Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

202 VA 417

Record No. 6249

In the
Supreme Court of Appeals of Virginia
at Richmond

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY

v.

MILTON LEE WEBB

FROM THE CIRCUIT COURT OF NORTHUMBERLAND COUNTY

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.

Record No. 6249

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 13th day of October, 1965.

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

against

MILTON LEE WEBB, Defendant in error.

From the Circuit Court of Northumberland County
John E. DeHardit, Judge

Upon the petition of C C. Peyton, Superintendent of the Virginia State Penitentiary, a writ of error is awarded him to a judgment rendered by the Circuit Court of Northumberland County on the 26th day of April, 1965, in a certain proceeding then therein depending wherein Milton Lee Webb was plaintiff and the petitioner was defendant; no bond being required.

RECORD

★ ★ ★ ★ ★

page 7]

★ ★ ★ ★ ★

PETITION FOR THE WRIT OF *HABEAS CORPUS AD SUBJICIENDUM*

To: The Honorable Robert L. Young, Judge of said Court:

On this — day of ————, 1963, comes by mail, your aggrieved petitioner, MILTON LEE WEBB, hereinafter referred to as petitioner, and in obedience to Section 8-596 of the Code of Virginia, as amended, petitioner respectfully states unto this Honorable Court that he has not filed, nor had filed, any petitions in any Court of the State of Virginia, at any time during his confinement in the Virginia State Penitentiary, comes now, and presents, in his own proper person, his petition for the extraordinary Legal Remedy, provided for by Statute and the Constitutions of Virginia and the United States, and humbly states and avers in humble complaint that he is illegally and unlawfully confined and restrained of his liberty and held in unlawful detention by the Respondent hereof; who by virtue of his office and appointment by the Executive Authority, is the Superintendent of the aforesaid Penal Institution of Virginia.

The void color of authority in law by which your petitioner is unlawfully detained and restrained, consist of, to-wit: "Denial of Due Process of Law and the Equal Protection of the Law," as guaranteed all citizens of the United States by the Federal Constitution, and the Constitution of the Commonwealth of Virginia.

Whereas, the void color of authority exists in the fatal indictment and Order of Conviction and sentence, which are based upon proceedings had in violation of Your Petitioner's Right to Due Process of Law and the Equal Protection of the Law, and the deprivation and invasion of your petitioner's Constitutional Rights while upon trial and before his trial on July 7, July 23, and July 24, 1953, said trial held in the

page 8] Circuit Court of Northumberland County, Virginia, where a sentence of forty (40) years was imposed upon your petitioner for the crime of Murder in the first

degree of 1 Arthur M. Purcell, said crime alleged to have occurred or committed on June 8, 1953, in the County of Northumberland, Virginia, of which trial, conviction and sentence are void, according to the United States Constitution, and the Constitution of Virginia.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 1, Section 8, of the Constitution of Virginia, Clauses therein:

"... he shall not be deprived of life or liberty except by the law of the land, or judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself..."
"... to call for evidence in his favor."

Amendment 14 of the United State's Constitution, Clauses therein:

"... no State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without Due Process of Law; nor deny to any person within its jurisdiction the equal protection of the laws."

PRELIMINARY STATEMENT

This case is before this Honorable Court for the issuance of the Writ of *Habeas Corpus ad subjiciendum,* because of a trial of a certain type, which was very much foreign to the proper procedure *to the proper procedure* of Court-room Ethics and Morals.

Petitioner was arrested, Indicted, tried, convicted and sentenced for a crime he did not commit. The offense allegedly committed was MURDER IN THE FIRST DEGREE, whereas petitioner was accused of, to-wit: "That Milton Lee Webb, on the 8th day of June, *nine* hundred and fifty-three, in the County of Northumberland did kill and murder one Arthur M. Purcell, against the peace and dignity of the Commonwealth."

Petitioner was arrested solely on the "information" of an aged Negro Female, who is allegedly said she saw petitioner "near the place where the murder took place about the time of the murder." No one positively saw petitioner commit the of-

fense of which he is erroneously charged. But on the flimsy information of this aged negro woman, petitioner
page 9] was arrested, without a warrant, lodged in jail, where he was confined without a warrant being served on him at any time, up until the present date, unmercifully questioned, taken out of jail at approximately midnight one night, and taken to what petitioner learned was the Commonwealth's Attorney's Office and was told by the Prosecutor, or Commonwealth's Attorney, "Now Milton, the reason I didn't have you here earlier is because I have terribly busy, and this is the first time I have had to talk with you, but I want to help you. I know you are young, and don't fully understand the gravity of the charge against you. Now you tell me the truth, and I promise you that I will personally see that you only get the rare minimum sentence for a Manslaughter charge." With that, the said Attorney for the Commonwealth began to question petitioner, and he tried in every way he could to lead petitioner to say that he had used some instrument to murder the said Arthur M. Purcell, and when that did not work, he threatened petitioner with possible life in the penitentiary if he did not be sentenced to the electric chair. This line of questioned conversation occurred from approximately midnight, until approximately day-break. After the interrogation, the Attorney told petitioner that he would be sorry that he did not do as he, the prosecutor told him to do, and told petitioner, if you don't think I am going convict you, you just listen, and with that, he turned some dials on a Tape-Recorder and petitioner could hear some of the things he had just said. However, when petitioner first entered the office, petitioner did not know said tape recorder was there and turned on to Record what was said. Petitioner was held in said jail for three days before he was permitted to have visitors or to contact an attorney, and during those three days, petitioner was unmercifully questioned, threatened and intimidated in an effort to get petitioner to say what weapon he had used to kill the said Arthur M. Purcell and where was the weapon at that time. When petitioner was first permitted to have visitors, he told his Father what had taken place since he had been confined in jail, and requested his father to get him a "good lawyer" as he felt
page 10] that he was being "Framed" from the way things were going. Petitioner's father promised petitioner that he would get him a "Good Lawyer" and left the jail. Upon his return, he told petitioner that he had talked to two lawyers, and they wanted $800.00 to represent petitioner, and if they received that amount, they would see to it that petitioner did not get any time for the alleged offense. Petitioner's father

did not have the $800.00 to pay, and the attorneys stated that they could not handle the case for anything less. Therefore, petitioner could not obtain counsel of his own choosing.

Petitioner was taken before the bar of the Circuit Court of Northumberland County, Virginia, and pleaded not guilty. Part of the evidence was given, and the Court adjourned until the next day, and the Jury was told something that petitioner could not understand, as the Judge spoke to them in a very low voice, and at that, one of petitioner's lawyers said something to the Judge, and the Judge called the Commonwealth's Attorney over and petitioner's other lawyer just sat in his seat, and the Judge, petitioner's lawyer and the Commonwealth's attorney went into a room off from the Judge's seat, and remained in that room approximately three minutes, and returned to the Courtroom, and the Judge spoke again to the Jury, and they filed out, with the spectators of the Courtroom, and petitioner distinctly heard a lady say, "Herbert, is it all over," and one of the male jurors said, "No, we have to come back tomorrow and finish it, but they could have finished today." Then the Lady said, "Will he get any time?" At that, they had passed out of petitioner's hearing, and he could not hear the male juror's reply. All during that day's trial, and the trial of the next day, each time the Attorney for the Commonwealth addressed the Jury, he would say that he had "A Confession on Tape" that petitioner had made and signed, but he never did re-play the tape so the Jurors could hear petitioner's alleged confession. After the trial, when the Jury had retired to the Jury room to reach its verdict, one of the jurors came back into the Court room three or four times to ask the Judge about how much time they could sentence petitioner to, and on one occasion, they asked the judge about petitioner's

page 11] parole *elibility,* and the Judge said, "If you want him to pull ten years, then give him forty years, and he will be paroled in ten years." The Juror returned to the Jury room, and within two minutes from the time he left the Court-room, the Jury filed out of the Jury room, and when the Foreman read the verdict, the jury had "ascertained and fixed petitioner's punishment at forty (40) years—just as the judge said. When the Judge made the aforesaid remark, the Attorney prosecuting for the *Common*-said, to no particular one, but loud enough for the Court to hear, and everybody in the court to hear, "that is not enough to give him." Thereby, petitioner was sentenced to forty years in the Virginia State Penitentiary.

STATEMENTS OF FACTS

On or about June 8, 1953, petitioner visited the residence of one Arthur M. Purcell, for the purpose of borrowing some money. In course of conversation regarding the money, an argument ensued over some other matters, relatively less important, to petitioner, than the money, and petitioner said to the said, Arthur M Purcell, "Aw, blow it out . . ." and "let me have the money, or let me get the h--- out of here. The said Arthur M. Purcell was between petitioner and the door, and as petitioner made the aforementiond statement, said Arthur M. Purcell, swung at, and hit petitioner with his fist, and told petitioner, "Boy, you don't know who you are talking to, do you? I'll beat your d--- brains out and pay for you. He hit petitioner and petitioner countered with a blow with his fist, and this seemed to enrage the said Arthur M. Purcell, and he begun to fight, and was talking all the while, and told petitioner, "You are in my house, and I'll either beat h--- out of you, or I'll blow your brains out." Petitioner and just about everyone who knew the said Arthur M. Purcell, knew that he kept a revolver there always laying on a table, and he had shot at several persons, but petitioner does not know definitely if he has ever shot anyone or not, so petitioner, while protecting himself, said, "Man, I don't want to fight you, just let me get out of here, but he acted as if he did not hear petitioner and kept fighting," at that, petitioner decided that if he were to get out of that room alive, he had to fight his way out, and fearing for his life, or in fear of great bodily harm or injury, petitioner began to fight back at the said Arthur M. Purcell, in an effort to get out of the room, as there was only way, and that was through the door, and the said Arthur M. Purcell was between petitioner and the door, and petitioner knew if the said Arthur M. Purcell was permitted to reach his gun before petitioner could get out of the room, he would get shot. During the fight, petitioner landed a blow, with his fist, that knocked the said Arthur M. Purcell down on the floor, and as he fell, petitioner began, speedily, to move out of the room, and as petitioner was leaving the room, the said Arthur M. Purcell was cursing and getting up moving toward the table where the gun was, and petitioner distinctly heard him say, "I'll blow your damn brains out." But petitioner *dis* not stay there to see if he meant what he said or not, for this man had the reputation of "Shooting at people" and petitioner did not care to be shot, so petitioner left and left as fast as he could. But, when petitioner left the residence of the said Arthur M. Purcell, the said Arthur M. Purcell

page 12]

was very much alive.

Approximately three days later, petitioner was stopped by the Sheriff and asked, "Do you know Arthur Purcell, the fellow that loans money?" Petitioner answered, "yes." The Sheriff and another officer was together, and the other officer asked petitioner, "did you ever have any trouble with him.?" Petitioner answered, "yes, we had a fight a few days ago, and I landed a lucky punch and knocked him down and ran as he tried to get his gun. He said he would "blow my damn brains' out, but I did not stick around," The Sheriff, then asked petitioner, "What did you hit him with?" Petitioner said, "we did not hit each other with anything but our fists, it was a fist fight." Then the Sheriff and the other said, almost simultaneously, you better come with us. They had no warrant, and they did not tell petitioner what they were arresting him for, and they carried *petitionerand* lodged him in jail. After petitioner was placed in jail, the Sheriff came and asked petitioner, "What did you hit Arthur Purcell with? Now, mind you, I want the truth and I want it straight." Petitioner replied, "As I told you and the other officer, we had a fight and neither of us hit the other with anything but our fist. Now, what is this about? Did he have me arrested? If he did, I want a warrant for him too, for he hit me first, and he was between me and the door, and I had to fight to get out, or he may have beat me up, or even shot me if I had let him get to his gun before I got out of there." The Sheriff told petitioner, "no he did not have you arrested." Then petitioner asked the Sheriff, "What have you got me locked up here for, then?" The Sheriff told petitioner, "You let me ask the questions and you furnish the answers. Now start at the beginning and tell me exactly what happened at Arthur Purcell house, and I want it straight!" Petitioner then related what had happened as it is stated in this, petitioner's "Statements of Facts." When petitioner had finished, the Sheriff told petitioner, that is not the truth and you know it, then he came over and grabbed petitioner "in the collar" and yanked him up, and said, "I want to know what you hit Arthur Purcell with, and I want to know what you did with it!" Petitioner was at that time just twenty-one years of age, and had been taught to respect his elders and officials, but when the Sheriff "Collared" petitioner, petitioner told him in no *uncertained* terms, "You had better turn me loose and talk to me like a man, or you will wish you had." The Sheriff then said, "Don't get smart with me, for I will *be* your head in with my blackjack, and if you don't tell me the truth, I might just do it any-

page 13]

how." Petitioner knew then that he did not have any chance to win, so petitioner told the Sheriff, "How about calling my father for me, and tell him that I am in jail and tell him what I am in here for?" But the Sheriff told petitioner, "I am not going to call anybody until you tell me the truth. Now if you want daddy, tell me the truth, and I will call him or anyone else you want me to call, but not before." That is when petitioner refused to answer any more questions. After two or three more attempts to get petitioner to talk, and petitioner page 14] refused, the sheriff left. Petitioner did not have anyone to bother him anymore until it was "feeding time" and the Sheriff came and fed petitioner, and while petitioner was eating, the Shriff asked petitioner, "Are you ready to tell me the truth now?" Petitioner said, "I am eating now." The *Sheriff waited* until petitioner finished eating, and called two more men in with him, and then he told petitioner, "We are going to get the truth out of you if we have to beat it out of you" and all three of them pulled their blackjacks out. Petitioner said, "I know that I cannot stop all three of you from doing anything you want to me, but if you hit me, you better kill me. I don't know what I am being locked up for, and I don't want anyone beating on me." Petitioner was questioned that night, the following day, and some that following night, then was permitted to go to bed. However, at approximately midnight, of the second day that petitioner was in jail, he was taken out of jail, and taken to the Office of the Commonwealth's Attorney, and questioned until just about dawn of the following morning. Then after the Commonwealth's attorney couldn't get petitioner to say what he wanted him to say by making "good" promises, he tried to intimidate petitioner, and even threatened petitioner with the electric chair. Then, when none of it caused petitioner to "confess" he told petitioner that he had what had been said during the questioning, and he played it back so petitioner could hear it. The Commonwealth's Attorney had recorded what petitioner had said on a Tape Recorder. But the funny thing about it was, petitioner could hear what petitioner said, but he did not hear the Commonwealth's Attorney's words. And it was at this questioning session that petitioner learned for the first time that the aforementioned Arthur M. Purcell was dead, and petitioner was charged with his death. Petitioner did not kill the said Arthur M. Purcell, for he was alive and trying to get to his gun when petitioner left, and petitioner told the Commonwealth's attorney just that. Petitioner was questioned several more times during the time he stayed in jail. Petitioner was questioned several times under threats of bodily harm, and of being sentenced to

the electric chair.

page 15] When petitioner was taken to court on Thursday, July 23, 1953, The Sheriff took petitioner to where his attorneys were sitting, and said, "here is your man." The lawyers greeted petitioner friendly and said, "Well, this is it. Don't build your hopes up too high, for anything can happen, and may happen." As the trial proceeded, things seemed to be going against petitioner. Oftentimes, the attorney prosecuting for the Commonwealth, would say something, and if petitioners objected to it, the Judge would overrule them without giving them a chance to explain why they objected to it. And, when it was petitioner's attorneys turn to be examining a witness or be talking, one of the attorneys prosecuting for the Commonwealth would object, and almost as soon as he would say, "I object" the judge would say, "Sustained," and petitioner's attorneys would not have a chance. While petitioner wishes to be truthful, he can't make the next statement exactly according to the time limit, but as near as petitioner could determine, he would say that *approximate* every ten minutes, the Attorney prosecuting for the Commonwealth would make a statement, "I have his confession right here on tape that I recorded in my office when he confessed, and he did so of his own free will." Petitioner *believe* that he is fairly correct in the time limit. Said attorney for the Commonwealth made the aforementioned statement several times, but he never played the tape so anyone could hear it. At one time, one of petitioner attorneys asked the Commonwealth's attorney to let the Court hear the alleged confession, and he received the reply, "I will, in due time." At that time, the judge did not say anything to petitioner's attorney, but the judge gave the attorney for the defense a stern look, and shook his head sideways, as in the negative.

The Commonwealth presented one witness who was identified as a Doctor, (petitioner cannot remember his name) and when he was asked of the condition of the said Arthur M. Purcell when he saw him, he said. "He looked like a freight train had hit him." And petitioner's attorney objected to that, but the Judge overruled him, and he attempted to explain why, and the judge told him to sit down and told the prosecuting attorney to proceed with the questioning of the witness. When petitioner's attorney attempted to cross-examine

page 16] the same witness, and when he asked him to clarify what he meant by saying that the deceased looked like a freight train had hit him, The prosecuting attorney jumped out of his seat and yelled, "I object," and said, "Your

Honor, counsel for the defense is trying to get witness to make a conclusion.'' The Judge said, ''sustained, the witness, saw and examined the deceased, and stated that he looked like a freight train had hit him, and that is as clear as it can be. The witness will not answer that question, and counsel may proceed with the questioning.'' Petitioner's attorney said, ''If it is alright with counsel for the prosecution, I would like for the witness to restate the question, and then state what is meant by how a person looks when they are hit by a freight train.'' The Judge then said, it seems to the Court that Counsel has no more questions to ask the witness, so the witness may leave the stand.'' Petitioner's attorney went to say something, but as far as he got, ''Your Honor . . . '' Petitioner's other attorney who was seated stood up and said to the Court, Your Honor, we would like to have a recess until tomorrow morning, for it seem as if we are not on the proper ground here. (Petitioner feel that his attorney made that statement, for the attorney for the defense that was on his feet cross-examining the witness had seemed to become so angry and red in the face until he could hardly speak, because when he started to say something, he kind of stuttered. The attorney for the Commonwealth tried to argue the Judge out of the recess, but petitioner's attorney was very adamant, and the Judge agreed to a recess until the following day. Then the judge said something to the Jury, but petitioner could not hear what it was, and one of petitioner's attorneys said something to the Judge in regard to that instruction to the Jury was wrong and said that the Judge should instruct them differently. At that, the Judge called one of petitioner's lawyers, the one who had told him that he was wrong, and he also called the attorney prosecuting for the Commonwealth, and they had a slight conversation, then the three of them went into a room
page 17] off from where the Judge sat, and they were in the said room for approximately three minutes, and then they came out, and the attorney for the petitioner came over to where petitioner and his other attorney was sitting, and the two attorneys began to alk, and petitioner could not hear what they said, and about that time, the Jury began to leave their seats, and walk up the aisle of the Courtroom, and as one of them got to the place where petitioner was seated, and had just gone by, a lady spectator joined him and asked him, ''Herbert, is it all over?'' The juror said, ''No, we have to come back tomorrow and finish it, but they could have finshed today.'' Then the lady said, ''Will he get any time?'' Petitioner will not lie and say he heard what the juror said to question, for these people were walking away from the peti-

tioner, and though he could hear the man's voice, petitioner could not understand what he said. Petitioner was taken back to jail, and as he was on his way out of the Courtroom and back to the jail, he saw some of the jurors talking with the spectators, and petitioner and his attorneys discussed that the following day in the Court, and one of petitioner's attorneys said, "I tried to do something about that yesterday, but the Judge would not give me any consideration on anything I tried to do, so there is no need for me to say anything about that now, for he would just ignore me completely like he did yesterday." When the Court opened the trial the following day after the recess, petitioner would venture to say that the commonwealth's attorney would mention something concerning the alleged confession, sympathetically, on the part of the deceased, at least three times within the first fifteen minutes of the trial. Petitioner's attorneys did not say anything hardly, and when petitioner mentioned their quietness regarding asking questions one of the witnesses, petitioner was told, "If we have a point that would be any good to you, the prosecutor would object, and the Judge will not let us get it in, so we might as well sit here and keep quiet and hope that the Jury don't believe all of those lies. We're for you, but the odds are page 18] against you here." When the time came for the next witness to speak, he spoke something about not seeing the deceased the day of the alleged murder, and he usually saw him, but he did see petitioner in the neighborhood, and at that time, petitioner told his attorneys that he had heard a man in jail talk to the Sheriff and this man said, Purcell could have died with from a heart attack, for he was taking treatment you know." The Sheriff said, I know he was going to the Doctor for something, but I didn't know what was wrong with him, as much as he run around and do, it is a wonder he hasn't been dead long ago." Petitioner conveyed that conversation to his attorneys, but they said it would not help him at this time, and they were concentrating on trying to keep him out of the electric chair, as that is what the prosecutor was trying to get.

None of the witnesses testified that they saw petitioner at the home of the said Arthur M. Purcell. None of the witnesses testified that they knew anything about the alleged murder of the said Arthur M. Purcell. Petitioner did not even hear any of the witnesses testify to finding the body of the deceased Arthur M. Purcell. No one testified that any type of weapon was found that was used to kill the deceased Arthur M. Purcell, but when the attorney prosecuting for the Commonwealth made his

final argument before the Jury, he said, "We have proven beyond a shadow of a doubt that the accused, and he turned and pointed at petitioner, and said, that cold-blooded, ruthless killer there, bludgeoned poor Mr. Arthur M. Purcell so meek and humble that he would not harm a fly; most of you, if not all of you know Arthur Purcell, for he was a kind man known throughout the County for his kindness-and helping those who were in need. He had no need to kill that poor man, but I have it right here in his own words, recorded by me, in my office, that he bludgeoned him to death, without any reason at all." Then he went on begging the jury to sentence petitioner to the electric chair. The attorneys who represented petitioner made their final address to the Jury, and he said among other things,

page 19] "Ladies and Gentlemen of the Jury, you cannot send this 'boy' to the electric chair. If he made a confession as the Commonwealth's attorney said he made, then he must be crazy, and you know you cannot send a crazy person to the electric chair. Petitioner was listening to hear him plead for the Jury to acquit petitioner, but evidently he felt that there was no need to do that either.

When the attorneys—*presecution* and defense—finished their final addresses to the Jury, the Judge instructed the Jury to go to reach their verdict, and if they "find him guilty, fix his sentence to a term in the penitentiary anywhere from twenty years to life, or death in the electric chair." As the Jury started to file out of their seats, petitioner's attorneys asked the Judge if he did not improperly instruct them, and shouldn't he given them more instructions, and the judge said that he had properly instructed the jury, then the attorney for the defense said, "you should have given them instructions as to murder in the second degree, or manslaughter." Then the judge said, "You and the prosecutor had your turn with the jury, and I have given them their instructions, now they may go to reach their verdict." As the Jury walked toward the room where they were to reach their verdict, the attorney for the Commonwealth walked behind them, and he had what seemed like a tape recorder's tape in his hand. Petitioner turned to see where he was going, but the Sheriff told petitioner, "Turn back around and keep still." Therefore, petitioner could not see where the prosecutor went, nor what he did with what seemed like a tape recorder's tape, but in a few minutes, he returned, and he did not have the objct in his hand, and it seemed too large to have fitted in his pocket.

After the Jury had been in the room about, the foreman of the Jury came out of the jury room and asked the Judge concerning the Parole system in Virginia, and the Judge gave him

a short answer and he returned to the jury room. In a few minutes, another Juror came out of the jury room and asked the judge concerning the Parole, and would petitioner be released when he became eligible. The Judge told him

page 20] yes, then the foreman came out again, and asked the Judge how much time could the jury sentence petitioner to, and the Judge said they could sentence him to whatever they wished, saying, "it is up to you how much time you give him." That is when petitioner's attorney again stood up and asked the Judge to call them back and give them the proper instructions, and the Judge stated, "they have been properly instructed." Then the Juror said, something concerning parole or probation, and the Judge snapped, "If you want him to serve ten years, give him forty years, and he will be paroled in ten years!" The Foreman of the Jury returned to the Jury room and within a couple of minutes, the Jury returned to the Jury room, and when he read the verdict, the Jury sentenced petitioner to forty (40) years in the Virginia State Penitentiary.

Petitioner's attorney made a motion to have the Judge set the verdict aside because it was contrary to law and the evidence and for misdirection of the Jury, and tried to explain why he was making said Motion, and the Judge cut him off and said, Motion overruled. Petitioner's attorney told the Court that he excepted the judgment of the Court, and the Judge smiled and the Prosecutors smiled, and neither of them paid any attention to counsel's exception, for the Judge got up from his seat laughing and went over and shook hands with the prosecuting attorneys, and someone must have said something very comical, for all three of them burst out laughing, right in the Court room.

CONTENTIONS

1. Petitioner contends that he was denied Due Process of Law and The Equal Protection of the Law when he was arrested without a Warrant, confined in jail, refused permission to get in touch with his family, or an attorney, and questioned and intimidated for long periods of time at all hours of the day and night while so confined.

2. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when he was taken out of jail at approximately Midnight and taken to the prosecutors office, or the office of the Commonwealth's attorney and questioned, with a Tape Recorder recording what petitioner

said, then using said tape as evidence to convict petitioner.

3. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when the Jury was permitted to mingle with the spectators and discuss petitioner's case with said spectators.

4. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when the
page 21] Judge conducted the trial of petitioner, when said Judge conducted the trial in a complete biased and prejudiced manner against petitioner and petitioner's attorneys, and when the said Judge misdirected the Jury.

5. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when the Judge appointed two attorneys to represent petitioner, for a fee of twenty dollars ($20.00) each, when the Judge knew the same two attorneys had told petitioner's parents their fee for representing petitioner would be $800.00. And thereby denying petitioner effective representation of Counsel by not permitting said attorneys to adequately and effectively represent petitioner.

6. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when the Judge and the Juror held further conversation re petitioner's sentence after the Jury had been directed to reach a verdict, and when the Judge told the Jury how many years to sentence petitioner to for him to serve a certain number of years and he would be paroled, erroneously.

7. Petitioner contends that he was denied Due Process of Law and Equal Protection of the Law when the Judge overruled petitioner's Counsel's Motion to set aside the verdict without giving said counsel proper time to properly and effectively present his Motion.

CONCLUSION

In conclusion, petitioner very humbly and respectfully states unto this Honorable Court that he has been arrested, confined, and unmercifully interrogated, had his words recorded, and said recorded words used, without playing them on the recorder, as evidence against him. Petitioner further states unto this Honorable Court that the Court was biased and conducted the trial in a partial manner where petitioner and petitioner's attorneys were concerned. Under the atmosphere of the said trial, it was impossible for the petitioner to have received a fair and impartial trial. Also during and before the said trial, it was impossible for petitioner to have effective repesentation

of counsel. Petitioner cannot understand, even today, why the Court behaved in the fashion it did, and acted in such a biased and prejudiced manner towards petitioner and his attorneys.

Petitioner's Constitutional Rights were flagrantly violated and denied by the Sheriff's Office and the Prosecutor or Commonwealth's Attorney's Office and the Court. Petitioner informed the Sheriff, The Commonwealth's Attorney and the Court that he had a "fist-fight" with the deceased, page 22] but did not use any weapon to strike him with, but everyone of the law-enforcing officials tried to prove that petitioner used some type of instrument to strike the deceased with, but no such instrument was produced, nor was any person produced that testified that they saw petitioner and the deceased at the time of the fight, or knew anything about it. All the Sheriff, The Commonwealth's Attorney and the Court had was petitioner's own word of what happened, and according to that, there could be no first degree murder indictment or conviction. The very best it could have been would have been murder in the second degree, and really should have been manslaughter, if not self-defense, for petitioner had retreated as far as he safely could, and for fear of great bodily harm, and possible death, petitioner had to fight, with his hands and fists, his way out of the room where he was with the aforesaid Arthur M. Purcell.

Petitioner feels that he has shown this Honorable Court probable cause for the Writ of *Habeas Corpus* to issue, and petitioner prays unto this Honorable Court to enter an Order granting the writ of *habeas corpus,* directed to the respondent named herein, commanding said respondent to have the body of your petitioner, together with the papers showing the cause of his detention, and petitioner further prays unto this Honorable Court to also enter an Order forever discharging petitioner from his unlawful confinement. For this and all other relief, petitioner will ever pray, etc.

Respectfully submitted,

MILTON LEE WEBB, Petitioner
500 Spring Street
Richmond, Virginia

★ ★ ★ ★ ★

page 43]

★ ★ ★ ★ ★

ANSWER

Now comes the respondent, by counsel, and, in conformity with the order of this Court of June 18, 1964, files his answer to the petition for a writ of *habeas corpus* and says:

1. Petitioner has filed a petition for a writ of *habeas corpus* which presents a case for the determination of unrecorded matters of fact relating to a previous judicial proceeding in the Circuit Court of Northumberland County, Virginia.

Wherefore, respondent prays that a writ of *habeas corpus* be issued in conformity with the provisions of § 8-598 of the Code of Virginia, returnable to the Circuit Court of Northumberland County, Virginia.

C. C. PEYTON, Superintendent
of the Virginia State Penitentiary
By. RENO S. HARP, III
Counsel

★ ★ ★ ★ ★

Filed Jul 2-1964
Teste: Luther Libby, Jr., Clerk

★ ★ ★ ★ ★

page 44]

VIRGINIA:

In the Law and Equity Court of the City of Richmond, the 6th day of July, 1964.

★ ★ ★ ★ ★

The respondent having filed his answer herein, in obedience to the mandate of the Supreme Court of Appeals of Virginia, a writ of *habeas corpus ad subjiciendum* is awarded petitioner, and the Clerk of this Court is ordered to issue said writ directed to the respondent, commanding to have and produce the body of Milton Lee Webb before the Bar of the Circuit Court of Northumberland County, Virginia, on Monday, the 12th day of October, 1964, at 10:00 o'clock A. M., together with the day and cause of his being taken and detained, it appearing that the

allegations of illegality of the petitioner's detention present a case for the determination of unrecorded matters of fact relating to a previous judicial proceeding in that Court, to do and receive what shall then and there be considered concerning the said Milton Lee Webb, by the said Court, and that he have then and there said writ of *habeas corpus ad subjiciendum.*

Enter R.L.Y.

★ ★ ★ ★ ★

Filed in Clerk's Office July 10, 1964
Emeline A. Hall, Clerk
Circuit Court of Northumberland County, Virginia

★ ★ ★ ★ ★

page 56]

★ ★ ★ ★ ★

ANSWER

Now comes the respondent, by counsel, and in conformity with the order of this Court files his answer and says:

1. During the June, 1953 Term, the grand jurors attending the Circuit Court of Northumberland County returned a true bill on an indictment charging the petitioner with the crime of first degree Murder (see Exhibit I, Certified copy of the indictment).

2. The Court, upon being instructed by the petitioner or someone in his stead, that the petitioner was unable to procure counsel in his behalf appointed Daniel Weymouth, an able and competent attorney, practicing in Heathsville, Virginia, to represent the petitioner in his case currently pending before that Court (see, Exhibit II, Certified copy of the court order).

3. On July 23, 1953, the petitioner appeared before the Circuit Court of Northumberland County, represented by counsel and in person and was arraigned, and after conference with his attorneys, pled not guilty, was tried by a jury and evidence was taken by the jury and upon being made aware that the evidence was not completed at the end of that day, the Court adjourned until the following day at 9:30 at which time the evidence was completed (see, Exhibit III, Certified copy of the

court order).

page 57] 4. On July 24, 1953, the petitioner again appeared before the Circuit Court of Northumberland County, accompanied by counsel, and the Court reconvened and resumed the case from the previous day. Whereupon, the jury, after having heard the evidence and arguments by counsel, retired and considered their verdict. After due deliberation, the jury returned and found the petitioner guilty of first degree Murder and sentenced him to serve a term of forty (40) years in the Virginia State Penitentiary, whereupon the Court, after having requested that the petitioner make any further statement that he might see fit, entered judgment on the verdict of the jury and committed the petitioner to serve a sentence of forty (40) years in the Virginia State Penitentiary (see, Exhibit IV, Certified copy of the court order).

5. The respondent states that he is currently detaining the petitioner pursuant to the above mentioned court order and further states that at no time were any constitutional rights of the petitioner violated.

6. Respondent denies any allegation which is not expressly admitted herein.

Wherefore, the respondent respectfully prays that the petition for writ of *habeas corpus* be denied and dismissed.

C. C. PEYTON, Superintendent of
the Virginia State Penitentiary
By: W. LUKE WITT
Counsel

★ ★ ★ ★ ★

page 58]

★ ★ ★ ★ ★

Filed in Clerk's Office January 12, 1965
Teste: Emeline A. Hall, Clerk

★ ★ ★ ★ ★

page 87]

★ ★ ★ ★ ★

Pursuant to stipulation of Counsel entered into in open Court

on the 26th day of March, 1965, the petitioner hereby amends his petition for a writ of *habeas corpus ad subjiciendum* by adding thereto the following:

STATEMENT OF FACTS

The Court file in the case of *Commonwealth* vs. *Milton Lee Webb* tried in the Circuit Court of Northumberland County, Virginia, on the 23rd and 24th days of July, 1953, does not contain any written instructions, nor any warrant of arrest for the petitioner.

Petitioner says that he was never informed of his right to appeal from his conviction.

CONTENTIONS

8. Petitioner contends that he was denied due process of law and the equal protection of the law by the failure of the Court properly to instruct the jury and by the failure of the Court to protect and preserve the records of his trial so that this failure of the Court might be proven; and by the failure of the Court or his Court-appointed Counsel to inform him of his right to an appeal from his conviction.

MILTON LEE WEBB
By Counsel

W. GARLAND CLARKE p.q.
RENO S. HARP, p.d.
Filed in Clerk's Office April 2, 1965
Teste: Emeline A. Hall, Clerk

★ ★ ★ ★ ★

page 90]

★ ★ ★ ★ ★

ORDER

This proceeding came on to be heard on March 26, 1965, upon the petition and the amended petition of Milton Lee Webb for a writ of *habeas corpus,* the petitioner appearing in person and by W. Garland Clarke, an attorney previously appointed by this Court to represent him; and the respondent appearing

by Reno S. Harp, III, Assistant Attorney General.

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 July 24, 1953, wherein petitioner was sentenced to serve a term of forty (40) years in the Virginia State Penitentiary, having been convicted of murder; and for the reasons stated in the Court's opinion which is filed herewith, the Court is of opinion that the writ should issue as prayed.

It is therefore adjudged and ordered that the forty (40) year sentence for murder in the first degree imposed upon the petitioner in this Court on July 24, 1953, be and is hereby declared null and void and that said judgment is set aside; and it is further ordered that the Superintendent of the Virginia State Penitentiary do forthwith release the said Milton Lee Webb from his custody and the said Milton Lee Webb is remanded to the custody of the Sheriff of Northumberland County for such action as the Commonwealth may be advised, to all of which action of the Court the respondent, by counsel, objects and excepts.

page 91]

On motion of the Assistant Attorney General it is ordered that the judgment of this Court be stayed for a period of sixty (60) days and if the respondent doth properly perfect an application to the Supreme Court of Appeals of Virginia for a writ of error, said judgment is stayed pending a final decision in the premises.

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 26th day of April, 1965.

JOHN E. DEHARDIT
Judge Designate

I ask for this:

W. GARLAND CLARKE
Counsel for Petitioner

Seen and objected to:

RENO S. HARP, III
Counsel for Respondent

★ ★ ★ ★ ★

page 96]

★ ★ ★ ★ ★

ASSIGNMENTS OF ERROR

To: Honorable Emeline Hall, Clerk of the Circuit Court of Northumberland County.

In support of his petition for a writ of error in the captioned matter, C. C. Peyton will rely on the following assignments of error:

1. The Court erred in holding that the petitioner should be released from custody because the warrant was not contained in the record.
2. The Court erred in holding that the petitioner should be released from custody because the instructions were not contained in the record of the criminal proceedings.
3. The Court erred in issuing the writ of *habeas corpus*...

C. C. PEYTON,
Superintendent of the Virginia State Penitentiary
By: RENO S. HARP, III
Counsel

★ ★ ★ ★ ★

page 98]

★ ★ ★ ★ ★

ASSIGNMENTS OF CROSS ERROR

Milton Lee Webb assigns as error the following:

1. The Court erred in failing to hold that Milton Lee Webb was denied the effective representation of Counsel at his trial.
2. The Court erred in failing to hold that Milton Lee Webb was denied due process of law and the equal protection of law upon his trial by the trial courts admission into evidence of a

coerced confession.

3. The Court erred in failing to hold that Milton Lee Webb was denied due process of law and the equal protection of the law by the failure of the trial court to inform him of his right to an appeal.

MILTON LEE WEBB
By Counsel

W. GARLAND CLARKE
Lively, Virginia
Attorney for Appellee

★ ★ ★ ★ ★

Filed in Clerk's Office May 20, 1965
Emeline A. Hall, Clerk
Circuit Court of Northumberland County, Virginia

★ ★ ★ ★ ★

page 5]

MILTON LEE WEBB,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Clarke:

Q. Give your name to the Court please.

A. (No response)

Q. Give your name to the Court.

A. My name is Milton Lee Webb.

Q. And you are the Milton Lee Webb who is the petitioner in this petition for *habeas corpus* now pending before the Circuit Court of Northumberland County?

A. Yes, sir, I am.

Q. Mr. Webb, I am going to ask you to search back in your memory to the year 1953 and recall some of the circumstances surrounding your arrest and trial which resulted in your present incarceration in the State Penitentiary. Do you recall under what circumstances you were arrested for the charge?

A. Yes, sir. I had been out with a friend of mine and we had

roamed around over the county most of the night until about 11:30 or 12:00 when we were stopped at Emmerton, Virginia, by, I think, a sheriff and state policeman. I was arrested there. In fact, both of us was arrested, and we were brought back here to the Heathsville jail.

Q. Who was it that arrested you?

page 6] A. I don't remember the state policeman's name. Mr. Bouldin, I believe, was there, and he didn't say why I was arrested, just arrested me.

Q. You were arrested?

A. Yes, sir.

Q. He did not say why?

A. I asked him. He said, Well—I asked him if I was in trouble, why I was being arrested. He said we will find out later. And that was it.

Q. Now, do you recall approximately when that was?

A. You mean the hour of night?

Q. Yes. The day and the hour, as close as you can.

A. It was June 8, I would say about 11:30 P.M.

Q. About 11:30 P.M.?

A. Yes, sir.

Q. And was any warrant served on you then?

A. No, sir.

Q. Was any warrant served on you later?

A. No, sir, not that I recall.

Q. Where were you taken after you were arrested?

A. We entered this courtroom and went into the Commonwealth's Attorney's office, I assumed. From there I was housed in this old jail here behind the court.

Q. Were you questioned by the officers—

A. Yes, sir.

page 7] Q. —that night?

A. Yes, sir.

Q. How long were you questioned that night?

A. I would say at least three hours. It was rather late when we got to the jail, and they released the other fellow that was with me.

Q. What occurred during the questioning?

A. Well, at that time they was just trying to find out where I had been that day and some of the things I had did. And I had been drinking quite heavily that day and at the time I was what you call under the weather. I couldn't tell them too much. So the next day I was questioned by the detectives from,

Milton Lee Webb

I assume out of town, here.

Q. Did you make any effort to find out what you were charged with?

A. Yes, sir. They were asking all the questions, though. I couldn't ask any myself.

Q. Well, did you make any effort to find out why they were asking you these questions?

A. Yes, sir.

Q. And what were you told?

A. The officer there said I was in serious trouble and that it would be better if I just answered questions at the time rather than ask questions, because I was the one in trouble.

page 8] Q. Did he inform you what you were charged with?

A. No, sir.

Q. Now, the next day you said you were being questioned. How long were you questioned the next day?

A. Well, actually I was taken out of jail about 9:30 or 10:00 o'clock and—by some sheriff and other policemen. I don't know who they were. I just remember they said they was detectives. And I was taken down here in a room downstairs in this building and questioned and fingerprinted, and I was taken out in a car out to the scene of the crime and so forth and questioned quite extensively that day.

Q. Can you say approximately how many hours you were questioned that day?

A. I would say from 9:30 until about 3:00 o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. Were you questioned any more that night?

A. No, sir, I can't say I was that night. No, sir.

Q. Were you questioned any the next day?

A. Yes, sir. We went back over the scene again by the same detectives.

Q. And were you questioned any the following night?

A. That night—yes, sir—I was taken out of jail—it must have been 11:30 or 12:00 o'clock— by the sheriff

page 9] and a state policeman who was in civilian clothes at the time and a deputy, Mr. Swan or Swain, and the Commonwealth Attorney, who was here in this office, and this lasted until the early hours of the morning. And he had—the officer that came to get me out of the jail said he had been some place and they had to wait until he came back before they could bring me over.

Milton Lee Webb

Q. You said they took you out of the jail and took you some place?

A. Yes, sir. Came over to Mr.—Mr. Johnson's office.

Q. To Mr. Johnson's office?

A. Yes, sir.

Q. That was approximately what time?

A. Between 11:30 and 12:00.

Q. And you were questioned until when?

A. I would say 3:00 or 3:30 in the morning.

Q. The next morning?

A. Yes, sir.

Q. Now, at what time were you told what you were being charged with?

A. Well, Mr. Johnson told me then. He said that I had killed a man.

Q. It was during this latter series of questioning then that you were first told what the charge was against

page 10] you?

A. Yes, sir.

Q. And that you learned you were charged with murder?

A. Yes, sir.

Q. Were you informed that you had a right to counsel?

A. No, sir, didn't mention any counsel. Just told me if I made a statement that—about all this trouble—that things might be a little easier for me in court if I voluntarily made a statement as to what I did and why I did it.

Q. He told you it would go easier if you voluntarily made a statement and told what happened?

A. Yes, sir. He said might go easier, didn't say it would.

Q. During any of these questioning periods, were you threatened by anyone?

A. In jail, yes, sir. Not in Mr. Johnson's office.

Q. Not in Mr. Johnson's office?

A. No, sir.

Q. What happened over in the jail?

A. Well, once when I protested about seeing my family before I answered any questions, why the sheriff and some gentleman that was with him said something about beating my head in if I didn't co-operate with them, and

page 11] I could see them after I had answered questions.

Q. Were you threatened in any other manner?

A. I don't know if you would call it threats or not. No, sir. I was visited in jail by the sheriff and his deputies on several

Milton Lee Webb

occasions, questioned, taken out by the detectives.

★ ★ ★ ★ ★

page 12]

★ ★ ★ ★ ★

Q. (By Mr. Clarke) When were you first taken before anyone for a hearing?

A. I had been in jail for at least a week before we came before the—Mr.—Judge Smith. I beg your pardon.

Q. Before Judge Smith, you say?

A. Yes, sir.

Q. And what occurred then? Was a warrant issued then?

page 13] A. No, sir. He just said that I was in grave trouble, and that if I hadn't a lawyer and if I wanted I could have my folks get me a lawyer; if I didn't have the proper funds, the court would appoint me a lawyer.

★ ★ ★ ★ ★

page 14]

★ ★ ★ ★ ★

Q. Did you at any time during the investigation stage of this trial ask the sheriff to call anyone for you?

A. Yes, sir. I asked him to call my folks and tell them where I was, why I was here.

Q. Do you know whether or not he did that?

A. He didn't. No, sir.

Q. From the time you were arrested, when was the first time that you were permitted to be visited by any member of your family or any friend?

A. I would say at least seven days after my dad came down.

Q. Let's go back now to the questioning session that took place when you were taken from the jail and taken over to Mr. Johnson's office. Can you recall anything that occurred there with respect to how you were questioned?

A. Well, after the questioning, I know the session was recorded on a tape recorder.

Milton Lee Webb

Q. You say the session was recorded on a tape recorder?
A. Yes, sir.
Q. Did you know it was being recorded?
page 15] A. Afterwards—yes, sir—he told me.
Q. Afterwards you knew it had been recorded?
A. Yes, sir.
Q. What did you tell the officers during that session? Do you know?
A. Yes, sir. I told them what I had done that day and—approximately all the things I had done, all the places I had been on the day that the thing occurred.

★ ★ ★ ★ ★

page 20]

Q. Were you ever informed by your attorneys or by the Court of your right to appeal?

Mr. Harp: Objection. There is no such allegation in the petition, if Your Honor please. If he desires to amend that, we would have no objection. But there is no allegation that he was denied his right to appeal, sir. If I stand corrected—I trust the Court understands that I have read this, but I could be mistaken.
The Court: I presume this is under No. 7 of the complaints?
Mr. Clarke: I just don't know, Judge. I had a feeling it was in here somewhere, but I can't put my finger on it.
The Court: It's a broad statement under No. 7.
Mr. Harp: I am cognizant of that, sir, but I don't think—I think that goes to the question of whether or not the Judge was patient, not to the question just raised by the petitioner's counsel.
Mr. Clarke: Well, this point might become of some relevance to the Court, and if it's not in here I would move the Court to allow me—
The Court: It is in here some particular place
page 21] that a motion was made to set the verdict aside as being contrary to the law and the evidence.
Mr. Harp: No question about that.
The Court: And that the motion was overruled. You will find that in the petition.

Mr. Harp: That's correct. That is in there, Your Honor.

The Court: Then No. 7, The petitioner contends he was denied due process of equal protection when the judge overruled petitioner's counsel's motion to set aside the verdict—

(Court reading from papers)

The Court: That is No. 7 on Page 16.

Mr. Harp: Now, I have no objection to counsel amending his petition, but I would like to know what his amendment is at the present time to cover that point. I'm not exactly sure of what point he is raising.

Mr. Clarke: The only point would be if he—It depends on how he responds to the question whether or not he was ever informed of his right to appeal.

Mr. Harp: Well, is he claiming denial of appeal, or what is he claiming?

page 22] Mr. Clarke: He is claiming he did not get effective representation of counsel.

The Court: Gentlemen, the Court would allow this gentleman to answer the question under the broad purport of these seven points.

Mr. Harp: All right. Note my exception to Your Honor's ruling, if I may, please.

A. I wasn't informed if I had right of appeal. I didn't know of an appeal until it was too late to appeal.

★ ★ ★ ★ ★

page 43]

★ ★ ★ ★ ★

page 44] Mr. Harp: We have a stipulation, if Your Honor please, I wish to read to the Court: William M. Balderson of Heathsville, Virginia, if called as a witness would testify, one, that in 1953 he was a Justice of the Peace in Heathsville. Two, to the best of his recollection the Commonwealth's Attorney prepared a warrant charging Milton Lee Webb with murder. Three, that he signed it in the presence of Milton Lee Webb and advised Webb that he could be bonded and that he would be committed to jail until he

made bond. Four, that he does not recall giving Webb any further advice with regard to his rights. As previously stated to the Court, Mr. Balderson has a heart condition and did not feel that it would be advisable for him to take the witness stand. I understand counsel for the petitioner has agreed to the stipulation. Is that correct, sir?

★ ★ ★ ★ ★

page 45]

T. T. BOULDIN,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Harp:

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

A. T. T. Bouldin, Wicomico Church, Virginia.

Q. What was your occupation in 1953, sir?

A. I was sheriff of Northumberland County.

Q. Did you have occasion to have in your custody that year Milton Lee Webb?

A. I did.

Q. Do you recall the charge upon which you had him in custody?

A. Sir?

Q. Do you recall the charge upon which you were holding him?

A. Holding him on a charge of murder.

Q. Did you have occasion to question him while he was in your custody?

A. Well, I was present when he was questioned. I reckon I asked him a few questions myself.

Q. Did you threaten him in any way with a blackjack?

A. I have heard that tape recording, and I think I must have.

page 46] Q. Would you—I'm sorry, I don't know if he understood the question or I misunderstood something. My question was this, Sheriff: When you were questioning him, did you threaten to hit Webb with a blackjack?

A. I think I did.

Q. Do you recall when that occurred?
A. Sir?
Q. Do you remember when that occurred?
A. Yes, sir.
Q. Would you tell us?
A. He had admitted that he killed the old man, and he was trying to make out that the old man got mad and got after him and he had to kill him in self defense.

★ ★ ★ ★ ★

page 68]

★ ★ ★ ★ ★

Mr. Clarke: If the Court please, we would like to have a stipulation put into the record at the present time that the original file in the case of *Commonwealth of Virginia* versus *Milton Lee Webb,* which was tried in the Circuit Court of Northumberland County on—in July of 1953, does not contain any written instructions.

★ ★ ★ ★ ★

page 69]

★ ★ ★ ★ ★

EMELINE HALL,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Harp:
Q. Would you please state your name, address, and occupation?
A. Emeline Hall, Clerk of the Circuit Court of Northumberland County, Heathsville.
Q. Have you examined the file in the case of *Commonwealth* versus *Milton Lee Webb?*
A. The criminal file?
Q. Yes.
A. Yes.

Emeline Hall

Q. Have you endeavored to locate the instructions that may or may not have been given?

A. Yes. I became Clerk in '57, and when I was called on for a copy of the records of the instructions to the

page 70] jury, it was not in the file.

Q. Have you inquired in your office?

A. I looked every place they could be, and I have not found them.

★ ★ ★ ★ ★

page 71]

★ ★ ★ ★ ★

The Court: Gentlemen at the bar, thank both of you for your kindness and consideration extended to the Court here today, and also all the officers in the court, and all of the witnesses. The Court realizes that you have all gone to a lot of detail and a lot of work was involved in this hearing, and the Court appreciates it very much.

Gentlemen, I will just take about three minutes to brief my decision in this case. First of all, I want the record to show that in no way does the Court have any opinion or any decision whatsoever, based on the allegation, that this gentleman was not properly represented. The Court takes the position that he was fully represented, that these gentlemen gave him ample time and opportunity to prepare the case, and that they went to great lengths to do so. So the Court wants the record, first of all, to show that.

Gentlemen, as you know, one of the first prerequisites of a court of record is that we have a record. I think

page 72] the courts say that that is almost academic, and I believe counsel would agree.

The Court does not find the record adequate here. The Court wishes also for the record to show that that is not the fault of the present clerk whatsoever. She was not in office at that time, nor does the Court reflect any discrepancy on any other officer. But the record, gentlemen, is definitely not complete.

First, in taking up the warrant, the Court realizes that this gentleman was arrested. The next point is that he was brought —there was a possibility, rather, that he was brought before a

J.P. Now, there is no evidence as to when he was brought before a J.P. It could have been several days later, or it could not have been. That evidence is not before the Court. The warrant is not before the Court. The return of the officer who executed the warrant is not before the Court. The Court could not assume that even a justice of the peace issued this warrant, other than what Mr. Balderson says. And the Court by stipulation has heard the evidence of a J.P. brought into this Court, and the Court is not advised as to the correctness of that.

However, I am advised in felony matters that if a man is to be bonded he should be brought before the county
page 73] court judge, the substitute county judge, the bail commissioner, county court clerk—now under recent law—or the circuit court clerk. The justice of the peace is not to bail a man who is charged with a felony unless there is very slight suspicion. The Court does not have any such evidence nor would it deem that any such evidence would be brought before the Court, he having been a judicial officer and his decisions are confidential.

But the warrant is not here. And based on the Winston case and all of the other statutes of the State of Virginia relating to bail and arrest, the Court cannot fully say that his gentleman was properly arrested. I do not have any evidence to say so. The Winston case the Court has read and is cognizant of and realizes what the Supreme Court said there. They said it was unconstitutional, and for that reason they reversed that case.

Then, coming to the instructions of the court, the Court is cognizant of the rules of the Supreme Court of Appeals of Virginia and also is cognizant of the statutory law relating to those.

Gentlemen, I am sorry that this situation exists. You can blame it on no one particular person. But I honestly feel that this gentleman is to be granted the prayer that he
page 74] has asked for. Thank you, gentlemen.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Writ of Error Awarded	1
Record	2
Petition for Writ of Habeas Corpus ad Subjiciendum	2
Order — July 6, 1964	16
Answer of Respondent	17
Amended Petition for Writ of Habeas Corpus ad Subjiciendum	18
Order — April 26, 1965	19
Assignments of Error	21
Assignments of Cross Error	21
Witnesses:	
Milton Lee Webb	22
T. T. Bouldin	29
Emeline Hall	30
Proceedings	28, 30
Opinion	31