halbert's were those rifle or pistol shells that you purchased or both?

A. Rifle shells and one box of 9 millimeter shells.

MR. KEHRLI: Your Honor, if I could, I'd like to have the witness -- first of all, I'd like to have what's been marked for identification as three M's, which consists of an exhibit plus two documents, that I'd like to have taken out by Madam Clerk, if possible, and marked for identification separately. Mr. Marshall, would you hand this to the Madam Clerk.

MR. WALBOURN: Your Honor, I apologize. I couldn't hear if Mr. Kehrli said M or N.

MR. KEHRLI: Three M's.

MR. WALBOURN: N as in Nancy?

MR. KEHRLI: M as in Marvin.

MR. WALBOURN: Thank you.

MR. KEHRLI: Certainly.

(The Marshall Complied)

THE CLERK OF THE COURT: Mr. Kehrli, these are N.

MR. KEHRLI: Oh, I'm sorry. Mr. Walbourn is correct, it is N as in Nancy.

THE CLERK OF THE COURT: Do you want the evidence tag removed, sir?

****

MR. KEHRLI: Yes, Ma'am, please, the evidence tag and also the envelope, Madam Clerk. Have them marked separately.

THE CLERK: What's previously been marked for identification as Government's exhibit three letters of the alphabet N has now been marked for purposes of trial as Government Trial Exhibit #117. The evidence tag contained therein has been marked for purposes of Trial as Government Trial Exhibit 117-A. The envelope, Your Honor, which was contained therein has been marked as Government Trial Exhibit 117-B.

THE COURT: Thank you, Madam Clerk.

MR. KEHRLI: May I see that before we show it to the witness.

(The Marshall complied)

MR. KEHRLI: Before I show the witness what's been marked for identification as Government's Exhibit 117 I'd also like to have what's been previously marked for identification as - - let's see, Government's Exhibit 3 N's marked as a Government Trial Exhibit, and again the evidence tag in the envelope.

THE COURT: 3 what?

MR. KEHRLI: 3 N's, as in Nancy, Your Honor.

THE COURT: I thought that's what 117 was.

MR. KEHRLI: Excuse me, 3 M's; 3 M's as in Marvin. I got the two mixed up, that's the problem.

MR. WALBOURN: Your Honor, do I understand now what Mr. Kehrli told me a minute ago when he said Marvin that he meant Nancy?

MR. KEHRLI: That's correct.

MR. WALBOURN: And now he means Marvin?

THE COURT: The first one was Nancy, second was Marvin.

MR. WALBOURN: Thank you.

THE CLERK OF THE COURT: The envelope is stapled to the envelope, sir. Is it all right if we remove this entire bag from it and leave it as it is?

MR. KEHRLI: That's fine with the Government, Your Honor.

THE CLERK OF THE COURT: See what I'm saying, Your Honor. This is stapled to the top of the brown envelope.

MR. ROWLAND: Your Honor, I never know when it's cold in here. I always know when

it's hot. Some of the people who are about half sick are still cold.

MR. KEHRLI: There is a significant draft coming in over here. It's been getting me all morning.

THE COURT: Let's say the Defendants will stipulate that. I'm being facetious there.

Is there -- Let's see, check and see if those windows, gentlemen, are...

MR. KEHRLI: They appear to be closed.

THE COURT: Sir?

A JUROR: They were down but there is wind coming all around them.

THE COURT: All right.

A JUROR: It's real cold in here when it's hot over in that area.

THE CLERK OF THE COURT: Your Honor, the exhibit which was previously marked for identification as Government's Exhibit three letters of the alphabet M has now been marked for purposes of identification as Government Trial Exhibit No. 118. The identification tag has been marked as

Government's Exhibit 118-A. The brown envelope has been marked as Government Exhibit 118-B.

THE COURT: I'm still being facetious, but the witness says it's pretty warm where he's sitting.

MR. KEHRLI: Wait until cross-examination.

THE COURT: All right.

MR. KEHRLI: All right. Mr. Marshall, since I've been confusing on my Marvins and Nancys I'll try to refer to these as Government's Exhibits 117 and 118.

Would you please show Government Exhibit 117 and 118 to the witness. I just want 117 and 118, sir.

(The Marshall Complied)

THE COURT: I think the Marshall has a statement to make.

THE MARSHALL OF THE COURT: Your Honor, these two exhibits have been shown to all opposing counsel.

THE COURT: Thank you, sir.

Q All right. Mr. Moore, would you take your time and examine those exhibits, please.

Mr. Moore, do you recognize either one of those exhibits?

A. This one (indicating).

****

Q. All right, that is Government's Exhibit No. 118.

A. Yes.

Q. What is that, please, sir?

A. Shells for a .243 rifle.

Q. All right. How do you recognize that?

A. I used to have them.

Q. Are those - - did you have those particular shells?

A. This is the shells that went to the rifle I had.

Q. All right. When - - when were you in possession of those shells, sir? When did you have them?

A. Jason Moore give me a box of shells when he gave me the rifle.

Q. Are these the shells that you used on the hill on Wednesday when you shot at Ray-Mac?

A. Yes.

Q. All right. What did you do with those shells after that Wednesday?

A. I gave the gun back, but I kept the shells. I didn't give the shells back.

Q. And what did you eventually do with those shells; do you recall?

A. Gave them to Richard Kemp later on.

MR. KEHRLI: Your Honor, at this time the Government moves into evidence what has been marked as Government's Trial Exhibit No. 118.

MR. HARWELL: No objection.

THE COURT: Okay, being no objection, let that which has previously been marked for identification as three M's, be finally entered into evidence as Government's Trial Exhibit No. 118.

REPORTER'S NOTE: At this point Government's Trial Exhibit No. 118, was marked for identification and is filed herewith as part hereof.

Q. Do you recognize the other exhibit?

A. No.

Q. Mr. Moore, the money that was used to purchase the shells that you purchased from Donahue Halbert on Tuesday and Wednesday evening was paid for by those two checks that you previously testified about; is that correct?

A. Yes.

Q. Do you know where that

money came from?

A. Where it came from? Pearl signed the check - - her and Phillip Booth, and gave me the check, and I took the checks to Donahue.

Q. Did you have any discussions with Pearl Booth about who was to pay for that ammunition?

A. She said Edgar Jones would reimburse her for it.

Q. When did she say that to you, sir?

A. I heard her say it several times.

Q. Did she say it during this week when you bought the ammunition?

A. No. She just said that Edgar would reimburse her. She didn't say when.

Q. No. When did she tell you that, sir?

A. Well, I just heard her say it several times there at the house when I was down at her house.

Q. During this week when you purchased the ammunition; is that correct?

A. Once, yes.

She said if Edgar didn't, they'd be broke up buying all of these shells. She was worried about getting it back.

Q. Did she tell you that at the same time?

A. Yeah. Yes, sir.

MR. SELF: Your Honor, if I could, I would like to have the Marshall show the witness what has been introduced into evidence as Government's Trial Exhibit No. 109; and, I believe, Madam Clerk, what has also been introduced into evidence as Government's Trial Exhibit No. 108.

That is correct, Your Honor. Our records reflect that both have been introduced into evidence.

(The Marshall complies)

THE MARSHALL OF THE COURT: Your Honor, these weapons have been cleared.

THE COURT: Thank you, sir.

Q. Mr. Moore, do you recognize that weapon, or either one of those weapons?

A. Just 109 with the scope on it.

Q. All right. Would you tell the Jury how you recognize that weapon?

A. That is the gun I had when I went up on the hill.

Q. On Wednesday?

A. Yes.

Q. Is that the gun Jason Moore gave you?

A. Yes.

Q. Do you recognize the other gun?

A. No.

Q. Did you ever see any gun like that during the week of the Ray-Mac violence?

A. No. I don't recognize it.

Q. You don't recognize it?

A. No.

MR. KEHRLI: All right. Thank you, Mr. Marshall.

Q. Mr. Moore, during the week of February 15, 1982, during this violence at Ray-Mac, do you know how Jason Moore was employed?

A. I don't think he was.

Q. Do you know how German Stumbo was employed - - who he worked for?

A. I don't think he was working either.

Q Do you know how Drexil Hall was employed?

A Drexil was working for German, I believe, and he wasn't employed either, I don't think.

Q Do you know how Teddy Kinney was employed at that time?

A I don't think he was employed either.

Q Do you know about Benny Caudill, who he worked for at that time?

A Yeah. He worked for Edgar Jones.

Q Do you know who Postman worked for at that time?

A He drove a truck, coal truck.

Q Do you know who he drove a truck for - - hauled coal for?

A He hauled coal to Edgar Jones's tipple from all the mines.

Q Do you know how - - do you know Ranny Blankenship?

A Yes.

Q Do you know how he was employed during that week?

A. He worked for Phillip Booth.

Q. Do you know Eugene Tackett?

A. Yes, sir.

Q. Do you know how Mr. Tackett was employed during that week?

A. Phillip Booth.

Q. And do you know in what capacity Mr. Tackett was employed?

A. Foreman.

Q. How about Harold Moore? Do you know how he was employed during that week?

A. Phillip Booth.

Q. Do you know which mine he worked?

A. Calamity.

Q. Hermit Newsome, do you know how he was employed that week?

A. Phillip Booth.

Q. In what capacity?

A. Foreman.

Q. Do you know Tim Milan?

A. Yes.

Q. Do you know how Tim Milan was employed during that week?

A. Phillip Booth.

Q. Do you know Mose Mead?

A. Yes.

Q. Do you know how Mose Mead was employed during that week?

A. No.

Q. Mr. Halbert, I believe, you already testified about his employment.

Do you know how Bo Moore was employed during the week of February 15th, 1982?

A. He drove a truck -- coal truck.

Q. Do you know who he drove a truck for?

A. Just all of Edgar's mine, hauled coal.

*** *** ***

Q. How about Pebo Gayheart? Do you know how he was employed during the week of February 15?

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

Q. Linville Mosley, do you know whether or not he was employed during that week?

A. No.

Q. And, Raymond Hall, do you know whether or not he was employed during that week?

A. He was a truckdriver.

Q. Do you know who he drove a truck for or who he worked for?

A. He hauled coal to Edgar Jones' tipple.

Q. Mr. Moore, why did you personally go upon that hill Wednesday and shoot at the Ray-Mac mine site?

A. In order that-- Well,-- Well, if we could scare them and get them to shut down or run them off, I could keep my job. I was told we wouldn't have a job if they kept working, and nobody would have a job.

MR. KEHRLI: Your Honor, may I have one

moment to consult with counsel?

THE COURT: Yes, sir.

(Government's counsel conferred.)

Q. You testified earlier that Tuesday morning, when the shooting occurred at the coal truck, Jason Moore had a gun?

A. Yes.

Q. What was-- Did you see him shooting?

A. I didn't see him shooting. He had a rifle.

Q. All right. And where was he at that time?

A. On the other side of the road by his truck, laying in a ditch over by his truck.

MR. KEHRLI: Your Honor, at this time I have no further questions.

THE COURT: Let's start with this end and come around.

MR. HARWELL: May the Court please. If it is agreeable with Your Honor, given this man has testified a great deal about my client,-- I certainly respect the Court's wishes, but I would be mighty grateful if I could go ahead.

THE COURT: Approach the Bench.

(Reporter's Note: At this time Mr. Self and Mr. Kehrli approached the Bench; whereupon the following was heard:)

THE COURT: Here is my thinking. You have got some avowal, and I--

MR. HARWELL: (Interrupting) On this guy?

THE COURT: Do you have an avowal on him?

MR. HARWELL: Yes, Judge, I have.

THE COURT: What I was thinking, if you had that, it might be more logical. You know, like on the other we had to wait until itwas over and get the avowal in.

MR. HARWELL: Judge, I think my avowal is going to be very short. There is a 1970 conviction that is ten years old, which I think is admissible. And, Judge, I have a hunch, though I certainly have learned not to anticipate the Court, that may be all that Your Honor may make me do by avowal. I will approach the Bench, Your Honor, if any question--

THE COURT: (Interrupting) I thought it more logically would fit in.

MR. SELF: For the record, Mr. Harwell has previously notified the Government that he

intended to use the 1970 conviction in an attempt to impeach the witness, and the Government moves in limine since it is over ten years old.

MR. HARWELL: I let the Government know some time ago, Your Honor, as a matter of courtesy. And I would approach the Bench and ask for a ruling.

THE COURT: Let's proceed until we get to the point, and then let me know.

MR. HARWELL: Can Mr. Moore sit behind me if he--

THE COURT: (Interrupting) Yes.

MR. HARWELL: Thank you, sir.

THE COURT: Just a moment. Let Mr. Kirkland come up here.

(Mr. Kirkland approached the Bench.)

THE COURT: What I was thinking was, as I told Mr. Harwell, that I thought he had some avowal and, you know, how it is, when we get to the end of it and we get the avowal in, and if it is more logical if we let him be last. But he said he doesn't think so, if you have no objections--

MR. KIRKLAND: (Interrupting) I have no objection, Your Honor. We can do it the way you want to do it. Is he going first?

THE COURT: Yes.

MR. KIRKLAND: That's fine with me.

THE COURT: Okay.

(End of conference at the Bench.)

MR. HARWELL: If the Court please, I think there are some papers under the podium that belong to the Government.

MR. KEHRLI: I'm sorry, Your Honor. I will get them out.

CROSS-EXAMINATION

BY MR. HARWELL:

Q. Mr. Moore, for the record, my name is Aubrey Harwell, and I represent Mr. Edgar Jones.

If I understand, Mr. Moore, during February of 1982, you worked for Phillip and Pearl Booth; is that correct?

A. Yes.

Q. And to be more specific, you worked at the Bryan Coal Mine, did you not?

A. Yes.

Q. And I think you said you were the third shift foreman at Bryan?

A. Yes, sir.

Q. All right, sir. That is

the midnight shift, is it not?

A. Eleven to seven.

Q. Eleven at night until seven in the morning?

A. Yes.

Q. All right, sir. And the man that you reported to was Mr. Phillip Booth, was it not?

A. True.

Q. And you also reported to Mrs. Pearl Booth, did you not?

A. Yes.

Q. All right, sir. And, as a matter of fact, Mr. Phillip Booth and Mrs. Pearl Booth had the power to hire and fire you; isn't that correct?

A. Yes.

Q. All right. In addition to that, it would be fair, would it not, Mr. Moore, to categorize the relationship that you and Phillip Booth had as close personal friends back in February of '82?

A. Yes.

Q. You and he were together socially in addition to being sometimes together in

regards to work; isn't that correct?

A. Yes.

Q. All right. You were in and out of his home?

A. Yes.

Q. You drank beer with him?

A. Yes.

Q. Traveled with him?

A. Yes.

Q. You ran around with him, and he with you; isn't that fair to say?

A. Yes, sir.

Q. All right, sir.

Mr. Moore, if I understood your testimony on direct, you learned that there was going to be a strike at Ray-Mac on Monday afternoon; is that right, February 15?

A. Yes.

Q. Before you were scheduled to go to work on that evening; isn't that right?

A. Yes.

Q. All right, sir. I think you said some fellow named Hall came by the house and told you?

A. Yes.

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Q. And that Hall that came by isn't any of these men over here, is it? It was someone else?

A. No.

Q. "No" it wasn't him?

A. No, it wasn't any of them.

Q. All right. And if I understood you a moment ago, that is the first you knew of any problems in regard to RAy-Mac?

A. That is true.

Q. All right, sir. I think you have said you had a telephone conversation with Phillip Booth later on on that Monday afternoon; is that correct?

A. Yes.

Q. Now, did you call Phillip Booth, or did Phillip Booth call you?

A. I might have called him, or he might have called me. I don't know. I talked to him.

Q. All right. In any event, you had a telephone conversation?

A. Yes.

Q. And in that conversation, you were told that there would be no work that

night because everybody was on strike; isn't that correct?

A. Yes.

Q. And Mr. Booth told you in the course of that conversation that he wanted the people who worked for Calamity and Bryan to be on the picket line the next day; is that right?

A. He said he wanted his people--his men that worked for him.

Q. His men that worked for him?

A. Yes.

Q. All right, sir. And he also told you, did he not, that all of his men had been pulled out of the mines so they could be on that picket line?

A. Yes.

Q. I beg your pardon?

A. Yes.

Q. All right, sir. Now, Monday night you didn't go to work. And you did, if I understand, go down to Phillip Booth's house; is that correct?

A. Correct.

Q. All right, sir. And I

think you said, sir, there were a number of men there that night. Can you estimate the number?

A. No. There was four or five, you know. I don't know.

Q. All right. The conversation that night, I believe you told the ladies and gentlemen of the jury, had to do with being on the picket line the next day, on Tuesday, February 16, is that what you told these ladies and gentlemen?

A. Correct.

Q. All right. Now, Edgar Jones wasn't down there at Phillip Booth's house that night, was he?

A. No.

Q. As a matter of fact, you have never seen Edgar Jones at Phillip Booth's house, have you, sir?

A. No.

Q. All right. And I think you also said that at Mr. Booth's house--and I refer to the house that Phillip and Pearl Booth both lived in--at Mr. Booth's house there was some talk about meeting up at the tipple on Tuesday morning; is that right?

A. Right.

MR. HARWELL: All right, sir.

May the Court please. I need an exhibit number to hand this gentleman. May I walk over to my--

THE COURT: Yes.

(Mr. Harwell conferred with cocounsel.)

MR. HARWELL: If the Court please. With Your Honor's permission, I would like to have the Marshal hand the photograph which has been marked and introduced as Exhibit No. 5 for the defendant, Edgar Jones. And if I could look at it just a moment, I would like to have it passed up here to this man on the stand, please, sir.

(The Clerk complied.)

MR. HARWELL: Thank you, Madam Clerk.

(The witness examined the photograph.)

Q. Mr. Moore, the Marshal has handed you that which has been marked as Defendant Edgar Jones' Exhibit No. 5, and it is a photograph. Can you tell us what is depicted therein? CAn you identify what that photograph portrays?

A. It is a picture of Bill Hall Branch, Edgar Jones' tipple.

Q. All right, sir. And, as a matter of fact, there are also included in the

picture another couple tipples; isn't that right?

A. I see one.

Q. I beg your pardon?

A. One or two.

Q. There are three tipples there, are there not?

A. Yes.

Q. All right, sir. I am going to get you to hold on to that just a moment while I ask you another question, and then we will get back to it, Mr. Moore.

Mr. Moore, on Tuesday morning, following the MOnday night meeting at the Booth's, you went, I think you said earlier, to the Edgar Jones tipple; is that right?

A. Yes.

Q. Now, looking at Exhibit 5, which is before you, you mentioned that there were three tipples, did you not?

A. Yes.

Q. And the truth of the matter is that John Hall Branch road runs up from McDowell toward Ray-Mac, does it not?

A. Yes.

Q. And there is a tipple on

the right as you leave McDowell and proceed towards the Ray-Mac site; is that correct?

A. True.

Q. And there is another tipple also on the right; isn't that correct?

A. Yes.

Q. Will you agree with me, sir, that the terrain there is kind of rough? It is hilly, steep; isn't that correct?

A. Do what now?

Q. The area there is kind of mountainous. It is steep around there as you go up the John Hall Branch road.

A. Yes.

Q. And the fact of the matter is there is a level area between those two tipples, that is the tipple that you referred to as Edgar Jones, and the second tipple going away from McDowell up John Hall Branch; isn't that correct?

A. Yes.

Q. And is it not a fact, sir, that when you went up there on Tuesday morning that you were in that area--that flat, level area between those two tipples?

A. Well, it's where the trucks back into there. They are on both sides.

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Q. They were on both sides?

A. Cars were parked on both sides.

Q. Yes, sir. But when you say both sides you mean both sides of the road, do you not?

A. Both sides of the tipple.

Q. Both sides of the tipple?

A. Yes, in front of it, and beside it.

Q. Say again, please.

A. Directly in front, beside of it, and the other side of it. They were parked anywhere they could get off the road.

Q. Right. And they were parked up toward that second tipple, is that right?

A. Yes.

Q. And there was just as many cars toward that second tipple as there was down toward that tipple that you referred to as Edgar Jones, isn't that true, on that Tuesday

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morning?

A. Yes, but the men were gathered up at Edgar Jones' tipple.

Q. The men were gathered at Edgar Jones' tipple?

A. Yes.

Q. Where is it that you're telling the jury those men were gathered there?

A. You want me to show them on the picture?

Q. I'd like, if we could, to get a wax pencil, a red one from Mr. Marshall, with the Court's permission.

A. It's circled right here in red already.

Q. All right, sir. But I need you to circle it and initial it if you would for purposes later on in this case, please, sir.

(Reporter's Note: The Marshall is handing a pencil to the witness.)

Q. On that, if you would, please, sir, circle where it is you say the men were gathered and then draw a line from that

circle and put your initial, PDM by it so we'll be able to tell.

A. It's about the same circle that's already on there.

Q. That will be fine, sir, but draw a line from that circle down and put a PDM for me, would you, please, sir, with the Court's permission.

All right. Mr. Moore, we're talking about Tuesday morning, you were up at the tipple. You're aware of the fact that there had already been a picket line up at Ray-Mac on Monday, are you not?

A. I heard some talk about it, yes.

Q. I see. Well, hadn't a fellow that came by your house, this Hall fellow told you that on Monday, that there was a picket line up there?

A. He said there was about seven -- seven or eight men.

Q. At Ray-Mac Monday?

A. Yes.

Q. On a picket line?

A. Yes.

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Q. All right, sir.

Tuesday morning, when you got to that tipple I think you said it was about eight or 8:30. Did you say there was forty to sixty men there?

A. It looked to me that there was that many, I didn't count them.

Q. All right. And those men were standing around talking, isn't that true?

A. Yes.

Q. All right. And as a matter of fact, Phillip Booth was doing a great deal of that talking up there, wasn't he?

A. Everybody was talking.

Q. But wasn't Mr. Booth doing a lot of talking?

A. He was talking. No more, no less than anybody else.

Q. All right, sir.

Then I think you said that the men left the tipple and went up the hill toward the Ray-Mac site?

A. Yes.

Q. About how long after

you got to the tipple did they depart for the Ray-Mac site?

A. It wasn't too long, thirty minutes --

Q. (Interrupting) Thirty minutes?

A. Fifteen, thirty minutes.

Q. All right.

Tuesday morning at the tipple, you did not see any firearms, did you, sir?

A. No, not at the tipple.

Q. Not one single gun, did you?

A. No.

Q. All right, sir. You left the tipple and you and Phillip Booth rode up toward Ray-Mac, up the John Hall Branch Road?

A. Yes, sir.

Q. And when you got there there was already some men up there, on that public access road, the John Hall Branch Road, isn't that correct?

A. I don't know, I didn't

see any.

Q. Are you saying that you and Phillip Booth were the first ones there that morning?

A. You mean the men that come from the tipple?

Q. I'm saying -- I'm talking about men -- you said earlier that there was men at the tipple and they went up around the Ray-Mac access road?

A. They came from the tipple, yes, there was some men up there.

Q. Were some men there --

A. (Interrupting) Yes --

Q. (Continuing) -- when you and Phillip arrived there?

A. Yes.

Q. All right, sir.

And the men that you referred to was standing on either side of that road, were they not?

A. Yes.

Q. And you did not see any guns at that point, did you, sir?

A. No.

Q. All right. Then, Mr. Moore, I believe you said that some trucks, some coal trucks started coming up and there was some requests made for them to turn around and go back, because they were nonunion. Is that what you told us?

A. They requested them to go back, yes.

Q. And didn't they request them, sir, to go back because they were nonunion?

A. I don't know, I didn't hear what they said.

Q. You didn't hear what they said?

A. No.

Q. All right.

And was Mr. Phillip Booth one of those people that was talking to the coal truck drivers?

A. I think he was, yes.

Q. But you didn't hear what he said?

A. No.

Q. All right --

THE COURT: (Interrupting) Mr. Harwell, it's quarter till twelve. It might be a good time for lunch.

MR. HARWELL: Yes, sir.

THE COURT: Jury, you're going to be in recess for lunch until one o'clock. During this recess the not now admonition is in effect. Do you understand?

Is there any objections or corrections to the Court's admonition?

MR. SELF: No, sir.

MR. KEHRLI: No, sir.

MR. ROWLAND: No, sir.

THE COURT: Please excuse the jury.

MR. HARWELL: There's one brief matter when the jury's gone, Your Honor, that I would ask the Court's instructions, please.

THE COURT: All right.

THE MARSHALL OF THE COURT: All the jury is out of the courtroom, Your Honor.

THE COURT: All right.

Is it necessary to have the witness here?

MR. HARWELL: Judge, I guess it is

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until Your Honor rules.

THE COURT: All right.

MR. HARWELL: May the Court please, now the Defendant Edgar Jones respectfully moves the Court under the authority set out in United States versus Jeters to totally, completely sequester this witness until his examination is completed on direct and cross, both from Defendants' counsel, Government's counsel and Government Agents, Your Honor.

THE COURT: Any objection?

MR. SELF: Yes, Your Honor, consistent with the Court's previous rules.

MR. KIRKLAND: Your Honor, this is a little different situation. As I perceive it, this man is now under cross-examination and I don't see any reason for the Government to talk to him. If it was overnight, if you were in between examinations that'd be different, but I think Mr. Harwell ought to have the right in an unfrettered manner to continue his cross-examination.

THE COURT: He has the right to cross-examine.

MR. SELF: Your Honor, I agree not to discuss anything regarding the subject

matter of his testimony.

THE COURT: All right. They will not discuss the subject matter of his testimony --

MR. HARWELL: (Interrupting) Or -- excuse, Your Honor, I did not mean to interrupt you.

Also, Judge, and I'm not picking, but did that include his demeanor -- just not the subject matter, but the demeanor of the witness as well?

THE COURT: No, I'm just saying that if they want to discuss the -- they won't discuss the subject matter of his testimony on cross-examination. If they talk to him -- ask the witness if they talk to him.

MR. HARWELL: Thank you, Your Honor.

THE COURT: I'm sure you will.

MR. HARWELL: Judge, you've ordered me not to anticipate you, but you anticipate me well, Your Honor.

THE COURT: All right. Anything else, gentlemen?

We'll be in recess until one o'clock.

(Reporter's Note: The Court was called to recess at 11:47 A.M.)

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(502) 587-6006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

EDGAR JONES, JASON MOORE, GERMAN STUMBO, DREXIL HALL, TEDDY KINNEY, BENNY CAUDILL, KENNETH ROLLAND, a/k/a POSTMAN, RANNY BLANKENSHIP, EUGENE TACKETT, HAROLD MOORE, HERMIT NEWSOME, TIM MILAN, MOSE MEAD, DONAHUE HALBERT, AUSTIN "BO" MOORE, PEBO GAYHEART, LINVILLE MOSLEY, RAYMOND HALL, VAN B. PATTON

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 28, 1984

VOLUME FORTY-THREE

Dale Soergel Moore Shaw & Associates
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LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

I N D E X

PHILLIP DALE MOORE

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A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
RANDY KEHRLI, ESQ.

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSON, JR., ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

For the Defendant Drexil Hall and Austin "Bo" Moore:

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

For the Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

WILLIAM D. KIRKLAND, ESQ.

UNOFFICIAL DOCUMENT

REPORTER'S NOTE: The Court convened at 12:58 P.M.

THE MARSHALL OF THE COURT: All rise, please. This Honorable Court is again in session. Be seated and come to order, please.

Your Honor, all Defendants, Counsel and all members of the Jury are present.

THE COURT: Thank you, sir.

Are we ready to proceed, gentlemen?

MR. SELF: Yes, Your Honor.

MR. HARWELL: Yes, Your Honor.

THE COURT: All right. Proceed.

MR. HARWELL: May I approach the podium?

THE COURT: Yes, sir.

(Continued) CROSS-EXAMINATION

BY MR. HARWELL:

Q Mr. Moore, right before the noon recess you and I were talking about Tuesday, February the 16th, 1982 up at Ray-Mac, the access road on John Hall Branch. And I think I had just asked you, sir, if it was a fact or not a fact that

Phillip Booth was one of the men up there who was asking the coal truck drivers to turn around. Would you answer that question, please, sir.

A. Yes.

Q. He was, all right, sir. One of those coal truck drivers indicated, did he not, sir, that he wasn't going to turn around, he was going on up to the mine site, is that right?

A. Yes.

Q. All right, sir. Now, was it at that point that Phillip Booth gave you a pistol?

A. Right after that.

Q. I beg your pardon?

A. Right after that.

Q. All right, sir. What kind of pistol was it that he gave you? Was it a .38 or a .357 Magnum?

A. .38.

Q. .38. That's a five shot revolver?

A. Yes.

Q. All right. Now, Mr. Booth himself, Phillip Booth, had a pistol at that point, did he not?

A. Yes.

Q. What was it he had?

A. .45.

Q. All right, sir. And after Mr. Booth gave you the pistol and you saw his, then you all stood around and waited for a period of time, am I right?

A. Right.

Q. All right, sir. And then coal trucks began to come out of the Ray-Mac Mine site, correct?

A. Correct.

Q. All right, sir. Now, the lead coal truck was driven by a man by the name of Danny Blanton, is that right?

A. Yes.

Q. All right, sir. When Danny Blanton came down that access road, Mr. Moore, headed toward the public highway, is it not a fact that he speeded up or appeared to speed up?

A. I don't know whether he speeded up or not. He just came on down the hill.

Q. Were you watching him?

A. You could see the coal truck coming down the hill.

Q. Yes, sir. And as it came

down the hill were you watching it come down that hill?

A. Yes.

Q. And you're saying that you don't know whether he did or didn't speed up, or you didn't pay any attention?

A. I don't know whether he speeded up or not.

Q. All right, sir. Did you hear any sound that caused you to believe that he was changing or shifting gears in that coal truck?

A. No.

Q. All right, sir. Now, I think you said, sir, that after that truck came off the hill it turned right on the John Hall Branch Road, correct?

A. Right.

Q. All right, sir. And then you saw Phillip Booth with a gun, is that right?

A. Yes.

Q. And he had in his hand that .45 that you just told the Jury about a moment ago, am I right?

A. Right.

Q. All right, sir. Now, there

were a number of other trucks that had come off the Ray-Mac site or were coming down that access road behind Danny Blanton's truck, is that right?

A. There was four-wheel drives in front of it.

Q. Yes, sir. A four-wheel drive in front and some trucks behind, is that correct?

A. I don't know if there was any trucks behind or not.

Q. You don't remember anything behind Danny Blanton's truck?

A. If it did they didn't come on off. They were behind him.

Q. I beg your pardon?

A. They didn't come on off the hill if they were behind it.

Q. They were behind, all right, sir.

And it was after Danny Blanton came off that the shooting broke out, is that correct?

A. Right.

*** *** ***

Q. All right, Sir. Now, the Ray-Mac people were shooting at you all, were they not?

(Interrupting)

A. Not until we started shooting at them, no.

Q. Yes, sir. But they were shooting during that day, on Tuesday?

A. Yes. Danny Blanton had a shotgun.

Q. Danny Blanton had a shotgun, all right, sir.

And wasn't it that day that one of the Ray-Mac people had what you believed to be an automatic weapon?

A. No. There was some men up on the hill behind us with rifles.

Q. I'm sorry , I didn't hear you, Sir.

A. The men up on the hill walked down the hill, that was up over us, and had some rifles.

Q. Up over you?

A. Yeh.

Q. On the point up over you

on the right, as you proceed from McDowell towards Mud Creek, is that right?

A. Yeah. Yeah.

Q. And how many men were up there with rifles?

A. I seen three.

Q. Three of them?

A. Yes.

Q. And did you see them firing down on you all?

A. They didn't fire.

Q. You didn't see them fire?

A. I didn't see them.

Q. All right, sir. And I think you said that the Ray-Mac people had a bigger and better gun than you all had, is that right?

A. Right.

Q. All right, sir. And you also said, did you not, in reference to that event that somebody had tipped Ray-Mac off, they knew you all were going to be there?

A. Well, the guy in the office there that worked for Edgar said that.

Q. The guy in the office said that?

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A. He's a Little.

Q. I can't hear you, sir.

A. He's a Little. He works for Edgar. Dwayne Little.

Q. Dwayne Little said that?

A. Yeh.

Q. And went was it that Dwayne Little said that?

A. When we first came down to the office he was telling us that.

Q. That meeting that you have testified that allegedly took place?

A. (Witness nodding head affirmatively)

Q. All right, sir. Now the fact of the matter is that on that Tuesday you and the other men up there were just trying to scare the men at Ray-Mac, is that right?

A. Right.

Q. All right, sir. And when that shooting took place I think your testimony was that you ran over and got behind the jeep, is that right?

A. Yes.

Q. And you mentioned Benny

Caudill in reference to that jeep, did you not?

A. Right.

Q. Was that Phillip Booth's jeep or Benny Caudill's jeep, or did you know?

A. Phillip Booth owned it. Benny drove it all the time.

Q. All right, sir. And I think you said, sir, with the pistol that Phillip Booth had given you, you fired all five shots in that revolver, is that right?

A. Right.

Q. All right, sir. And, as a matter of fact, there was a fellow up there that you named, I think Harold Stumbo, on that Tuesday?

A. yes.

Q. I beg your pardon?

A. Yes. He's not - - I didn't mean to interrupt you, sir.

Q. He's not one of these defendants over here, is he?

A. No.

Q. As a matter of fact, Harold Stumbo was throwing rocks at Danny Blanton's truck, was he now, sir?

A. That's right.

sir. And isn't it a fact, sir, that at that point in time the purpose of trying to stop Ray-Mac was to get them to sign a UMWA contract and organize so they would be a union company?

A. I don't know.

Q. You don't know that?

A. No.

****

that?

A. No.

Q. All right, sir. Now, you had a .243 rifle with a scope on it, did you not?

A. That's right.

Q. And are you not, sir, aware of the fact that that gun, that particular gun, came from Wendall Ray Newman through Pearl Booth?

A. I -- I didn't know where it came from.

Q. Do you know now where it came from?

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

Q. All right, sir. I think you said, sir, that this alleged meeting on Tuesday at the JRM or Edgar Jones' office lasted about ten or fifteen minutes, correct?

A. Yeah. It wasn't long.

Q. I apologize to you, I'm having trouble.

A. I said it wasn't long.

Q. Wasn't long, all right, sir.

number of guns that were given to various people during this week of February 15th?

A. I didn't know that, no.

Q. You don't know that?

A. No.

Q. All right, sir. It was Pearl Booth, was it not, that sent you to buy ammunition at the gun shop?

A. Pearl, yeah. Pearl and Phillip.

Q. Sir, I'm sorry, I'm having trouble hearing you.

A. Pearl and Phillip, yeah.

Q. Pearl and Phillip. And you bought a 9 millimeter pistol for the Booths, did you not?

A. Right.

Q. And were you aware of the fact, sir, that Pearl Booth had borrowed two or three long guns from her brother Wendall Ray Newman?

A. No.

Q. You weren't aware of

Q. All right, sir. And it was your testimony, was it not, earlier today that you and Phillip Booth told Edgar Jones and the others there that Ray-Mac had been expecting you all, didn't you say that?

A. I told them they had bigger and better guns than we did, I wasn't going back up there unless we got bigger and better guns.

Q. All right. And you also said this morning that Edgar Jones indicated or stated that if you needed bigger and better guns you'd get them, is that what you told the jury?

A. He said if that's what we need, we'll get them.

Q. All right, sir. Now, the fact of the matter is you never got a gun from Edgar Jones, did you, sir?

A. Nope. I didn't say I did.

Q. The guns came from Phillip and Pearl Booth, did they not?

A. I don't know. Jason Moore gave me mine.

Q. All right, sir. Don't you know that Phillip and Pearl Booth had a

of bullets too, didn't he?

A. Yes.

Q. All right, sir. Then I think you indicated this morning that you and Phillip Booth stayed at the tipple some ten or fifteen minutes, is that correct?

A. Yeh.

Q. Then I think you said that you all went down to Edgar Jones's office, is that right?

A. Right.

Q. Sir?

A. Yes.

Booth had left the Cadillac up there near the Ray-Mac access road, had he not?

A. Yeh.

Q. All right. When you went back to the tipple did you take the Cadillac, Phillip Booth's car, the one in which you'd ridden up?

A. Yes.

Q. All right, sir. So, he left his car up there. I gather that from your statement that he left the keys in the ignition or you had a set?

A. They were in the ignition.

Q. All right, sir. And you took it back down to the tipple?

A. Right.

Q. All right. And when you got to the tipple you then again saw Phillip Booth, did you not?

A. Yes.

Q. And at that point in time it is a fact, is it not, Mr. Moore, that you told him that you fired all five shots you had in the weapon you had?

A. Right.

Q. And he told you he shot out

Q. And you saw that?

A. Yeh.

Q. All right, sir. Did you see Phillip Booth shoot?

A. He had the gun aimed at the truck.

Q. All right, sir. And then after the shooting started that came a time when he bolted and ran, isn't that right?

A. Yes.

Q. You saw him do that, didn't you?

A. I didn't see where he went, but I couldn't find him after all the shooting was over.

Q. All right. I think you said you had ridden up there that day to the Ray-Mac access road with Phillip Booth in his Cadillac, correct?

A. Right.

Q. All right, sir. You looked around after the shooting and couldn't find him, and you went back down the road toward McDowell, did you not?

A. Back down to the tipple.

Q. All right, sir, And Phillip

MR. HARWELL: Judge, in accord with Mr. Self's request, may I approach him to make reference to a particular section?

THE COURT: Sure.

MR. HARWELL: Or Mr. Kehrli, Your Honor, since he is examining.

(Mr. Harwell conferred with Government's counsel.)

Q. Mr. Moore, you recall, do you not, sir, testifying in regard to these matters before a federal grand jury on February 3 of 1983?

A. Yes.

Q. All right, sir. Now, I will ask you, sir, if it is not a fact that you were asked this question: "Was the purpose of trying to stop Ray-Mac to organize them?"

I will ask you, sir, if you didn't give this answer: "They was going to try that morning. They wanted them to sign a UMWA contract so that they would have to sell the coal same as Edgar."

Do you remember giving that answer to that question during your grand jury testimony?

A. That is what they said,

but I don't know if they wanted them to join the union or not.

Q. All right, sir.

A. You asked me if I knew.

Q. The point is, you testified just as I have read your answer before the grand jury, did you not?

A. You asked me if I knew. I don't know.

Q. All right, sir. I think you also said, sir, that that alleged meeting on Tuesday, down at Edgar Jones' office, Edgar Jones and German Stumbo stepped out of the room that everyone was in, and went into a separate room in that three-room office; is that right?

A. Correct.

Q. All right, sir. You know what room they went in?

A. It was the back one. He had three rooms, and they went in the back one.

Q. All right, sir. You say "back one." As you face that office, the front--or the center is where there was a secretary or receptionist, right?

A. Right.

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Q. And when you say "back one," you are referring to the one on the left off of that, are you not?

A. Right.

Q. All right, sir. The fact of the matter is you didn't overhear anything that was said by my client, Edgar Jones, nor anything that was said by German Stumbo during that alleged conversation, did you?

A. No.

Q. All right, sir. And then in the sequence of events about which you have testified, Mr. Moore, I think you said that you and Phillip Booth left, did you not?

A. Correct.

Q. And you went down to his house; is that correct?

A. Correct.

Q. All right, sir. Now, that was on Tuesday, February 16, 1982; is that correct?

A. Correct.

Q. All right, sir. Now, do you recall how long you stayed at Phillip Booth's house that Tuesday?

A. No. I can't put it down

to exact times, no.

Q. All right. But that must have been according to your earlier statements, what, around noon? What time was it about?

A. Must have been around noon.

Q. All right, sir. Then you went back to Phillip and Pearl Booth's house that night, did you not?

A. That's right.

Q. And did you go back because Pearl Booth called you and asked you to come down?

A. Yes.

Q. All right. And when she called you, she didn't tell you what she wanted, did she, sir?

A. Nope.

Q. Now, when you got to Phillip and Pearl Booth's house that Tuesday night, Pearl Booth asked you then if you would help her get some guns; isn't that correct?

A. She wanted me to go get some shells for her.

Q. Some shells?

A. Uh-huh.

Q. All right. Pearl Booth had a list, did she not?

A. Yes.

Q. And that listed various kinds of ammunition, didn't it?

A. Yes.

Q. And she also gave you a check, just as the Government has shown you, drawn on Calamity Coal; am I correct?

A. Correct.

Q. All right. And then you left there and went over to the gunshop--the Donahue Halbert Gunshop; is that correct?

A. Yes.

Q. All right. And you bought those items on the list at that point; is that what you are telling the jury?

A. Yeah, what he had.

Q. I beg your pardon?

A. What he had of them, yes.

Q. All right. Now, is it on Tuesday night that you say that you had a telephone conversation from Halbert's Gunshop in regard to a 9 millimeter pistol?

A. He called Phillip Booth's from over there.

Q. You called Phillip Booth's?

A. Yes.

Q. And you discussed the matter--

A. (Interrupting) He called over there, one or the other, and we talked to him from there on the phone.

Q. Say again, please, sir.

A. Phillip called Donahue's. We talked to him while I was at Donahue's, Donahue and I both.

Q. You talked to Phillip Booth?

A. Yes.

Q. And you told Phillip Booth that the 9 millimeter pistol looked all right; is that correct?

A. Correct.

Q. And it was decided that you would buy that pistol and a box of ammunition for it; is that right?

A. He told me buy it, yes.

Q. All right, sir. Now, after you purchased the shells and the 9 millimeter pistol, it is your testimony, is it not, that you took them back to Phillip and Pearl Booth's residence?

A. That's right.

Q. Is that correct?

A. Yes.

Q. All right. And I think you said that you took them back and set them on a table and said, "There they are.", or something like that, correct?

A. I gave the gun to Phillip. He looked at the gun.

Q. You gave the 9 millimeter pistol to Phillip?

A. Yes.

Q. All right. And it was at that time, was it not, that you have testified that Phillip Booth told you to be down at the tipple the next morning on Wednesday?

A. Correct.

Q. All right, sir. Now, at the time you purchased that 9 millimeter pistol, you had been convicted of a felony, had you not, sir?

A. Yes.

Q. All right, sir. And when you purchased that pistol, you were required to fill out a Federal form, were you not?

A. I don't know whether I filled it out or not.

MR. HARWELL: With the Court's permission, I would ask that the Marshall pass that which has been marked and introduced as Government's Exhibit No. 91 to the witness.

THE WITNESS: It is already here.

(The Marshall complies)

Q. You have before you, do you not, sir, that which has been - -

A. (Interrupting) Yes.

Q. (Continuing) - - Marked as Government's Exhibit - - is that Government's Exhibit No. 91?

A. Yes.

Q. All right, sir. Now, I will ask you, sir, to look in the middle part of the page where it says "Transferee buyer's signature".

A. Yes.

Q. That is your signature, is it not?

A. It might be, yes.

Q. You don't know whether it is or not?

A. It is my name.

Q. All right, sir. But I am not talking about your name, I am talking about your signature.

A. I said it might be.

Q. Yes, sir. Let me ask you this, sir.

Again, referring to the testimony you gave before the Grand Jury on January 3, 1983, you were asked - - I will ask you, sir, if it is not a fact that you were asked the following question in regard to that paper.

MR. KEHRLI: Your Honor, could we have the page number.

MR. HARWELL: I'm sorry, Your Honor. May I?

THE COURT: Yes, sir. Please do.

(Mr. Harwell conferring with Government's counsel)

Q. I will ask you, sir, if it isn't a fact that you were asked the following questions:

"Question: Did he" - -

referring to Mr. Halbert - - "Inquire of you as to whether you were a resident of Kentucky?" And I will ask you if you didn't give the following answer. "I think he checked my driver's license. I wouldn't say for sure. I signed some kind of paper."

Do you recall giving that answer to the question?

A. Yes. I might have, yes.

Q. All right, sir. Was it true - -

A. (Interrupting) Yes.

Q. (Continuing) When you gave it. All right, sir.

And I will ask you further, sir, if it is not true that you were also asked when you were before that Grand Jury: "Question: What kind of paper?" And you answered: "I don't know." And the question was posed: "Was it a yellow paper?" And you answered, "I don't know what it was. I just signed it."

Isn't it true, sir, that at your testimony before the Grand Jury those questions were posed, and you gave those answers?

A. Yes.

Q. Now, does that refresh your memory as to this being your signature on this?

A. I said it might be my signature. I didn't deny it.

Q. No, sir. But there is a difference between "It might be" and "I don't remember signing it".

A. I might have signed it.

Q. Take your time and look at that exhibit and tell me if that appears to be your signature, regardless of your - -

A. (Interrupting) It appears to be. It is my name. And I said it might be.

Q. All right, sir.

A. I might have signed it.

Q. All right, sir. And let me get you, sir, to look at Question "B". And, with the Court's permission, I would ask you to read question "B" above your signature.

A. "Have you been convicted in Court of a crime and punishment of a term of imprisonment exceeding one year?"

*** *** ***

Q. Would you speak up a little, please, sir?

A. "Have you been convicted in any court of a crime punishable by imprisonment of a term exceeding one year?"

Q. All right, sir, how is that answered on that form?

A. It is answered "no".

Q. All right, sir. Let me ask you, sir, to read question "D". That is still over your signature.

A. "D"?

Q. "D", as in David.

A. It's up at the top. "Are you an unlawful user or addicted to marijuana, a stimulant or narcotic drug?"

Q. And how is that answered?

A. "No".

Q. Now, let me get you, sir, to go to the box right above where it has "Transferees buyers signature", the box that says "Phillip Moore".

Would you read that for the gentlemen and the ladies of the jury,

please?

A. "I hereby certify that the answers to the above are true and correct."

Q. Yes, sir. If you would, read the entire language, please.

A. "I understand that the person who answers any of the above questions" -- I don't know that word -- "in the affirmative" --

Q. Can you speak up, please, sir?

A. (Continuing) -- "is prohibited by Federal Law from purchasing and/or possessing said firearm. I also understand that making any false or written statement of any false, misrepresented identification with respect in this transaction is a crime and punishable as a felony."

Q. All right, sir. Mr. Moore, you will agree with me that question "D" was not answered honestly; would you not, the one that you read?

A. "B"?

Q. "D", the one you read about the prior conviction of a felony.

A. I have never been convicted of a year.

Q Are you telling this Court and this jury that you have never been convicted in any court of a crime punishable for a term exceeding one year?

A I have never had -- pulled a year -- total year, no.

I have never been convicted. I pled guilty to it.

MR. HARWELL: May the Court please. I would ask that I be allowed to have the Marshall hand Madam Clerk a document for the purposes of being marked. May I, Judge, hand the Government a copy of this? I have an extra one.

THE COURT: Did you get his last answer?

MR. HARWELL: Judge, I don't know if I did or not. I have trouble hearing. What was the last answer?

THE WITNESS: I said --

THE COURT: (Interrupting) Go ahead and answer.

THE WITNESS: I said I never was convicted. I pled guilty.

MR. HARWELL: I see.

Q Well, as a result of

your guilty plea, as a matter of fact, you were convicted of a crime, a felony, for which the punishment is in excess of one year; that is correct, is it not?

A. I stayed five months and ten days in the County Jail.

Q. You were sentenced, were you not, sir, to not less than one, and not more than fifteen years in the Ohio State Penitentiary in 19 hundred --

A. (Interrupting) I was sentenced to one year.

Q. I beg your pardon?

A. I was sentenced to one.

Q. You were sentenced to one year.

A. I stayed five months.

MR. HARWELL: May the Court please. If I could, could I have Madam Clerk go ahead and mark this?

THE COURT: All right.

MR. HARWELL: And the record should reflect I have given the Government a copy.

THE CLERK OF THE COURT: Your Honor, the exhibit which has not previously been marked for identification has been now marked for the purpose of identification as Edgar Jones NPM No. 12 and he has now been marked for purposes of trial as Edgar Jones' Trial Exhibit No. 14.

MR. HARWELL: Thank you, Madam Clerk.

(Reporter's Note: The Marshal showed the document to all counsel.)

MR. HARWELL: Before passing it to the witness, with the Court's permission I would like to have it passed to Your Honor.

THE COURT: Yes, I would like to see it.

MR. HARWELL: It contains a certification of authentication.

MR. KEHRLI: Your Honor, may we approach the Bench on this matter?

THE COURT: Yes.

(Reporter's Note: At this time all counsel approached the Bench; whereupon the following was heard.)

MR. WALBOURN: Your Honor, this is the first bench conference today.

THE COURT: Yes, I'd like to commend you gentlemen for that.

MR. HARWELL: May Your Honor please, we submit that that is a self-authenticating document. It contains the certification of authentication by Clerk of the Court right here, Judge. It's not a very good one but we therefore move for its admission.

MR. KEHRLI: Your Honor, we object to the introduction of that document based on Rule 609. The conviction is over ten years. And additionally the Government submits that witnesses already admitted that he was convicted of a felony. As far as the appropriate value or the relevance to the form of the ATF which he is going to testify about. Mr. Harwell has elicited all information that's necessary and this has nothing to do with it. It does not prejudice the jury as far as the details of that over ten-year conviction.

MR. HARWELL: May the Court please, we are not offering it under 609. This witness has testified that he had not been convicted of a felony carrying punishment--or a crime that carried a punishment more than ten years in a penitentiary. That's simply not a fact. This proves it's not a fact, may the Court please. That's the purpose for which we're offering this, whereby we believe this should be admitted not under 609. The truth is, Judge, that I

had thought that he would answer yes, I was convicted of a felony, yes, that's not true on the ATF form. I was surprised when he did it, but I'm not offering this under 609, may the Court please.

THE COURT: Well, we'll let it in the record, it will not go to the jury.

MR. HARWELL: It won't, Your Honor?

THE COURT: It will not go to the jury.

MR. HARWELL: May the Court please, I intend to examine the witness on this, may I, hand it to him and have him read it. He says he was not convicted of a crime that carried more than a year. And, Judge, he had one to fifteen.

MR. KEHRLI: He pled guilty.

MR. HARWELL: He also said he wasn't convicted and I had to drag it out of him, may the Court please.

THE COURT: All right, let's let him be examined on it, but it's not going to the jury.

MR. HARWELL: Yes, Your Honor, and we respectfully object. Thank you, Judge.

(End of conference at the Bench.)

MR. HARWELL: Hand it to the witness, please.

Q. Mr. Moore, the Marshal is handing you that which has been marked as Defendant Edgar Jones' Exhibit No. 14. Do you have it before you, sir?

A. Yes.

Q. On the left-hand side, that bears the caption State of Ohio v. Phillip Dale Moore, does it not?

A. Right.

Q. All right, sir. And on the right-hand side it says a Journal Entry, does it not?

A. Yes.

Q. All right, sir. I would ask you, sir, to read the language beginning: This case came on for hearing on 23rd day of July, 1970.

MR. KEHRLI: Objection based on Rule 609.

THE COURT: Let your objection be noted and overruled.

Q. Could you read that so the ladies and gentlemen of the jury can hear you, sir?

A. This case on the hearing of the 23rd day of July, 1970, before the Honorable Ralph A. Wainter, Judge of the Medina County Common

Pleas Court, State of Ohio, being represented by prosecuting attorney. Defendant being in court with his attorney, S. S. Dalby. Prosecutor thereupon presented motion to amend indictment to read assault with attempt to rob. The Court sustained the motion without objection. The defendant went on and pleaded guilty on the amended indictment.

Defendant being asked if he had anything to say in his defense. Should not be pronounced and had not been said before. Is therefore ordered the judge and decree that the defendant be sentenced to not less than one year and more than fifteen in the Ohio State Penitentiary. And the further order of this case the sentence is suspended upon the following conditions. Defendant served one year in Medina County Jail with a right to review after six months on good behavior.

That defendant serve on probation five years. Defendant pay costs. Defendant --that the defendant be of good behavior during probation period.

Q. There's one more line I think, sir.

A. Bond herefore given is hereby released.

Q. And then there's a signature line for a judge, isn't there?

A. Yes.

Q. And the signature line for the prosecuting attorney and the defense attorney, isn't that right?

A. Yes.

Q. You will agree with me, will you not, sir, that the defendant referred to therein is you, you are the same Phillip Dale Moore, are you not?

A. Right, yeah.

****

Q. You are the same Phillip Dale Moore, are you not?

A. Yes.

Q. All right, sir. So the fact of the matter is, sir, you have been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, isn't that true?

A. Six months off for good behavior is what I pleaded guilty to.

Q. Yes, sir, but the crime was punishable --

A. (Interrupting) You said convicted. I was not convicted of more than a year. It was --

Q. (Interrupting) Let me --

A. (Interrupting) It was a plea bargain with six months, I'd be off for good behavior. I pleaded guilty.

Q. The crime to which you pled guilty was punishable by imprisonment for more than one year, is that correct?

A. You asked me if I was convicted and I said no, I pled guilty. Right

there is where I pled guilty, six months.

Q. Are you --

A. (Interrupting) And probation.

Q. Excuse me?

A. Six months, five years probation is what I pled guilty to.

Q. Are you telling the ladies and gentlemen of this jury that answering on this ATF form, Section B, the answer no to the question, have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, are you saying that the answer no is a true answer, is that what you're telling us?

A. I was never convicted, no.

Q. Yes, but answer my question, if you will. Are you telling this jury that the answer no on that is a true or not true answer to that question?

A. I think it's the truth.

Q. No is true?

A. Yes, I think it's true.

Q. All right, sir.

During the spring of 1982, you had a series of conversations with a man you later learned to be ATF Agent Kemp, did you not?

A. That's right.

Q. Is it not true, sir, that during the course of some of those conversations you told him "I've been convicted of a felony. I can't carry a gun." Didn't you tell him that on occasion in the spring of '82?

A. Yes.

Q. And I see, and that felony to which you referred in your conversations with Kemp is the same felony from Ohio that we talked about this afternoon, isn't that true?

A. Yes.

Q. All right, sir.

Looking, sir, at that Government exhibit at question D, the one you read a moment ago as to unlawful user of, addicted to marijuana, depressant stimulants, that question is answered no, isn't it?

A. Yes.

Q. Are you saying that the

answer to that is true or untrue?

A. I'd say it's true.

Q. You're saying that was true?

A. Yes.

Q. All right, sir.

On that form you have before you, the fact of the matter is that you stole that from Donahue Halbert that evening, didn't you, sir?

A. No, I didn't steal nothing from Donahue Halbert.

Q. You didn't take that yellow form that we just talked about from Donahue Halbert that night?

A. No, man.

Q. You deny that?

A. I didn't steal nothing, no.

Q. Well, did you take it from Mr. Halbert that night?

A. I don't know if I took it or not. I didn't steal nothing from him.

Q. I see. Isn't it a fact, sir, that you later told Pearl Booth when

you returned from Donahue Halbert's that you had stolen that form?

A. No, I didn't.

Q. You didn't tell her that?

A. No.

Q. All right, sir.

Mr. Moore, let me get you, if you would, please, to focus your attention on Wednesday, February 17th, 1982. If I recall your testimony earlier today, you went to the JR tipple on Wednesday morning -- the JRM tipple, is that right?

A. Yes.

Q. All right, sir. And there were men at that tipple when you got there, were there not?

A. Yes.

Q. And those men included Mr. Phillip Booth, is that right?

A. Yes.

Q. All right. And I think you told this jury and His Honor while you were there at that tipple on Wednesday that my client, Mr. Edgar Jones, over here, drove by and

he stopped, is that right?

A. Yes.

Q. He stopped up on the road, did he not?

A. Yes.

Q. And I believe recalling your testimony, sir, that you said he talked to some of the people there, is that right?

A. Yes.

Q. Okay. Now, you were able to observe if I understand what you said, Mr. Jones and the vehicle he was in, is that right?

A. I seen him stop, yes.

Q. He didn't get out of the vehicle, did he?

A. No.

Q. And he was not there but a few minutes, was he?

A. That's right.

Q. I see. And you did see Phillip Booth and possibly Jason Moore go over and talk to him, is that correct?

A. Yes.

Q. They didn't get in

the car, they stayed outside and talked through the window on the driver's side, am I right?

A. That's right.

Q. I see. And you can't remember anyone talking to him that morning up at that tipple other than Phillip Booth and possibly Jason Moore, isn't that correct?

A. No, I didn't see anyone else.

Q. You didn't see Jake Moore or anyone else go over and talk to him?

A. I don't know if Jake -- or who talked to him.

Q. I see. And I think you had said, sir, that was a little bit after eight o'clock in the morning, is that correct?

A. Correct.

****

Q. All right, sir. And you were not able to hear what comment Edgar Jones made or what comments Phillip Booth made, were you?

A. No.

Q. All right, sir. Mr. Moore while you were at that tipple on Wednesday morning, Phillip Booth made the comment he wants people to go up in the hills, didn't he?

A. Now, I didn't hear him.

Q. Who commented about going in the hills according to your testimony?

A. I think Jason Moore was first I heared it.

Q. I see. And is it not true sir that the expression scare Ray-Mac, go up in the hills and scare Ray-Mac is what was said?

A. It might have been what was said, yes.

Q. Do you remember or do you not remember?

A. I don't remember if that's exactly what was said or what.

Q. Do you remember the use of the word scare Ray-Mac?

A. That was said after I got

up on the hill, shoot to scare them.

Q. I see.

Did you sir, at that tipple on Wednesday morning see Mr. Ed Panhandle Moore?

A. No.

Q. You didn't see him draw a line with his foot and talk about people crossing over it to indicate who would or would not go?

A. No.

Q. I see. I think you also said it was on that Wednesday morning that you got handed a rifle and a box of shells, isn't that right?

A. Yes.

Q. And you told this Jury that you were told Papa said to make sure you got a good one, isn't that correct?

A. Correct.

Q. And it's a fact, is it not that my client's nickname originated by his grandchildren is Papa?

A. That's what they call him, some of them, yes.

Q. And you know that that's what his grandchildren called him, is that right - -

MR. KEHRLI: (Interrupting) Object - -

A. (Interrupting) I don't know that he's got any grandchildren, that's what the men that work there call him.

MR. KEHRLI: I withdraw my objection, Your Honor.

Q. Now, I think you said it was on that morning that you were given a .243 bolt action rifle with a scope on it, is that right?

A. That's right.

Q. Now, earlier today Mr. Kehrli had the Marshall hand you Government Exhibit 109, do you remember that?

A. Yes.

Q. And that is a matter of fact if you recall was or is a .243 bolt action rifle with a scope, isn't that right?

A. That's right.

Q. And you testified, did you not, sir, that that was the rifle that allegedly was given you by Jason Moore that morning, is that correct?

A. That's correct.

Q. I see. And you're aware of the fact, are you not, sir, that that gun did not come from Edgar Jones?

A. I don't know where it came from, I said Jason Moore gave it to me.

Q. All right, sir. But you indicated that that was what was said, that Papa said to give it to you?

A. That's what Jason Moore said. He said Papa said to make sure you get a good one.

Q. All right, sir.

And didn't you later that week, sir, have a conversation with Phillip Booth and make a comment that indicated that you were aware of the fact that that rifle had come from Phillip Booth, that .243?

A. No.

Q. You deny that? - -

THE COURT: (Interrupting) Approach the Bench.

MR. HARWELL: All right, sir.

(Whereupon a Bench Conference of all counsel was held.)

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DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: I still have not got this, I notice this is on the Government also, this are you aware, have you learned, have you heard.

MR. HARWELL: I believe it's proper cross-examination, may the Court please. My last question was --

THE COURT: (Interrupting) Well, if there were something does your say -- doesn't that get outside the Rule kindly, have you learned or are you aware, or do you know. And would those general question which would elicit an improper answer based on hearsay or something?

MR. HARWELL: I don't think so, Your Honor. See the problem is, Your Honor, that I have been told by some --

THE COURT: (Interrupting) Here is what I am trying to do, I'm trying to keep this thing within the realm, you see what I mean?

MR. HARWELL: Yes, sir.

THE COURT: Let's try not to get outside of it.

MR. HARWELL: Well, let me tell you the basis for the question so Your Honor will better understand.

I was told by some of

my folks who listened to the tapes that the Government had provided us, the last batch, that this witness had made reference to a conversation with Phillip Booth indicating that he knew that the .243 rifle he had had come to him via the Booths from Wendall Ray Newman. The point is, Your Honor, his testimony is that I got it from Jason Moore and I was told Papa said to get a good one and it didn't come from Papa. That was not the source at all. The truth of the matter is that it came from Wendall Ray Newman, and that's what I was probing for and I think he said a minute ago, I don't know where it comes from. So my next question, regardless of your whole knowledge since he tends to dance on that term, you were told, you had information that it came from Wendall Ray Newman via the Booths. That's where I was going, Your Honor, with that question.

I respectfully submit that that's proper, Your Honor, on cross-examination. Especially given what I sense to be a certain evasive propensity by this witness indicated by the conviction in Ohio.

MR. KEHRLI: Your Honor, if counsel wants to inquire whether this witness made a prior

inconsistent statement, the fact he knew where that gun came from, we have no problem with that. We do have the same objection that the Court raised, and just generally, are you aware, that is hearsay unless you establish the grounds.

THE COURT: If you get a -- if you ask a general question, you're going to get a general answer.

MR. HARWELL: Your Honor, I can't sit here and tell you in good faith that I've got a date when I don't. I can't honestly remember. I don't have any notes that I can refer to. What I customarily do is listen to a tape tonight and know a little better.

THE COURT: Well, let's keep our questions specific enough that we can --

MR. HARWELL: (Interrupting) All right, Your Honor.

THE COURT: Okay.

(Reporter's Note: At this point the Bench conference was concluded.)

Q. Mr. Moore, again directing your attention to Wednesday you and some other men then went up the hill some distance but overlooking Ray-Mac. Is that what you said?

A. Yes.

Q. All right, sir. And then there was a lot of shooting, was there not?

A. Yes.

Q. Okay. And I think you indicated that you had heard or been told at some point that it sounded like a little Vietnam, is that right?

A. Yes.

Q. All right, sir. Now, the Ray-Mac people were shooting back, weren't they?

A. They were shooting, yes.

Q. They were shooting, yes. And were they shooting back or were they just shooting? Which is it?

A. I didn't see any bullets or see them hit. I don't know.

Q. All right, sir. The fact of the matter is that they were shooting with an automatic weapon or weapons, weren't they, sir?

A. Yes.

Q. Like a submachine gun?

A. Yes.

Q. A fully automatic weapon? The Ray-Mac people, I mean.

A. Yeah.

Q. Isn't that correct?

A. (The witness nodded head affirmatively)

Q. And you could hear the sound of that automatic weapon being fired, - -

A. Yes.

Q. - - From where you were?

All right, sir. The truth of the matter is that you weren't shooting to hurt anybody but rather shooting at a toolshed, weren't you?

A. That's right.

Q. And that was true of the other men, is that correct?

A. That's true.

Q. All right. As a matter of fact, somebody had made the comment, I believe you said earlier, did you not, that you all had talked about or discussed shooting at that toolshed down there at Ray-Mac, isn't that right?

A. Yes.

Q. All right. Now, Mr. Jake Moore had a gun up there on that hill on that Wednesday, didn't he?

A. Yes.

Q. And it's true, is it not, sir, that he had a mini 14 - -

A. Yes.

Q. - - that had been furnished by Phillip Booth?

A. I don't know where he got it.

Q. You don't know where it came from?

A. No.

Q. All right, sir.

A. He said it was Phillip Booth's, I think - - got it off of Phillip Booth.

Q. He said he got it from Phillip Booth?

A. I think he did, yes.

Q. All right, sir. Then I think you said after some little time you all came off the hill, is that correct?

A. Yes.

Q. And you went to a little store near Stiffy Stumbo's, is that right?

A. That's right.

Q. Okay. And when you got there, sir, Phillip Booth was there, wasn't he?

A. He came there, yes.

Q. Beg your pardon?

A. He came up there after we got there.

Q. All right. And it was at that point in time that you heard there was going to be a union meeting at the local union hall that evening, isn't that right?

A. Yeah.

Q. And then, Mr. Moore, you and Phillip Booth left and went back over to his house, didn't you?

A. Yeah.

Q. All right. And when you got there you saw Pearl Booth, did you not?

A. Yeah.

Q. And she asked you to go buy some more shells, some more ammunition, didn't she?

A. Yeah, that was that night.

Q. I beg your pardon?

A. Later on that evening, yeah.

Q. All right, sir. But you were at the Booth house when she asked you to do that?

A. Uh-huh.

Q. She gave you a check, didn't she?

A. Yes.

Q. And asked you to go back to Donahue Halbert's, isn't that correct?

A. That's correct.

Q. All right. And, as a matter of fact, she told you what you were to buy in the way of ammunition, didn't she?

A. She gave me a list.

Q. She gave you a list. And you went back over to Donahue Halbert's, is that correct?

A. Yes.

Q. All right. Now, you've testified, have you not, sir, that when you got to Mr. Halbert that you told him that McDowell had been shot all to pieces that day, isn't that right?

A. Something like that, yes.

Q. Something like that?

A. Yeah.

Q. All right. Let me refer you again, sir, to sworn testimony that you gave before the Federal Grand Jury.

MR. HARWELL: May I advise Mr. Kehrli of the reference?

THE COURT: Yes, sir.

(Mr. Harwell complied)

Q. I will ask you, sir, if you weren't asked this question and if you didn't give this answer: "Question: Did you talk to Donahue about what you done that day? Answer: No, I don't think so."

In the sworn testimony didn't you get asked that question and give that answer on January 3, 1983?

A. I might have. I didn't talk to him about what we done that day.

Q. I see. And you're saying --

A. I didn't tell him what we done, no.

Q. You're saying something - - some comment about McDowell being shot all to pieces is different - -

A. Yes.

Q. - - From telling him?

A. Yes.

Q. All right, sir.

A. I didn't tell him what nobody done.

*** *** ***

Q. And I think your testimony, Mr. Moore, is that you then went back to Pearl an Phillip's house, isn't that correct?

A. After I got the shells, right.

Q. All right, sir. And that was the time when you said you weren't going back up in the hills and you weren't going to be involved anymore, is that right?

A. That's right.

Q. And Pearl Booth asked that you give your gun back, isn't that right?

A. Yeh.

Q. All right, sir. Now, after that is it your testimony that you didn't have any more involvement in regard to Ray-Mac?

A. That's right.

Q. All right. Let me ask you, sir, it is not a fact that on April 2 of 1982 that in a conversation with Richard Kemp you told him you were the ring leader and you took care of destroying Ray-Mac equipment? Didn't you tell him that?

A. I might have, yes.

Q. Do you remember whether you

told him that or not?

A. I don't know. I told him a lot.

Q. All right. And if he told him that that was a lie, wasn't it?

A. Yeh, that was a lie if I told him.

Q. All right, sir.

A. That was the last I had to do with it that night.

Q. I see. Didn't you tell Mr. Kemp that you damaged over one million dollars worth of equipment in a conversation with him on April 2, 1982?

A. I'll tell you, I might have told him that, yes.

Q. And if you did was that a lie?

A. If I told him that it was a lie, yes.

Q. You don't remember whether you made that kind of a comment?

A. I said I told you it's a lie.

Q. All right, sir.

A. I was trying - - -

Q. And on May 13 of 1982, did you tell Mr. Kemp that you had blowed up the equipment, the equipment up at Ray-Mac?

A. I don't know whether I told him that or not.

Q. You don't remember whether you told him that or not?

A. I said I - - I don't remember if I told him that or not.

Q. If you told him that, sir, was that true or was that a lie?

A. If I told him that that was a lie.

Q. All right, sir.

A. Yeh.

Q. On that same day , May 13th, 1982, didn't you tell Kemp that when the equipment blew up that you were about twice as far away from the equipment as you were from a telephone pole that you pointed at?

A. I might have told him that, yes.

Q. If you told him that that was a lie, wasn't it?

A. It was a lie, yes.

Q. All right, sir. And on that same date, May 13th of 1982, didn't you tell Mr. Kemp that blowing up the equipment wasn't a big deal, walking through the hills was the hardest part of it? Didn't you tell him that?

A. I might have, yes.

Q. If you did that was a lie?

A. That was a lie, yeh.

Q. All right, sir.

A. I think you've made your point clear.

Q. I'll respectively, sir, let the Court address me on that issue, with Your Honor's permission. And isn't it true, Mr. Moore, that the morning after the Ray-Mac equipment was blown up that you were over at Phillip Booth's house telling a lot of people that you and Phillip Booth had had that done?

A. I don't know whether it is or not.

Q. You don't know whether that's true or not?

A. No.

Q. You told Mr. Kemp that you'd done that, didn't you, that you'd made that comment after it was blown up?

A. I don't know whether I did or not.

Q. If you did was it true or was it a lie?

A. It was a lie if I did.

Q. All right, sir. Is it not true, sir, that on Sunday, the Sunday after you had come back from Winchester, the Sunday that you talked about in your direct testimony, the Sunday that the equipment was damaged, that you were at Phillip Booth's house with a number of men and you looked around at Phillip Booth and said, boy, you sure fixed them this time, ain't you, buddy? Didn't you say that on that Sunday?

A. I don't know.

Q. You don't know?

A. No.

Q. If you did say it was that true or was that a lie?

A. If I said it it was a lie.

Q. All right, sir. And didn't you on that same Sunday say to a number of men over at Phillip Booth's house; me and the Roundman done blowed up that auger? Didn't you say that?

A. I don't whether I did or not.

Q. If you said that - -

A. It's a lie.

Q. It's a lie. As a matter of fact, the Roundman or the Roundman was the nickname for Phillip Booth, was it not?

A. Just like Papa is, yeh.

Q. It's a nickname?

A. Yeh.

Q. All right, sir. Do you deny, sir, burning up the tipple?

A. Yes.

Q. All right, sir. On April 2, of 1982, you told Mr. Kemp that you burned up that tipple, didn't you?

A. I might have.

Q. And if you said that that was a lie?

A. That was a lie.

Q. All right, sir. And did you not tell him, Mr. Kemp, on May 12 of 1982 that you and Panhandle Moore had soaked the tipple in diesel fuel and burned it?

A. I might have.

Q. And if you did was that a lie?

A. That's a lie.

Q. All right, sir. Didn't you have a conversation, sir, on or about May 12 of 1982, with Phillip Booth where you and he discussed how the tipple was burned; and it was wood and tin and no I-beams? Do you recall that conversation?

A. No.

Q. You don't remember that, all right.

Isn't it true, sir, that throughout that week of February 15 that you were drinking and drinking heavily?

A. I was drinking, yes, sir.

Q. Were you drinking to such a point that you were intoxicated during that week?

A. I don't think so.

Q. You don't think you were intoxicated?

A. No.

Q. All right, sir. Were you taking any medication or drugs during that week?

A. No.

Q. It is a fact, is it not, sir, on March 19, 1982, you told Agent Kemp that you'd been taking speed during that week?

MR. KEHRLI: Objection, Your Honor.

THE COURT: Approach the Bench.

(Reporter's Note: At this time all counsel approached the Bench; whereupon the following was heard.)

THE COURT: What's the cutoff point?

MR. HARWELL: May the Court please, this witness has said that he was not drunk that week. This witness has lied and said he had not taken drugs that week. Both of those go to his ability to remember and his ability to recall.

THE COURT: What if he said-- What if he said he lied?

MR. HARWELL: He can say that, Judge. I'm entitled. He said that he was on speed that week. I'm entitled to have, yes, I said that, but I lied about it. He's either lying here or he lied then.

THE COURT: All right. I mean assume that he says that he lies here, as--as the witness says, you made your point.

MR. HARWELL: May the Court please, I am not sure--

THE COURT: Let me ask you this. Whether he lies a thousand times or whether he lies one hundred times, what's the difference?

MR. HARWELL: Judge, the degree of deceit in a human animal is measured by his propensity

to lie and the frequency of the lies and the cavalier attitude in spouting out lies.

THE COURT: Well, what about 304?

MR. HARWELL: What about it, Your Honor? I'm not sure what you're asking.

THE COURT: The point where he gets prejudicial.

MR. HARWELL: When it comes to the credibility of a witness, if he's lied in regard to thesubject matter of his testimony, especially a witness who is--

THE COURT: Okay.

MR. HARWELL: He's a coconspirator who's made a plea bargain, and I feel the law is clear on it.

THE COURT: We're getting to a point where I'm going to use the Court's discretion.

MR. HARWELL: I've got some lies under oath coming up, some other lies.

THE COURT: Well, I think-- You can ask him if he's ever lied under oath, but if you're going to show ten or fifteen occasions of him lying under oath I'm going to use my discretion.

MR. HARWELL: With all due respect, Your Honor, Larry Webster had about twenty-five or

thirty of them, as I recall. There were a whole bunch. I'd like to go into that, Judge.

THE COURT: What I did with Larry Webster doesn't have a thing to do with you, Mr. Harwell.

MR. HARWELL: I'm not--I hope that I'm manifesting the respect that I have for YOur Honor.

THE COURT: Yes.

MR. HARWELL: All I'm saying, Judge, is that this is a crucial witness. He is a liar--

THE COURT: He's--

MR. HARWELL: --by his own testimony.

THE COURT: He admitted it.

MR. HARWELL: He said in one of the Morris Joe Hall cases; I don't know anything about Ray-Mac. He said it under oath where he was sworn to tell the truth, just as he was sworn to tell the truth here.

May Your Honor please, the same subject matter is relevant in time , and, I believe, Judge, with all due respect to Your Honor, that it is a violation of my client's right to confront and cross-examine, which gives rise to the problem on my client receiving a fair trial and due process if I can't go into this with this fellow.

it's beneficial to the jury or beneficial to anyone to permit him to show forty more occasions where he lied.

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MR. HARWELL: Is Your Honor including lies under oath, that is sworn lies in that statement, Judge?

THE COURT: Well, I'm going to have to look at them specifically.

MR. HARWELL: Beg your pardon?

THE COURT: I'm going to have to look at them specifically.

MR. HARWELL: Okay, Your Honor, I understand.

MR. KEHRLI: For the record, Your Honor, on the basis of 403 we will object to any further questions along this line.

MR. HARWELL: That's not a 403 issue, with all due respect, Your Honor.

THE COURT: Well, let's go back, gentlemen. You know the feelings of the Court.

MR. HARWELL: Your Honor will call me back up and I can continue until you call me back up?

THE COURT: If it's -- If it's along the same lines just to show that he's made a -- that he's a liar, let's go on to another point.

On the drug thing you can ask him if he's -- he was under the influence of

drugs. That's all right.

MR. HARWELL: Judge, I know that he said earlier in time that I was under the influence of drugs and on speed that week. I mean -- I don't accept the validity, the truthfulness of his response to my question of were you on drugs that week when, as a matter of fact, from his own mouth he has previously said --

THE COURT: Okay. Ask him if he didn't tell someone he was on speed.

MR. HARWELL: Okay. Thank you, Judge.

MR. SELF: These deal with Special Agent Kemp in his undercover capacity in trying to determine perpetrators.

THE COURT: You can show that back on redirect. Let's go.

MR. HARWELL: Yes, Your Honor.

(Reporter's Note: At this point the Bench conference was concluded.)

THE COURT: You may proceed, sir.

MR. HARWELL: Thank you, Your Honor.

Q When we approached the Bench, Mr. Moore, I was asking you if it -- if

it wasn't true that on March 19 of 1982 you told Agent Kemp that you'd been taking speed.

A. I might have.

Q. And were you, as a matter of fact, during the week of February 15th taking speed?

A. No.

Q. If you said that to Agent Kemp that was a lie, is that correct?

A. That's a lie.

MR. HARWELL: All right, sir. In light of Your Honor's comment, may I have just a second, Judge?

THE COURT: Yes, you may.

MR. HARWELL: Thank you, sir.

Q. Mr. Moore, other than this one meeting that you said you had with Edgar Jones, there was never any other meeting or conversation that you had with Edgar Jones concerning Ray-Mac or buying guns or ammunition, isn't that right?

A. That's right.

Q. All right, sir. As a matter of fact, that's the same Edgar Jones that you, according to your testimony, only met with

once; the same Edgar Jones you were talking about on March 19 of 1982 to Richard Kemp when you said, I ain't that close to Edgar Jones. They're one in the same, aren't they?

A. Do what now?

Q. All right, sir. Is it not a fact that on March 19 of 1982 in a conversation with Richard Kemp you said, I ain't that close to Edgar Jones? Didn't you say that?

A. I'm not that close to him.

Q. You're not, are you?

A. No.

Q. All right, sir. And didn't you also say that Edgar won't talk to too many people; I worked with him for four years and I think I've talked to him four times. He don't hardly know me. Didn't you say that to him?

A. Yeah.

Q. Was that a true statement?

A. That's the truth.

Q. All right, sir. And on May 13, 1982 in a conversation with Mr. Kemp you said that Edgar Jones back in February had

EZ EZ EZ

given you two blank signed JRM company checks, did you not, sir?

A. I don't know whether I said that or not.

Q. You don't know whether you told Agent Kemp that?

A. No.

Q. If you did, it was not true, was it?

A. It's not true.

Q. You never got a signed blank company check or any other check from Edgar Jones, did you, sir?

A. No.

Q. All right, sir. Looking again, Mr. Moore, at the week of February 15, I think your testimony was that the meetings that you were at, the get-togethers at Phillip Booth's house, that Edgar Jones was never present; is that what you told us?

A. Yes.

Q. He wasn't present when you went up in the hills, was he, sir?

A. No.

Q. All right, sir. He

never gave you any ammunition, did he, sir?

A. No.

Q. All right. Now, you testified, sir, on direct in regards to a trip to Lexington, if I recall your testimony, you say you think you went in the afternoon or evening and returned on the following day, is that right?

A. I think so, yes.

Q. And I think your testimony was that you couldn't be certain as to whether you left on Friday and came back Saturday, or left on Saturday and came back Sunday, is that right?

A. I didn't know I was going to have to remember the day or I would have wrote it down.

Q. Yes, sir. I'm asking you though if it wasn't your testimony --

A. I don't remember what day it was on.

Q. All right, sir. In any event, you've told us, have you not, sir, that you got a call from Phillip Booth and went over to his house, is that right?

A. Right.

Q. From there you and he left for Lexington, is that correct?

A. Right.

Q. Did you go in Mr. Booth's Corvette?

A. I'd say his Corvette or Cadillac, one of the two.

Q. All right. And Mrs. Booth didn't go in the car with you all, did she?

A. No,

Q. All right, sir. Did anybody go in the car with you other than Phillip Booth?

A. Yeah, I think Ed Tackett did, I think.

Q. Ed Tackett?

A. I think so.

Q. All right, sir. Did anybody --

A. We went to Lexington several times, every weekend, as a matter of fact.

Q. I'm referring to this weekend that you testified to when Mr. Kehrli was talking to you. On that weekend you say you think Ed Tackett went?

A. One weekend Ed Tackett went.

Q. All right, sir. Do you know whether it was that weekend?

A. I couldn't be sure.

Q. All right. Do you know whether Reon Slone went on that weekend?

A. No.

Q. You don't know or no, she didn't?

A. That's a man, Reon is.

Q. Excuse me.

A. No, I don't think so, no.

Q. Okay. What about Lynn Isaac, on that weekend did Lynn Isaac accompany you all to Lexington?

A. I don't know. He might have and he might not.

Q. You don't remember?

A. No.

Q. All right, sir. On that weekend when you all were gone, did you see Pearl Booth?

A. Yeah, before we left. She was there.

Q. Did you see her after you left, before you all came back to McDowell?

A. I think she was going down the parkway.

Q. I beg your pardon?

A. I think we met her coming down the Mountain Parkway as we were coming back.

Q. As you were coming back from Lexington?

A. Yeah.

Q. All right, sir. And do you remember what automobile she was in?

A. No.

****

Q. All right.

A. She was driving the Corvette, I think.

Q. I beg your pardon?

A. She might have been driving the Corvette.

Q. All right. Mr. Moore, I think you testified earlier, did you not, sir, that you and Phillip Booth went to Em Pack Restaurant?

A. Yes.

Q. On a Tuesday or a Wednesday, is that right?

A. Yes.

Q. And is that the week of February 15, that is Tuesday the 16th, or Tuesday the 17th of February?

A. Yes.

Q. All right. And if I understood you, sir, you said that Phillip Booth went in, and you later went in that restaurant; is that correct?

A. Correct.

Q. You didn't go in with him?

A. No.

Q. All right. And I think you

also said, did you not, sir, that you didn't overhear any conversations between Phillip Booth and Edgar Jones on that occasion, did you, sir?

A. No.

Q. All right. That was the time that you told this Jury that you all got a case of Jack Daniels whiskey out of the back of Mr. Edgar Jones's vehicle; is that right?

A. Right.

Q. Who got that out?

A. I did.

Q. You got it out?

A. Yes.

Q. And where did you put it?

A. I put it in Phillip Booth's car.

Q. Put it in Phillip Booth's car. All right, sir.

Mr. Moore, even though you have testified that you don't know Edgar Jones well, you are aware of the fact, are you not, sir, or you have knowledge that for a period of years he has given away cases of whiskey that he and JRM received at Christmastime; are you aware of that? Do you know that?

A. I know he gave away some at Christmas when I worked for him, yes.

Q. All right, sir. And you know that he did that for a period of years, do you not?

A. He gave it at Christmas. I got it twice, I know.

Q. All right. And you know a lot of other people - -

A. (Interrupting) Everybody that worked for him.

Q. Yes, sir. What about customers? Are you aware of the fact that they were given cases of whiskey on occasion by JRM?

MR. KEHRLI: Objection.

THE COURT: Sustained.

Q. Did you know it?

A. I didn't know it.

Q. All right, sir. Mr. Moore, you are currently in custody at Sandstone at the Federal Correctional facility there, are you not?

A. That's true.

Q. And you are there by virtue of having pled guilty to a charge of violating a Federal criminal statute that prohibits conspiring to

commit an offense against the United States, or to defraud the United States; isn't that correct?

A. Yes, I guess.

Q. All right, sir. You say you guess. Weren't you charged along with Morris Joe Hall and Basil Ray Moore - -

A. (Interrupting) Dealing in explosives without a license.

Q. I beg your pardon?

A. Dealing in explosives without a license.

Q. All right, sir, selling explosives without a license.

A. Right.

Q. All right, sir. And as part of your guilty plea, you admitted certain facts, did you not, to this very Judge, Judge Unthank?

A. Yeah.

Q. All right. And you admitted, did you not, sir, that on March 5, 1982, you met with Special Agent Dick Kemp, who you thought was Rick Kemper, and agreed to sell him explosives?

A. Yes.

Q. All right. And you also admitted, did you not, that on March 11th of 1982,

you stole fifty pounds of Hercules Dynamite and two Hercules electric blasting caps from a coal mine up near McDowell; didn't you admit that to this Judge?

A. I don't think I admitted stealing anything, no.

Q. You don't think you admitted that?

A. (No response)

MR. HARWELL: May I approach the Government, Your Honor.

THE COURT: Yes.

(Mr. Harwell conferring with Government's counsel)

MR. HARWELL: Judge, may I get a copy of this for the United States? They don't have this copy in their file here.

THE COURT: Yes, sir.

(Defense counsel conferring)

MR. HARWELL: May the Court please. This is the sentencing hearing, and I need the plea hearing. Excuse me.

Mr. Moore, may I have the guilty plea transcript?

(Defense counsel conferring)

MR. HARWELL: Is Your Honor inclined

to have a very brief recess, or is Your Honor - -

THE COURT: That would be fine.

MR. HARWELL: Thank you, Judge. I can't find that right now.

THE COURT: Fifteen minutes?

MR. HARWELL: That will be fine, Your Honor. Thank you, sir.

THE COURT: We are going to be in recess fifteen minutes. During this recess, the "not now" admonition is in effect.

Is there any objection or corrections to the form of the admonition?

MR. PAFUNDA: No, Your Honor.

MR. SELF: No, Your Honor.

THE MARSHALL OF THE COURT: Everybody remain seated while the Jury leaves the Courtroom.

REPORTER'S NOTE: At this point the Jury leaves the Courtroom at 2:16 P.M.; whereupon the following was held.

THE MARSHALL OF THE COURT: Your Honor, the Jury is out of the Courtroom.

THE COURT: All right. The witness may be excused for fifteen minutes. And Court will be in recess fifteen minutes.

THE MARSHALL OF THE COURT: All rise.

All right, the Court is in recess for fifteen minutes.

REPORTER'S NOTE: At this point a fifteen minute recess was held; whereupon, the following was thereafter heard.

THE MARSHALL OF THE COURT: All rise, please. This Honorable Court is again in session. Be seated and come to order.

Your Honor, all Attorneys, Defendants and all the Jurors are present.

THE COURT: Okay. You may proceed, sir.

MR. HARWELL: Thank you, Your Honor.

Q. Mr. Moore, at the time of the recess I was talking about your entering a guilty plea before Judge Unthank on December 6th, 1982.

As a matter of fact, that hearing involved both you and a man by the name of Basil Ray Moore, did it not?

A. That's true.

Q. All right, sir. And in the course of that hearing before His Honor, you admitted that on March 5 of 1982, you agreed to sell to Richard Kemp a quantity of explosives, any amount he wanted; isn't that true, sir?

A. Yes.

Q. All right, sir. And in that hearing before His Honor, you also admitted that on March 11, 1982, that you sold to Agent Kemp fifty pounds of dynamite and two electric blasting caps; isn't that true?

A. Yes.

Q. You also admitted that on March 19th of 1982, you sold to Special Agent Kemp, who was acting in an undercover capacity, approximately fifty pounds - - a case - - of dynamite, and three electric blasting caps; isn't that true?

A. Yes.

Q. And you also admitted to His Honor, that on April 2 of 1982, you sold to Special Agent Kemp two cases of dynamite approximating one hundred pounds, and one box of electric blasting caps; isn't that true?

A. Yes.

Q. And you also admitted in that hearing, did you not, that on May 12th of 1982, you and an associate sold to Special Agent Kemp approximately eight sticks of dynamite and six blasting caps; isn't that correct?

A. Yes.

Q. All right, sir. And it is a fact, is it not, sir, that at the time of those transactions with Special Agent Kemp that he was acting in an undercover capacity; isn't that right?

A. Yes.

Q. And you believed, did you not, he was somehow involved with organized crime when you sold that to him; didn't you, sir?

A. I didn't know what he was involved in really.

Q. You didn't know what he was involved in?

A. No, not really.

Q. Hadn't you and he discussed his being tied in with Big Al, allegedly a member of organized crime?

A. Yes, we discussed it.

Q. And he told you that, hadn't he?

A. Yes.

Q. All right, sir. Now, Mr. Moore, you have this morning and this afternoon testified in regard to a number of activities which you say that you were involved in back in mid-February of 1982, regarding Ray-Mac.

The fact of the matter is that those things to which you pled guilty, things that you admitted and that I have talked to you about here, had nothing to do with Ray-Mac, did they?

A. No, I don't guess.

Q. They had nothing to do with Edgar Jones, did they?

A. I don't think so.

Q. All right. And the events to which you pled guilty before His Honor occurred in March and April and May of 1982; isn't that right?

A. True.

*** *** ***

Q. And the fact of the matter is, sir, that you have an agreement with the Government that they will not bring any criminal charges against you concerning your alleged activities with Ray-Mac, that's true, isn't it?

A. They had seven counts on me and they dropped five of them and I pleaded guilty to two.

Q. Beg your pardon?

A. I had seven counts. They dropped five of them and I pleaded guilty to two.

Q. Let's go back to that. You're telling us that in the indictment to which you entered guilty pleas to some counts there was a total of seven counts against you?

A. Yes.

Q. And as part of the plea bargain the Government dropped five of those counts, is that right?

A. That's right.

Q. And you entered a guilty plea only as to two of them, correct?

A. Right.

Q. But the truth is none of

the counts in the indictment, the two counts of which you entered a plea to, none of those counts had anything to do with Ray-Mac, did they?

A. I didn't have much to do with Ray-Mac either.

Q. Yes, sir. But my question is that no charges--

A. (Interrupting) No.

Q. (Continuing) No counts, in the indictment, the ones that were dropped or the ones you pled to, none of them had anything to do with Ray-Mac?

A. Dealing in explosives without a license.

Q. Yes. Uninvolved with Ray-Mac and these other matters, right?

A. Right.

Q. All right, sir.

And the fact of the matter is that you had an agreement with the Government where they will not bring any criminal charges against you in regard to Ray-Mac, is that true?

A. That's true.

Q. All right, sir.

And at the current time,

sir, you have no criminal charges pending against you, do you?

A. That's right.

Q. And you don't know of any criminal charges that will be brought against you, do you?

A. No.

Q. Now, you were a convicted felon when you went to Donahue Halbert's and bought that 9 millimeter pistol, weren't you, sir?

A. I had a felony, yes.

Q. All right, sir. And part of your understanding with the Government is that you will not be prosecuted under the 1969 Gun Control Act for illegally buying that weapon, isn't that true? You won't be prosecuted on that, will you?

A. No, I don't think so.

Q. And you won't be prosecuted for possessing that .38 pistol that you said Phillip Booth gave you up there during the week of February 15, that's part of your agreement, isn't it?

A. I don't think I'll be prosecuted on it.

Q. All right, sir.

And the truth of the matter is that that .243 bolt action rifle that we talked about earlier, the one you possessed during that week of February 15, even though a convicted felon, you will not be prosecuted for possessing that, will you, sir?

A. No.

Q. All right, sir. And in regard to the statements on that ATF form that we talked about earlier today, you understand you will not be prosecuted for anything pertaining to that statement, isn't that your understanding?

A. Yes.

Q. All right, sir. And you do-- Let me rephrase that.

Are you aware of the punishment provided by statute for violation of the Gun Control Act of 1968?

A. No, not aware of it.

Q. All right, sir. Mr. Moore, you have over a period of time talked to Government lawyers and the Government agents about the Ray-Mac situation with some frequency, haven't you, sir?

A. Yes.

Q. All right, about how many

times have you talked to them in total?

A. I don't know.

Q. More than five?

A. Possible, I don't know.

Q. You don't know, all right, sir.

On December 6 of 1983 a man by the name of Hank Hillin came to see you, did he not?

Stand up, Mr. Hillin.

Do you recognize that gentleman standing?

A. Is that the one that came down to the jail?

Q. Yes, sir.

A. Yeah, I talked to him.

Q. And he was courteous to you, wasn't he?

A. Do what?

Q. He was courteous, he was nice to you, wasn't he?

A. Yes, he was all right.

Q. And he told you that he was working for me, did he not, sir?

A. Yes.

Q. And he told you that I was involved in representing Mr. Edgar Jones, didn't he, sir?

A. Yes.

Q. And he asked you if you would talk to him about the Ray-Mac situation, didn't he?

A. Yes.

Q. As a matter of fact he asked you if you would give a statement about it, did he not?

A. Yes.

Q. Didn't you tell him that you were not going to give any written statement to him about this matter?

A. I told him what I testified. That's exactly what I told him.

Q. Didn't you tell him, sir, that you would not give a written statement?

A. I told him I would not let him record me, a statement.

Q. Did you tell him you would not give a written statement?

A. I didn't give one, I told him I would not let him record me. He wanted to

record the statement.

Q. Is it your testimony, sir, that you and Mr. Hillin did or did not discuss a written statement from you?

A. I didn't sign anything or nothing, he might have asked me and I said no.

Q. All right, sir.

You might have said no, is that what you just said?

A. I didn't sign anything. I must have said no if he asked me.

Q. All right.

Mr. Moore, you testified before His Honor, Judge Unthank, in this very courtroom on February 7th, 1983, against Morris Joe Hall, did you not, sir?

A. Yes.

Q. And in that case much like this case, you raised your hand and swore to tell the whole truth and nothing but the truth, did you not, sir?

A. Yes.

Q. All right, sir.

And during that testimony Mr. Larry Webster asked you some questions, did he not?

A. Yes --

MR. KEHRLI: (Interrupting) Your Honor, we're going to have to object at this time to the question.

THE COURT: Approach the Bench,

please.

Reporter's Note: Whereupon a Bench conference was held with all counsel present where the following was heard:

THE COURT: Mr. Harwell, let's don't use this as a springboard to get into a bunch of incompetent evidence. If you're going to ask him something specific about him stating something falsely under oath, get to it.

MR. HARWELL: Yes, Your Honor. I was laying groundwork.

THE COURT: You're laying your groundwork, let's don't bring in a bunch incompetent stuff, get to the subject matter.

MR. HARWELL: All right, sir.

(Reporter's Note: Whereupon the Bench conference was concluded.)

THE COURT: You may proceed.

MR. HARWELL: Thank you, Your Honor.

Q. Mr. Moore, when you were testifying in that matter back in February of 1983, you stated under oath, did you not, that you had told Phillip Booth that Rick Kemp was a hit man?

A. Yes.

Q. All right, sir. And that was a lie, was it not, sir?

A. Evidently it was, he was an undercover man.

Q. Yes, sir. But you made that up and you so admitted in Federal Court, did you not?

A. Yes.

Q. All right. And the truth of the matter is, did you not also testify, sir, in that hearing that Rick Kemp -- let me strike that, Your Honor, may I in accordance with what Your Honor said, if I can take just a moment to look over these I think I can best follow the Court's directives.

THE COURT: All right.

MR. HARWELL: May I go on, Your Honor?

THE COURT: Yes, sir.

Q. Mr. Moore, let me move to another hearing before this Court in regards to Morris Joe Hall on December 28th of 1982. And like the previous hearing to which I made reference, in that situation you raised your hand as you have here and you swore to tell the truth, the whole

truth and nothing but the truth as you will answer under God, did you not?

A. Yes.

Q All right, sir. Isn't it true, sir, that Mr. Webster asked you while you were under oath if you knew anything about the Ray-Mac situation --

MR. KEHRLI: (Interrupting) Your Honor, we object to the question on the grounds -- we don't also have a copy of the alleged prior consistent statement, if that's what counsel is attempting to use this for. I'm sure that is what he is. If he is not, we object to the question. If it is a prior inconsistent statement, we don't have it.

THE COURT: Do you have a copy of it?

MR. HARWELL: Your Honor, I'll see if I do.

MR. SELF: I think we have a copy.

MR. HARWELL: May I approach the Government, Your Honor?

THE COURT: Yes.

Q Let me ask you, sir,

if you were not asked, while you were under oath before this very Judge, what you knew about the Ray-Mac matter and you said, "I don't know nothing about it, don't know a thing about it, no." Weren't you asked that question and didn't you under oath give that answer on or about December 28th, 1982 in this Court?

A. I don't know, I don't remember.

Q. You don't remember that?

A. No.

Q. You don't recall what I just --

A. (Interrupting) I don't recall, it might have been more than the question what you're asking there. You're picking out parts, that was a whole trial.

Q. I see. Did you --

A. (Interrupting) You're picking out parts you want to pick out.

Q. The truth is you lied in the course of that trial?

A. No, I didn't lie, don't call me a liar.

Q. You deny that, sir?

A. I didn't lie.

MR. SELF: We object, Your Honor, and ask that the colloquy asked between them between completed.

THE COURT: That's what I'm trying to keep from getting into, gentlemen.

THE WITNESS: I'm not going to let you stand up there and call me a liar.

MR. HARWELL: May counsel approach the Bench, Your Honor.

THE COURT: Mr. Moore, it's all right. Yes, approach the Bench.

Reporter's Note: At this point a Bench conference was held with all counsel present where the following was heard:

THE COURT: Now, gentlemen, we can't go bringing the Morris Ray Hall trial here into evidence in this case, you know that.

MR. WALBOURN: Your Honor, this evidence is not a complete doctrine question. A complete doctrine is concerning a prior statement like that, that's where you're talking about a writing or something.

THE COURT: Well, I think the

witness has made a good point that there's something being taken out of context.

MR. WALBOURN: I agree, Your Honor, entirely, but this is not a complete doctrine question.

THE COURT: Well, in order to determine the context, you have to get as to the -- I guess enough to eliminate on the matter. But I don't want to get outside of that, that's what I don't want to do.

MR. WALBOURN: I have no problem with that, Your Honor, at all. If Mr. Self's objection is one of completeness, then it's an ill-founded objection.

THE COURT: Well, here's what I don't want to watch, we're getting into this thing. You want to show -- maybe he signed something false on a trip to Lexington, but as a by-product they want to show they went down and had prostitution and they smoked marijuana and they -- you know, I don't think -- I think we're getting too much into this thing and that's why I want to be specific. Let's confine him to that.

MR. HARWELL: May the Court please, I'm not sure how to communicate what I want to

state to the Court. I'm not waiving any rights on cross-examination, but I'm trying to follow Your Honor's rules. But I'm now at a point where as a matter of total good faith to my wishes to follow the Court's ruling and furnish to the Government that I intend to go into subject matter concerning drugs, arson, and some other things. Now, if Your Honoras to the previous witness if I'm required to do that, by avowal --

THE COURT: (Interrupting) Let's do it by avowal. I made this statement a while ago when you made the statement I let Larry Webster ask thirty questions. What I done in another case doesn't have anything to do with this case. That's the point I'm making. We're using something as a springboard to bring in a bunch of other stuff which has got nothing to do with this trial.

MR. HARWELL: Well, what I was saying to the Court is I don't want to waive my rights of cross-examination, but may the Court please, based on Your Honor's prior comments I think that I'm at a point where Your Honor might wish to hear this out of the presence of the jury and determine whether it goes or it doesn't go. I don't know, Your Honor.

THE COURT: Well, if he's lying under oath I think the jury should hear this. But -- as I say, I don't think this is a springboard to bring in a bunch of other stuff.

MR. HARWELL: Judge, the problem with a denial under oath that Your Honor's commenting on without intentionally bringing in a lot of other things that comes in, given the subject matter of the question.

THE COURT: I don't think there's any such thing as something unintentionally coming in, Mr. Harwell.

MR. HARWELL: Judge, that's exactly why I asked to approach the Bench to get Your Honor's feelings before I got into this matter.

THE COURT: All right, let's do it by avowal and we'll weed it out, gentlemen.

MR. SELF: Well, Your Honor, the reason we asked to approach the Bench was the previous question that he asked as to the witness --

THE COURT: You can come back and ask him on redirect. If he only asks one question, you come back and read it.

MR. HARWELL: There's a way we're going to do this. The way Your Honor saw fit

earlier, to let cross-examination go on then. That's agreeable with me, Judge.

THE COURT: Yeah, that's why I suggested that you wait till last. I figured you were going to get into this thing and instead of going back up, we were going to let you wait till last and then we could get into it.

MR. HARWELL: It's not very long, Your Honor.

THE COURT: All right, that's fine.

(Reporter's Note: At this point the Bench conference was concluded.)

THE COURT: All right, you may proceed.

MR. HARWELL: May Your Honor please, as consistent with the Court's Ruling I'll sit down at this point in time, Judge.

THE COURT: All right, Mr. Pafunda.

CROSS-EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Moore, for the record, my name is Bernard Pafunda.

I believe in the course of your questioning you indicated that you were

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

aware of where Drexil Hall worked in the week of February 16th, 1982, is that correct?

A. I said I wasn't aware, I didn't know where he was working.

Q. Did you know that he worked for Adkins and Adkins Coal Company as a coal miner at that time, sir?

A. I don't know -- if he worked there, I'll take your word for it.

Q. Did you know at that time he was vice-president of Local 5967?

A. I --

THE COURT: (Interrupting) Approach the Bench.

(Reporter's Note: At this point a Bench conference was held with all counsel being present where the following was heard:

THE COURT: What is the purpose of this, he says he doesn't know.

MR. PAFUNDA: Your Honor, I think on direct examination he said he didn't know the name of where he worked and I asked him if he worked for Adkins Coal Company.

THE COURT: And what else?

MR. PAFUNDA: If he was vice-president

of the local at that time.

THE COURT: And what else?

MR. PAFUNDA: I just had one other thing, Your Honor.

THE COURT: All right, let's get on with it.

(Reporter's Note: At this point the Bench conference was concluded.)

Q. I'll repeat my second question, Mr. Moore.

During the week of February 16th, 1982 you knew that Drexil Hall was the vice-president of the local union up there, is that correct?

A. I knew he had something to do with the union, yes.

Q. All right, as a union official, correct, sir?

A. Yes.

Q. And Tuesday morning when you showed up at the tipple in East McDowell you saw Drexil Hall, did you not, sir?

A. Yes.

Q. And he was dressed in a blue United Mine Workers jacket?

A. Yes.

Q. And it had an emblem on the back, did it not, sir, that said United Mine Workers of America, Local 5967?

A. I guess, I don't know.

Q. And he also had on a blue and white cap, did he not, sir?

A. Yes.

Q. And on that cap 0--

A. (Interrupting) He had on black shoes, too.

Q. Thank you.

And on that cap, sir, was Local 5967, was it not, sir?

A. I don't know, I guess it did.

Q. During the week of February 16th, you're aware of the fact that Bo Moore was hauling coal for Willie Moore, were you not, sir?

A. I knew he hauled coal to the tipple, I don't know who for, for Edgar Jones' mines.

Q. All right, sir. And

you knew that he earned a living as a coal truck driver, right?

A. He drove a truck, yes.

Q. Now, with regards to Tuesday morning, it was Phillip Booth that called you up and directed you to be out there on Tuesday morning, correct?

A. Yes.

Q. He called you on Monday night?

A. Yes.

Q. And he asked you to be down at the tipple on Tuesday morning, correct?

A. Yes.

Q. Drexil Hall didn't give you any instructions, did he?

A. No.

Q. In fact, Drexil Hall didn't give you any instructions on Tuesday whatsoever, did he, sir?

A. No.

Q. And the first person you saw shoot on Tuesday morning was Phillip Booth, was it not?

A. Yes.

Q. And was that before Danny Blanton fired his shotgun?

A. Yes.

Q. And you saw Drexil Hall behind Benny Caudill's Jeep on the morning, on Tuesday morning, did you not, sir?

A. Yes.

Q. And you saw him look out from behind that Jeep and you saw his hat shot off his head, did you not?

A. Yes.

Q. You didn't see Drexil Hall with a pistol at the tipple when you first arrived on Tuesday morning, did you, sir?

A. No.

Q. And the pistol you say you saw Drexil Hall firing that morning, that was a dark pistol, was it not, sir?

A. A dark pistol?

Q. Yes, sir.

A. It was a .25 automatic.

Q. It was black in color, was it not, sir?

A. I seen the shells, it was a .25 automatic.

Q. My question is though, the pistol itself was black in color, was it not?

A. I don't know, I just seen the pistol -- all pistols are black, most of them.

Q. That .45 pistol Phillip Booth had that morning, was that a shiny pistol or was it blue?

A. It was blue.

Q. With a long barrel on it?

A. Yes.

Q. And you're saying he was the first one that shot that morning, is that correct?

A. That's what I think, yes.

Q. And that was at Danny Blanton's coal truck, shot and threw the men out onto the main highway, was it not?

A. Can --

MR. KEHRLI: (Interrupting) Object, that's not the witness' testimony, Your

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Honor.

MR. PAFUNDA: I'm asking the witness, if it please the Court.

THE COURT: Repeat the question.

Q And he fired at Danny Blanton's truck and ran through the men and moved out onto the highway and stopped, correct?

A. Yes.

Q Then Danny Blanton jumped out of the truck and opened fire with a shotgun?

A. It was more shots than that before he jumped out of the truck.

Q But that sequence of events is correct, is it not, that Danny Blanton then got out of his coal truck and opened fire with a shotgun?

A. Yes.

Q And there was another individual in that truck with Mr. Blanton, was there not?

A. Yes.

Q Did you happen to notice if that individual was also armed?

A. No, I don't think he

was.

Q. Now, I believe in response to Mr. Harwell's questions, you noted some men up on the ridge there that morning, carrying rifles?

A. Yes.

Q. Did you hear them shoot those rifles?

A. They didn't shoot, I don't know.

Q. You don't know or they didn't shoot?

A. Well, if they had shot at us they would have killed us, they were right up over top of us.

Q. But there were shots going on all around you, is that correct?

A. They were shooting.

Q. When you were behind the Jeep?

A. From behind -- I said if they were shooting, they would have killed us if they wanted to.

Q. Then, I believe after that shooting, you then left the area, is that

correct, after about five minutes or so?

A. Yeah.

Q. And later that night you ended up at Phillip and Pearl Booth's house?

A. Yes.

Q. You didn't see Drexil Hall there, did you, sir?

A. I don't remember if he was there or not.

Q. At that time, I believe it's already been brought out, you were fairly close with the Booths, is that not correct?

A. I worked for them, I was a foreman.

Q. They trusted you, did they not, sir?

A. I don't know, I guess they did.

Q. They trusted you enough to give you a check with the amount blank signed by Pearl and Phillip Booth on Calamity Coal Company to go and buy guns and ammunition?

A. Yes.

Q. So, they trusted you to a certain degree?

A. Yes.

Q. And you spent a lot of time at their home, did you not, sir?

A. I was down there, yes.

Q. You spent -- you were down there quite often during the week of February 16th, 1982, were you not?

A. Yes, I was, I guess.

Q. And during that entire time, you did not see Drexil Hall there, did you, sir?

A. I think he was down there a time or two, yes.

Q. Do you recall testifying at a hearing we had in this court before this Judge back in November of last year, a mini-hearing, sir?

A. Yes.

Q. And do you recall this question and in this answer, and if I may, Your Honor, approach Mr. Kehrli.

THE COURT: Yes.

Q. I'll ask you if you recall this question and your answer, sir.

Question: During the week of February 16th, the incident at Ray-Mac, did you at any time see Drexil Hall at the home of Pearl or Phillip Booth --

A. (Interrupting) He might have been down there, he might not have, I don't know.

Q. Your answer at that time --

A. (Interrupting) I seen him down there before. I don't know whether it was that week or not, but he's been down there.

Q. Sir, I'll ask you if you recall your answer at that time under oath and your answer was no, no.

A. Okay, no then.

Q. During the week of February 16th at the home of the Booths, did you at any time see Austin "Bo" Moore?

A. No.

Q. On Wednesday, when the men went into the hills, Bo Moore went into the hills, is that correct?

A. Yes.

Q. And guns and ammunition

were passed out that morning, is that correct?

A. Yes.

Q. They were passed out separately, the guns were handed out and then the ammunition, is that correct?

A. Yes.

Q. And Bo Moore was there, was he not?

A. Yes.

Q. And Bo Moore went into the hills?

A. Yes.

Q. But he only went as far as the ridge, is that correct?

A. Yes.

Q. With regards to that rifle, did you see Bo Moore ever get any ammunition with that rifle?

A. No, I didn't see him get the rifle, but he had a rifle.

Q. Did you see him get ammunition with that rifle?

A. I say he had some of it, I didn't see him, no.

Q. And you didn't see

load that rifle, did you, sir?

A. No.

Q. As a matter of fact, when you got to the ridge line and saw men who you believed to be Ray-Mac employees, that's as far as Bo Moore went, isn't that so?

A. Yes.

Q. And he sat down there on that ridge next to a tree with Raymond Hall, did he not?

A. Yes.

Q. And never fired a gun that day, did he, sir?

A. I don't think so, no.

Q. And you never saw him back up there after that day, did you, sir?

A. No.

****

Q. As a matter of fact, as you and the rest of the group of men proceeded along that hill area to another point, at one point in time you were approximately one quarter a mile away from Bo Moore, were you not?

A. We were a long ways away, yes.

Q. You would agree it was more than a quarter of a mile?

A I don't know how far.

Q. Approximately - -

A. A fifteen minute walk, probably.

Q. Would a fifteen minute walk be a quarter of a mile?

A. I don't know.

Q. Again, do you recall your testimony at the mini-hearing, correct?

A. Do what?

Q. Remember testifying at that hearing, sir?

A. Yes.

MR. PAFUNDA: If I may, Your Honor, approach Mr. Kehrli.

THE COURT: Yes.

(Mr. Pafunda complied)

Q. I will ask you if you recall this question being asked and your answer. I asked you: "Would that be a mile?"

Your answer was: "No, it wouldn't be a mile."

My question: "Half a mile?"

And your answer: "Quarter of a mile."

A. Well, I don't know exactly how far. I could tell you exactly where it was at in that picture, if you want to see it. You could figure it out.

Q. But it would be approximately a quarter of a mile?

A. I don't know if it was a quarter of a mile, half a mile or two miles.

Q. Returning to the events of that week of February 16th, it's true, number one, that Phillip Booth told you to be out there on Tuesday morning, correct?

A. Yes.

Q. And Phillip Booth's the one that gave you a gun, correct?

A. Correct.

Q. When he handed you that gun

at that time in the morning there'd been no violence, had there?

A. No.

Q. And Phillip Booth was the one that told you may need this gun?

A. Right.

Q. And it was Phillip and Pearl Booth who directed you to buy the guns and the ammunition, is that correct?

A. They give me the check. Yes, I went and got it.

Q. At no time did Bo Moore do anything like that?

A. No.

Q. Nor did Drexil Hall?

A. No.

MR. PAFUNDA: Thank you, sir.

THE COURT: Mr. Thomas.

CROSS EXAMINATION

BY MR. THOMAS:

Q. Mr. Moore, my name's David Thomas. I represent Eugene Tackett. I just have one or two questions.

I think you testified that

on direct by Mr. Kehrli that it was Ed Tackett that went with you to get the ammunition.

A. Yes.

Q. Are you sure of that?

A. Yes.

Q. Pearl Booth testified last week that it was Eugene Tackett.

MR. Kehrli: Objection, Your Honor.

THE COURT: Sustained.

Q. You know there's a difference between Ed and Eugene Tackett, don't you?

A. Yes.

MR. THOMAS: Thank you.

CROSS EXAMINATION

MR. WALBOURN:

Q. Mr. Moore, my name is E. J. Walbourn. I would likewise like to ask you some questions regarding your prior testimony.

The third shift where you were foreman, how many people were on your shift, please?

A. Five to six.

Q. Five or six?

A. Yes.

Q. When you went down to the tipple on Tuesday did you see any of those other people from your shift down there?

A. Yes.

Q. Okay. And I believe you testified that you live in the community of Price, is that correct?

A. Yes.

Q. All right. About how far is that from McDowell?

A. About three miles.

Q. Are you quite familiar than with the McDowell area?

A. Yes.

Q. All right. And do you know quite a few of the people that live in the McDowell and Price area?

A. Yes.

Q. How long have you lived in the Price/McCowell area?

A. Most of my life.

Q. All right. Now, I understand - - Would you tell me again when you went to the tipple on Tuesday morning about how many men were there?

A. I'd say thirty, forty, fifty.

Q. And of those thirty, forty, fifty men that were there, did you know most of them?

A. No. There was some of them I didn't know.

Q. All right. Would you say you knew more than half the men that were there or less than half? You just don't know?

A. I don't know. I didn't know a lot of them.

Q. All right. There were a lot of individuals there gathered at that - -

A. There was a lot of people that worked in them mines that I don't know.

Q. I understand that, sir. I'm asking the - - Quite a few of the people that were gathered at the tipple on Tuesday morning you did not know, is that correct?

A. That's correct.

Q. Now, when you went to

Phillip Booth's on Monday evening, approximately how many people were there?

A. I don't - - I can't remember how many were there.

Q. On Tuesday evening when you went there, approximately how many were there?

A. They all the time stayed about five or six guys there.

Q. When you say all the time, are you talking about - -

A. Just about everytime you go down there.

Q. All right. That would be weeks before February 15th, 1982?

A. Yes, two - - two years ago the same thing. It wasn't because of this. People just went down to his house.

Q. All right. That was a convenient gathering spot?

A. Yes.

Q. And a lot of people went down there and drank beer and talked and carried on, is that right?

A. Yeah.

Q. It wasn't unusual at all if

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you were to go down there to see other people down there drinking, was it?

A. That's right.

Q. All right. How often did you go down there, sir?

A. As often as I wanted to.

Q. All right. Were you a frequent visitor to Phillip Booth's house?

A. Yes.

Q. Regarding the Tuesday morning up at the - - where the shooting took place, you hid behind or you were behind a Jeep driven by Benny Caudill, is that correct?

A. Yes.

Q. Now, Mr. Caudill did not have a gun, did he?

A. No.

Q. Now, was that - - After the activity took place up there was that Jeep driven away or was it left there?

A. Towed away.

Q. All right. And why was it towed away, if you know?

A. I don't know.

Q. Do you know if it were

disabled or not?

A. It was shot. I guess it - - I don't know.

David Martin towed it away.

Q. All right. Turning your attention to Wednesday morning, you testified as to the nine individuals that went up in the hills with you, is that correct?

A. Yes.

Q. Including yourself there were nine people?

A. Yes.

Q. Okay. Now, I believe you indicated that Mr. Caudill drove the Jeep and Mr. Mosley drove the Jeep, and there was another person, is that correct?

A. Yes.

Q. Do you know who that other person was?

A. No.

Q. Did that person likewise drive individuals?

A. I don't - - There was three of them, I think.

Q. Okay.

A. I don't know.

Q. How many were in the vehicle that you were in?

A. Me and Hermit Newsome.

Q. All right. Do you know how many were in the Jeep driven by Mr. Caudill?

A. No.

Q. This is a - - The Jeep that you testified regarding what Mr. Caudill was driving, this was some other vehicle than the one that was shot up, is that correct?

A. Yes.

Q. But you don't recall who the other driver might have been that day?

A. No.

Q. Now, when you went up into the hills, where was Hermit Newsome in relation to where you were?

A. He was walking right along with me.

Q. All right. When you got up to where you finally arrived was Mr. Newsome with you? In front of you? Behind you?

A. Behind me.

Q. All right. Who was he with,

if you recall?

A. He was by himself. There wasn't - - Who was he with?

Q. Was he - - When you were up there was he by himself? With someone else? Was he beside you? Do you recall?

A. He was behind me.

Q. All right. How far?

A. Behind the three shooting.

Q. All right. How far behind you, sir?

A. About as far as I am to you.

Q. All right. Is that - - I'm awful on distance. Is that twenty-five or thirty feet?

A. So am I. I don't know.

Q. Okay. Is this about twenty-five or thirty feet (indicating)?

A. I don't know.

*** *** ***

THE COURT: Let the record reflect it is twenty-five feet, I guess, twenty or thirty feet.

MR. WALBOURN: Thank you.

Q. I understood your testimony to be that the entire time you were up there you shot two shells, is that right?

A. Yes.

Q. All right. And then you all decided it was time to leave the hill?

A. When they started shooting back, yes.

Q. All right. Now, did you have a plan as to where you were going to come off that hill?

A. No.

Q. You just kind of came off it someplace and waited for somebody to drive by and pick you up?

A. Yes.

Q. But it was not planned as to where to come off?

A. If it was I didn't know.

Q. To your knowledge, it wasn't planned as to how long you would stay up there?

A. It wasn't to my knowledge if it was.

Q. Thank you, sir. Now, at no time on Wednesday did you see Benny Caudill with a weapon, did you?

A. No.

Q. All right. The union meeting you testified to that occurred on Wednesday night, approximately how many people were there, if you know?

A. The building was full. I don't know how many it holds. That's the vice president over there. (Indicating) Ask him how many it holds.

Q. Well, I'm asking you, Mr. Moore.

A. I don't know how many it holds. It was full.

Q. All right. Would there have been more than twenty people there?

A. Yes.

Q. Would there have been as many as fifty?

A. I would say close, yes.

Q. All right. Again, did

you know most of the people at that meeting?

A. I knew some of them. Some of them I didn't know.

Q. Would you say you knew half or less than half?

A. Less than half.

Q. And, again, you-- I understood your testimony to be that there was talk about organizing Ray-Mac at that meeting, correct?

A. They talked about all kinds of stuff. I got up and left.

Q. Okay. Approximately how long were you there, sir?

A. Not very long.

Q. All right. And did I understand your testimony to be that Hermit Newsome was with you?

A. No, he wasn't with me. He was there.

Q. All right. And did I understand your testimony to be that Hermit had had quite a bit to drink?

A. He acted to me like he had, yes.

Q. Would you say he was drunk?

A. I'd say he was pretty lit, yeah.

Q. All right. Did Hermit give the speech or did he want to give a speech?

A. He wanted to.

Q. Did he give one?

A. I don't know. I didn't stay around.

Q. While you were present he did not give a speech?

A. No.

Q. Did Hermit leave with you or did he stay?

A. No. No, he didn't leave with me.

Q. Who did you leave with?

A. Phillip Booth.

MR. WALBOURN: Thank you, Mr. Moore.

THE COURT: Next.

CROSS-EXAMINATION

BY MR. SPENCER:

Q. Mr. Moore, my name is Ed Spencer, and I represent Linville Mosley. I want to ask you not very many questions, no more than ten,

I hope.

On MOnday, February 15, 1982, you did not see Linville Mosley, is that correct?

A. Correct.

Q. On Tuesday, February 16, 1982, you did not see Linville Mosley, did you?

A. No.

Q. On Thursday, February 18, 1982, you didn't see Linville Mosley, did you? On the 18th.

I've skipped the 17th. I'm coming back to it.

A. Okay. Okay. No.

Q. On Friday, February 19, 1982, you didn't see Linville Mosley, did you?

A. I don't think so, no.

Q. So, on-- On Saturday, February 20, you didn't see Linville Mosley, did you?

A. No.

Q. On Sunday, the 21st, you didn't see Linville Mosley, did you?

A. No.

Q. On Monday, February 22, 1982, you didn't see Linville Mosley, did you?

A. No.

Q. You didn't see Linville Mosley with a gun in his possession at all, did you?

A. No.

Q. On Wednesday, February 17, 1982, did you see Linville Mosley?

A. Yes. I rode up--

Q. Where did you first see Linville at?

A. At the tipple.

Q. What time was this, if you can tell me, please?

A. It was in the morning.

Q. What-- Approximately what time in the morning?

A. Nine o'clock or between eight and nine.

Q. What time did he allegedly take you up a hollow?

A. It must have been around ten--ten o'clock.

Q. Around ten o'clock?

A. Yeah.

Q. Did Jake Moore--was he with you on this morning?

A. He didn't ride up there with me.

Q. Well, was Jake with you at any gathering?

A. Yes. Yes.

Q. Do you recall who Jake rode up with?

A. No.

Q. Was that, according to your knowledge--personal knowledge, is that all you know of that Linville may have--may have done?

A. Yes.

Q. Did you see Linville Mosley at Edgar Jones' office at--

A. No.

Q. Did you see Linville Mosley at any conversation or conference that Phillip Booth had at his home that week?

A. No.

MR. SPENCER: No more questions.

CROSS-EXAMINATION

BY MR. ADAMS:

Q. Mr. Moore, my name is Eldred Adams, and I represent Ranny Blankenship.

Now, Mr. Moore, isn't it a fact that you never saw Ranny Blankenship yourself do anything relating to the shootings at Ray-Mac?

A. I never saw him, no.

Q. Now, I believe you indicated earlier there was machine gun fire coming from Ray-Mac?

A. Yes.

Q. Did it sound like a .50 caliber machine gun?

A. Yes.

MR. ADAMS: Thank you.

CROSS-EXAMINATION

BY MR. HOLLON:

Q. Mr. Moore, my name is Tom Hollon and I represent Pebo Gayheart. I think you testified here earlier that Pebo went upon the hill with you on Wednesday, the week of February 15, is that correct?

A. Yes.

Q. Did Pebo go all the way around that hill with you until you--you stopped walking?

A. Yes.

Q. How far was Pebo from you during this period of time?

A. I don't know. I wasn't watching everybody.

Q. Did you see Pebo load a gun?

A. No, I didn't see him load no gun.

Q. Did you see Pebo shoot the gun?

A. No.

Q. In fact--

A. Everybody was shooting.

Q. The fact is, Mr. Moore, you don't recall Pebo Gayheart being on that hill at all, do you?

A. Yes, I do, yes.

MR. HOLLON: May I approach Mr. Kehrli?

THE COURT: Yes.

(Mr. Hollon complied.)

Q. Mr. Moore, do you remember being in this court in November?

A. Yes.

Q. Do you remember testifying in court in this matter?

A. Yes.

Q. Do you remember the question that I asked you--the question was: "I think you testified earlier on direct examination that Mr. Gayheart was not present the first time you went in the hills."

Do you remember that question?

A. The first time-- I only went once. He was with us.

Q. Do you remember the question, Mr. Moore?

A. No, I don't remember the question.

Q. Do you remember the answer you gave?

A. No.

Q. You said, "I said I wasn't sure. I don't know."

A. No.

Q. Do you remember the next question I asked you?

A. No.

Q. "But to the best of your knowledge, the best of your recollection, he was not

there, is that a correct statement?"

Do you remember that question?

A. Pebo was there.

Q. Do you remember the next answer? You said, "That was a correct statement."

A. No, I don't remember.

Q. You don't remember making--making those answers to those questions?

A. No.

MR. HOLLON: That's all, Your Honor.

CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Moore, my name is Bill Kirkland. I represent the men on the end down there. (Indicating)

There's been a lot of interest displayed in what kind of a cap Jason Moore had on up there at the Ray-Mac picket line. What kind of cap was that, that you recall?

A. A ski mask.

Q. Now, other people have said it was a toboggan. There has been other testimony--

A. Well, it had eyes and a mouth in it. I call it a ski mask. I don't know.

Q. It was not a toboggan or a ski cap?

A. I think it was-- That's what I'd call it.

Q. There's been other testimony it was pulled down where you could see Jason's face in pretty good shape. Could you see Jason's face pretty well?

A. Yeah, after the shooting was over.

Q. After the shooting?

A. He pulled it down over his face.

MR. KIRKLAND: I'll ask that this (Indicating) be passed to the Clerk and marked and passed to the prosecution and defense counsel.

THE CLERK OF THE COURT: Mr. Kirkland, we previously marked your exhibits collectively. Do you want this one so marked?

MR. KIRKLAND: That's fine.

THE COURT: What, Madam Clerk?

THE CLERK OF THE COURT: The previous exhibits entered by Mr. Kirkland have been marked

collectively, Your Honor. He said this will be marked the same, and it will be not previously marked for identification for Defendants German Stumbo, Teddy Kinney, Jason Moore, Raymond Hall and Kenneth Rolland as NPO No. 3; and for purposes of trial as those defendants Trial Exhibit No. 4.

THE MARSHAL OF THE COURT: Your Honor, all counsel have had an opportunity to see this exhibit.

(The Marshal handed the witness an exhibit at this time.)

THE COURT: All right.

Q. Mr. Moore, the Marshal's just handed you a type of cap that some people call a toboggan. My question to you, is that the type of cap that Jason Moore had on at the time that the Ray-Mac picketing was going on up at the hill?

A. No.

Q. It was not?

A. I don't think it was.

Q. Tell the jury what's different about that from what you recall that Jason had on.

A. He had-- He had one with the eyes in it. He pulled it down over his

face.

Q. You saw him do that?

A. Yes.

Q. When-- When did he do that?

A. When the coal trucks started off the hill.

Q. He just sort of automatically pulled it down, sort of like a window shade, is that right?

A. Yes, that's right.

Q. Now, have you seen Jason Moore do a lot of skiing up there at McDowell?

MR. KEHRLI: Objection.

A. No, I--

THE COURT: Sustained. Well, overruled. Go ahead and answer. Go ahead, Phillip, answer it.

THE WITNESS: No.

Q. If a fellow wanted to could he even go buy a ski mask at McDowell or Martin?

A. I'd say you could buy them anywhere. I don't know.

Q. You could?

A. I'd say you could.

Q. Had you ever seen him with one before?

A. No.

Q. So that was totally out of the ordinary?

A. It sure was. He maybe needed it. He didn't want nobody to see him. I don't know.

Q. And you said that you just happened to be looking at him, is that right?

A. I looked right at him, yes.

Q. He jerked that right down over his face?

A. Right down over his face.

Q. And then what did he do? Just as the shooting was over--

A. He went over behind his truck.

Q. Went over behind his truck?

A. Yeah.

Q. Did he take it off then?

A. He-- I don't know whether

he took it off then.

Q. All right.

A. He laid down by the side of his truck in a ditch.

Q. Have you talked to Danny Blanton about--

A. No, I've never talked to Danny Blanton.

Q. He said he had a toboggan on.

A. Well, maybe he calls what I call a ski mask a toboggan.

MR. KEHRLI: Objection.

THE COURT: Sustained.

THE WITNESS: I don't know.

THE COURT: Just a moment. I'm sustaining the objection.

Now, this has been on several occasions, gentlemen, where attorneys have made reference to what somebody else has testified to. Don't do that, gentlemen, that's improper.

Q. Mr. Moore, you testified that you went to either Lexington or Winchester or both the weekend after the shooting at Ray-Mac, is that correct?

A. Yes.

Q. And you were unable to remember whether it was either -- you went to Lexington on Saturday, and you can't remember whether it was Saturday you came back or Sunday, is that right?

A. No, but I bet you know, don't you.

Q. Well, do you recall now? You had a couple of hours to think about it.

A. I said it was either Friday or Saturday.

THE COURT: Just a moment, gentlemen. Now, I guess the witness is tired. And Mr. Moore, I understand you're tired.

THE WITNESS: Yes.

THE COURT: Let's have a ten-minute recess. Mr. Moore, just be responsive to the questions.

THE WITNESS: They ask the same things over and over.

THE COURT: I know. It's tiresome, sir. That's part of the rules of the Court. You are going to be in recess for ten minutes. During this recess you're--the not now admonition is in effect. Do you understand?

Any objections or corrections to the form?

CONCERTED VOICES: None, Your Honor.

THE COURT: All right. Please excuse the jury for ten minutes.

(Reporter's Note: The jury left the courtroom at 3:26 p.m.)

THE MARSHAL OF THE COURT: The jury's departed the court.

THE COURT: All right. I realize that the repetition-- You understand that we have about ten attorneys here.

THE WITNESS: They all ask the same question and they're wanting a different answer.

THE COURT: I know that.

THE WITNESS: Why don't they just ask one question and all of them go by the same answer.

THE COURT: Just--just be responsive to the question.

THE WITNESS: They're trying to make a big thing out of nothing.

THE COURT: All right. You are permitted to be excused for ten minutes.

Court will be in recess for ten minutes.

THE MARSHAL OF THE COURT: All rise. Court will be in recess for ten minutes.

(Reporter's Note: Court recessed at 3:27 p.m.)

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THE MARSHALL OF THE COURT: All rise. This Court is again in session. Be seated and come to order.

Your Honor, all Defendants, Counsel and members of the Jury are here.

THE COURT: Thank you, sir. You may proceed, Mr. Kirkland.

(Continuing) CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Moore, I think I was asking you about your trip to Lexington or Winchester or where ever it was, the weekend of approximately the 20th of February, 1982.

Would you tell the Jury whether you went to Winchester or you went to Lexington?

A. Went to both.

Q. You went to both of them?

A. Yeah.

Q. Now, you got - - did you go to Winchester first? Did you stop there on the way back, or what did you do?

A. Well, we went to Winchester

first, yeah.

Q. And I believe you testified that - -

A. (Interrupting) Phillip Booth owns a trailer down there, and we were at his trailer and at the Continental Inn.

Q. Did he have a trailer out in the country, - -

A. (Interrupting) Winchester.

Q. (Continuing) - - Or is it in town?

A. In Winchester.

Q. How long did you stay at the trailer?

A. I don't know.

Q. Well, was it several hours or all day?

A. I don't know. We might have stayed all night. We stayed all night somewhere.

Q. You stayed all night somewhere?

A. Yes.

Q. Why can't you remember where you stayed?

A. It might have been the

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Continental Inn, or it might have been the trailer. I don't remember. It was one of the two places.

Q. Could you have stayed two nights instead of one?

A. No.

Q. Just one night?

A. I think so.

Q. Now, I believe you testified that you saw Pearl when you left; is that right?

A. Yes.

Q. Did Mr. Phillip Gene Booth say "Goodbye, Pearl. My good friend, Phillip Dale, and I are going to Lexington, or what did he say?

A. I don't know what he said to her.

Q. You saw her there at home; is that right?

A. Yes, she was there.

Q. Who was she with when you saw her?

A. With her kids.

Q. Was she with Ruth Mosley?

A. Ruth might have been down there, or she might have came down.

Q. Well, was Ruth there?

A. I don't think so. I don't know.

Q. Now, is it your testimony - - I'm just trying to get this clear - - that you went to Winchester, and you stayed a while, and when you went on to Lexington; is that right?

A. Yeah.

Q. Now, did you go to the Continental when you got to Lexington, or did you not?

A. Yeah, we went to the Continental.

Q. Did you all check into a room or two rooms or not?

A. I don't remember. I said we either stayed at the Continental or at the trailer, if we stayed there.

Q. But you can't remember which?

A. We stayed at both of them. We had been there many times.

Q. I see. Now, did you get up with Ruth Mosley later on that weekend?

A. Did I get up with her?

Q. Well, I mean, you had been dating her, hadn't you?

A. I still do.

Q. All right. Did you see her that weekend?

MR. KEHRLI: Objection on the basis of relevancy, Your Honor.

THE COURT: Overruled.

Q. Did you see Ruth that weekend in Lexington or Winchester?

A. No, I don't think so.

Q. You did not.

Did you see Pearl except - - you said, I believe, that you saw her on the parkway someplace.

A. I think - - if it was this time, we met Pearl going down the parkway when we was coming back.

Q. Would that have been on Sunday or same - - whatever - -

A. (Interrupting) Saturday or Sunday, one of the two.

Q. Okay. So, Pearl was headed towards Lexington or Winchester when you were headed back towards Floyd County; is that your testimony?

A. Yes.

Q. And about what time of day was that when you saw her headed down towards

Lexington?

A. It was before dark.

Q. Late in the afternoon?

A. Yeah.

Q. How many people did she have in the car with her; do you recall?

A. No.

Q. Did you wave at her, or did you honk at her or try to catch her?

A. She was going down one side of the parkway, and we was coming back up the other.

Q. Was it on the four-lane portion or the two-lane portion?

A. On the four-lane.

Q. The four-lane, I see.

A. Yeah.

Q. Did Phillip Gene say, "Hey, there goes Pearl?" or did he say anything or think anything about it?

A. Yeah. I think he said, "There goes Pearl."

Q. "There goes Pearl."

A. Yes.

Q. Now, was she gone then

for a day or two?

A. I don't know.

Q. But anyway, it was either on a Saturday afternoon or Sunday afternoon, and you don't remember which, but Pearl was headed towards Lexington, and you and Phillip Gene saw her headed that way; is that your testimony?

A. Yes.

Q. And you are pretty clear on that?

A. Yeah, I'd say.

Q. Now, back to the picket line up at Ray-Mac; do you recall that pretty clear as well as all the other things that you remember so clear?

A. Yeah, I recall it pretty clear.

Q. Were there other mines that had shut down that had numerous personnel up there as well as the mines that sold the coal to Edgar Jones?

A. I don't know.

Q. You don't know. Was there a lot of people up there?

A. There was a lot of people

there that I didn't know.

Q. Do there appear to be some old, retired miners as well as active miners?

A. Yes.

Q. A variety of people from that whole section of Floyd County; is that right?

A. I guess there was some.

Q. Was there a lot of people there that did not work for Phillip Booth?

A. Yeah.

Q. So, they came there for some other reason other than allegiance to Phillip Booth, didn't they?

A. I don't know.

Q. Now, when you got back to Price from the McDowell area, did you go look up your lady friend, Ruth Mosley, and say, "How have you been this weekend?" Or did you see her that afternoon or that night?

A. I probably did.

Q. Do you remember?

A. I said I probably did.

Q. What did she say to you?

A. I don't remember what she said.

Q. Did she say, "Hey, where have you been this weekend?"

A. I don't know.

MR. KEHRLI: Your Honor, that is hearsay.

THE COURT: Sustained.

Q. Now, I believe you testified that once you all ran out of shells for your pistols that everybody beat a hasty retreat off of the Ray-Mac hill; is that right?

MR. KEHRLI: Objection to the misstatement of the record. That is not an accurate reflection of his testimony.

THE COURT: It is a characterization. Please rephrase your question.

MR. KIRKLAND: All right.

Q. Would it be correct to say that after you ran out of pistol bullets that you all beat a hasty retreat off of the Ray-Mac hill?

A. We left, yes.

Q. Some people were backing backwards down the hill, and some people were running down the hill, and some people were jumping over the hill; is that right?

A. Well, I don't know. They

were getting out of there, yeah.

Q. As fast as they could.

A. I don't know.

Q. Phillip Booth even left his car up there; is that right?

A. Yes.

Q. Who did he ride down the hill with?

A. I don't know.

Q. He just got out the best way he could.

A. I don't know who he rode with.

Q. Did he leave the keys to the car?

A. Yes.

Q. And that was the best way for you to leave, so you jumped in it and took off too; is that right?

A. I saw his keys, and he wasn't nowhere around, so I drove his car.

Q. Now, I believe your testimony earlier today was that toward the end of the week, whenever it was, Friday or Saturday or whatever, that Phillip came to you, and he said that he

needed a good witness - - needed to get out of town, and he needed a good witness with him; was that your testimony?

A. He told me that after we got to Lexington.

Q. After you got to Lexington.

A. Yes.

Q. Do you know why in the world, if he needed a good witness, why he would pick you?

A. I don't know.

THE MARSHALL OF THE COURT: Order in the Court, please.

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

THE WITNESS: Because you wasn't there, I guess.

THE COURT: Approach the Bench.

REPORTER'S NOTE: At this point counsel approached the Bench; whereupon, the following proceedings were held.

THE COURT: Now, how are we going to work this other thing.

MR. WALBOURN: Pardon?

THE COURT: Can we get the avowal in,

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and then the redirect, or do we get the redirect in and then the avowal.

MR. SELF: Get the avowal in, and then the redirect, and then let the Court make a determination whether it is proper cross.

THE COURT: Hold on just a minute. Mr. Harwell, where is he?

MR. HARWELL: Pardon?

THE COURT: Should I let the Jury go? How long do you think it will take?

MR. HARWELL: I am guessing forty-five minutes, thirty minutes.

THE COURT: So, we better let the Jury go.

MR. HARWELL: That would be fine, whatever Your Honor wishes. Can you hear me, Judge?

THE COURT: Yes, sir.

MR. HARWELL: I am guessing forty-five minutes.

THE COURT: Well, we are not going to waste more than fifteen minutes, and that doesn't make that much difference.

MR. HARWELL: Yes, Your Honor. Did Your Honor say you are going to have an avowal before the redirect, Your Honor?

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THE COURT: Yes.

MR. HARWELL: Okay, Judge.

THE COURT: Isn't that what we did the other time.

MR. HARWELL: Yes, it was, Your Honor.

THE COURT: Well, I just want to be consistent about it.

MR. HARWELL: That is how you did it, and we respectfully objected; and we do now, Your Honor, respectfully.

THE COURT: All right. Okay, let's let the Jury go until tomorrow morning at 9:00 o'clock.

MR. WALBOURN: I believe, Your Honor, there are travelers advisories out, so there - -

THE COURT: (Interrupting) Well, we will tell them to check with the Clerk.

MR. HARWELL: About the snowing?

THE COURT: Yes.

REPORTER'S NOTE: Whereupon the Bench Conference was adjourned.

*** *** ***

THE COURT: You are going to be in adjournment until tomorrow morning at 9:00.

When you are in adjournment, you understand the "not now" admonition. You are not to discuss the case, no radio, no television, no newspapers.

Madam Clerk will tell you something about checking with the telephone. Madam Clerk.

CLERK OF THE COURT: We will record telephone message tonight as we have been advised there is a travelers advisory out. So, we could or could not get snow.

So, the message after 6:00 P.M. will direct you to report tomorrow morning at 9:00, and it will say that in the event of a change you should check your message again before leaving your home, and that is at 6:00 A.M. in the morning, okay.

So, you can call tonight. And don't for to call collect, okay.

THE COURT: Are there any objections or corrections to the admonition.

MR. HARWELL: None, May Your Honor please.

MR. KEHRLI: No objection.

THE COURT: All rise. Mr. Marshall, please excuse the jury until 9:00 tomorrow morning.

(Reporter's Note: At this point the jury departs from the courtroom at 3:50 P.M.; whereupon the following proceedings were held.)

THE MARSHALL OF THE COURT: Now, all the jurors are outside the courtroom.

THE COURT: Now Mr. Moore, what we are doing now is something called "by way of avowal". They want to ask you some questions which I have ruled that the jury isn't entitled to hear.

They want this to be in the record - - to be put into the record so that the Court of Appeals or that someone viewing this, will be able to determine whether or not I have made the right ruling. And unless this is entered into the record, they won't know whether I made the right ruling; do you understand that.

THE WITNESS: Yes.

THE COURT: All right, Mr. Harwell.

MR. HARWELL: Thank you, Judge.

THE COURT: Mr. Harwell will ask you some questions, and you be responsive to the questions, and you answer the questions.

MR.KEHRLI: Your Honor, before Mr. Harwell begins, for the purposes of the record, the

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Government will note that it's objections to this testimony before the jury is on the basis of Rule 613, and also on the basis of 4 - - or Rule 3 of the Federal Rule of Evidence.

Additionally, I think the record should reflect that Mr. Moore's attorney is not present as well.

THE COURT: All right.

THE WITNESS: Yes. Can I ask you a question?

THE COURT: Yes, sir.

THE WITNESS: I am not on trial here.

THE COURT: No, you are not on trial.

THE WITNESS: Why do they keep acting like I am?

THE COURT: That is just part of the way a trial is.

THE WITNESS: I wish you'd tell them that I'm not on trial.

THE COURT: They understand that. Here is what you've got to remember. These fellows are just trying to represent their clients, and all sides are. Everybody is just doing what they - - they consider to be their job.

And since they don't - - I

don't think they consider it personal, but when a witness takes the stand, he is going to be asked a bunch of questions. You aren't on trial, but just be responsive to the questions.

He doesn't have an attorney and - -

THE WITNESS: (Interrupting) Could I refuse to answer these?

MR. WALBOURN: They examined him this morning knowing his attorney wasn't there, so I don't believe they have any standing to object to this.

THE COURT: Look, I think that this witness by taking the stand hasn't waived his rights to the 5th Amendment. But if it comes to the point where I think the 5th Amendment comes in, I will advise them and say to him, "Mr. Moore, you can take the 5th Amendment in this case."

THE WITNESS: Do I have to answer these questions?

THE COURT: If it is something which will tend to incriminate you, you don't have to answer it.

THE WITNESS: Well, that is what they are going to try to dig out, I believe.

THE MARSHALL OF THE COURT: Let's have order,

please.

MR. KEHRLI: Your Honor, in all fairness to the witness, it is proper for the court to inquire of the witness whether he wants his attorney here for this questioning.

THE COURT: Who was your attorney?

THE WITNESS: Paul Burchett.

THE COURT: Paul Burchett. Do you want Paul here when you are asked questions?

THE WITNESS: If I knew - - I think I know some of them, and I would like to have one present.

MR. SELF: I advised Mr. Burchett he was going to take the stand, and I left a message at his office early this morning. I have not talked to him. I have not talked with Mr. Burchett.

THE WITNESS: I am not on trial, and I don't know what these questions pertain to.

THE COURT: They are going to ask you questions concerning possible acts of criminal conduct for which you have not been indicted; is that correct?

MR. HARWELL: That is part of it, Your Honor, but may the Court please, a significant portion of that, according to the statement in open Court by the prosecutors yesterday, has to do with Arlie Potter's fire, wherein this man has immunity, according to what we were told yesterday, which is not a Fifth Amendment right.

THE COURT: Well, of course, you are contending that he has waived his Fifth Amendment rights - -

MR. HARWELL: (Interrupting) No, Your Honor. I don't mean to interrupt Your Honor, but that is not my contention.

My contention is, may the Court please, that he has been immunized; that is what Mr. Self or Mr. Kehrli said yesterday. They said that they had talked to or had information from Mr. McKensie and/or the Commonwealth Attorney, and there is immunity on that as to this witness and as to Mr. Phillip Booth.

My recollection is that they said that it was not as to Pearl Booth - - Pearl Booth is **their** immunity. So, it is not a waiver situation as compared to the fact there is immunization, Judge.

MR. KEHRLI: Now, that was by the State and not the Federal Government. I made the statement to convey to the Court what I had been advised. This is between this attorney, this witness and his attorney and the Commonwealth. We don't represent Mr. Moore. That was the status.

THE WITNESS: Well, I don't have to answer nothing to him then.

MR. SELF: Well, I think in essence what I stated yesterday was what I had been advised, Your Honor, in regard to the State charges and in regard to Arlie Potter's fire.

Now, whether he answers those or has any basis to answer those, I can't make that determination, nor can I advise the witness of it.

THE WITNESS: That doesn't have anything to do with this case, and I don't think it is any of his business to know about it.

MR. HARWELL: May the Court please. He has waived that. He submitted - - I think if I voir dire him, he will say that he submitted on December the 28th to a long interview and that he has waived the rights he has to that interview with the State Arson Investigator, Mr. J. B. McKensie.

THE WITNESS: That has nothing to do

with Federal Court. That is the State.

THE COURT: Wait a minute. I'm not going to find that he has waived any of his Fifth Amendment rights until it is - - I am not going to make a discretionary judgement on something. I am going to have to - -

Whether or not a fellow waives his Fifth Amendment rights is something serious.

MR. HARWELL: Very serious, may the Court please.

THE COURT: And I would have to - - it would have to be by clear evidence before I could make a decision as to whether anyone has waived their Fifth Amendment rights.

Now, I am still not satisfied with whether you have got a prosecutorial grant of immunity or whether you have got a judicial grant of immunity.

MR. SELF: Your Honor, this is not a judicial grant of immunity.

THE COURT: All right. Well, - -

MR. SELF: (Interrupting) Judicial has to be conveyed. It has to be approved by the Department of Justice before the Court can order a witness

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to testify. That is a different situation than what we are talking about here.

MR. SPENCER: Your Honor, we are talking about State Court. In State Court, I believe it has been about four or five years or so, but Workman versus Commonwealth - -

THE COURT: I beg your pardon.

MR. SPENCER: Workman versus Commonwealth. In that case, the Commonwealth Attorney promised that if the man would take a polygraph examination and he passed it, he would dismiss the charges. That was the Supreme Court here in Kentucky, and they held that the Commonwealth was bound by the agreement that the Commonwealth Attorney made.

And they reversed that with - - and remanded it with directions to dismiss, didn't they, Jerry?

And that has been about four or five years ago. So, if he has got immunity in State Court from the Commonwealth Attorney, that would be good.

THE COURT: But that was - - that was Judge Palmore, and I remember that.

That was contrary to the rule in the State of Kentucky, the reversal was. But that

is immunity as to the specific charge upon which he took the lie detector test.

MR. SPENCER: I believe it was a murder case, Judge.

THE COURT: It wasn't immunity as to all.

MR. SPENCER: No. It was an agreement they had there.

THE COURT: They said they thought that if the State made an agreement they ought to be bound by it.

MR. SPENCER: They would be bound by it under that ruling, Judge.

MR. HARWELL: Judge, your comment a moment ago that - - in substance, if I heard the Court, was that Your Honor would have to have some clear and convincing proof because of the waiver of the Fifth Amendment right being such an important one, the Fifth Amendment being such a precious constitutional guaranty.

THE COURT: Yes, sir.

MR. HARWELL: May I respond to that.

THE COURT: Yes, sir.

MR. HARWELL: May the Court please. I am holding before me a report signed by Mr. James B.

McKensie, and I would like to read with Your Honor's permission the very first paragraph of that report, if I may.

I will quote: "On December 28, 1982, at 1340 hours, I was introduced to Pearl Booth and Phillip Dale Moore at the U.S. Attorney's office in Pikeville, Kentucky."

"I took a taped statement from them at this time. They were under an agreement with the U.S. Attorney to tell of their involvement in several crimes that they had knowledge of, and testify in Court about these charges under a plea bargaining agreement."

"They were guaranteed immunity from further prosecution of crimes that occurred prior to their being taken into Federal custody."

And then it goes on to discuss that which was transpired in that interview.

I also state for the record that we didn't get this from the Government, Your Honor, but that we found it through independent sources.

But the point I want to make is that, in and of itself, would, hopefully,

fulfill the Court's requirement that if there was proof given to Your Honor - -

THE COURT: (Interrupting) Clear and convincing proof. That is not clear and convincing.

MR. SELF: May it please the Court. I would like to have this plea bargaining agreement marked as the next United States Exhibit, Your Honor.

THE COURT: Well, - -

MR. HARWELL: We join in that motion, although, may the Court please, if the Government tries to cause that to be shown to the Jury, we would move that the Court order a redaction to paragraph eight that talks about a polygraph test, because that is something that shouldn't go to the Jury.

But with that reservation, we would join in Mr. Self's motion on that being made an exhibit.

*** *** ***

MR. SELF: The point is, Your Honor, whatever Mr. McKensie said in some hearsay statement that Mr. Harwell is trying to rely on as some sort of proof in this case. This document that they stipulated to as authentic contains the plea agreement between the United States and Phillip Dale Moore. Whatever Mr. McKensie said or thought when he and the Commonwealth Attorney talked was something else. All I have conveyed to you is the hearsay statement that I have been advised of. Whether he waived any rights between he and his attorney, and Mr. McKensie and the Commonwealth Attorney -- I wasn't -- I may have been there, but I was not a part of that interview. I don't know what was said during that interview. And to say that I granted immunity to charges, I don't have that authority.

THE COURT: Well, I think this witness is entitled to an attorney to advise him with regards to specific acts of criminal conduct for which he has not been tried and convicted. I think he ought to be entitled to an attorney to tell him whether or not he might be incriminating himself.

MR. SELF: Your Honor, the Court

has two choices. One is to get ahold of Mr. Burchett who did represent him and have him here which I've advised him previously that he needs counsel.

THE COURT: Well, I think Mr. Burchett was appointed to represent him in that other trial --

THE WITNESS: (Interrupting) No, I hired him.

THE COURT: You hired him?

THE WITNESS: Yes.

MR. HARWELL: It's retained counsel, Judge.

THE COURT: See if you can get ahold of Mr. Burchett, ma'am.

(Reporter's Note: At this time the Clerk of the Court attempted to contact Mr. Burchett.)

THE COURT: Ask him if he can be here at 8:30 in the morning to see if we can talk to him.

THE WITNESS: It's 9167, I believe.

MR. ROWLAND: Isn't that right?

THE WITNESS: I believe.

MR. THOMAS: Your Honor, this

might speed things up. Maybe he can talk with him over the phone outside if he has a question.

(Reporter's Note: At this time the Clerk of the Court is speaking on the phone with someone.)

THE COURT: Who do we have locally?

MR. KIRKLAND: Well, Your Honor, Fraces Dale Burke, he's back from his big trial -- in all seriousness.

THE COURT: Well, he was representing someone.

MR. KIRKLAND: Well, his daughter...

THE COURT: Well, it would be a conflict, that's in his firm.

MR. THOMAS: How about Mr. Trivett, Tommy was in this thing.

MR. WALBOURN: Mr. Burke's client was dismissed, Your Honor, by the Government. Well, Mr. Hall.

MR. SELF: Well, I advised Mr. Burchett about the possibility that he might be in here today since he was retained by this gentleman.

THE COURT: Yes, he was retained

by him, but after he performed his services, it's over with. I'm sure like he'd be entitled to be paid to come back here again.

MR. SELF: Why don't the Court appoint him?

MR. HARWELL: Which has been done before in similar fact situations, Your Honor. I have been hit on that before.

THE COURT: Well, you gentlemen -- back when I first started practicing, we were appointed for nothing.

MR. HARWELL: Judge, we were in Tennessee, too, to the State Court. We got a little bit out of Federal Court back in the sixties, but State Court was pro bono.

THE COURT: One criminal term I had twenty-six Defendants.

MR. HARWELL: All appointed, Your Honor?

THE COURT: All appointed, I didn't get one cent, and that's tough.

But, rightfully, it's been changed and when someone is appointed to represent someone you are entitled to compensation.

MR. ROWLAND: Very meager compen-

sation.

MR. HARWELL: May Your Honor please, is there a Federal public defender in the Eastern District?

MR. THOMAS: Right here.

MR. HARWELL: Well, I mean a full time.

(Reporter's Note: At this time the Court is talking on the phone with someone.)

THE COURT: Mr. Burchett will be here at 8:30 in the morning.

Now, let's get into the various categories which you're going to inquire about so that Mr. Burchett can talk with him.

MR. HARWELL: I'll be happy to, or I will be happy to talk to Mr. Burchett and meet with him as I did before with Mr. Justice and go over each and every one of them either in person or by phone tonight.

THE COURT: Well, that would mean you'd have to be here at 8:30, sir.

MR. HARWELL: Yes, sir.

THE COURT: Would you?

MR. HARWELL: Sure, Your Honor.

THE COURT: Okay, that will be fine.

MR. HARWELL: Whatever Your Honor wishes. But I have met previously with Mr. Burchett on several occasions and he has been very cordial to me and I hope I have him. I have no problems with lawyer to lawyer sitting down and reviewing this with him. And I think he also may need to look at some of these other things, may the Court please, and be able to make an informed judgement.

THE COURT: Okay.

MR. HARWELL: I'll do that, Your Honor -- is Your Honor -- did you get him at home or at the office?

THE CLERK OF THE COURT: We reached him at home.

MR. HARWELL: I'll call him this afternoon, Judge.

THE COURT: All right.

Anything else we can take up, gentlemen?

MR. SELF: Yes, it's a matter that does not concern this witness, but I'd like to get it in as part of the record.

Your Honor, during

the course of cross-examination of this witness, it was very clear from the cross-examination of Mr. Harwell that he was provided access to or had access to certain transcripts and testimonies in the course of the United States versus Morris Joe Hall.

For the record, that case involves indictments against this Defendant, and Morris Joe Hall and Basil Ray Moore at which time this witness testified in the case of Morris Joe Hall on at least two occasions during the first trial and the retrial.

I also state for the record, Your Honor, as part of the trial in the case of the United States versus Morris Joe Hall certain exhibits and certain transcripts and copies of tapes that were made reference to by Mr. Harwell, that allegedly were not furnished to him until after this case began. I state this for the record, Your Honor, that Mr. Harwell currently has had access to those tapes and transcripts from them at times prior -- it would appear, I won't say he did, but it would appear that he had existence of one,existence of those tapes and two, the transcripts of some of those tapes prior to

the time that they were turned over to him by the United States.

MR. HARWELL: May I be heard, Your Honor, please?

THE COURT: Yes.

MR. HARWELL: May the Court please, with great respect to the Court, I say that Mr. Self has gotten up at least three times in the course of this litigation and said now Judge, I'm not saying Mr. Harwell did wrong, but it looks like so and so, and then throwing it out. And may Your Honor please I submit, I submit that this case in so far as my conduct and that of my team is concerned has been handled in accordance with Your Honor's ruling and totally in accord with the code of professional responsibility.

I am so irritated, Judge, at that kind of cheap shot, and I state, Your Honor, that I did have some Morris Joe Hall trial one-trial two testimony. I didn't have those tapes. And I respectfully suggest, may the Court please, that the truth of the matter is that Mr. Self knows he's got himself in a box on these tapes because of Brady material, and he's trying to dig his way out.

May the Court please, I didn't have them and I'll be happy if Your Honor wants to excuse this gentleman to take the stand and be sworn that I did not have them.

Your Honor, if I have been a little loud in volume I apologize to the Court, but I feel very strongly about it.

THE COURT: That's all right. It's been a long trial, gentlemen, and a long day. I can understand. The Court -- the Court is satisfied with all attorneys on both sides in this case. I realize that at times we get overzealous and possibly our feelings come out. I guess that's part of the case, gentlemen.

The Court -- I want these Defendants to know this and I'm saying this with all sincerity. This Court time after time has seen appointed counsel be someone who's just previously out of law school. The Court is proud of all these defenders, you've got to be -- those of you who have paid counsel and those of you that have appointed counsel, your appointed counsel in this case are just as competent, they're very competent attorneys. The Court wanted to see that you all got competent attorneys.

I assume you gentlemen are standing up getting ready to go home.

MR. WALBOURN: Well, as everybody wants to get the record clear. I do not have the Morris Joe Hall materials and when Mr. Self represented to me that I had all the tapes I took him at his word. Unfortunately I do not have all those tapes but I hope his representations didn't include us that was involved in fray as to whether we have the Morris Joe Hall tapes or not.

THE COURT: Mr. Walbourn's client was hitchhiking.

MR. SELF: Your Honor, I did not allege that they had been. I just made the statement with regard to Mr. Harwell's complaint about me to the Department of Justice which he's already threatened to file--

MR. HARWELL: (Interrupting) May I, Your Honor--

MR. SELF: (Interrupting) May I finish my statement, Mr. Harwell?

THE COURT: Gentlemen.

MR. SELF: I'm just saying, Your Honor, it would appear from what was stated today that he had access to those tapes when he stated to the Court

that he didn't. If he says he didn't, then the record is clear.

THE COURT: Mr. Self, he said he didn't and he kindly resents the implication that he has. I think that's the point which he's making, isn't it, Mr. Harwell?

MR. HARWELL: Yes, sir. It goes beyond that. I would have been playing footloose and fancy free with this Court if I had filed all those motions and begged Your Honor for those tapes, when as a matter of fact I had had them. And I would not have been acting in a professional and responsible fashion if I had done that, Judge, and I did not do it.

MR. SELF: The reason is, Your Honor, those tapes were turned over to Mr. Larry Webster back in --

MR. SPENCER: (Interrupting) I make a motion that you take this up in chambers between the two of them, Your Honor. I want to get out of here.

MR. THOMAS: I would just like someone to get on my case, Your Honor. I'd like to wake up here.

THE WITNESS: I would like for him

to get off of my case --

MR. HARWELL: (Interrupting) Might we excuse the witness, Your Honor?

THE MARSHALL OF THE COURT: Let's have order in the courtroom.

THE COURT: All right -- all right --

MR. ROWLAND: (Interrupting) Your Honor, before we go --

THE COURT: (Interrupting) Let's let the witness go. He's had a long day.

THE MARSHALL OF THE COURT: The witness is out of the courtroom, Your Honor.

THE COURT: Thank you.

MR. ROWLAND: Your Honor, on this personal matter -- I know that you want to be through with this thing some time today. You know that thing today that came up in Prestonsburg, if they get that medical report and if they still desire that it be done tomorrow, I'm hoping I can be able to do that. But what I am trying to do is get them to do it Friday. So, may I come late if I need to tomorrow?

THE COURT: If your client will agree.

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. ROWLAND: I'm sure he will.

MR. MILAN: Yes, I agree.

THE COURT: In other words, without repeating it it would be the same thing which went on back in chambers yesterday. You understand you're letting Mr. Thomas represent you in the matter?

MR. MILAN: Yes.

MR. ROWLAND: Thank you, sir. I'll probably be here.

THE COURT: Is that agreeable, Mr. Thomas?

MR. THOMAS: Yes, Your Honor.

MR. SELF: One other thing, Your Honor. If we're going to start at nine with the voir doir, is there any need for the jury to be in at that time?

THE COURT: I don't want this done and I want you gentlemen to understand this. You can -- I don't know, it seems like every time we get ready to come into Court the Marshall comes up and says Judge, the attorneys told me to leave the jury downstairs. I guess I'm a little jealous.

MR. SELF: We will not do that, Your Honor --

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LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: (Interrupting) I'm jealous, I want to feel like I'm running the courtroom.

MR. SELF: Yes, Your Honor. I apologize on behalf of the United States and will tell the Court that it won't happen again.

THE COURT: Thank you.

MR. SELF: I do it only instead of having the jury come in and then we approach the Bench with the jury sitting there saying why did they have to come in.

THE COURT: Well, you gentlemen come into chambers and we'll discuss it in chambers before the jury comes up.

MR. SELF: I think that would be fine.

MR. KEHRLI: Your Honor, two things. One; we may have some Jencks Act material for the defense counsel tonight. Earlier today I gave the Court a copy of the jury instructions that were actually given in the United States versus Russo. We have copies available for defense counsel and are making copies available for defense counsel if they want them.

THE COURT: All right. Anything

else? We will be adjourned until nine o'clock tomorrow morning --

THE CLERK OF THE COURT: Your Honor, should I make a statement on this?

THE COURT: Yes, make the statement that it's not in evidence yet.

THE CLERK OF THE COURT: The plea agreement which was not previously marked has been identified as Government NPM #24 and has now been marked for the purposes of trial as Government Trial Exhibit #119.

THE COURT: All right.

THE MARSHALL OF THE COURT: This Court is adjourned until 9:00 A.M.

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STATE OF KENTUCKY)
)
) SS.
)
COUNTY OF JEFFERSON)

We, JAMES E. EDMONDSON, RICHARD L. COULTER, & GEORGE R. CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by us in the presence of the Court; that the foregoing is a full, true and correct transcript of the said proceedings so given; that the appearances were as stated in the caption.

We further certify that we are neither of counsel nor of kin to either of the parties to this action, and are in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURES this 28th day of February, 1984.

Richard L. Coulter
Notary Public

George R. Cameron
Notary Public

James E. Edmondson
Notary Public

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006