

Q You mean the defendant here? A Yes, sir.

Q And were they both riding in the front seat?

A Yes, sir.

Q What kind of automobile was it?

A It was a Ford sedan.

Q And I believe you say that was within about a mile of the foot of Trace Mountain? A Yes, sir.

Q Where were you and this other man you were talking about that was with you at the time this car went by?

A We was sitting on the front porch.

Q About how close to you did this man Stephenson and the other man and the car pass?

A Well, we wasn't no farther away from them than where them people is sitting on that front seat there back of you.

Q You say that was around six or six--thirty in the evening? A Yes, sir.

Q Could you see the defendant plainly?

A Yes, sir.

Q Did you speak to him or he to you?

A No, the best of my opinion Clarence just sort of moved his hand on the steering wheel something like that as he passed. (Demonstrating)

Q You are positive it was he? A Yes, sir.

Q Did you see him and the other man or him by himself come back out of there that evening?

A No, sir, I did not.

Q You don't know what time he came back?

A No, sir, I couldn't tell you.

Q Well, what did you do from that time on that evening?

A Well, sir, I set around there a while, and then went over to Mr. Spauldings that lives there just below me, and stayed there until after the prize fight that night.

Q That was the night of the prize fight?

A Yes, sir.

Q That was the night Schmeling and Sharkey fought?

A Yes, sir.

Q You spoke about some other man being with you on the porch there. Was he a white man or colored man?

A He was a white man.

Q What was his name? A Henry Barney.

Q Do you know where he is now?

A No, sir, I don't.

Q Where was he the last time you heard from him?

A He was in Jenkins, Kentucky.

MR. CHAFIN: You may cross examine.

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CROSS EXAMINATION BY MR. CHAMBERS:

Q Gillam, you say it was six o'clock you were sitting on your porch? A I believe it was from six to six-

thirty. The best of my opinion it was six to six-thirty.

Q You would fix it, then, between six and six-thirty?

A Yes, sir.

Q What day of the week was it?

A It was on Monday evening.

Q Monday evening? A Yes, sir.

Q Did you see the defendant, Stephenson, on Tuesday evening? A No, sir, I did not.

Q Had you ever seen him up there in a car before?

A Oh, yes, Clarence always passed up and down by there pretty often, because, I will tell you, I made the remarks when they went up the road that evening, and Henry was sitting on the porch, I said, "I guess Clarence is going over to Mr. Maynard's up there to have a fox race tonight. That was Toliver Maynard. They always hunted together.

Q What did you work at that day?

A I loaded coal.

Q What did you work at next day?

A I loaded coal.

Q What had you worked at on the Saturday before?

A We don't work any up there on Saturday.

Q Had you loaded coal the Friday before?

A Well, I always load coal whenever the mine works. That is what I do all the time, is load coal.

Q I know you load coal. Did you load coal on Monday before you say you saw Stephenson go up there?

A Yes, sir, I had worked that day.

Q The Monday before? Are you sure of that?

A Monday before I seen him go up on Monday--

Q Yes.

A Well, I couldn't tell you the Monday before. I knowed I worked the day Stephenson went up.

Q I know you worked the day Stephenson went up, and I think you saw him go up one Monday--

A Yes, sir.

Q (Continuing) --or one day.

A It was Monday evening.

Q Are you sure that it was-- Are you sure what day of the month it was?

A Well, sir, I believe it was the 20th.

Q You believe it was? A Yes, sir.

Q You are not certain of that?

A No, sir, I ain't sure of it, but in my best opinion it was the 20th.

Q And a man by the name of Henry Barney was with you?

A Yes, sir; he was boarding at my house at that time.

Q Did you see any other cars pass while you were out on the porch?

A Yes, I seed some more cars pass.

Q Who was in them?

A Well, I didn't know the people that was in them.

Q Didn't know any of them? A No, sir.

Q What kind of cars passed while you were sitting there? A There was different kinds.

Q Name some.

A Well, there was Chevrolets and Fords.

Q How many Chevrolets?

A I couldn't tell you just how many.

MR. CHAFIN: We object to that.

THE COURT: I am going to sustain the objection.

(Exception saved by defendant.)

BY MR. CHAMBERS:

Q Did you notice all the cars that passed you?

A Oh, no, I didn't notice them all.

Q You just noticed this particular one?

A Yes, sir.

Q And are able to tell the jury it was a Ford sedan?

A Yes, sir.

Q You noticed that? A Yes, sir.

Q Did you notice the license number on it?

A No, sir, I did not.

Q How was the man with Stephenson dressed?

A Well, I never paid any attention to how he was dressed, because he was on the far side of him.

Q How was Stephenson dressed?

A Well, he was in his shirt-sleeves and to the best of my opinion he had on a white shirt.

Q What kind of head-piece?

A Well, sir, I forget whether he had on a cap or hat.

Q Don't know about that?

A No, I am not positive which one he had on.

Q But you say that was on Monday?

A Monday evening.

Q You think the 20th? A Yes, sir.

Q When did you hear of Mrs. Thurman's body being found?

A Not until the next evening, until I come out from work.

Q Next evening? A Yes, sir.

Q Are you sure it was next day that you heard of it?

A Yes, sir.

Q You are positive, then, it was on Monday Stephenson went up, and on the next day, Tuesday, you heard of her body being found on Trace Mountain?

MR. CHAFIN: We object to that, your Honor.

MR. CHAMBERS: Well, I want to find out.

THE COURT: I am going to sustain the objection.

MR. CHAMBERS: I want to get it clear, your Honor, is the reason I am asking it.

BY MR. CHAMBERS:

Q As I understand you, it was on Monday that you saw Stephenson and this other man go up?

MR. CHAFIN: We object to that.

THE COURT: I am going to sustain the objection. You have gone into that, Mr. Chambers, two or three times.

MR. CHAMBERS: All right; I think the jury understands it.

BY MR. CHAMBERS:

Q Do you know what day Mrs. Thurman's body was found on Trace Mountain?

A It was the 21st, I think.

Q What day of the week? A Tuesday.

Q Don't you know that body was found on Wednesday?

MR. CHAFIN: Your Honor, we object to that for this reason--

MR. CHAMBERS: All right, I will withdraw the question. You may stand aside.

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D O N H U F F, called as a witness in behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHAFIN:

Q What is your first name, Mr. Huff?

A Don.

Q Where do you live? A 21 Holden.

Q What do you do? A Operate a mining machine.

Q Married man? A Yes, sir.

Q How far is it from the shaft mine there at 21 Holden to where you live? A Well--

Q About how far?

A I would judge a quarter of a mile.

Q How long have you been living at that place?

A A little over two years.

Q You were living there, then, on the 21st and 22nd of last June? A Yes, sir.

Q Do you remember hearing about the body of Mamie Thurman having been found on Trace Mountain last June?

A Yes, sir.

Q Where were you when you first heard that, Mr. Huff?

A Going to work.

Q What time? A It was-- I don't remember the exact time. We generally left home between two-thirty and three o'clock in the afternoon.

Q And what time did you usually reach the mine?

A Around about three o'clock in the afternoon.

Q And did you work all night? A Yes, sir.

Q Do you recall the day on which you heard about her body being found? A If I am not mistaken, it was on the 22nd of June--the evening of June 22nd.

Q Do you recall the day of the week, Mr. Huff?

A I won't be positive about that, but I believe it was on Wednesday.

Q You say, then, it was sometime around three o'clock that you learned about her body being found?

A Yes, sir.

Q Have you ever been up to where the body was said to have been found?

A I don't know where it was found, no, sir.

Q You are familiar with 22 Mountain, are you?

A Yes, sir, crossed it a good many times.

Q Did you work in that 21 Mine the night before you heard about this body being found? A Yes, sir.

Q What time did you quit work on the next morning, on Wednesday morning, the 22nd?

A We left the bottom of the shaft at five-thirty.

Q What time did you reach the outside of the mine?

A Well, we belled the cage and the cage always come right down and we come out and turn the lights in at the light house and came on home.

Q If I understand you correctly, that mine you work in is located almost at the foot of Trace Mountain, isn't it? A Well, it is this side of Trace Mountain. It is, I would say-- I don't know exactly, but it is quite a little ways up to the foot of the mountain, what we call the foot of the mountain, where you start up the grade.

Q What kind of morning was it on the 22nd of June last at the time you came out of the mine?

A It was a little bit foggy.

Q Had it rained the night before?

A I don't remember if it had or not.

Q Who was with you, Mr. Huff, at the time?

A Charley Huff, Frank Gibson, and Roy Mullen-- Roy Hall.

Q Had they worked with you that night?

A Roy Hall works there with me on the same machine that I do.

Q Did you all leave the mine and come out together that morning? A Yes, sir.

Q Did they live down this side of the mine in the direction of where you lived? A Charley Huff lives above where I do. He lives right at what they call the mouth of Stone Hollow.

Q It is all this side of the foot of Trace Mountain? A Yes, sir.

Q While you men were coming down the road away from the mine that morning tell the jury whether or not an automobile passed you.

A Yes, sir, an automobile passed us.

Q Give the jury, Mr. Huff, your best impression as to how far it was from the foot of Trace Mountain where this automobile passed you men.

THE WITNESS: Can I say how far below the hoist house?

MR. CHAFIN: Yes, tell us how far below the hoist house.

A I would think about a hundred yards below the hoist house.

Q Then about how far would you say it was from there back up to the foot of Trace Mountain?

A Well, I would think from the hoist house to the foot of the mountain it is almost a quarter of a mile, isn't it? It is quite a little straight stretch of road there.

Q Then, if I understand you, this automobile passed

you within a quarter or half mile this side of the foot of Trace Mountain, is that right?

A Yes, sir, I would think so.

Q What kind of automobile was it? A Ford.

Q A Ford? A Yes, sir.

Q Was it a one-seated car or a two-seated car?

A Well, I took it to be either a coach or sedan.

Q Did you see who was driving it? A No, sir.

Q Tell the jury how it was traveling with reference to speed, whether it was going fast or slow.

A I judge it was going between forty and fifty miles an hour.

Q Was that still coming down-grade?

A Yes, sir.

Q How is the grade there at that point, is it pretty steep or otherwise? A Well, I don't know just what percent the grade is, but a car will coast good there.

Q Do you know whether the car had its engine on or off? I mean whether the ignition was on or whether it was coasting.

A I think the motor was pulling the car.

Q How many people did you see in that Ford car?

A I didn't recognize anyone in it.

Q Which side of the car were you men traveling on?

A We was on the right-hand side of the road coming from the mine.

Q Walking? A Walking, yes, sir.

Q On which side of the road was the automobile coming down? A Well, I can't say what side. He was coming down behind us. I know that Roy Hall hollered at Gibson to watch out for that car, or that car would hit him.

Q Just tell the jury, Mr. Huff, just what one of the men in the group that was when he hollered to the other man.

A Well, Mr. Gibson and myself was walking in front, and Hall and Charley Huff was--

MR. CHAMBERS: I am going to interpose an objection as to what the man said.

MR. CHAFIN: Your Honor, it was a warning that one of the men in the group gave to the other one about the car, and he was close enough there to hear it.

THE COURT: I think he may answer it. He has already answered it, I think.

MR. CHAFIN: No, not that part of it.

BY MR. CHAFIN:

Q Just tell the jury what was said there.

A He hollered at Gibson and said, "Look out, Frank, that car will hit you."

Q Did he say anything about who was driving the car, or whether it was a white man or colored man?

MR. CHAMBERS: We object.

THE COURT: I am going to sustain the objection.

MR. CHAFIN: That may be objectionable, your Honor.

BY MR. CHAFIN:

Q Was that all he said, Mr. Huff, "Look out, Frank, the car will hit you?"

A As I remember it, after the car passed he says, "That nigger will run over you."

Q As this car passed you men there did it slow its speed any, or keep going at the same rate of speed?

A Well, I couldn't say what he was coming when he was back of us, because I didn't look around until we moved off the road. After he passed us I couldn't tell that the car slowed its speed any at all. If it did, it wasn't noticeable to me.

Q During all that time the car was going in the direction from Trace Mountain? A Yes, sir.

Q And how was it going with reference to this city here, was it going toward the City of Logan or away from it?

A Well, it was coming towards Holden from 21.

Q That is the same highway that leads from here to 21, isn't it?

A Yes; but I couldn't say about coming to Logan, because probably the road branches off.

Q How was the morning at that time, was it light or dark?

A Well, it was daylight, but it was a little foggy that morning.

Q Now, if you can, Mr. Huff, I want you to tell the jury just about as near as you can what time it was when the car passed you men there. Just give them your best opinion about it. You say you left the mine at a certain time and had come so far. Tell the jury, in your opinion, about the time that the car passed. A Well, it was five-thirty when we left the bottom, and I would judge it wasn't over five or ten minutes after that. I never looked at my watch any more. I always look when we finish the shift. That is when we left the bottom.

Q Do you know where Logan Avenue is in Holden?

A I believe I do.

Q You know where the main store in main Holden is?

A Yes, sir.

Q Do you know that highway that runs from Sulphur Springs down towards Logan here that you travel going from here to Sulphur Spring? A Yes, sir.

Q How far would you say it is from where this car passed you people that morning down to the Holden store?

A I have traveled it a good many times. From the Holden store up to 21 Mine I would judge it is about two mile.

MR. CHAFIN: I think that is all with Mr. Huff.

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HERMAN N. PUGH
SHORTHAND REPORTER
HUNTINGTON, W. VA.

CROSS EXAMINATION BY MR. CHAMBERS:

Q Mr. Huff, as I understand you, you work at No. 21 Mine? A Yes, sir.

Q That is a shaft mine? A Yes, sir.

Q And No. 21 Mine is something near a half or three-quarters of a mile from what is called the foot of Trace Mountain, isn't it? A I judge about a quarter of a mile below the mouth-- below the foot of the mountain where you start up the grade.

Q You are just guessing at that?

A I never measured it, no, sir; never had no occasion to.

Q Are there any houses above No. 21 shaft?

A No, sir.

Q Aren't there some right across the creek from it?

A There is a boarding house right straight across from the upper shaft.

Q The upper shaft? A Yes, sir.

Q That road up Trace was then and is now used very extensively by automobiles? A Yes sir.

Q And both day and night? A Yes, sir.

Q Beyond No. 21 at that time there was and is still a camp known as 22 Camp?

A Yes, sir, you pass 21 going to 22.

Q Large number of houses over there? A Yes, sir.

Q And it is a paved road all the way to No. 22 Camp?

A Yes, sir.

Q You men left the bottom of this shaft at five-thirty?

A Yes, sir.

Q You looked and know that was the correct time there. Did you have to wait to get up out of the shaft, or did you get a way to come up at once?

A We belled the cage and he drops it right down.

Q Belled it?

A Belled the cage, or signalled it.

Q And they sent the car right afterwards, and you came up?

A Yes, sir.

Q When you got outside did you do anything before you started down the road?

A Turned the lights in at the light house.

Q Went over to the light house and turned your lights in?

A Yes, sir.

Q And then started walking down Trace?

A Yes, sir.

Q And you had walked about a hundred yards?

A I would judge. I never measured it.

Q You say that Roy Hall, Frank Gibson and Charley Huff were with you?

A Yes, sir.

Q And you all four were walking along the right-hand side of the road?

A Yes, sir.

Q Who was in front? A Myself and Frank Gibson.

Q You and Frank Gibson were in front?

A Yes.

Q And Charley Huff and Roy Hall were behind you?

A Yes, sir.

Q Were you walking side by side?

A Frank Gibson and me were.

Q How about the other two men?

A I don't know if they was right side by side or not.

Q How close to you were they?

A I judge they was probably ten feet.

Q Something like ten feet. Were you all on the concrete slab, or were you off of it? A Gibson and me were on the concrete slab.

Q Now, did you hear any car coming? A Yes, sir.

Q Did you look around? A No, sir.

Q What was the first thing you heard or saw on that occasion? A I don't believe I understand that question.

Q You four men were walking down the road on the right-hand side, and you say you heard a car; that is right, isn't it? A Yes, sir.

Q Now, what was the first thing that you heard said and who said it? A Roy Hall said, "Look out, Frank, that car will hit you."

Q That was the man that was in behind you?

A Yes, sir.

Q And he said ^{that} to the man that was walking with him?

A Walking with me.

Q Walking with you? A Yes, sir.

Q What side was Frank Gibson on, left or right?

A He was next to the middle of the road, and I was next to the curb--what we call the curb.

Q Did you pull Gibson over or did he get over himself?

A He got over himself.

Q Nobody took hold of him? A If they did, I didn't see them.

Q You did see a car pass? A Yes, sir.

Q That you took to be a two-seated car?

A Yes, sir.

Q You don't know whether it was a coach or sedan?

A I couldn't say as to that.

Q And it was making something like forty or forty-five miles an hour? A I judged the speed to be between forty and fifty miles an hour.

Q Did you see whether there was a man or woman in it?

A No, sir.

Q Could you tell? A No, sir.

Q Did you look at it as it passed?

A Just looked at the car.

Q But you couldn't tell who was in it--

A No, sir.

Q (Continuing) --whether a black man, white man--

A No, sir.

Q (Continuing) --woman, or who it was?

A No, sir.

Q That was something like an hour or hour and a half after daylight, wasn't it, Mr. Huff? A I don't know just at that time just what you would call daylight.

Q Well, you know that daylight came the 21st or 22nd of June along about four-thirty, didn't it?

A Well, I think it was daylight at five o'clock, anyway.

Q You think it was daylight anyway at five. You know it was broad daylight on this morning this car passed you?

A Well, it was foggy that morning.

Q But it was daylight? A I don't know what you would term broad daylight.

Q Well, Mr. Huff, you know what the break of day means, and you know what daylight means. Was it breaking day or was it good daylight? A Well, I can't say it was good daylight, because it was foggy.

Q That is all you can say, is that the morning was foggy? A Yes, sir.

Q Did the car stop after it passed you?

A I never seen it stop, no, sir.

Q Did you know who was in it? A No, sir.

Q As a matter of fact, Mr. Huff, you couldn't tell, or nobody that was along there with you could tell, who was in that car, could they? A I couldn't.

MR. SCAGGS: We object to what somebody else could have told.

BY MR. CHAMBERS:

Q Haven't you made the statement, Mr. Huff, that you were along that morning and saw the car pass, but that you or nobody else along there could tell who was in it, whether it was a man or woman?

MR. CHAFIN: We object to any statement Mr. Huff made about it.

THE COURT: I am going to sustain the objection.
(Exception saved by defendant.)

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R O Y H A L L, called as a witness in behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SCAGGS:

Q Tell the jury your name. A Roy Hall.

Q Where are you from, Mr. Hall? A Holden.

Q How long have you lived about Holden?

A A little better than six years.

Q Where did you come from when you came to Holden?

A Virginia.

Q Do you know Don Huff? A Yes, sir.

Q Do you know Frank Gibson? A Yes, sir.

Q And Charley Huff? A Yes, sir.

Q Do they live close to where you live at Holden?

A They live in the camp, same camp I live in.

Q In what camp do you live? A 21 Camp, better known as Trace Additional.

Q Is that close to the foot of Trace Mountain?

A It is about a mile and a half.

Q What do you do, Mr. Hall? A Work on the machine cutting coal.

Q For the Holden people? A Yes, sir.

Q Do you recall hearing about the body of Mrs. Mamie Thurman being found on 22 Mountain on the 22nd day of last June? A Yes, sir.

Q Where were you when you heard about the body being found? A I was on my way to work.

Q On your way to 21 Mine? A Yes, sir.

Q What time in the day did you hear about the body of Mrs. Thurman being found? A About two-thirty-five.

Q Were you alone at that time, or was there someone with you on your way to work?

A There was one man with me going up the road.

Q Who was that man? A Barney Walsh.

Q What had you been doing or where had you been the night before you heard about the body of Mrs. Thurman having been found? A I was at work.

Q Where did you work? A In the mines.

Q 21 Mine? A Yes, sir.

Q Who worked with you? A Mr. Don Huff.

Q Did Charley Huff and Frank Gibson work in the same mine? A Yes, sir.

Q What time did you go to work?

A Well, we went inside about three-thirty.

Q What time did you come out of the mine?

THE WITNESS: What day are you speaking of?

MR. SCAGGS: The same day that you heard about the body of Mrs. Thurman having been found.

THE WITNESS: That was on Wednesday morning you are speaking of?

MR. SCAGGS: Yes, sir.

A We come out about five-twenty, something near that.

Q I believe that is a shaft mine? A Yes, sir.

Q Do you recall who came out of the mine with you?

A Us four men.

Q What did you do, or where did you go, when you came up out of the mine? A We went over and turned our lights in. We have safety lamps. We turned them in at the hoist house.

Q After you turned your lights in at the hoist house where did you go? A Down the hard road.

Q You four men? A Yes, sir.

Q All walking? A Yes, sir.

Q Or riding? A Walking, yes, sir.

Q How far do you live below the mine? About how far?

A Well, I guess it is about a mile or a mile and a quarter.

Q What time would you say, Mr. Hall, you left the place where you turned your lamps in and started down the hard road? A About five-thirty-five or five-forty.

Q How were you men walking with reference to each other? Could you tell the jury whether you were in single file, or walking side by side, or how?

A Well, we were walking practically side by side, I guess, yes, sir.

Q Do you recall who was walking next to you?

A Mr. Gibson.

Q Frank Gibson? A Yes, sir. He was on my left.

Q Where were Don Huff and Charley Huff?

A Just a step forward.

Q In front? A Yes, sir.

Q Were you walking on the left-hand side of the road or right-hand side of the hard road coming down?

A Right-hand side.

Q Did an automobile pass you somewhere below that mine? A Yes, sir.

Q How far would you say this automobile passed you people below 21 Mine? A Well, something like four hundred yards.

Q Were you or Frank Gibson walking closer to the right-hand side of the road coming down?

A I was on the right.

Q Frank was nearer the middle or center of the hard road, is that right? A No, he was along just by the side of me.

Q On your left coming down?

A On my left side, yes, sir.

Q How close to you people was this automobile when you first saw it? A Well, something like three hundred and fifty feet behind.

Q Was this automobile traveling on the right side of the road coming down, the left side, or near the center, or how? A It was practically on the right side, yes, sir.

Q Same side you people were on? A Yes, sir.

Q What did you do, if anything, when the automobile came near you? A When I saw the car coming I cast my eye kind of over my shoulder and saw the car was on our side of the road, the same side. I made a few steps on forward down the road, and kind of cast back the second time, and he was still coming the same way. I made another step or two forward on down the road, and looked back, and the car was right behind me. I jumped to one side and grabbed Mr. Gibson.

Q You grabbed Frank Gibson? A Yes, sir.

Q What did you do with Frank? A I jerked him.

Q Did you say anything to him? A Yes, sir.

Q What did you say?

MR. CHAMBERS: Objected to.

THE COURT: He may answer.

(Exception saved by the defendant.)

BY MR. SCAGGS:

Q What did you say to Frank Gibson when you grabbed him and jerked him off the road? A I says, "Frank, you had better watch out," I said, "that nigger liked to have hit you."

Q What kind of car was this, Mr. Hall?

A It was a Ford.

Q What kind of Ford?

A What you call a Ford sedan.

Q How many people were in this car?

A I only saw the one.

Q Tell the jury whether or not it was a white man or colored man driving the car. A I couldn't swear that definitely. I taken it to be a colored man; apparently black; he could have been a miner, but the man apparently looked black to me, and I called him a nigger at the time.

Q How was he dressed, with reference to having on a hat or cap? A I couldn't swear that positive, but he had on something light. I couldn't swear it was a cap or couldn't swear it was a hat.

Q Do you know whether the mines over at 22 Holden were running at that time or not? A They was not.

Q Can you give the jury some idea about what speed

this car was making when it passed you people?

A Well, I judge the car was making about thirty-five miles an hour.

Q Was the car coming in the direction of Holden and Logan? A Yes, sir.

Q Do you recall whether or not any more automobiles passed you on your way home that morning? A No, sir.

Q Don't remember any more? A I don't remember any.

Q What kind of morning was it, Mr. Hall, with reference to being light? A It had been raining, and it cleared up before we came to the top of the ground.

Q I will ask you this question, Mr. Hall: Did this automobile slow down any when it passed you people, or did it go on out of sight making about the same speed?

A It went on out of sight about the same speed.

MR. SCAGGS: I believe that is all.

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CROSS EXAMINATION BY MR. CHAMBERS:

Q Mr. Hall, what time did you say you quit work that morning? A Well, we quit work about five o'clock, and we put the machine what we call put the machine in the stall.

Q Did you look at your watch to see?

A Mr. Huff looked at his watch.

Q And what time was it? A It was about five-five when we put the machine in the stall.

Q Five minutes after five? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q You remember testifying in this case in the preliminary trial? A Yes, sir.

Q Do you remember of testifying then that you quit work at fifteen minutes until five?

MR. CHAFIN: That is a different proposition, about quitting work and putting up the machine.

BY MR. CHAMBERS:

Q When did you quit work? A Well, something near five o'clock.

Q When did you leave the outside of the mine?

A About five-thirty-five, something near that, as I can say.

Q What time was it when Mr. Huff told you down in the mine?

THE WITNESS: What time?

MR. CHAMBERS: Yes.

THE WITNESS: When he put the machine in the stall?

MR. CHAMBERS: Yes.

A It was five-five.

Q Five minutes after five? A Yes, sir.

Q From that on you came up out of the mine and put your lights away? A We came over to the hoist and belled

the cage down and went up.

Q And when you got out of the mine you four men started

walking down the road? A After we checked in, yes.

Q Now tell us about what time it was when you started leaving the mine after you had checked in on your way home?

A Well, it was about five-thirty-five, something near that. It takes about five minutes for the cage to come up or come down.

Q About how far had you walked before this car passed you? A We had walked below the hoist house something

like four hundred or four hundred and fifty feet, something like that.

Q Feet or yards? A Well, about four hundred feet, I suppose.

Q Didn't you testify in the preliminary trial that this automobile passed you five hundred yards below this 21 Mine? A I couldn't say about that.

Q You don't mean to say you didn't state that, do you?

A No, sir.

Q It might have been as much as five hundred yards this side of 21 Mine? A I didn't measure it.

Q Do you know where the bridge is that crosses the creek below 21 Mine?

THE WITNESS: Little culvert?

MR. CHAMBERS: Yes.

A Yes, sir.

Q Just above that culvert are some garages on the left of the road. Do you know where they are?

A Yes, sir.

Q Where did this automobile pass you with reference to those garages? A On above.

Q How far above? A I couldn't say. I guess three hundred and fifty or three hundred and seventy-five feet on up the road.

Q Above that? A Yes, sir.

Q You were walking down the right-hand side of the road, and who was walking with you?

A Frank Gibson.

Q You are sure of that? A Yes, sir.

Q Roy Hall was not walking with Frank Gibson, was he-- I mean Don Huff?

A He was in front with his brother.

Q You are sure he was walking with his brother?

A Yes, sir.

MR. CHAFIN: Your Honor, that is what Mr. Huff stated.

MR. CHAMBERS: It is not.

BY MR. CHAMBERS:

Q Don Huff testified he was walking in front with Frank Gibson, that you were walking in the rear, and he didn't know whether you were with his brother or not, but you were both behind him and Frank Gibson. Now, that is not right, is it? A I am telling my story of it.

Q I knew you are telling your story--

THE COURT: Well, let him tell it.

BY MR. CHAMBERS: Were you walking with Don Huff, or was Frank Gibson walking with Don Huff?

A I was walking with Frank Gibson.

Q And Don Huff was walking with his brother?

A Yes, sir.

Q And you and Gibson were in front of the other two men?

A No, sir.

Q Behind? A Behind.

Q All right. Now, you told the jury that you looked back and saw this car three hundred and fifty feet away?

A Something near that.

Q Did you see who was in it? A No, sir.

Q Couldn't see or tell who was driving it?

A No, sir.

Q And you are the man that pulled Frank Gibson out of the way, aren't you? A I didn't exactly pull the man.

I just reached and got him by the arm and kind of jerked him.

Q You reached and got Frank Gibson by the arm and kind of jerked him? A Yes, sir.

Q What was it you said to him? A I said, "You had better look out, Frank," I said, "that nigger liked to have hit you."

Q Now, didn't you say, "Look out, Frank, the car will hit you?" A No, sir.

Q You didn't say that? A No, sir.

Q And wasn't it after the car had passed that you made

the statement "That negro liked to have hit you?"

A The car was passing at the time.

Q What kind of head-gear did this man have on?

THE WITNESS: Head-gear?

MR. CHAMBERS: Yes, what did he have on his head?

A I couldn't say whether it was a cap or hat.

Q You swore in the preliminary trial it was a cap, didn't you? A No, sir, I didn't.

Q Are you sure of that? A I said it was a hat or cap. I didn't swear which.

Q You say now you don't know whether it was a white man or colored man?

MR. CHAFIN: We object. Why repeat that?

THE COURT: I am going to sustain the objection.

BY MR. CHAMBERS:

Q Well, was it a white man or colored man?

MR. CHAFIN: We object. He has said he didn't know.

MR. CHAMBERS: I don't care, that is cross-examination.

THE COURT: I am going to sustain the objection.

MR. CHAMBERS: All right, note an exception to the ruling.

BY MR. CHAMBERS:

Q What kind of shirt did he have on?

A I don't know.

- Q Well, what color was it? A I don't know.
 Q Did he have on any? A I couldn't say.
 Q Did he have on a coat? A I couldn't say that.
 Q You don't know that? A No, sir.

MR. CHAMBERS: You may stand aside.

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F R A N K G I B S O N, called as a witness in behalf of
 the State, having been duly sworn, testified as follows:
 DIRECT EXAMINATION BY MR. CHAFIN:

- Q Your name is Frank Gibson? A Yes, sir.
 Q How old are you, Mr. Gibson?
 A I will soon be fifty years old.
 Q Married or single? A Married.
 Q Where do you live? A I live at 21 Holden.
 Q You work for the Island Creek Coal Company?
 A Yes, sir.
 Q What kind of work do you do?- A Run a machine in
 the mines.
 Q How long have you been working at mining?
 A I will be there four years the 2nd of December.
 Q That is, for the Holden Company? A Yes, sir.
 Q Have you worked about any of its other mines except
 21? A No, that is the only place.
 Q How far is it from where you live up to the shaft
 mine known as 21 Mine? A Well, I figure it is around