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Richmond, Va.

# Records Nos. 6205, 6206

## In the Supreme Court of Appeals of Virginia at Richmond

## HUBERT HOFFLER
## v.
## C. C. PEYTON, SUPERINTENDENT, ETC.

## RUBEN PIERCE
## v.
## C. C. PEYTON, SUPERINTENDENT, ETC.

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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**Record No. 6205**

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VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 10th day of September, 1965.

HUBERT HOFFLER, Plaintiff in error,

*against*

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY, Defendant in error.

---

From the Circuit Court of the City of Suffolk
Walter T. McCarthy, Judge Designate

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Upon the petition of Hubert Hoffler a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Suffolk on the 8th day of January, 1965, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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**Record No. 6206**

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VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 10th day of September, 1965.

RUBEN PIERCE, Plaintiff in error,

*against*

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY, Defendant in error.

---

From the Circuit Court of the City of Suffolk
Walter T. McCarthy, Judge Designate

---

Upon the petition of Ruben Pierce a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Suffolk on the 8th day of January, 1965, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

## RECORD NO. 6205

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### ORDER

This proceeding came on to be heard on December 14, 1964, upon the petition of Hubert Earl Hoffler for a writ of *habeas corpus ad subjiciendum* and the answer of the respondent, the petitioner appearing in person and by Richard R. Ryder, an attorney of petitioner's own choosing, and the respondent appearing by Reno S. Harp, III, Assistant Attorney General.

Whereupon, on motion of counsel for the petitioner, the respondent not objecting, this case was heard together with the case of *Ruben Pierce* v. *C. C. Peyton.*

Whereupon, the Court heard the evidence and argument of the counsel, and, upon mature consideration thereof, doth find that the petitioner is presently detained pursuant to a judgment of this Court of April 15, 1963, wherein he was sentenced to serve a term of five (5) years in the Virginia State Penitentiary, having been convicted of robbery; and, for the reasons stated by the Court from the bench at the conclusion of the hearing, the Court is of opinion that the writ should not issue as prayed.

It is, therefore, adjudged and ordered that the petition for a writ of *habeas corpus* be, and is hereby, denied and dismissed, the writ discharged, and the petitioner remanded to the custody of the Superintendent of the Virginia State Penitentiary, to all of which action of the Court, the petitioner, by counsel, objects and excepts.

page 26 ] Let the Clerk of this Court certify a copy of this order to the petitioner, the respondent, and the Attorney General of Virginia.

Entered this 8th day of January, 1965.

WALTER T. McCARTHY
Judge Designate

I ask for this:

RENO S. HARP, III
Counsel for Respondent

Seen and objected to:

RICHARD R. RYDER
Counsel for Petitioner

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## NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Comes now petitioner, Hubert Earl Hoffler, by and through his attorney, R. R. Ryder, and hereby gives notice of appeal from the judgment of the Circuit Court of the City of Suffolk, The Honorable Walter T. McCarthy sitting by designation, by which judgment the petition for writ of *habeas corpus* of the petitioner was denied and dismissed and the writ discharged, which said judgment was entered on the 8th day of January, 1965.

Your petitioner assigns as error the following:

1. the Court erred in denying the petition for writ of *habeas corpus.*

2. the Court erred in ordering the petitioner to be remanded to the custody of the respondent.

3. the Court erred in finding that the Constitutional rights of the petition had not been violated.

HUBERT EARL HOFFLER
R. R. RYDER
By Counsel

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 3rd day of February, 1965.

WM. S. HOLLAND, Clerk

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## RECORD NO. 6206

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### ORDER

This proceeding came on to be heard on December 14, 1964, upon the petition of Ruben Pierce for a writ of *habeas corpus ad subjiciendum* and the answer of the respondent, the petitioner appearing in person and by Richard R. Ryder, an attorney of petitioner's own choosing, and the respondent appearing by Reno S. Harp, III, Assistant Attorney General.

Whereupon, on motion of counsel for the petitioner, the respondent not objecting, this case was heard together with the case of *Hubert E. Hoffler* v. *C. C. Peyton.*

Whereupon, the Court heard the evidence and argument of counsel, and, upon mature consideration thereof, doth find that the petitioner is presently detained pursuant to a judgment of this Court of April 15, 1963, wherein he was sentenced to serve a term of five (5) years in the Virginia State Penitentiary, having been convicted of robbery; and, for the reasons stated by the Court from the bench at the conclusion of the hearing, the Court is of opinion that the writ should not issue as prayed.

It is, therefore, adjudged and ordered that the petition for a writ of *habeas corpus* be, and is hereby, denied and dismissed, the writ discharged, and the petitioner remanded to the custody of the Superintendent of the Virginia State Penitentiary, to all of which action of the Court, the petitioner, by counsel, objects and excepts.

page 16 ] Let the Clerk of this Court certify a copy of this order to the petitioner, the respondent, and the Attorney General of Virginia.

Entered this 8th day of January, 1965

WALTER T. McCARTHY
Judge Designate

I ask for this:

RENO S. HARP, III
Counsel for Respondent

Seen and objected to:

RICHARD R. RYDER
Counsel for Petitioner

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page 19 ]

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## NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Comes now the petitioner, Ruben Pierce, by and through his attorney, R. R. Ryder, and hereby gives notice of appeal from the judgment of the Circuit Court of the City of Suffolk, the Honorable Walter T. McCarthy setting by designation, by which judgment the petition for writ of *habeas corpus* of the petitioner was denied and dismissed and the writ discharged which said judgment was entered on the 8th day of January, 1965.

Your petitioner assigns as error the following:

1. the Court erred in denying the petition for writ of *habeas corpus*.
2. the Court erred in ordering the petitioner to be remanded to the custody *oft* the respondent.
3. the Court erred in finding that the Constitutional rights of the petitioner had not been violated.

RUBEN PIERCE

R. R. RYDER
By Counsel

Filed in the Clerk's office of the Circuit Court of the City of Suffolk, Virginia, this 3rd day of February, 1965.

WM. S. HOLLAND, Clerk

## RECORDS NOS. 6205-6206

*Major M. Hillard, Jr.*

page 1 ]

Circuit Courtroom,
Nansemond County Office Bldg.
Suffolk, Virginia,
Monday, December 14, 1964.

The above-entitled matters came on for hearing at 10:00 o'clock, a.m.,

BEFORE:

HONORABLE WALTER T. McCARTHY
Judge Designate

APPEARANCES:

R. R. RYDER, ESQ., Richmond, Va.
For the Petitioners,

RENO S. HARP, III, ESQ., Assistant Attorney General.
For the Respondent,

page 2 ] PROCEEDINGS

(Opening statements were made by counsel for either side, and the witnesses were called, sworn, and excluded from the courtroom.)

Mr. Ryder: Your Honor, for the record, there are two petitions, the petition of *Reuben* Pierce and the petition of Hubert Earl Hoffler. We think that the evidence will go to each petition as we will try them jointly.

The Court: Does the Attorney General agree to this?

Mr. Harp: Yes, Your Honor.

Whereupon,

MAJOR M. HILLARD, JR.

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Hillard, would you state your name?

*Major M. Hillard, Jr.*

A. Major M. Hillard, Jr.

Q. And your residence and occupation, please?

A. Residence is 5920 George Washington Way, City of Chesapeake. I am an attorney at law.

Q. Mr. Hillard, were you employed to represent Hubert *M*. Hoffler and Ruben Pierce in a charge of robbery pending in this court?

page 3 ] A. Yes, sir.

Q. When were you employed, do you recall, sir, approximately?

A. No, sir, I do not. I was employed approximately three or four months before the matter was tried.

Mr. Ryder: For the record, Your Honor, the indictment involved in the trial that Mr. Hillard was hired to represent the defendants was returned in this court in March of 1962, *nda* the trial of the matter—

By Mr. Ryder:

Q. Do you remember the trial date, Mr. Hillard?

A. No, sir, I do not.

Mr. Harp: April 15th, of 1963.

Mr. Ryder: April 15th, 1963 is when the matter was tried, sir.

By Mr. Ryder:

Q. Where were you hired? Was it in your office, or where?

A. Yes, sir, in my office.

Q. What action did you take immediately upon the employment?

A. Well, I wasn't in the matter when it was heard on a preliminary hearing. I think Mr. Parr represented Mr. Hoffler at that time. After the matter was remanded to the

page 4 ] grand jury, Mr. Hoffler came to see me and discussed the matter, and I got in my car, along with Mr. Hoffler, and we came to Suffolk and I went and discussed the matter with Mr. Stallings.

Q. Now, in the discussion with Mr. Moody Stallings, what, if anything, did he state to you with respect to what he anticipated doing as far as this offense was concerned?

Mr. Harp: Object. That would clearly be hearsay, if Your Honor please.

*Major M. Hillard, Jr.*

Mr. Ryder: Your Honor, one of the allegations we make—
The Court: Objection is overruled.
Mr. Harp: Note my exception, please.

THE WITNESS: Well, I discussed the matter, I guess, for about a half an hour with Mr. Stallings in his office. This was after the indictment had been presented, and discussed entering a plea of guilty to assault and battery. And after we had discussed it, I guess maybe a half hour, he said, "Well, that sounds like to me it's just an argument between two bootleggers," and that was the end of that discussion.

That was the day that Mr. Hoffler first came to my office. Now, that was—I don't know how long before it came to trial, because we continued the matter one time, if I recall correctly. Then Mr. Hoffler employed Mr. Woodward and Mr. Parr, and Mr. Woodward and myself represented Mr. Hoffler.

page 5 ] By Mr. Ryder:

Q. Did you at any time subsequently have conversation with Mr. Stallings?

A. Oh, yes.

Q. What was the nature of those conversations?

A. I discussed a matter with him about entering a plea of guilty to assault and battery before the trial, about 10 or 20 minutes before the case went to trial.

Q. What was his response on that occasion?

A. Well, he said that he didn't know what to do with it. He said, "Don't amount to anything." He said, "Let's come on here and try it and get it off my docket." He said, "I am tired of messing with it." That is what he told me.

Q. Did you at any time prior to the trial advise Mr. Hoffler as to the necessity of witnesses being available?

A. No, sir, I didn't, because I was in a peculiar situation. It was my understanding Mr. Parr was chief counsel. I was to be associate counsel, but it developed when we got to trial I ended up trying the case.

Q. Did you have any discussion with Mr. Hoffler concerning witnesses in the robbery trial?

A. No, because Mr. Stallings did not commit himself on a plea to assault and battery, but he, from every indication,

he was going to go along and not press for anything more.

page 6 ] Q. Did you adequately prepare the case for trial?

Mr. Harp: Object. That calls for an opinion.

The Court: Objection is overruled.

Mr. Harp: Note my exception, if Your Honor please.

The Witness: Well, no, sir, I did not, because I was supposed to be associate counsel, and I presumed that Mr. Woodward or Mr. Parr was going to take care of the other matters. The only thing I did was try to negotiate with the Commonwealth's Attorney.

By Mr. Ryder:

Q. Did you make any efforts to interview any witnesses?

A. No, sir.

Q. Did you conduct any investigation prior to trial to determine whether there were any witnesses?

A. I did not know there were any witnesses. I presumed that would be taken care of by Mr. Parr or Mr. Woodward.

Q. Did you form any impression with regard to the ultimate outcome of the trial from your conversations with Mr. Stallings?

A. Yes, sir, I had—he didn't—well, he didn't come out and say it, I won't say that, but from every indication that I gathered from him, he was going to go ahead along with assault and battery.

page 7 ] Q. Did you communicate to Mr. Parr and to Mr. Woodward your impressions as to what Mr. Stallings was going to do with *het* case?

A. Oh, yes, Mr. Woodward was under the same impression I was, I presume. He may not recall it, but he was in the hall at the time Mr. Stallings and myself were talking, and he was talking to Mr. Stallings along with me.

Q. And the tenor of that conversation—was that the day of the trial?

A. Yes, sir, about 10 or 20 minutes before we went to trial.

Q. The tenor of that conversation with Mr. Stallings *asw* what?

A. That he was not going to press for anything more than assault and battery.

*Major M. Hillard, Jr.*

Q. How long have you been practicing law, Mr. Hillard?
A. Since February, 1949.
Q. During that period of time have you handled, as a defense counsel, many trials and criminal cases?
A. Yes, sir.
Q. In your opinion, based upon your experience, was the representation afforded the petitioners Hoffler and Pierce adequate?

Mr. Harp: Same objection as before.
The Court: Objection overruled.
page 8 ] Mr. Harp: Note my exception, if Your Honor please.
The Witness: Under the circumstances, the way it developed, no, sir.

By Mr. Ryder:
Q. To what do you attribute the inadequate representation?
A. To what do I attribute it to?
Q. Yes, sir.
A. Well, we—we had all, I guess, presumed that we were going to go along with the assault and battery and that the Commonwealth's Attorney wasn't going to press for a conviction for armed robbery.
Q. During the course of the robbery trial, did you or Mr. Woodward, within your knowledge, attempt to obtain witnesses by telephone?
A. Now, Mr. Ryder, I couldn't say yes or no to that. It has been a good while and—
Q. When did you first become aware of, during the trial, that Mr. Stallings was going to press for something other than a conviction of simple assault?
A. That would be hard to determine, but I couldn't say that, either. I don't know what he had in mind when he went in there.
Q. When Mr. Stallings made his closing argu-
page 9 ] ment to the jury, were you at that time—I mean, to the judge—were you at that time aware of the fact that he was going to ask the Court for something other than simple assault?
A. When he started making his argument to the Court, yes.
Q. What was your reaction at that time?
A. Well, I was—I don't know whether you'd say—flabbergasted, I guess you'd call it.
Q. Why were you this way, sir?

*Major M. Hillard, Jr.*

A. Because I was under the impression all along during the course of the discussions that we had had that he was going to go along with the assault and battery conviction.

Q. Did you attempt, or did any other counsel within your knowledge attempt to subpoena any witnesses on behalf of the defendant?

A. I had nothing to do with the subpoenaing of witnesses or interviewing of witnesses. I merely came up with Mr. Hoffler, I came up with him that morning, in fact, he drove his car, came by and picked me up, and I came up here to associate and assist in the trial of the case.

Q. Did you advise Mr. Hoffler as to whether or not he should be tried by the Court or by the jury?

A. Mr. Ryder, if I had had any possible idea that Mr. Stallings was going to press for a conviction on
page 10 ] robbery, I'd never have tried that case without a jury.

Q. Did you advise Mr. Hoffler to waive jury?

A. Yes, sir.

Q. Your advice to him to waive jury was based upon what, sir?

A. Under the impression I had gained from the Commonwealth's Attorney, same as Mr. Woodward and Mr. Parr and myself all had the same opinion. In fact, we all advised him.

Q. And that impression, for the record?

A. That he was not going to press for conviction on robbery, that he was going to go along with assault and battery.

Q. Had there been any conversation with Mr. Stallings concerning the maximum punishment he would request the Court to impose?

A. No, sir.

Q. During the ride with Mr. Hoffler to the court on the morning of the trial, was there any conversation with Mr. Hoffler pertaining to the necessity of witnesses being brought in?

A. No, sir.

Q. Did you, on that morning before you left your house, have a conversation by telephone with Mr. Moody Stallings, before you picked Mr. Hoffler up?

A. I don't recall, Mr. Ryder, I may have, I may
page 11 ] not. It's been a good while ago, and I have tried a number of cases since then, and I can't recall all the details. Possibly I did. I think Mr. Woodward—well, I won't say. I thought probably I had a conversation with Mr. Woodward that morning on the phone.

*Major M. Hillard, Jr.*

Mr. Ryder: That's all the questions I have of this witness.

## CROSS EXAMINATION

By Mr. Harp:

Q. Now, Mr. Hillard, when were you admitted to practice, sir?

A. February 1949.

Q. And you have been practicing continuously since that time, have you not?

A. Yes, sir.

Q. And you have had a great deal of experience in handling criminal matters?

A. I have tried a few, Mr. Harp.

Q. You have tried quite a number, have you not?

A. Yes, quite a number.

Q. You were employed shortly after the preliminary hearing, between the time of the preliminary hearing and the indictment?

A. I think it might have been a week after the preliminary hearing Mr. Hoffler came to see me.

page 12 ] Q. A week after the preliminary hearing, so that would have been prior to the return of the indictment, wouldn't it?

A. Yes, sir.

Q. Now, if I told you that the warrant was issued on January 15, 1962, and the indictment was returned in March of 1962, would you give us a general idea as to when you were employed?

A. What was the first date, the preliminary hearing?

Q. January 15th, '62.

January 15th was the date of the issuance of the warrant.

A. And when did the grand jury meet?

Q. March 1962.

A. Probably was employed around the first part of February, somewhere along in there.

Q. All right. Now, then, you had from the first part of February 1962 until the 15th of April 1963 to prepare for the defense of these matters, didn't you?

The Court: Argumentative question. If he was employed, he had that much time.

Mr. Harp: All right.

*Major M. Hillard, Jr.*

By Mr. Harp:

Q. What did you do during that period of time in connection with the matter?

page 13 ] A. Well, the first day Mr. Hoffler came into my office I got in my automobile and we came to Suffolk and went to Mr. Stallings' office. I did. Mr. Hoffler sat out there where the old courthouse is now, sat over there in the car in the parking lot, and I went in and talked to Mr. Stallings.

Q. And did Mr. Stallings ever tell you definitely on that occasion that he was just going to ask for a—he would agree to reduce the matter to assault and battery?

A. No, sir, he did not.

Q. What was the tenor? What did you ask him?

A. I asked him how about pleading guilty to the assault and battery in the charge, because—apparently he knew Joe Jordan, who was the complainant, and I think he knew Mr. Hoffler. He told me—we were discussing it, I was sitting in his office, and he said, "It is just a matter of an argument between two bootleggers, that is what it sounds like to me."

Q. But did he tell you specifically—

A. No, sir, he didn't say specifically he would accept a plea of guilty to the assault and battery.

Q. *then* you are basing your theory he was going to reduce it to assault and battery on Mr. *Stalling's* statement that he thought it was an argument between two bootleggers?

A. Mr. Stallings minimized the issue from the beginning to the end until he started making his argument

page 14 ] to the Court.

Q. But my question is this: that initially your theory of the case is predicated upon the statement of Mr. Stallings that it was an argument between two bootleggers?

A. That was the substance of the conversation.

Q. When was the next conversation?

A. Morning of the trial, if I recall correctly.

Q. Was that conversation—it wasn't in this courtroom, but it was in the old courtroom, was it not?

A. It was out in the hall, it was in the courtroom.

Q. It wasn't in the hall. Did you have two conversations with him?

A. No, sir.

The Court: Wait just a minute. You are getting all mixed

up. You are referring to a courtroom, he is talking about. Then you say it wasn't in the hall. You better ask those questions again.

Mr. Harp: Let me try to delineate it.

By Mr. Harp:

Q. This trial took place in the old courthouse, is that correct?

A. Yes, sir.

Q. Now, referring you back to the date of trial in the old courthouse, was the conversation that you had with Mr. Stallings on the morning of trial held in the

page 15 ] courtroom or in the hall?

A. It was in the hallway.

Q. And Mr. Woodward was present?

A. Yes, sir.

Q. Was Detective Lieutenant H. W. Bryan of the Suffolk Police Department?

A. I have no idea.

Q. You do not?

A. No, sir, I was only interested in talking to the Commonwealth's Attorney, and I was only interested in what I was doing, and I didn't pay attention to see who was there.

Q. Exactly what were you told at that time by Mr. Stallings?

A. I asked Mr. Stallings could he enter a plea of guilty to assault and battery, and he didn't know, he didn't know what to do. He said, "Come on, let's try the case. I want to get it off my docket."

Q. All right, now, between the time of your employment and the time—were you employed to represent both of these men, or just one?

A. Well, they were tried together, so I think Mr. Pierce was working for Mr. Hoffler, I don't know.

Q. All right. Between the time of your employment, which we have established now as sometime in early Feb-

page 16 ] ruary of 1962, and the time of the date of trial, did you have any conversations with the other two attorneys?

A. Oh, I talked to Mr. Parr on the telephone. Of course, I talked to Mr. Parr about once a week.

Q. During this period of about a year?

*Major M. Hillard, Jr.*

A. Yes, sir. I don't think I talked to Mr. Woodward till the day of the trial. I don't know. I think I called him or talked to him on the telephone that morning, but I won't swear to that.

Q. Now, were there any witnesses present in the courtroom or in the hall outside the courtroom who had not been subpoenaed but who were available to testify who are here today?

A. The only one that I know was Coffield boy came up there, but he got up there, the trial was well underway when —he was late getting there, and we didn't use him.

Q. Which Coffield boy was this, sir?

A. Now, Mr. Harp, there are two or three of those Coffield boys. I could tell you if I saw him, but—

Q. Is he here today?

A. I don't know whether he is here or not.

Mr. Ryder: Your Honor, if it will help the Commonwealth, we will expect to elicit from the witness Coffield it was Douglas Coffield, I believe, who came to the courthouse.

page 17 ] Mr. Harp: All right.

By Mr. Harp:

Q. Now did you stay with this case *throught* the appeal?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Were you present when the appeal was argued?

A. Yes, sir.

Q. You were. All right.

A. I was a spectator in the courtroom when it was argued. Mr. Parr handled the matter.

Q. This may be repetitive, but I wanted to make sure I had asked this question: During the course of the trial you had here, as the evidence was being presented did this indicate to you that a robbery charge was being tried?

A. (Long pause.) I don't quite understand what you are driving at, Mr. Harp, and I frankly don't know how to answer the matter.

Q. My question is this, Mr. Hillard: As you heard the evidence presented in the trial of these two men, as the evidence was presented and the trial went forward, were you not aware

of the fact that the evidence was presented for the purpose of showing a robbery?

A. No, sir.

page 18 ] Q. You were, *now*?

A. No, sir, because it was not a robbery, Mr. Harp. Now, I am prejudiced, you understand, because I was representing the defendant, and you put me in a—I can't sit there like a judge, because I am looking at one side and—

Q. I understand, you are an advocate, as every attorney is, sir. Now, getting on, then, you didn't realize it, then, until such time as Mr. Stallings started his argument to the court, is that correct?

A. Well, no, you could sense it before that.

Q. About when?

A. I guess when—I guess when we put about—I think it was when Ruben Pierce testified.

Q. Isn't that the fact, isn't that when your case went up in smoke?

The Court: I don't know how he can answer that question. "Went up in smoke," you mean that is the point where the judge came to the conclusion that robbery—he did not know that. I hope he didn't know it until the judge announced his decision.

Mr. Harp: Let me rephrase the question.

By Mr. Harp:

Q. It was at this point that a disparity in testimony appeared, then, did it not?

page 19 ] A. Yes, sir.

Q. Now, did you at any time advise the Court during the trial, immediately after the trial, within the 21-day period after the trial, that in your opinion as a member of the bar of this Court that you had not been prepared and that you would like to ask that the verdict be set aside on that ground?

A. No, sir.

Q. Did you prepare any of the appeal papers?

A. No, sir, Mr. Woodward prepared them, as I understand.

*Thomas L. Woodward*

Mr. Harp: That's all. Thank you.
Mr. Ryder: That's all the questions I have, Your Honor.

(Witness excused.)

Mr. Ryder: Call Mr. Woodward.

Whereupon,

THOMAS L. WOODWARD

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr Ryder:

Q. Mr. Woodward, sir, do you feel up to testifying? I know you have been ill.

A. Yes, I can testify. I am a little shaky, but I can testify all right.

page 20 ] Q. Sir, would you state your name, address, and occupation, please?

A. Thomas L. Woodward, 212 Bosley Avenue. Attorney at law.

Q. Mr. Woodward, were you employed to represent Mr. Hoffler and Mr. Pierce in the robbery charge in the Suffolk Circuit Court for which they were convicted and received 5 years?

A. Yes, sir, in collaboration with Mr. Parr and Mr. Hillard.

Q. Mr. Woodward, how long have you been practicing law, sir?

A. Since July first, 1920.

Q. Mr. Woodward, during that course of time have you represented many defendants in criminal cases?

A. I suppose a thousand.

Q. Mr. Woodward, do you recall, sir, when you were first employed, that is, with relation to the date of the trial of the robbery charge?

A. Well, it would be the sheerest guesswork, but I would say three or four days before the trial.

Q. Do you recall any of the circumstances, Mr. Woodward, of the employment; that is, what you were told and what you did, sir?

page 21 ] A. Frankly, I couldn't tell you the circumstances under which I was employed. Didn't make any special note of it, and consequently, my mem-

ory doesn't serve me along that line.

Q. Did there come a time, Mr. Woodward, when you talked to Mr. Moody Stallings, or to Major Hillard, Jr., concerning the case?

A. I may have talked to Mr. Stallings, but if I did, it was in an offhand way.

Q. Yes, sir.

A. Not with reference to any—the case in its merits or anything of that kind.

Q. Did you talk to Mr. Hillard?

A. Yes, I talked to Mr. Hillard.

Q. What was the tenor of that conversation?

Mr. Harp: If your Honor please, I'd like to renew my objection made before on the ground that would be hearsay.

Mr. Ryder: Maybe I will rephrase the question.

The Court: Objection is overruled.

Mr. Harp: May I have an exception, if Your Honor please?

By Mr. Ryder:

Q. What was the tenor of your conversation with Mr. Hillard with respect to the case?

A. Well, it was in a most general sort of way.
page 22 ] I don't recall now the exact conversation we had.
The thing that sticks out in my mind more than anything else is I opposed going ahead with the trial.

The Court: I didn't hear that, sir.

The Witness: I said, I opposed going ahead with the trial, because I didn't think the case was ready for trial, and I certainly wasn't ready myself, and the case was of too much moment as far as these boys were concerned, to go into it lightheartedly or haphazardly.

Q. Did you go ahead with the trial?

A. I went ahead with the trial with the understanding that an arrangement had been made between Mr. Stallings and Mr. Hillard to come on around and let's get rid of it, want to get it off the docket, wasn't anything but assault and battery, anyway. Mr. Stallings never told me that. I never asked him that, and that was the only circumstances under which I set in on the trial.

Q. Mr. Woodward, did you adequately prepare the case for trial?

*Thomas L. Woodward*

Mr. Harp: Object. That calls for an opinion, if Your Honor please.

The Court: Objection is overruled.

Mr. Harp: May I have an exception?

The Witness: Let's put it this way: I didn't prepare it.

page 23 ] By Mr. Ryder:

Q. Did you interview any witnesses of any kind?

A. Didn't interview any witness. Most of them were down in Portsmouth. I didn't interview any of the witnesses at all. What I actually did was sit in on the trial with the understanding that what Mr. Hillard had led me to believe was the fact.

Q. In your opinion, sir, based upon your knowledge of the circumstances that existed prior to trial, based upon your knowledge of what took place during the trial, and based upon your knowledge of what evidence was available, what witnesses were available which you gained subsequent to trial, was this a fair trial with respect to these defendants, this robbery charge?

Mr. Harp: I have to object to that question as being too broad and also calling for an opinion.

The Court: Objection sustained.

By Mr. Ryder:

Q. Were you subsequently made aware that there were certain witnesses that would have testified to material facts in the robbery charge?

A. Yes, some during the course of the hearing and some afterwards.

Q. Now, in your opinion was the testimony of

page 24 ] those witnesses material to the defense of the robbery charge?

A. I considered it so.

Mr. Harp: Same objection.

The Court: Overruled.

Mr. Harp: Exception.

By Mr. Ryder:

Q. Sir?

A. I considered it so.

Q. Based upon the knowledge which you gained with respect

to the testimony of the witnesses who were not called, in your opinion was the trial of the defendants a farce?

Mr. Harp: Object.
The Court: Objection sustained.

By Mr. Ryder:
Q. Was it a fair trial?

Mr. Harp: Same objection.
The Court: Objection sustained. He has testified that there were material witnesses.

By Mr. Ryder:
Q. In your opinion, Mr. Woodward, were these defendants in the robbery charge adequately represented?

Mr. Harp: Same objection.
The Court: Objection overruled.
Mr. Harp: Note my exception.
page 25 ] The Witness: I don't think so. Let's put it this way, Mr. Ryder—if I may, Your Honor—on an offense of this kind, it is not like going down and representing a man for having a pint of whisky or something of that kind. The offense is too grave to hazard it in any light-hearted way or with half preparation.

By Mr. Ryder:
Q. Based upon your knowledge, was this trial treated by you and co-counsel in a light-hearted and haphazard way?

Mr. Harp: Object.
The Witness: I wouldn't say that, because I didn't know enough about it to treat it one way or the other.

By Mr. Ryder:
Q. Yes, sir. Did you, Mr. Woodward, subsequent to the trial—let me ask you this, sir: When did you first become aware that Mr. Moody Stallings was going to endeavor to obtain a conviction for robbery?
A. Well, I didn't have any idea that he would ask for a conviction of robbery until the case was practically over.

*Thomas L. Woodward*

Q. Was that during the course of his closing argument to the Court?

A. Well, either then or immediately preceding that.

Q. What was your reaction, sir, at that time?

A. Well, it's hard to describe your reaction to
page 26 ] a thing of that kind. I don't know that I could.

Q. Were you surprised, sir?

A. I was surprised at it, yes, sir, particularly surprised.

Q. Subsequent to the conviction and sentence, Mr. Woodward, did there come an occasion when you appealed to the judge of this court, that is, Judge *Goodwin,* to set the verdict aside based upon the inadequate preparation?

A. Yes. It went before Judge Godwin either once or twice. I recall the second time—I believe it was the second time—but inadequacy of preparation was brought up, and I told the judge just what I am telling you here today. It is my recollection of it. I thought it was a *commedy* of errors in which neither one was seeking to any particular advantage, but it was just an incident that happened once in a lifetime.

Q. Did you advise the Court that you felt that you had been tricked?

A. Well, I didn't *fell* I had been tricked in the sense that you—but—that way. I don't think Mr. Stallings intended to trick us.

Q. No, sir.

A. I think he got into it and from the evidence that was brought out, maybe he didn't have any other course to pursue.

But I did understand it was going to be just a
page 27 ] question of assault and battery.

Q. Was there any conversation or any other understanding that you had with respect to the maximum punishment that was to be imposed?

A. No; I talked to Mr. Hillard over the telephone not more than an hour before the proceedings and at that time I raised objection to the trial of the matter, because I thought it was one for a jury. Even then I didn't know what the facts were, but the witnesses who went on the stand—I know practically all the witnesses who went on the stand and I know their standing and their reputation and what not, and if I had been permitted, I could have found out a good bit more than I did find out.

Q. You mean, pertaining to the reputation and the standing of the prosecuting witnesses?

A. That's right.

*Thomas L. Woodward*

Q. Did you or did Major Hillard, Jr., within your knowledge, advise the petitioners to waive trial by jury?
A. I don't recall that I did.

Mr. Ryder: That's all the questions I have, Your Honor.

CROSS EXAMINATION

By Mr. Harp:

page 28 ] Q. Now, Mr. Woodward, you have testified that during the course of the trial you learned of a material witness, or more than one material witness who was not available, is that correct?
A. Yes. Yes.
Q. Who were those witnesses, sir?
A. They were two brothers Coffield that had a business down right by the viaduct leading over the Norfolk and Western Railroad next to the Elizabeth River.
Q. Just the two brothers Coffield, is that correct?
A. I wouldn't limit it to the two brothers Coffield. I knew Dallas Coffield. I did not know his brother. Of course, I knew Joe Jordan and Mac McClennon and Overboyce. I knew all those.
Q. But I was trying to find out exactly which witnesses you discovered you needed during the course of the trial. Now, Douglas Coffield and his brother, I assume, were two of them.
A. Dallas Coffield is the one I know. I knew.
Q. Do you know a Douglas Coffield?
A. I never saw a Douglas Coffield in my life, but I understand that they could testify that the money that was supposed to be passed for the truck in issue actually was passed in their presence and that maybe one or the other of them furnished the money to this man on the end there to pay for the truck.

page 29 ] Mr. Ryder: Your Honor, may I say for the record that the man on the end he is referring to is the petitioner Ruben Pierce?
The Witness: That's right, Pierce.

By Mr. Harp:
Q. During the course of the trial, sir, do you recall that you asked for a recess, you and your co-counsel asked for a recess in order that you could discuss some facts in the matter with

*Thomas L. Woodward*

a witness who was not in the courtroom but who was standing outside and that this witness's name was Douglas Coffield?

A. (Shaking head negatively.) I don't say it didn't happen, but I don't have any recollection of it. It may very *we-l* have happened.

Q. Do you recall that you were ever granted a recess for the purpose of talking to a witness?

A. I wouldn't know that. I was trying cases nearly every day, and I'd be a wizard if I could remember that.

Q. All right. Now, do you know Douglas Coffield?

A. No, I know Dallas Coffield.

Q. You know Dallas. Now, you say you went before Judge Godwin on two occasions and asked that he set the verdict aside because of the fact that you had inadequately represented this man, is that correct?

page 30 ] A. I didn't say that was the only ground. No, sir, I didn't—

Q. But that was one of the grounds that you mentioned to him, is that correct?

A. I told him from my own standpoint, as I recall it now, that I didn't think they had been properly represented and if I had known the situation, I would never have gone into a trial of that kind so ill-prepared.

Q. This was after the 21 days had elapsed, though, was it not?

A. I couldn't tell you.

Q. Wasn't it about three months afterwards?

A. I couldn't tell you that.

Q. Did you prepare the application for a writ of error to the Supreme Court of Appeals?

A. Well, Mr. Parr prepared it, and I may have added a small amount to it, but it was drawn in my office.

Q. It was drawn in your office. The two of you did it together, didn't you?

A. I didn't add a lot to it. Mr. Parr did most of it.

Q. Did you assign as error that Judge Godwin had refused to grant you a new trial because you had not adequately represented the man?

A. Oh, no. Oh, no.

page 31 ] Q. You did not. Now, subsequent to the trial you say you learned of some other material witnesses, is that correct?

A. That is true.

Q. Who were they?

*Thomas L. Woodward*

A. I can't tell you offhand. There was a woman there that was in the house at the time of all this going on. There was a man standing outside whose name I never learned who knew what went on over there. But I never—it was too late for me to go see them then.

Q. When did you learn of these witnesses?

A. I think that was during the trial, maybe.

Q. You say you think this was during the trial?

A. I think it was during the trial, yes, sir.

Q. And did you make any motion to the Court asking that the Court continue the matter—

A. I did not.

Q. —on the ground that your witnesses were not available?

A. No, sir, it was too late then, in the middle of the trial.

Q. Now, did you testify that Mr. Major Hillard, Jr., told you that Mr. Stallings—rather let me rephrase that question. Did you testify, sir, that Mr. Hillard, Jr., who was one of your co-counsel, advised you that he had discussed the matter with Mr. Moody Stallings and that Mr. Moody Stallings had said that this was just a fight between two bootleggers and it was just an assault and battery charge and that's all there was to it?

page 32 ]

A. You are adding a point about the fight between two bootleggers, but Mr. Hillard discussed with me on two occasions and the last occasion was about an hour before trial over the telephone from Portsmouth.

Q. What did he say on that occasion as to what Mr. Stalings had told him?

A. He said it was going to result in a punishment of assault and battery, Mr. Stallings wanted to get rid of it and come on around and we'd dispose of it that morning.

Q. I see.

A. I don't think Mr. Stallings intended to put anything over on us, as far as that is concerned.

Q. But—

Mr. Harp: That's all.

Mr. Ryder: May I ask him just one more question, Your Honor?

## REDIRECT EXAMINATION

By Mr. Ryder:

Q. If I showed you an affidavit, would you recall the name

of the one witness that was at the house? Would
page 33 ] that prompt your memory?
A. I might.

Mr. Ryder: (Handing paper to Mr. Harp.)

Mr. Harp: If Your Honor please, I think this would clearly be leading the witness. This is an *ex parte* affidavit which purports to recite certain facts and circumstances surrounding this crime, and I think it would be clearly leading the witness to let him read this and then have him testify.

The Court: What is the affidavit of?

Mr. Ryder: It is affidavit of one Joe Lewis, Your Honor.

The Court: The question is: does this witness recall the person? Objection is overruled.

Mr. Harp: Note my exception, if Your Honor please.

By Mr. Ryder:

Q. (Handing affidavit to witness.)

A. Mr. Ryder, I can't truthfully answer your question.

Mr. Ryder: That's all the questions I have.

The Court: Through?

Mr. Harp: Yes, sir.

It is my understanding this witness will be excused. I have him under subpoena. I don't think I need him, but if necessary, I will have a right to call him back.

The Court: You understand?
page 34 ] The Witness: Yes, sir.

(Witness excused.)

Mr. Ryder: I would like to call Douglas Coffield.

Whereupon,

DOUGLAS COFFIELD

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Mr. Ryder: Your Honor, before this witness testifies, I recite the decision of the Supreme Court of Appeals decided on

*Douglas Coffield*

September the 11th, 1964, in the case of *Ruben Pierce* versus *Commonwealth* and *Hubert Earl Hoffler* versus *Commonwealth.*

The opinion, in the advance sheets, on page 533, makes reference to the witness Coffield and the fact that the witness Coffield did not testify, and I think that is particularly important in view of the fact that the Court of Appeals singled that out in determining these appeals.

The Court: All right.

By Mr. Ryder:

Q. Mr. Coffield, would you state your name, address, and occupation, please?

A. Douglas Coffield, Route 2, Box 43, Chesapeake, Virginia, and I run Coffield Auto Parts, Used Auto Parts.

Q. Where is Coffield's Used Auto Parts?

page 35 ] A. It's on Military Highway at the *tripple*-decker overpass.

Q. Mr. Coffield, are you acquainted with the fact that Mr. Pierce and Mr. Hoffler were indicted, tried, and convicted for the robbery of one Joe Jordan, involving a pick-up truck?

A. Yes, sir.

Q. On the date the matter was tried in the Circuit Court of Suffolk in the—I believe this is the Circuit Court of Suffolk, is that correct?—in the old building, were you present when the matter was tried?

A. I was outside the court.

Q. Would you tell His Honor whether or not you were advised or asked to appear as a witness and just what happened, why you did not testify?

A. Mr. Hillard—I had been there for some time, and Mr. Hillard come out of court and told me I could go home.

Q. What would you have testified to in that hearing? What knowledge did you have of that robbery charge?

Mr. Harp: Object.

The Court: Objection is overruled.

Mr. Harp: Note my exception, please, sir.

The Witness: I knew that Mr. Hoffler and Mr. Pierce had bargained to buy, was in the process of buying a pick-up truck.

page 36 ] Mr. Harp: I hate to interrupt the witness, but I think he is testifying to hearsay, I think.

*Douglas Coffield*

The Court: I was going to ask him myself.

When you say this, did you see or hear this, or did somebody tell you this?

The Witness: I saw it.

The Court: You saw it.

By Mr. Ryder:

Q. What did you see, Mr. Coffield?

A. I saw Mr. Pierce give Mr. Jordan—this was prior to the day they come out to my shop—I think it was $115.00 payment on a Chevrolet pick-up.

Q. Was that the Chevrolet pick-up that was involved in the robbery charge?

A. Yes, sir.

Q. Now then—

A. And they owed him for more money on it.

Q. Where was the $115 paid?

A. In Suffolk.

Q. In Suffolk?

A. It was on that back road that comes out by that scales. I forget now the name of the road or the route number, but the Colored fellow didn't have the title for the truck that day, and they were going to give him the—Mr. Pierce
page 37 ] told him that he would give him the rest of the money when he brought the title for it.

Q. Did there come an occasion when you subsequently saw this Colored fellow, Jordan?

A. Yes, sir.

Q. Where was that and under what circumstances?

A. He come down to the shop—Mr. Pierce went and got him, rather, and brought him over to the shop in order to get the title and finish paying for the truck, for they needed the title to buy a license for it. And they brought Joe Jordan out there, and at that time Jordan told them—and I was present—

Mr. Harp: I object. That's hearsay. Anything Mr. Jordan said was hearsay.

The Court: You say "were present" or "were not present?"

The Witness: I was there.

Mr. Ryder: Your Honor, the purpose of this—

The Court: Mr. Jordan told who? What did he say just now?

*Douglas Coffield*

(Whereupon, the last above-recorded answer was read by the reporter.)

The Court: Objection is overruled.

Mr. Harp: Note my exception, if Your Honor please.

page 38 ] By Mr. Ryder:

Q. What did Jordan tell him?

A. Told him he wanted a title for the truck, and Jordan did not have the title. So he told—

The Court: Apparently that is mixed up.

By Mr. Ryder:

Q. Who told what to whom, sir?

A. Jordan told Ruben Pierce.

Q. All right, sir.

A. —that he did not have the title for the truck with him and at the same time he told him that instead of the original $150 he wanted for the truck, he wanted some more money. I forget now how much it was. And Mr. Pierce told him that he did not want to pay any more money for it. So Jordan told him to bring the truck back to Suffolk and he'd give him his money back. And Mr. Pierce left with Jordan in his car to go to Suffolk.

Q. Where was the truck?

A. It was at the shop.

Q. What happened to it?

A. Mr. Hoffler was also there, and he left driving the pick-up truck to carry it back and to get the money back for the truck.

page 39 ] Q. Was there anyone else present at that time other than yourself, Hoffler, Pierce and Joe Jordan?

A. Yes, sir. I don't remember exactly who, but it was several people at the shop at the time.

Q. Was there any argument between them?

A. Between—

Q. —Jordan, Pierce, and Hoffler?

A. Not between Pierce and Hoffler.

Q. How about between Jordan and Pierce?

A. Yes, sir, there was a misunderstanding or disagreement

about the price of the truck. He wanted more money for it.
Q. By "he" you mean who, sir?
A. Mr. Jordan.

Mr. Ryder: That's all the questions I have.
The Court: What is your name?
The Witness: Douglas Coffield.
The Court: Did you ever go by the name of "Dallas?"
The Witness: No, sir, that was my uncle.

## CROSS EXAMINATION

By Mr. Harp:
Q. Mr. Coffield, now, when did you see them pass this $115 down at Portsmouth?
A. This was about two weeks prior to the time they were at the shop.
Q. About two weeks before Joe Jordan was
page 40 ] brought in, is that correct?
A. Yes, sir.
Q. All right. Now, during the course of the trial, you were present but you were standing out in the hall, weren't you?
A. Yes, sir.
Q. And do you remember Mr. Hillard coming out and talking to you?
A. Yeah, he come out.
Q. And isn't it a fact that he told you that he had made a deal with the Commonwealth's Attorney and that it would just be reduced to assault and battery and that you could go on home?
A. He told me that I could go home. I think he told me that later that there was something about a deal had been made.
Q. Do you remember what that was?
A. No, sir.
Q. You do not?
A. About the—something about making a deal with the prosecuting attorney, but that was later.
Q. Do you recall being interviewed on October 29, 1964, between 12:15 p.m. and 1:00 o'clock, p.m., by Investigator L. W. Koffman of Virginia State Police?
A. I remember a State Police investigator coming out.
page 41 ] Q. Do you remember talking to him?
A. Yes.

*Douglas Coffield*

Q. Do you remember telling him that you had been advised by Mr Hillard on the morning of the trial during the trial that the Commonwealth's Attorney had agreed to an assault and battery conviction and let him pay a small fine and you could go home?

A. No, sir, Mr. Hillard come out and told me that—

The Court: Now, wait a minute.

The Witness: —that he didn't need me.

The Court: No, sir, he is asking you what you told the police officer. What did you tell the police officer when you talked to him?

The Witness: I told him as much as I knew about the case.

The Court. Well, did you tell him what he has just asked you?

The Witness: I told him that Mr. Hillard had come out and—out of the courtroom and told me that he didn't need me—they didn't need me in the thing, that everything was finished, or taken care of.

Mr. Harp: All right.

By Mr. Harp:

Q. Now, who else was present at the shop—who
page 42 ] do you work for, the—

A. Coffield Brothers.

Q. Coffield Brothers. Are you one of the brothers?

A. Yes.

Q. Who owns it? And are you related to Pierce or Hoffler in any way?

A. No, sir.

Q. Do a lot of business with you, hum?

A. Yes, sir.

Q. Have you bought motor vehicles at one time or another?

A. I have sold them cars.

Q. You have sold them cars?

A. And bought a few from them.

Q. Who else was present at this conversation that you say Joe Jordan didn't have the title and he wanted $200, do you recall?

A. He wanted $200?

Q. Um-hum.

A. I didn't hear him say he wanted $200.

Q. You didn't hear him say, the second time around, now—

let me delineate these times in order that the record may be straight. You have testified that you saw Joe Jordan on two occasions. Correct?

page 43 ] A. Yes.

Q. First occasion was when you saw Mr. Pierce give Joe Jordan $115. Correct?

A. (Nodding affirmatively.)

Q. All right, now, I am talking to you about the second occasion when Joe Jordan apparently was brought in, by your testimony, to your place of business and there were some other people present, a conversation took place at which time Mr. Jordan said he wanted more money—

A. Yes, sir.

Q. —for his truck. Now, who else was present besides you, Pierce, Hoffler and Joe Jordan?

A. There were several people at the shop, customers.

Q. Do you remember their names?

A. No, sir. My brother was also present. I think he was inside of the shop, though.

Q. He was inside?

A. Inside the building.

Q. Now, did this $115 pass at your place of business?

A. No, sir.

Q. Where was this passed?

A. That was about two weeks before in Suffolk.

Q. Where in Suffolk?

A. It's on a road that goes around the back of

page 44 ] Suffolk and comes out over near the scales, at a service station on that road. I don't remember the —

Q. You mean, the bypass? Are you talking about the bypass?

A. I don't know. I guess it is. It's — that road that comes out at Magnolia.

Q. Um-hum. All right, that's all.

## REDIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Coffield, who is Clarence E. Coffield?

A. It's my father.

*Douglas Coffield*

Q. Was he present at the time this discussion took place with Jordan as to coming back to Suffolk and getting the money back

A. Yes, sir.

Q. Is your father now — What is his status now?

A. He is dead.

Q. How long ago?

A. Couple of weeks.

Q. How old was your father?

A. Fifty-eight.

Q. How long had he operated Coffield Brothers?

A. Since 1939.

Mr. Ryder: (Handing affidavit to Mr. Harp.)

Mr. Harp: May I ask a couple of questions?

page 45 ] Mr. Ryder: Yes.

Mr. Harp: How has his health been?

The Witness: The last two years he's been in bad health.

Mr. Harp: He's been pretty sick, has he?

The Witness: He's had a heart condition.

Mr. Harp: I see. I am going to object.

By Mr. Ryder:

Q. Can you identify this document, Mr. Coffield? Is that your father's signature?

A. Yes, sir.

Mr. Ryder: Your Honor, I have here an affidavit of Mr. Clarence E. Coffield. He is now deceased. I offer it for the purpose of showing that had an adequate investigation been made, that among other witnesses the defendants would have had available would have been Mr. Clarence E. Coffield.

Mr. Harp: I think it is clear hearsay, if Your Honor please. If counsel for the petitioners was advised, as he must have been, of the condition of this particular man, he could have served notice upon us to take depositions in connection with it, and I think it is a tragedy that the man has died, but nevertheless, I think it is clear hearsay, sir.

The Court: I think the objection ought to be sustained.

page 46 ] Mr. Ryder: Your Honor, may I — I would like to get this statement in the record. May I just offer it?

The Court: Um-hum. I don't want to see it. Just mark it — this is the first one you have had?

Mr. Ryder: Yes, sir, Your Honor.

The Court:— Petitioner's Exhibit A.

(The affidavit referred to was received in evidence as Petitioner's Exhibit A.

Mr. Ryder: All right, sir. That is all the questions I have of Mr. Coffield, Your Honor.

The Court: Through?

Mr. Harp: Yes.

The Court: Take a recess. Ten minutes.

(Whereupon, a short recess was taken.)

Mr. Ryder: Call Mr. Parr.

Whereupon,

ROBERT J. PARR,

was called as a witness on behalf of the plaintiffs and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. Mr. Parr, would you state your name and address and occupation, please?

A. Robert J. Parr. I am an attorney and prac-

page 47 ] tice law in the City of Suffolk. I am 37 years old.

Q. How long have you been practicing law, Mr. Parr?

A. Since 1951.

Q. During that period of time, sir, have you had an occasion to represent many defendants in criminal cases?

A. Well, I have represented right many defendants, yes, sir.

*Robert J. Parr*

Q. Did there come a time when you were employed to represent Mr. Hubert Hoffler and Ruben Pierce?

A. Yes, sir.

Q. On a robbery charge that was pending in the Suffolk Court?

A. Yes, sir.

Q. Was there a warrant sworn out in Suffolk, as well as in Nansemond County?

A. Yes, there was a warrant in the City of Suffolk against Ruben Pierce and Hubert Hoffler charging them with armed robbery, and there was a warrant sworn out in Nansemond County charging them with *larseny* of a pick-up truck.

Q. Was that the same truck as the truck involved in the robbery here in Suffolk?

A. Yes, the same truck was the subject of the controversy.

Q. In the Nansemond County hearing were you present?

page 48 ] A. Yes, I was.

Q. Do you recall whether or not Jordan, that is the complainant on the robbery charge and the complainant on the larceny charge in Nansemond County, testified to anything, and if so, enumerate, contradictory to what he testified to in the robbery case in Suffolk?

Mr. Harp: I object. I think that would be hearsay, if Your Honor please.

The Court: Well, I don't think it's hearsay, but I was just wondering how material it is.

Mr. Ryder: Your Honor, the reason I offer this, sir, is that I anticipate putting on witnesses to show that, had proper investigation been made, that these witnesses could have testified to contradictory statements made by the complaining witness Jordan and of a material nature, sir. He was under oath in Nansemond County, as well as in Suffolk, and testifying about the same thing, sir.

The Court: Well, wasn't Mr. Parr present when he was tried the second time?

Mr. Ryder: Yes, sir.

By Mr. Ryder:

Q. Were you present when he was tried in the robbery

charge?

A. Yes, I was.

The Court: I don't know how this is all going to
page 49 ] turn out, but if Mr. Parr was present on both occasions, did he cross-examine the witness about his previous contradictory statement? Objection is overruled. I guess we have to develop it, I don't know.

Q. Did you participate, actually participate in the trial of the robbery charge, that is, as far as examining witnesses and things of this nature?

A. At the trial of the robbery charge in the Circuit Court of the City of Suffolk I did not cross-examine Joe Jordan. Mr. Hillard cross-examined Joe Jordan. In the preliminary hearing in the Municipal Court of the City of Suffolk, I, as I recall, examined Joe Jordan, and I was present when the cases in the County involving larceny were either dismissed or *nolle prossed,* and I forget what the Court designated on the warrant.

In the preliminary hearing in the City of Suffolk, Jordan admitted that he had committed *purgery,* of which he then purged himself and told an entirely different story concerning the whole incident.

Q. Was there any witnesses called to testify to this aspect of it in the robbery trial?

A. There were not any witnesses called with respect to that, and there were not any witnesses called with respect to his statements at the preliminary hearing in the Nansemond
County Court on the larceny charges when they
page 50 ] were dismissed or *nolle prossed.*

Q. Mr. Parr, in your opinion, were these defendants adequately represented, that is, Pierce and Hoffler, in the robbery trial in Suffolk?

Mr. Harp: Objection.

The Court: Objection overruled.

Mr. Harp: Note my exception.

The Witness: In my opinion, insofar as the development of the facts of the case in the trial of the robbery case, the facts

were not properly developed, and I feel that that was to their prejudice a great deal.

By Mr. Ryder:

Q. Had you, in effect, turned over the representation of the defendants to Mr. Hillard and Mr. Woodward?

A. Yes, I was the only counsel that was present at the preliminary hearing on the robbery charges. As I recollect, I was probably the only one present when the cases were dismissed or *nolle prossed* in the county. I know there was considerable confusion concerning the handling of the county matters and things as I have learned of through investigation since then transpired that I did not hear said or see done.

Q. Do you think that those things would have been material to the defense of the defendants on the robbery charges?

page 51 ] A. Well, I think what transpired in the Municipal Court of necessity was very important, and what transpired in the County Court as this case developed at the robbery trial was most material.

Q. Now, in your opinion, based upon your experience, would a proper investigation of the facts prior to the trial of the robbery charge have developed these circumstances that you speak of?

Mr. Harp: I renew my objection, if Your Honor please.

The Witness: Well, there should —

The Court: Just a minute. Excuse me. Objection is overruled. The question is — what I have in my mind is whether they weren't already developed. He knew about it. Most of what he has been testifying, he knew about it already.

By Mr. Ryder:

Q. Did you communicate to Major Hillard or to Mr. Woodward the prior *inconsistancies* of Mr. Jordan?

A. Well, I am sure that Mr. Hillard was aware of the dismissal of the cases in the county. I am also sure that those cases — that all counsel, besides Mr. Woodward, including the Commonwealth's Attorney for the City of Suffolk, in my opinion, were aware of that, particularly in light of Jordan's

statement that in the *Coutny* Court that he was
page 52 ] advised that the way to get his truck back was to
secure a warrant, and as many people do when you say "warrant," they attach the meaning of "criminal warrant" to it. Therefore he had two criminal prosecutions pending at the same time, one in the City and one in the County. My recollection is that the County matter had been disposed of prior to the trial in the City.

Q. Did you advise Mr. Woodward or Mr. Hillard about the statements made by Jordan pertaining to his having committed perjury?

A. I did not advise them by any written communication that have access to, and insofar as the record that was made in the Municipal Court, a copy was made, but it was made subsequent to the trial of the robbery case, and that delay, I believe, was due greatly to the court reporters being so busy.

Q. Did you or did other counsel within your knowledge have any understanding as to what charge ultimately would be pressed by the Commonwealth's Attorney, Moody Stallings?

A. Well, after I represented the defendants in the Municipal Court, Mr. Hillard was subsequently employed, as was Mr. Woodward. Mr. Hillard, as I understand it, had been counsel for Mr. Hoffler in business transactions in the City of Chesapeake and the City of Portsmouth. And subsequently they talked to Mr. Woodward, and at that point is when I
relinquished control of the case, I considered it,
page 53 ] to them. Now, when it came time to set the case,
I would advise counsel when it was set. It was continued several times, and I appeared and got the continuance. But so far as preparation of the case or further investigation or interviewing witnesses, I did none of that.

Mr. Ryder: That's all the questions I have, Your Honor.

## CROSS EXAMINATION

By Mr. Harp:

Q. Now, you were employed by both of these gentlemen to represent them initially, were you?

A. In the Municipal Court, yes.

Q. And in the County Court?

A. Yes, sir.

*Robert J. Parr*

Q. Now, you say that there was a transcript made of the County Court hearing, is that correct, or of the Municipal Court, which?

A. Municipal Court.

Q. And that hearing, if I told you that was held on the 9th of February in the year 1962, would that be roughly *when* you think it was?

A. My notes would show that date, I believe.

Q. All right. I have checked the warrant, and that is what it shows on the back.

page 54 ] A. Yes, sir.

Q. And you say you were unable to secure a copy of the transcript of that hearing until subsequent to the trial on the robbery charge because of the fact that the Court Reporter was busy?

A. I never requested the transcript for myself personally until some considerable time later when there were several other lawyers involved, and if I recall correctly, the transcript was brought to my office and immediately delivered to other counsel, and I could not tell you what counsel received it.

Q. Was it before or after the robbery trial?

A. I couldn't tell you that. My thinking is that it was afterwards.

Q. Do you have any notes that would show that?

A. I have no notes or no paid bills on paying for the transcript, because it was secured subsequently.

Q. Now, you say that there was conflict, however, in the testimony given at the Municipal Court and given at the Circuit Court by Joe Jordan, is that correct?

A. Well, there was a conflict in Jordan's testimony in the Municipal Court initially from that which he finally said was correct, and then when it came to the Circuit Court his testimoney was pretty much the same that he gave in the Municipal Court after he purged himself of perjury.

page 55 ] Q. Now, when Joe Jordan testified in the County Court, didn't he testify to the taking of the keys?

A. I don't recall that. The thing that impressed me was that he didn't want to press — to use his language — no charges, he just wanted to get his truck back.

*Robert J. Parr*

Q. I see. Now, these were two robbery warrants, is that correct?

A. There were robbery warrants in the City.

Q. That's what I meant, in the City.

A. And larceny warrants in the County.

Q. Now, in regards to the case in the City, do you recall when Mr. Hillard was employed?

A. No, I don't. I have correspondence with him that covers a period of a year or better, I would say.

Q. When was your first correspondence with him, about?

A. May I see my file?

Q. Sure.

A. September the 27th, 1962.

Q. That is your first correspondence?

A. That is my first written correspondence.

Q. Do you recall whether or not he was employed prior to that time?

A. Well, yes, he would have been employed prior to this time. It may have been a very short time, because

page 56 ] September the 27th I wrote to Moody Stallings with a copy to Mr. Hillard advising that the case was set for October the 16th, '62. The case had been previously set, and Mr. Hillard could not try it on the 16th of October of '62. And on November the 14th, '62, I wrote Mr. Hillard that the case was set for November the 20th, '62, and at that time I did not send a copy to Mr. Stallings.

Q. All right, now, when Mr. Hillard came into the case, you say he really took over, is that correct? He was the chief counsel?

A. When Mr. Hillard came into the case, I would say he was chief counsel, yes.

Q. And yet you had all the factual information available, didn't you?

A. That's — all the factual information that had been developed at that time, yes, which were the preliminary hearing —

Q. What was your expectation as to the trial?

A. Subsequent to Mr. Hillard's conversation to me and my advice that he was in it, Mr. Woodward was also in it, and during this period of time the matter was discussed, I am sure, at the time the motions for the continuances were made

and also discussed with Mr. Stallings concerning the case. And everybody knew, except the trial judge, from my impression of it, and my investigation, that this was an argument between some people who allegedly were dealing page 57 ] in illicit whisky, and it was commonly referred to as an argument between bootleggers. That was the common denominator, and it just wasn't anything to the charge of robbery.

Q. And Mr. Hillard advised you as to what Mr. Stallings had said about it?

A. I discussed it shortly with Mr. Stallings, and Mr. Hillard had talked with Mr. Stallings, because I knew that I was seeing Mr. Stallings as an attorney, going and coming practically every day. And it was my impression that Mr. Hillard had discussed it with Mr. Woodward. And we all agreed that there wasn't anything to the claim made by Jordan.

Q. In other words, you figured you were just going to enter a plea on an assault and battery charge, is that correct?

A. Well, I had no promise of that. I believe Mr. Stallings' words were generally this way: "Let's go down there and hear what they have to say about it, because" — he didn't say this, but this is the impression — that "we all know what it is, anyway." Of course, when you got to court it sounded a lot worse than when you talked across a desk.

Q. But it was the impression of you and your two associate counsel, then, as I understand it, that it was just an assault and battery matter, is that correct?

A. Well, that was my — if I may use the word — conclusion from the evidence and the statement of page 58 ] Jordan in the County Court and association with the case from the beginning till it was finally terminated.

Q. Nevertheless, you had made arrangements for a court reporter?

A. No, we didn't make arrangements for a court reporter at the Circuit Court hearing, we certainly did not.

Q. Where did the court reporter come from?

A. The court reporter came into the Municipal Court hearing intitially, and at that hearing Joe Jordan was represented by Mr. Anderson Maxie.

*Paul V. Massey*

Q. I am talking about the trial on the robbery trial. There was a court reporter present to take that down, wasn't there?

A. Yes, but I didn't, according to my recollection, make that arrangement. Mr. Woodward or Mr. Hillard, probably.

Q. I see. Now, did you prepare the papers to seek the writ of error which was subsequently granted by the Supreme Court of Appeals?

A. Mr. Woodward and I together.

Q. Did you assign as error that you had not had a sufficient preparation for the trial, sir?

A. No, sir.

Q. Did you take it up with Judge Godwin during the course of the trial when you saw the evidence developing

page 59 ] as it was, did you take it up with the Court?

A. We didn't take it up with Judge Godwin, but if you note in the record, there were several brief recesses in which some frantic phone calls were being made by counsel. I didn't make them, because I didn't know the people in Portsmouth, but Mr. Hillard went out, whether he made any phone calls, I gathered that he was trying to get some witnesses there that were material. I might say, had I known then like it developed later, I or Mr. Maxie or someone who was in the Municipal Court would certainly have been a witness, and someone who was in the County Court would have been a witness.

Mr. Harp: All right, thank you very much, sir.

Mr. Ryder: That's all the questions I have, sir.

(Witness excused.)

Mr. Ryder: Call Mr. Massey.

Whereupon,

PAUL V. MASSEY

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Sir, would you state your name, residence and occupation?

*Paul V. Massey*

A. Paul V. Massey, Deputy Sheriff, Suffolk, Virginia.

page 60 ] Q. Mr. Massie, did there come an occasion when you were in the County Court of Suffolk in February or March of 1962, when a charge against Hubert E. Hoffler of auto larceny of a truck by the use of a gun was heard?

A. Yes, sir, I was.

Q. Did you overhear or did you hear the testimony of the complainant, Joe Jordan?

A. Yes, sir, I did.

Q. What did the complainant, Joe Jordan, tell Judge Andrews with respect to the agreement that he had with Mr. Hoffler?

A. As best I remember, he had—Hubert Hoffler had purchased a pick-up truck from Joe Jordan and had paid him $110 or $115 and was supposed to pay him the balance later. Hoffler saw Jordan sometime later over on Freeney Avenue, I believe it was, to pay him the difference, and Jordan had decided not to sell the pick-up truck and had spent most or all of the money, and they got in an argument over the difference.

Q. Did Jordan say anything about whether or not he had been robbed with respect to this truck?

A. Not over there, no, sir.

The Court: Wait just a minute. Is this the testimony that he gave at the hearing that you were present?

The Witness: In the County Court, yes, sir.

page 61 ] By Mr. Ryder:

Q. Did Jordan say anything in the County Court as to whether or not Hoffler had robbed him?

A. He said he hadn't robbed him over there.

Q. Were you contacted by either Mr. — any of the attorneys for Ruben Pierce or Hubert Hoffler prior to the trial of the robbery charge here in Suffolk?

A. State that again.

Q. Were you at any time requested to be a witness or subpoenaed as a witness in the trial of the robbery charge in

Suffolk?

A. No, sir, not before today.

Q. Had you been subpoenaed, would you have testified as to the statements that Jordan made in the County Court?

A. So far as what took place in the County, yes, sir.

Mr. Ryder: That's all the questions I have.

CROSS EXAMINATION

By Mr. Harp:

Q. Is it my understanding that Joe Jordan testified he had not been robbed in Nansemond County?

A. Yes, sir.

Q. And you are a deputy sheriff of Nansemond?

A. Yes, sir. I had talked to the defendant in the jail prior to this trial at the time he was arrested.

page 62 ] Q. You had talked to — and exactly what did Joe Jordan testify to about that truck, now?

A. As best I remember, he had sold this truck to Hubert Hoffler for around $150 and he had paid him over a hundred, hundred and ten or fifteen, as best as I remember. He went back to finish paying him the money, and Jordan had decided not to sell the truck and had spent part or all of the $115.

Q. This is what Jordan testified?

A. This is what Jordan testified.

Q. Yes, sir. In the County Court of Nansemond County?

A. Yes, sir.

Q. What else did he testify to?

A. Basically that's all I remember.

Q. That's all you remember?

A. Yes, sir.

Q. Did Joe Jordan attempt to testify in the County Court of Nansemond County that he had been robbed of the keys to that vehicle?

A. I believe he did mention something about some keys, but it wasn't on Freeney Avenue.

Q. All right.

A. As best I remember.

Mr. Harp: Thank you.

page 63 ] Mr. Ryder: That's all the questions I have, Your Honor.

*Junius Paul Harmon*

(Witness excused.)

Mr. Ryder: *James Harmon.*

Whereupon,

JUNIUS PAUL HARMON

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Harmon, would you state your name, residence?

A. Junius Paul Harmon, 38 5th Street, Portsmouth, Virginia.

Q. How old are you, Mr. Harmon?

A. Twenty-six.

Q. Mr. Harmon, were you present at Coffield Brothers' Auto Parts on or about January the 13th of 1962 when *Reuben* Pierce and Hubert Hoffler and a Joe Jordan were present?

A. Yes, sir, I was.

Q. Did you overhear any conversation between them concerning a pick-up truck?

A. Yes, sir, I did. There was a conversation between Pierce, Mr. Hoffler, and this fellow Jordan or "Jerdan," whatever his name was. The conversation stemmed around—

page 64 ] it was some disagreement about the price of a truck, and I think there was some question as to whether or not Mr. Jordan was going to return the money or either hand over the title to the truck or something. It's been some time ago.

Q. What happened after the conversation with regard to handing over the title or the money?

A. As I recall it, I think they all left. I think Mr. Pierce and Mr. Jordan left together. I think Mr. Hoffler left shortly after. There was a—the reason I happened to notice it, I was under the hood of another car, and I heard Jordan say something about bringing the truck to Suffolk, "and I will give you your $115 back," something, and he raised his voice,

and then I think Mr. Hoffler raised his voice to him is the reason I happened to notice it.

Mr. Ryder: That's all the questions I have, sir.

CROSS EXAMINATION

By Mr. Harp:

Q. Now, you are employed at Coffield Brothers, are you?

A. No, sir, I am not.

Q. This conversation took place at Coffield's, did it?

A. Yes, sir.

Q. Where are you employed?

A. Local 87, Sheet Metal Workers of America.

Q. This is where you were employed at the
page 65 ] time of this conversation, is that correct?

A. Yes, that is correct.

Q. And do you remember definitely what date it took place?

A. No. That must have been three years ago.

Q. So you can't testify as to what date it took place, you just remember a conversation, is that correct?

A. It was, I'd say, in—it was in January, because I recall the time I put the motor in my wife's car.

Q. In other words, you were working on your wife's car at Coffield's?

A. No, sir, I was checking a motor out. I bought a motor from Coffield's which I put in the car, and I was trying to see if it was any good before I bought it.

Mr. Harp: That's all.

(Witness excused.)

Mr. Harp: Mr. McClenny.

Whereupon,

W. A. McCLENNY

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

*W. A. McClenny*

DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. McClenny, would you state your name and address?

page 66 ] A. William A. McClenny, 1008 Pennsylvania Avenue.

Q. Mr. McClenny, are you acquainted with Joe Jordan and Hubert Hoffler?

A. Yes, I am.

Q. Are you acquainted with the fact that Joe Jordan was the prosecuting witness for a charge of robbery involving the keys to a pick-up truck?

A. Yes, I am.

Q. That particular truck, do you have any knowledge as to what was the status of the title of that truck at or about the time the truck was sold — or this whole thing arose?

A. Yes. I had the title in my possession due to the fact that I had did some repair work on a Buick, and I was holding the title as collateral for the repairs on the Buick car until such time as Joe Jordan would produce the money to redeem the title for his truck, and, however, he was supposed to still be using the truck at the time.

Q. Do you have any knowledge concerning the payment of $115 by Mr. Hoffler or Mr. Pierce to Mr. Jordan?

A. Well, let me start at it this way: First a fellow named Gilbert Rollins came to me—

Mr. Harp: I object. That isn't responsive to the question. The question didn't ask him about Gilbert Rollins, if Your Honor please.

page 67 ] The Court: I think that objection ought to be sustained.

The Witness: Yes, I do have knowledge.

The Court: Wait just a minute. I don't think this is the right way to get at this.

Mr. Ryder: Let me ask it a different way, if I might, sir.

By Mr. Ryder:

Q. Have you ever had any conversation with Joe Jordan

concerning the payment of $115?

A. Yes. I'd like to tell just leading up to how it all came out.

The Court: No, we don't want you to do that. You answer it the way he asked.

The Witness: Yes, I do have.

By Mr. Ryder:

Q. What did Joe Jordan tell you with respect to the $115?

A. To the best of my recollection, I was talking to him sometime after this, and I asked him how he intended to—well, I got to put it in there that he was trying to sell it to the other fellow. I asked him how he intended for both people to pay for the truck and I am holding the title.

Q. Did you have knowledge, or were you advised that he was selling the truck to a third person, that is, a

page 68 ] man named Gilbert Rollins?

A. All in the sequence of time I did, yes.

Q. Was that during the course of your conversation with Joe Jordan?

A. Yes, when I was talking to Joe himself.

Q. And what did he say about the $115?

A. He said that he was—I asked him, "What are you trying to do, sell it to two different people?" He said, "I was going to make it all right."

I said, "How are you going to make it all right? I was holding the title for the money you owed me."

Mr. Harp: That is hearsay as far as Joe Jordan.

The Court: I don't think so. It has to do with his veracity, if that is material.

Mr. Harp: Note my exception, sir.

By Mr. Ryder:

Q. All right, you go ahead.

A. And that was after all the deal was consummated between everybody, and he said he was going to make it all right. I said, "I don't see how you can make it all right selling it to two different people at the same time."

Mr. Ryder: That's all the questions I have.

*Hubert Earl Hoffler*

Mr. Harp: No questions.
The Court: You are excused.

(Witness excused.)

page 69 ] Mr. Ryder: I'd like to call Mr. Hoffler.

Whereupon,

HUBERT EARL HOFFLER

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Hoffler, you are the petitioner in this case. Your residence now is Nansemond County Jail, is that correct?

A. Yes, sir.

Q. Mr. Hoffler, did you employ Mr. Woodward and Mr. Major Hillard to represent you in the robbery charge?

A. Yes, sir.

Q. Would you elate to the Court what was communicated to you by Mr. Hillard and by Mr. Woodward with respect to what the outcome of the trial was to be?

A. The day that I employed Mr. Hillard when he got in his car and came to Suffolk and he talked to the Commonwealth's Attorney, came back out, he said, "There is nothing to it." He said, "We have reduced it to simple assault. Everybody recognized it for what it is." And I asked him about it a number of other times during the time the case was being continued, and it was always the same thing, that he had talked to Mr. Stallings on
page 70 ] different occasions and it was the same thing. He said one time Mr. Stallings was at Chesapeake Court and he had spoke to him about the case and that there was nothing to worry about, it was just going to be a fine, he said, $50, $75, he said, hundred dollars at *tips* for simple assault. I didn't want to plead guilty to simple assault, it was self-defense, and he said it was cheaper to pay the $75—$50, $75 fine than it was to fight the trial. That went right

on to the morning of the trial. Of course, the case was continued a number of times, I think. Mr. Hillard was sick, I think, one time, and Mr. Woodward was in the hospital with a broken leg. When I originally employed him I talked to his secretary, who originally called the court and had it continued. It seemed someone was sick or had a case in on the docket at all times.

And the morning of the trial I told Mr. Hillard at the truck stop on Highway 15 and he told me he had talked to Mr. Stallings and he said it was all agreed on that I was going to pay a fine.

Q. Was there any conversation concerning material witnesses?

A. Yes, sir. I told him I had asked for the witness to be over here, and I said, "I had better try to notify him if we are not going to need him," and I tried to call some of them from the truck stop, the pay phone at the truck stop, and I located Coffield, but Douglas Coffield, I think, page 71 ] had already left at the time that I called there, and I called Mr. Harmon and told him to try to get in touch with some of the other witnesses, you know, to keep them from coming up here. And then on the way to Suffolk he said he had talked to Mr. Stallings that morning on the telephone and asked him about the jury, and he said, "We are going to waive jury."

We got to the court, I told him about if he was sure of it or not sure. I said, "We better make sure before we go into court on this thing," and he went to talk to Mr. Moody Stallings, and he said the judge wanted to hear a little bit of the case," and then Mr. Stallings is going to make his recommendation and we are going to pay the fine and that's it."

Q. Mr. Hoffler, you have heard the testimony of the witnesses that have testified here this morning. Were there other witnesses available at the time of the trial and before the trial within your knowledge that would have testified to the altercation at Coffield's and that would have testified to the altercation at Jordan's house, or where the alleged robbery took place?

A. Yes, sir, I told him that. He said we didn't need them. When I went to talk to Mr. Woodward the last time before

we went to court—well, before Mr. Hillard, I guess, had talked to him, I was over asking him about the witnesses, and I was getting the addresses and bring them over,
page 72 ] and he was going to have them all subpoenaed. And when he told me Mr. Hillard reached an agreement with Mr. Stallings and I said he was going to check that first, and he called Mr. Hillard and Mr. Stallings, and I asked him about the witnesses, and he said, "Just forget it. Everybody knows it for what it was."

Q. Would you have waived trial by jury for this alleged offense?

A. No, sir, under no set of circumstances.

Q. Are you acquainted with a man named Joe Lewis?

A. No, sir. I have seen him, but I don't know him.

Q. Where did you see him?

A. At that Crumper's Lane where this Jordan took us around, supposed to be taking us around to get the $115. Came in, some other Colored people were standing on the porch there and inside the house. I doubt if I'd know him if he came in here. I don't think I'd recognize him.

Q. Were you present in my office when an affidavit was made by Joe Lewis concerning what he saw?

A. Yes, sir.

Q. With respect to the altercation that Jordan said he was supposedly robbed?

A. Yes, sir, I was present there, but wasn't in the same car with him.

Q. Did you communicate to your attorneys that
page 73 ] this individual, Joe Lewis, was there?

A. Oh, yes, sir. I told him I had a number of witnesses. I called them all off to them. But they said we didn't need them.

Q. Is this the affidavit that was made by Mr. Lewis?

A. Yes, naturally. I couldn't say word for word, but that was essentially what was said.

The Court: Is this the one we had before?

Mr. Ryder: No, this is another one. I recognize it is hearsay, but I offer it for the purpose of showing not that the contents of it are necessarily true, but that had an adequate

investigation been made of this matter prior to the trial that this witness, among others, would have been available.

Mr. Harp: I object, of course, if Your Honor please. I think it's clear hearsay.

Mr. Ryder: I agree with you that it is hearsay, but I think it is material to show lack of adequate representation.

Mr. Harp: The best evidence of that is the witness himself, if Your Honor please. This one is not dead so far as I know.

The Court: Objection is sustained.

Mr. Ryder: Your Honor, I would like to have
page 74 ] it in the record, if I might, sir.

The Court: Yes. We will call this one B.

(The affidavit referred to was received in evidence as Petitioners' Exhibit B.)

By Mr. Ryder:

Q. At any time, Mr. Hoffler, did your counsel endeavor to talk to any of the witnesses that were available?

A. No, they said we didn't need them.

The Court: That didn't answer the question.

By Mr. Ryder:

Q. Did you attempt to talk to them, within your knowledge?

A. No, sir.

Q. And did you advise them of the names, that there were many witnesses available?

A. Yes, the names and addresses of some, and I went to get the addresses of some of the others. I didn't know their exact address and had to find it.

Q. Is that when you were advised that they were not necessary?

A. Yes, sir.

Mr. Ryder: That's all the questions I have.

## CROSS EXAMINATION

By Mr. Harp:

page 75 ] Q. It was my understanding that it was your theory of this particular situation that it was a

case of self-defense, is that right?

A. That's the way I felt about it.

Q. All right. Now, is it my understanding, sir, that on the morning of the trial your attorney, Mr. Major Hillard, Jr., came out of the judge's chambers at the old courthouse, or out of one of the rooms over there, and said that it was just going to be an assault and battery charge and the judge wanted to hear a little bit of evidence, is that correct?

A. That's right.

Q. That's what he told you?

A. Yes, sir.

Q. Is that what he said the judge had told him?

A. No, he didn't say who told him.

Q. He didn't say who told him?

A. No, sir, I don't think he was in the judge's chamber. I don't know where he went. I was in the courtroom, and he came in the courtroom. He told me, he said, "It's not going to be anything to it. It's going to be reduced to simple assault." He said, "He wants to hear a little bit of the evidence before Mr. Stallings makes his recommendation, and that's it.

page 76 ] Q. Do you recall that day that you employed Mr. Hillard and you all drove over here in Mr. Hillard's car and talked to Mr. Stallings?

A. Yes, sir.

Q. What did Mr. Hillard say specifically when he returned to your motor vehicle as to what Mr. Stallings had said?

A. He said, "Moody recognized it for what it was." He called him "Moody." His exact words, then was "between two bootleggers," is what he listed as. He said, "There is not going to be anything to this.

Mr. Harp: That's all.

Mr. Ryder: I have no further questions.

(Witness excused.)

Mr. Ryder: Your Honor, for the record, I would like to recall one witness.

*Junius Paul Harmon*
*Ruben Pierce*

Would you call Mr. Harmon again, please?

Whereupon,

JUNIUS PAUL HARMON

was recalled to the stand on behalf of the petitioners and, being previously duly sworn, was examined and testified further as follows:

REDIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Harmon, at my request over the last two or three weeks, at my request have you been endeavoring to locate a man named Joe Lewis?

page 77 ]

A. Yes, sir, I have.

Q. And have you spent considerable time attempting to locate him?

A. Yes, sir, I have.

Q. And have you been able to find him?

A. No, sir, I have not.

Mr. Ryder: That's all the questions I have.

Mr. Harp: No questions.

(Witness excused.)

Mr. Ryder: Call Mr. Pierce.

Whereupon,

RUBEN PIERCE,

was called as a witness on behalf of the petitioners and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Pierce, would you state your name and your age?

A. Ruben Pierce, age, 56.

Q. Mr. Pierce, you are a resident of the Nansemond

County jail, is that correct?

A. That's correct.

Q. You were convicted of robbery in this court?

A. That's correct.

page 78 ] Q. Mr. Pierce, what education have you had, sir?

A. I don't have very much education. It's very little.

Q. Did you go as high as the third or fourth grade?

A. Somewhere about the third or fourth, part time.

Q. Can you read and write?

A. I can write just a little, my name and stuff like that. I can't read and spell words correct.

Q. Mr. Pierce, the employment of Mr. Woodward and Mr. Hillard to represent you and Mr. Hoffler, did you pretty much leave that up to Mr. Hoffler?

A. I did.

Q. Did you ever have any specific conversations with them about the trial?

A. Well, I was present once or twice when a few words was—some things was spoken. Not all the time. Not every time Mr. Hoffler was present with the lawyers.

Q. Did they ever tell you anything about what the outcome was going to be?

A. Said it would be nothing to it.

Q. That is the attorneys?

A. Yes, sir.

Mr. Ryder: That's all the questions I have of this witness.

Mr. Harp: No questions.

(Witness excused.)

page 79 ] Mr. Ryder: Your Honor, may I have just a moment? If I could have about a five-minute recess.

The Court: Take a 5-minute recess, yes, sir.

(Whereupon, a short recess was taken.)

Mr. Ryder: Your Honor, with the exception that I desire

to introduce the testimony of Joseph Jordan, the complaining witness in the trial of the matter in the Suffolk Court on the charge of robbery—I would like to introduce that as part of the Petitioners' case—other than that we would rest.

The Court: Do we have that here?

Mr. Ryder: Yes, sir, I have a copy of his testimony.

The Court: Oh, you have it in the record?

Mr. Ryder: I believe it is in the original record in the Clerk's Office, if Your Honor please.

Mr. *Har*: You mean this (indicating appeal record)?

Mr. Ryder: I believe, Your Honor, it begins on page 12 and goes through page 24. And I offer it, Your Honor, the portions of it dealing with the testimony of Jordan as to the $115 paid to him, as to the purpose of the trip to Coffield's, as to the purpose for leaving Coffield's and related matters.

The Court: Any objection?

Mr. Harp: If Your Honor please, first we would like to move the entire record of the trial into evidence.

page 80 ] You have it before you: It is Supreme Court Record 5766 and 5767, and I'd like to move that into evidence in this proceeding, sir, first, and ask that it be marked as a Respondent's exhibit.

The Court: Is this the only one you have? Do you have one for the Court?

Mr. Harp: I borrowed this from the Supreme Court of Appeals. It is on loan.

Mr. Ryder: I have a copy here.

The Court: Call it Exhibit No. 1.

(The document referred to was received in evidence as Respondent's Exhibit 1.)

Mr. Harp: Call Mr. Hillard.

Whereupon,

MAJOR M. HILLARD, JR.,

was called as a witness on behalf of the respondent and, being previously duly sworn, was examined and testified as follows:

*Moody Stallings*

DIRECT EXAMINATION

By Mr. Harp:

Q. Just for the record, would you please state your name again, please?

A. Major M. Hillard, Jr.

Q. Now, Mr. Hillard, during the course of the trial in this case, do you recall whether or not at a recess you talked to a Douglas Coffield?

page 81 ] A. I talked—spoke to him—to one of the Coffield boys in the hall. I don't know whether it was a recess or not.

Q. Do you recall what you told him?

A. I told him we couldn't use him.

Q. I see. Now, let me ask you this question: Just before the trial, did you tell your client, Mr. Pierce, that the matter was just going to be an assault and battery matter and that the judge just wanted to hear a little evidence?

A. Well, I told him the same thing I told Hoffler.

Q. What did you tell Hoffler?

A. That I thought that was all it was going to amount to.

Q. Did you tell him this just before trial?

A. Yes, sir.

Mr. Harp: That's all. This witness may be excused, if Your Honor please, and so may Mr. Parr. I don't think I will need him.

(Witness excused.)

Mr. Harp: Mr. Stallings.

Whereupon,

MOODY STALLINGS,

was called as a witness on behalf of the respondent and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

page 82 ] By Mr. Harp:

Q. Would you please state your name, address, and occupation?

*Moody Stallings*

A. I am Moody Stallings. Business address, 129 North Saratoga Street, Suffolk, Virginia. I am an attorney and have been Commonwealth's Attorney for 7 years.

Q. And did you prosecute the matter of *Commonwealth* v. *Pierce* and *Commonwealth* versus *Hoffler,* which is under discussion here today, sir?

A. Yes, sir.

Q. Now, do you recall having any discussions—whether or not you had any discussions with Mr. Major Hillard, Jr., who represented those two gentlemen?

A. Yes, sir.

Q. Prior to trial?

A. Yes, sir.

Q. Would you tell us what the purport of these discussions were, sir?

A. Mac came to my office, I think one of the times we were continuing the case, and told me that Mr. Hoffler had to appear in Federal Court and wanted a continuance. I suggested to him that we get an order on it, because there had been several terms in which we hadn't had an order continuing this case. At that time he said, "I don't think it's any-
page 83 ] thing but assault and battery," and I told Mac, as I told Mr. Parr and everybody else repeatedly, I said, "It might not be, but with this man's record I am going to have to try—

Mr. Ryder: Your Honor, I object.

The Court: Objection overruled.

The Witness: With this man's record, I am going to have to try it and let the judge decide.

By Mr. Harp:

Q. I see. Now, do you recall whether or not you were approached by Mr. Hillard on the morning of the trial in regard to this case?

A. Yes. That morning I was sitting at counsel table with Major Hillard, and he learned over the table and said, "We will give you a plea of guilty on assault," and I repeated, "Mr. Hillard, with this man's record, we will have to put it on and let the Court decide."

Mr. Harp: Your witness.

*Major M. Hillard, Jr.*

CROSS EXAMINATION

By Mr. Ryder:

Q. When you were sitting across the table from Major Hillard or at any other time did you say something to the effect, "It's just an argument between two bootleggers, it was just a case of simple assault"?

A. No, but they stated it.

page 84 ] Q. I am talking about what you said to them.

A. Yes, sir.

Q. But on every occasion you spoke to them you told them that because of this man's prior record you would have to present the case to the court, you at no time talked to them—I am talking about what you said to them—you at no time said to them, "It is a case of assault, just an argument between a couple of bootleggers?"

A. No, sir.

Mr. Ryder: That's all the questions.

Mr. Harp: That's all.

(Witness excused.)

Mr. Harp: Respondent rests, if Your Honor please.

Mr. Ryder: I would like to recall Mr. Hillard.

Whereupon,

MAJOR M. HILLARD, JR.,

was recalled as a witness on behalf of the petitioners in rebuttal and, being previously duly sworn, was examined and testified as follows:

REBUTTAL DIRECT EXAMINATION

By Mr. Ryder:

Q. Mr. Hillard, would you state your name for the record, sir?

A. Major M. Hillard, Jr.

page 85 ] Q. Mr. Hillard, during your conversation with Moody Stallings, the Commonwealth's Attorney, did he at any time say to you, "I am going to have to sub-

mit this matter to the Court because of this man's prior record?" I assume he was talking about Mr. Hoffler.

A. No, sir. If he did, I don't recall it.

Q. Did Mr. Stallings say to you something to the effect, "This is an argument between two bootleggers, it is nothing but a case of simple assault. Let's just try it to get it off the docket?"

A. No, he told me that in his office when I discussed it. He said, "It is just a fight between two bootleggers is all it amounts to," as far as he could see.

Q. It is that what he said to you?

A. Yes, sir.

Q. Not what you said to him?

A. That's what he said to me in his office.

Q. Did he repeat it on more than one occasion?

A. I don't recall—no, sir, I don't think so. That was when we were winding up the conversation in regard to the matter.

Mr. Ryder: That's all the questions I have.

Mr. Harp: I have no questions.

(Witness excused.)

page 86 ] Mr. Ryder: That's all the evidence we have, Your Honor.

The Court: Any further evidence?

Mr. Harp: No, Your Honor, the respondent has no further evidence.

The Court: Do you all want to argue it now?

Mr. Ryder: Your Honor, I am prepared to, sir.

(Arguments were made by counsel for either side.)

(Whereupon, a 20-minute recess was taken, following which a luncheon recess was taken, reconvening at 2:36 o'clock, p.m., when the following proceedings were had:)

The Court: The appearance that this case gives to me, I will give you all the benefit of what I am thinking so you can have that for the record, whatever good it may do.

Of course, I am not here to determine whether there was

enough evidence to convict these defendants or whether the Judge Godwin made an error, or certainly not whether the Court of Appeals made an error. The case comes here on an allegation or a contention that these defendants have been deprived of some constitutional right which they should have preserved to them in the trial of this case. And this boils down, as I see it, to two propositions, the first of which is that the defendants waived the jury trial on the advice of counsel, which was given to them under the belief that they were going to be tried and

page 87 ] convicted, at the worst, of a misdemeanor. And I don't think it is any particular use to discuss that by itself, because the same sort of reasoning applies to the other contention, that they did not have the witnesses that were material to the cause and which were available to be called and which possibly would have produced a different result.

As I understand it, the defense relies most strongly on the case of *Jones* against *Huff*. The Virginia case of *Whitley* v. *Cunningham* doesn't seem to me to be in point at all. And I was under the impression, a tentative sort of a thing that the case that I referred to of McGrady was pretty persuasive in this instance, making a distinction particularly about whether the defendants had employed their own counsel or not. That would seem to not be entirely true, in view of *Jones* v. *Huff*, where it appears that the petitioner employed counsel himself. So that even though counsel is employed by a defendant, if he actually deprives the defendant of constitutional rights, according to *Jones* v. *Huff*, the defendant would be entitled to have a judgment on application for a writ of *habeas corpus*.

A careful examination of *Jones* v. *Huff* indicates, in the first place, that no final judgment was ever entered. It was reversed because the Court refused to have a hearing on it. And in addition to that, it would appear that

page 88 ] the allegations contained in the petition indicates a positive and an almost willful misconduct on the part of the attorney.

He further says that he gave his attorney the names and addresses of several persons who could prove that he was not guilty of the charge against him and that the attorney refused to call these witnesses. He says he requested the at-

torney have a handwriting expert present at the trial in order that he might prove his innocence to the charge of forgery, but the attorney offered no defense.

Of course, we don't know what the Court would have done —I don't know what it did do after it was reversed and sent back for a hearing. But as I see the facts in this particular case, these defendants not only had one attorney, they had three, and according to all of the evidence, they were thoroughly competent and experienced in the trial of this kind of a case.

And as far as Mr. Parr is concerned, his statement is that he retired to the background somewhat after he had familiarized himself with the case much more than anybody else apparently did, by attending two hearings and particularly a hearing in which Mr. Jordan had engaged in some obvious perjury, and yet when he appeared at this trial, he didn't call that to his associates' attention, or at least he didn't take any positive action in re-
page 89 ] spect to this, and it is a little difficult to understand, because the defendant has claimed he is not guilty of anything. He says he did this in self-defense. And his evidence of perjury on the part of Jordan would seem to me to be very pertinent to that issue, as well as it would be to the felony charge.

In regard to Mr. Woodward, there seems to be a little bit of conflict between these attorneys about this thing. As I understood Mr. Hillard to say, he also kind of somewhat retired to the background and depended on Mr. Parr and Mr. Woodward to summons the witnesses, and he didn't make any effort in this respect at all.

But anyway, Mr. Woodward realized what the situation was, because when he got here that that morning he objected to going ahead with the case, because he knew it wasn't prepared and the witnesses weren't here. But apparently he gave in and did go *a head* with it, and nothing was said to the judge. I was listening to this testimony particularly. I didn't want to ask the question, but I was hoping one of you all would ask it, and you did not, and I finally looked at the record and I find out that—one thing I wanted to know, whether counsel made an opening statement to the Court, and the record shows that they did, both sides made an opening statement to the Court. They didn't wait until the final argument, they made an opening

statement.

So now we come to Mr. Hillard, and Mr. Hill-
page 90 ] ard admits that at least twice he tried to get the Commonwealth's Attorney to agree and was unsuccessful, and then we get into a little dispute about what happened, how it was going to be presented. He said there wasn't going to be anything to it and it would result in a conviction for a misdemeanor, leaving him under the impression that that was the most the Commonwealth's Attorney was going to ask for.

Well, the Commonwealth's Attorney just flatly contradicts that. He says that isn't so. He told him all the time he was going to insist upon it being presented to the judge on account of these defendants' records.

Now, this wasn't a case where no real investigation was made. Apparently people knew what had gone on here, they knew something about these facts, and they knew who these witnesses were, and when the defendant got on the stand, he indicated that a lot of them had already been called. Then that morning he had begun to get on the telephone and tell them not to come.

And then he wouldn't want to found a case on it, but rather it is one of these kinds of things you read between the lines:

One of these witnesses was put on the stand and asked if he was here, and he said, "Yeah."

"And why did you leave?"

"Because counsel told me they couldn't use me."

page 91 ] The judgment will have to be—I would be very reluctant to award a writ in this kind of a case. It seems to me it would open the door to all kinds of carelessness, to say the least, and I don't want to punish defendants on account of what an attorney may do, but it just doesn't seem to me that I can award a writ in this case. It is denied, and give a judgment for the respondent.

Now, whether you can get any other kind of a hearing, like a pardon or whatever else you may think you are entitled to is something I don't have anything to do with, but judgment is for the respondent on this writ.

Mr. Ryder: Judge, we would except to the Court's ruling, sir.

Mr. Harp: I would take it you desire me to prepare an order and get Mr. *Rider* to attach his signature to that.

The Court: I suppose they are in custody.

Mr. Harp: Yes, sir, they are in custody, sir.

One matter I would like to call to the Court's attention, if Your Honor please. These men are presently incarcerated here. With your permission, I would like to make arrangements to have them sent over to the penitentiary on the next trip the bus comes down through here, if that's all right. They should be in the Superintendent's custody as it is, and it will probably be some days before we can

page 92 ] get an order entered.

Mr. Ryder: Your Honor, we, of course, intend to appeal Your Honor's decision to the Supreme Court.

The Court: Does it make any difference where they are?

Mr. Harp: Yes, I think they should be in the Superintendent's custody.

The Court: I think they better be in Richmond. You are located in Richmond, aren't you?

Mr. Ryder: Yes.

Mr. Harp: All right, I will make arrangements to have them sent to Richmond.

(Whereupon, at 2:49 o'clock, p.m., the hearing in the above-entitled matter was closed.)

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Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, This 19th day of February, 1965.

WM. S. HOLLAND, Clerk

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A Copy—Teste:

H. G. TURNER, Clerk.

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