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Richmond, Va.

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Record No. 6326

In the
Supreme Court of Appeals of Virginia
at Richmond

EUGENE C. TORAN

v.

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

FROM THE CORPORATION COURT OF THE CITY
OF NEWPORT NEWS

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. 6326

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 13th day of January, 1966.

EUGENE C. TORAN, Plaintiff in error,

against

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

From the Corporation Court of the City of Newport News
Douglas M. Smith, Judge

Upon the petition of Eugene C. Toran a writ of error is awarded him to a judgment rendered by the Corporation Court of the City of Newport News on the 25th day of February, 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

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In the Corporation Court of the City of Newport News

PETITION FOR WRIT OF HABEAS CORPUS
AD SUBJICIENDUM

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page 3]

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CONTENTIONS

Petitioner avers that he has been denied Due Process of Law and Equal Protection of Law on the following grounds:

(a) He was not represented by counsel at preliminary hearing.
(b) He has been convicted on an improper indictment; an indictment wherein there exists no probable cause to substantiate its charge.
(c) *Corpus delicti* has not been proven as stipulated in the indictment.
(d) Inadequate and ineffective representation of counsel.

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WHEREFORE, petitioner avers that he is being illegally detained by the respondent by virtue of his office at the State Penitentiary at 500 spring Street, Richmond 19, Virginia and seeks relief hereby.

PRAYER

Wherein, in lieu of the foregoing, petitioner prays the writ to issue, directed to the said respondent commanding him to have the body of your petitioner before this court as soon as

possible together with the true cause of his detention, if any there be, to determine what then and there shall be done concerning petitioner, that the said twenty-year conviction be reversed and petitioner forever set free.

And the petitioner shall ever pray etc.

Respectfully submitted,
EUGENE C. TORAN

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VIRGINIA: In the Corporation Court for the City of Newport News, the 17th day of June, 1963.

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This day came the attorney prosecuting for the Commonwealth and the prisoner, Eugene C. Toran (who was represented by J. L. Rainey, attorney heretofore appointed by the Court), was led to the bar in the custody of the jailer of this Court, and being arraigned, and after being advised by counsel pleaded not guilty to said indictment, and upon advice of counsel and with the consent of the attorney prosecuting for the Commonwealth, and the Court, waived trial herein by jury, and the Court proceeded to hear and determine this case without the intervention of a jury. And the reports required by order of this Court entered on February 13, 1963, of the full and complete investigation of the physical, mental and social condition and personality of the said Eugene C. Toran and the facts and circumstances pertaining to the violation of the law which is the cause of his being before the Court, having been filed herein as provided by Title 16. 1-176 of the Code of Virginia, and the evidence and arguments of counsel being fully heard the Court doth find the said Eugene C. Toran guilty of armed robbery as charged in the indictment, and doth fix and ascertain his punishment to be imprisonment in the public jail and penitentiary house of this Commonwealth for the term of twenty (20) years. Thereupon, it being demanded of the prisoner if anything he had or knew to say why this Court should not now proceed to pronounce judgment against him, according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said Eugene

C. Toran be imprisoned in the public jail and penitentiary house of this Commonwealth for the term of twenty (20) years, the term of his imprisonment therein by the Court herein fixed and ascertained, there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law,

* * * * *

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ORDER

This matter came on for hearing on February 11, 1965, on a petition for a writ of *habeas corpus* filed in this Court by the petitioner, who appeared in person and by counsel, Philip Walker, heretofore appointed by this Court to represent the petitioner in this matter; and the respondent appeared by counsel, W. Luke Witt, Assistant Attorney General for the State of Virginia.

This Court, after hearing evidence offered by the petitioner and the respondent and after hearing the arguments thereon and after mature consideration thereof, doth find that the petitioner was ably and effectively represented by J. L. Rainey, his counsel appointed for him to represent him in the matter pending before the Court; that the petitioner was accorded the proper protection under the appopriate juvenile and domestic relations laws at the hearing held in the Juvenile and Domestic Relation's Court which preceded his trial as an adult in the Corporation Court of the City of Newport News; and the Court doth further find that the *corpus delicti* was proven to the satisfaction of the Court; and the Court doth further find that at no time prior to or during the course of his trial were any constitutional rights denied the petitioner.

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Therefore, the Court, upon mature consideration of the facts as stated above, doth hereby adjudge, order and decree that the petition for a writ of *habeas corpus* filed in this Court be denied and dismissed and that the petitioner be remanded forthwith to the custody of the Superintendent of the Virginia State Penitentiary, to all of which action of this Court, the Petitioner in person and by counsel doth object and except; and doth move to set the decision of the Court aside as being contrary to the law and evidence, which motion the Court doth overrule; and the Court doth further order that the Clerk of

this Court shall certify copies of this order to the petitioner, the respondent, and the Attorney General for the State of Virginia.

Entered 2-25-65 D. M. Smith, Judge

I ask for this:
W. LUKE WITT
Counsel for respondent
Seen and objected to:
PHILIP S. WALKER
Counsel for petitioner

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Filed April 20, 1965
F. B. BARHAM, Clerk

NOTICE OF APPEAL AND
ASSIGNMENT OF ERRORS

To the Clerk of the Corporation Court of the City of Newport News, Virginia:

Counsel for Eugene C. Toran, the petitioner in the above styled case, hereby gives notice of appeal from the order entered in this case on February 25, 1965, and sets forth the following Assignments of Error:

1. That the Court erred in finding that the petitioner was ably and effectively represented by counsel at his trial.
2. That the Court erred in finding that the petitioner was Domestic Relations Laws at his hearing held in the Juvenile and Domestic Relations Court.
3. That the Court erred in finding that the *corpus delecti* was proven at petitioner's trial.
4. That the Court erred in finding that at no time prior to or during the course of petitioner's trial were any constitutional rights denied to him.
5. That the Court erred in holding that no counsel was needed for petitioner at his preliminary hearing.
6. That the Court erred in holding that counsel was not needed at the time statements were taken from petitioner by police officers.
7. That the Court erred in denying and dismissing the petition for a writ of *habeas corpus*.

8. That the Court erred in overruling petitioner's motion to set the decision of the Court aside as being contrary to the law and the evidence.

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page 3] (The Court Reporter was duly sworn).

Court: Do you desire to make an opening statement, Mr. Walker?

Mr. Walker: No sir.

Court: Mr. Witt, you want to make any opening statement at all?

Mr. Witt: No sir, I waive opening statement.

Court: Let me ask this, Mr. Walker. In lieu of an opening statement, do you intend to rely on all the contentions listed on Page Two?

Mr. Walker: Yes sir, we intend to rely on all the contentions listed there.

Court: All right, sir. All right sir, you may proceed.

Mr. Walker: If your Honor please, in the answer filed by the Superintendent, there are certain Exhibits filed with that answer. These Exhibits include a certified copy of the warrants as Exhibit One, a certified copy of the petition as Exhibit Two; a certified copy of the indictment as Exhibit Three; a certified copy of the Court Order and the report
page 4] as Exhibit Four. We would like — we agree these are true certified copies of these Exhibits of these papers and we'd like — ask they be introduced into evidence.

Court: All right, sir.

Mr. Walker: The first witness we'd like to call, Mr. E. L. Greene.

(The documents were received and marked Petitioner's Exhibits 1, 2, 3, & 4.)

ERNEST L. GREENE,

called as a witness by the Petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Will you please state your name and your address?

Ernest L. Greene

A. Ernest L. Greene, 27 Courtney Avenue, Newport News, Virginia.

Q. What is your occupation, Mr. Greene?

A. I am the chief Probation Officer in the Juvenile and Domestic Relations Court, Superintendent of the Newport News Detention Home.

Q. Are you also the Clerk of that Court?

page 5] A. No sir.

Q. How long have you held the office that you hold?

A. A little over four years.

Q. Did you hold that office on November 20, 1962?

A. The Clerk of Court?

Q. Your present office.

A. Yes sir, I did.

Q. Do you have in your custody certain records of the Juvenile Court?

A. Yes sir, I do.

Q. Did you, at my request, bring certain of those records to court with you today?

A. Yes sir, I did.

Q. Can you identify these records (indicating)?

A. Yes sir, I have here the arrest card which came to the Juvenile Court for the docketing of the case of Eugene Claude Stuart Toran charged with armed robbery. This is a — this is the original arrest card and I have two copies. I have a copy of the Judge's docket, Judge Wall of November 20, 1962. I have the docket book, the official Court docket book for November 20, 1962. I also have a case folder that was made on Eugene Toran, colored male.

Q. What is contained in the case folder?

page 6] A. A copy of a petition, the body of the petition charged that — do you want me to —

Q. Just identify the documents. We don't want you to read them at this time.

A. Copy of the petition and a blank copy of an intake sheet and there are a couple of little notes showing in the margin of the folder.

Q. Now, are these all of the records of the Juvenile Domestic and Relations Court with reference to the trial of — hearing of Eugene Toran?

A. No sir.

Q. Are there other records?

A. Mr. Pierce has a — loose-leaf notebook in which he made

notes to present to the Court at the date of the hearing.

Q. Well, then these are all of the records other than the loose-leaf notebook?

A. To my knowledge, yes sir.

Mr. Walker: I see.

(The documents were then handed to opposing counsel).

By Mr. Walker:

Q. Now Mr. Greene, in reference to the documents enclosed in the folder designated as, "Petition" —

A. Yes sir.

page 7] Q. This is not the original petition filed in this case, is it?

A. I cannot say.

Q. Take a look at it. Is it signed by anybody?

A. No sir.

Q. Would you look at the back of the petition? Has that been signed by anybody?

A. No sir.

Mr. Walker: Your Honor, in my discussion with Mr. Witt just a few minutes ago we agreed this is not the original petition contained in the folder here.

By Mr. Walker:

Q. Now you have here a large blue book marked, "Docket." Does that contain any information with reference to this case of Mr. Toran?

A. Yes.

Q. Would you turn to that page, please?

A. Actually, Mr. Walker, there are two pages here with reference to Mr. Toran.

Q. What are the numbers of the pages which refer to Mr. Toran?

A. The first reference to Mr. Toran is Page 480. The second page is 485.

page 8] Q. Pages 480 and 485?

A. Yes sir.

Mr. Walker: That is a right big book. I wonder if you want to see this, if you would take a look at it.

(Mr. Witt then approached the witness chair and viewed the book).

Ernest L. Greene

A. The first notation here shows the first date that Mr. Toran came on our docket. November 16, 1962. The case was continued to November 20, 1962 and that date, the second notation is shown.

Mr. Walker: If the Court please, we would like to introduce the folder identified by Mr. Greene, the documents contained in it, the document sheet number 485 which is separate from his docket book and also pages 480 and 485 of the docket book.

The Court: What do you want to introduce the pages for?

Mr. Walker: To show — we want to show as completely as possible everything that was done with reference to Mr. Toran in the Juvenile Court.

Court: Well, it's been read. I don't see any need
page 9] for taking the pages out of his book. It's been read into the record.

Mr. Walker: Well, may I ask him for clarification to review that?

Court: Yes sir.

Mr. Walker: To review that.

By Mr. Walker:

Q. Will you turn to Page 480 of the docket book?

A. All right, sir.

Q. And would you read from that page any information which is contained with reference to Eugene C. Toran?

A. All right, sir. The first notation is docket number 2578. The name is Toran, Eugene C. S., colored juvenile, charge, armed robbery. Witnesses, Sergeant Austin, L. Pierce. The next notation shows a continuance to November 20, 1962. In the remarks column, $5,000.00 bond.

Q. Would you turn to Page 485 and read whatever information you have with reference to Eugene C. Toran?

A. All right, sir. Docket number 2578, Toran, Eugene C. S., colored juvenile; charge, armed robbery. Witnesses, Sergeant Austin L. Pierce. Continued from November 16, '62. In the other dispositions column, there's a check showing
page 10] the case was sent to the grand jury and in remarks column, $5,000.00 bond.

Mr. Walker: These are the items we would like to have marked and introduced.

Court: Mark them as — the folder, what's in the folder? Let me see it.

Ernest L. Greene

(The document was handed to the Court).

Court: Mark that as Petitioner's Exhibit Five. The folder, Petitioner's Exhibit Five and the enclosures therein. And the docket sheet for November 20, '62, mark it Six, Petitioner's Exhibit Six.

(The documents were received and marked Petitioner's Exhibits 5 & 6).

By Mr. Walker:
Q. You referred previously to a notebook?
A. Yes sir. No sir, that is just a separate notebook of my own (indicating).
Q. Does this have any record of the hearing with reference to Eugene Toran?
A. No sir.
Q. I see. Now Mr. Greene, in addition to the documents which you have identified, there has been introduced into evidence a certified copy of the petition filed with reference to Eugene C. Toran. I wonder if I might use that a moment, your Honor.

page 11]

Court: Yes sir.

By Mr. Walker:
Q. Would you please examine the front and the back of that copy of the petition.
A. All right, sir.
Q. Is the age of Eugene C. Toran shown on that petition?
A. Yes sir, it is.
Q. Is his birthday shown on that petition?
A. Yes sir.
Q. Now examine all of the Exhibits which were identified by you a moment ago, plus the petition and tell the Court whether or not the record shows that an attorney was present to represent Eugene C. Toran at this hearing?
A. No sir, the records do not indicate an attorney was appointed for Mr. Toran.
Q. Would you examine the Exhibits and tell the Court whether or not a guardian *ad litem* was appointed for Eugene C. Toran in these proceedings?
A. No guardian *ad litem* was appointed according to the records.
Q. Would you examine the records and tell the Court whether

or not either of the parents or a legal guardian was present—
page 12] parents of Eugene C. Toran or legal guardian of Eugene C. Toran were present at this hearing?
A. Mr. Walker, the records do not so indicate that parents or guardian were present.

Mr. Walker: All right sir, I have no further questions of this witness.

CROSS EXAMINATION

By Mr. Witt:

Q. Mr. Greene, were you present during this hearing that occurred at the Juvenile and Domestic Relations Court?

A. Yes sir, I was.

Q. You were?

A. Yes sir.

Q. In what capacity were you present?

A. Actually, two capacities. They both were very closely related. As chief Probation Officer and as Clerk of Court.

Q. You served in both capacities, is that correct?

A. At that time, yes sir.

Q. Now I believe the docket book shows Mr. Pierce appeared in that case, is that true?
A. Yes sir, it does.
page 13] Q. Do you know in what capacity he appeared?
A. He was a *p*robation Officer and still is.

Q. He was the *p*robation Officer that was serving for the Juvenile and Domestic Relations Court at that time?

A. That's correct.

Q. Was you supervising this case or rather was he involved in this case in that capacity?

A. He was the *p*robation Officer that the case was assigned to, yes sir.

Q. Do you know for a fact whether anybody was appointed or not appointed to represent this young man as a guardian?

A. I cannot state factually that one was.

Q. Isn't it true that in many cases in the lower Court or down in the Juvenile and Domestic Relations Court, *p*robation Officers are used to serve in that capacity?

Mr. Walker: We object to what is true in many cases. We're deciding only in the case of Eugene C. Toran.

Court: Sustained.

Leon Curtis Pierce

Mr. Witt: Note my exception please, sir.

By Mr. Witt:

Q. Do you know whether Mr. Pierce was ap-
page 14] pointed or not?

A. I could not state factually whether he was or not.

Q. All right, sir. You remember whether you were or not?

A. I vaguely recall that I was but I could not state that I was without any doubt.

Q. In other words, you have some recollection that you were appointed to serve as guardian for this man, is that right?

A. Yes sir but — I could not state without any doubt.

Q. Now I direct your attention please, sir, to the docket books which you have up there. I believe that you read into the record from both pages of the docket book that Mr. Pierce appeared as a witness. Now I would like to clarify that as far as the record is concerned. Did Mr. Pierce actually appear as a witness on behalf of either the Commonwealth or the Defendant in that matter or was he there solely as a *p*robation Officer?

A. As a *p*robation Officer. In the column showing witnesses, this is really a device that we use in our Court to see who the arresting Officer was and which *p*robation Officer or clerk that the case might be assigned to.

page 15] All right, sir. Now, are you familiar with the future events that occurred with regards to Mr. Toran after these two hearings that you were talking about?

A. Not entirely, no sir.

Mr. Witt: All right sir, I have no further questions.

Mr. Walker: Your Honor have any questions?

Court: No sir. All right, you may leave. You want — do you need the book?

Mr. Walker: No sir, it's been read into the record.

Court: I didn't know whether you wanted it for one of the other witnesses. All right sir, next witness.

Mr. Walker: Call Mr. Leon Pierce.

LEON CURTIS PIERCE,

called as a witness by the Petitioner, being duly sworn, testified as follows:

Leon Curtis Pierce

DIRECT EXAMINATION

By Mr. Walker:

Q. Please state your name and your address.

page 16] A. Leon Curtis Pierce, 1124 — D — 34th Street, Newport News, Virginia.

Q. What is your occupation, Mr. Pierce?

A. Juvenile and Probation Officer.

Q. By whom are you employed by the Juvenile and Probation Officer?

A. City of Newport News Juvenile and Domestic Relations Court.

Q. How long have you been so employed?

A. Approximately two and a half years.

Q. You were so employed on November 20, 1962?

A. Yes, I was.

Q. Do you recall the case of *Commonwealth* vs *Eugene C. Toran* in the Juvenile and Domestic Relations Court?

A. Yes, I do.

Q. Did you perform any function with reference to that?

A. Yes, I — I served as the investigating Probation Officer in this case.

Q. You served as the investigating what?

A. Probation Officer.

Q. Probation Officer. As such, what was your function? What did you do?

A. I had to investigate the home environment or circumstances and to make community investigation. I

page 17] had to also talk with the Defendant and also to make a school investigation and an investigation as to a previous Court record, if any.

Q. Did you testify with reference to your investigation?

A. Yes, I did. I gave an oral report in the Juvenile and Domestic Relations Court?

Q. Did you file any written report with the Juvenile and Domestic Relations Court.

A. Yes, I did.

Q. You did file a written report?

A. I don't want to misconstrue what you are saying. I gave a written report and — but I did not make it an accurate record of the Court.

Q. Well, I have here all of the records of the Juvenile and Domestic Relations Court with reference to Mr. Toran's hear-

ing. Would you tell me if your report is found in those records at any place?

A. No, Mr. Walker, the only thing I have here is the Court dates and the outcome, the disposition of the case other than the information I have in this — notebook here.

Q. Well, was any copy of your report type-written and officially filed with the Court?

A. No, it wasn't.

page 18] Q. Did you have any memorandum of such report?

A. Of a filed report with the Court?

Q. No sir, of a report of your investigation?

A. Just a personal memorandum. Just this here (indicating). That's all.

Q. Will you identify this document to the Court (indicating)?

A. Yes sir, Mr. Walker, this is the information that I gathered from my investigation into the environment, the community, the Defendant's — the Defendant himself, his school record, if any, and any previous Court record. This is the the results of the investigation that I conducted myself.

Q. Do you have any other written memorandum of this investigation except this document?

A. No, I don't.

(At this time Mr. Walker handed Mr. Witt a document).

Mr. Witt: All right, sir.

Mr. Walker: May I see the petition marked Exhibit Two.

(The document was handed to Mr. Walker).

By Mr. Walker:

Q. I show you a document marked Petition which has been filed with the answer of the Superintendent in

page 19] this case and ask you to examine the back of that document.

A. All right.

Q. Does your signature appear on that document at any place?

A. Yes, it does.

Q. And would you read the information with reference to your signature?

A. "Investigated November 20, 1962, L. C. Pierce, Probation Officer. Docketed for hearing, November 20, 1962."

Q. All right, sir. Was either Mr. Toran — either Mr. Toran's parents present in Court?

A. As I recall, they were not.

Leon Curtis Pierce

Mr. Walker: I have no further questions, if your Honor please.

CROSS EXAMINATION

By Mr. Witt:

Q. Mr. Pierce, do you know whether any guardian was appointed by the Court?

A. No sir, I cannot recall. I couldn't say either way.

Q. Do you recall what transpired during the hearing?

page 20] A. Yes sir, I recall how the hearing proceeded.

Q. All right, sir. Now I'm a little bit fuzzy as to just exactly what took place with relation to the Probation report which you made. Did you file a written report with the Juvenile and Domestic Relations Court on November 20, 1962?

A. No sir, I did not file a report with the Court.

Q. Did you ever file a report with them?

A. In this particular case here, sir?

Q. Yes.

A. No, I didn't.

Q. Isn't it true that the first trial that was held concerning Mr. Toran by the Court Record was declared null and void and the verdict set aside for the reason that there was not a report and later that circumstance was corrected. Do you know anything about that?

A. I don't recall of any — of any report being assigned to me to make to any Court, not at that time, no sir I don't.

Q. You do not?

A. No sir.

Mr. Witt: I have no further questions.

Court: You do recall making a report though to

page 21] the Judge in the lower Court regarding your investigation?

A. Yes sir.

Court: All right, sir. Step down.

Mr. Walker: If your Honor please, the next witness we would like to examine is Lieutenant George C. Austin of the Newport News Police Department. Some of his evidence may be in conflict with the evidence of the Petitioner. I would therefore like to ask that he be called as a witness of the Court rather than as a witness for the Petitioner.

Lieutenant George Clarence Austin

Court: No Sir, I'm not going to do it. He brought the petition. Let him prove it.

Mr. Walker: We note an exception to the Court's ruling.

Court: Yes sir.

Mr. Walker: Lieutenant Austin, please.

LIEUTENANT GEORGE CLARENCE AUSTIN, called as a witness by the Petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION

page 22] By Mr. Walker:

Q. Please state your name and your address.

A. George Clarence Austin, 3215 Madison Avenue, Newport News, Virginia.

Q. And what is your occupation, sir?

A. Detective Lieutenant, City of Newport News.

Q. How long have you been employed in the Police Department of the City of Newport News?

A. 18 years, sir.

Q. And you were so employed on November 20, 1962?

A. I was, sir.

Mr. Walker: If I might have Exhibits One and Two, please.

(The Court then handed Mr. Walker the Exhibits).

By Mr. Walker:

Q. Lieutenant Austin, I show you document marked Exhibit One, I believe it to be a warrant. I wonder if you would examine this front and back please?

A. Yes sir.

Q. Tell us what that is?

A. Yes sir. This is a warrant or a copy of a warrant that was sent to the Superintendent of New Jersey State Reformatory in Bordentown, New Jersey, as a de-
page 23] tainer against Eugene Toran, the Defendant in this case and it shows on the front of this warrant, of the face of the warrant that it was executed by me on the 9th day of November, 1962 at twelve noon, at Bordentown, New Jersey and my name is placed in the — under the Officer making the arrest.

Q. Does the warrant show who caused it to be issued?

A. Yes sir. Lieutenant John Meck of the Newport News

Lieutenant George Clarence Austin

Police Department.

Q. And was Lieutenant Meck an Officer of the Newport News Police Department at the time the warrant was issued?

A. He was, sir.

Q. Now where did you execute this warrant?

A. In — at the Reformatory in Bordentown, New Jersey.

Q. Did you then place Eugene Toran under arrest?

A. I did, sir.

Q. Did you then bring him back to Newport News?

A. I did, sir.

Q. Was any search made of Eugene Toran prior to transporting him back to Newport News?

A. Yes sir, it was. On two occasions. Eugene Toran was given to me from out of what they described as the hole in the Reformatory. He was searched there before taking page 24] him out. I started to take him out of the confinement area there and — I was called back and in his presence I was told I better re-search him so I did and I placed the cuffs on the man and we left the Reformatory.

Q. Do you recall whether or not you found any money in his possession?

A. If he had any money at all, sir, it was very little because I was spending mine coming back here and I don't know that he spent any or if he had any. I don't recall, sir.

Q. Now, between the time that you arrested him —

A. Yes sir.

Q. And November 20 —

A. Yes sir.

Q. When he was given a preliminary hearing in Juvenile Court, did you have occasion to talk to him?

A. You mean from — from the time that I arrested him on the 9th, did I talk to him any more? After returning him here to the jail?

Q. Yes sir, between the time that you arrested him and the time of his preliminary hearing. You arrested him I believe you said on the 9th?

A. I arrested him at twelve noon and we were together. I took a statement from him on the morning of the 10th at about three something in the morning. Maybe it was page 25] two something in the morning and I appeared with him on the 16th of November and there was a continuance at that time and I re-appeared along with him on the 20th. I can't say whether I talked to him on the date of the 16th or not. I don't know if I talked to him or not.

Eugene Claude Toran

Q. You took a statement from him on the 10th?
A. Yes sir.
Q. Of November?
A. I reduced it to writing on the 10th, yes sir.
Q. Between two and three o'clock in the morning?
A. Yes sir.
Q. Where were you at that time?
A. In the Detective Bureau. We had just returned from Philadelphia. I mean from Bordentown.
Q. Newport News Detective Bureau?
A. Yes sir.
Q. Did you at any time take any other statement from Mr. Toran?
A. Only the statement pertaining to the armed robbery sir, of the Whittaker Hospital. No other statement do I recall taking. I have no notes of it.
Q. Now prior to taking this statement from him, did you advise him that his statement might be used for or against him?
page 26] A. When I reduced it to writing, yes sir, I did. There was — other conversation that I did not warn him of or advise him of. However, it was not included in the statement that was taken at 3:55 on the morning of the 10th but when I did reduce this statement to writing and at that time he was advised of his rights to make or not to make a statement and he stated he wanted to make one.
Q. Was he advised by you that he had a right to have an attorney present at that time?
A. No sir, to my knowledge I did not warn of this.

Mr. Walker: I have no further questions.
Mr. Witt: I have no questions of this witness at this time, your Honor, but I would like to reserve the right to recall him on my own if I need him later on.
Court: All right, Lieutenant, you may step down.
Mr. Walker: I'd like to call Eugene Toran.

EUGENE CLAUDE TORAN,
called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

pge 27] By Mr. Walker:
Q. What is your name, please?

Eugene Claude Toran

A. Eugene Claude Toran.
Q. Where do you now live?
A. My street address or institution address?
Q. Tell us where you live; either one will be satisfactory.
A. 1932 Banks Avenue, Asbury Park, New Jersey.
Q. Are you now confined in the Virginia State Penitentiary?
A. Yes, I am.
Q. And why do you understand that you are confined there?
A. For armed robbery, armed robbery charge of the Whittaker Memorial Hospital.
Q. And do you know by what Court you were committed to this institution?
A. Yes sir.
Q. And by what Court was that?
A. *Cooperation* Court of the City of Newport News.
Q. When were you arrested on this charge?
A. November 9th, 1962.
Q. And where were you arrested?
A. New Jersey State Reformatory, Bordentown, N. J.
page 28]
Q. By whom were you arrested?
A. At that time, Sergeant Austin.
Q. Now, at the time of your arrest did you have any money?
A. Yes, the money they gave me from the Reformatory.
Q. How much money did they give you?
A. $13.25.
Q. Do you recall having any conversation with Lieutenant Austin between the time of your arrest and the time of your preliminary hearing in the Juvenile Court of the City of Newport News?
A. No, I do not recall no such conversation.

Court: What was that question?
Mr. Walker: My question was, whether or not he recalled have any conversation with Lieutenant Austin between the time of his arrest and the time of his preliminary hearing.
A. Oh, excuse me, I thought you said preliminary hearing. Yes, I talked with him from the time of the arrest to the preliminary hearing.

By Mr. Walker:
Q. Did you make any statement to Lieutenant Austin?

A. I did.

page 29] Q. Do you recall whether or not you were advised that such statement might be used for or against you?

A. I was advised of that.

Court: What?

A. I was advised of that.

By Mr. Walker:

Q. Do you recall whether or not you were advised that you were entitled to an attorney at that time?

A. I was not advised of that right, no.

Q. Were you represented by an attorney at your preliminary hearing?

A. No, sir.

Q. Were either of your parents present at your preliminary hearing?

A. No, sir.

Q. Where do your parents live?

A. 1932 Banks Avenue, Asbury Park, New Jersey.

Q. Do you have any relatives in the State of Virginia?

A. No, sir.

Q. Did you enter a plea at your preliminary hearing?

A. I did.

Q. What plea did you enter?

A. Not guilty.

page 30] Q. Do you recall whether or not you examined any of the witnesses at your preliminary hearing?

A. I believe I did.

Q. Would you state whether or not an attorney was appointed for you at any stage of these proceedings?

A. Only for the trial taken place here in the *Cooperation* Court.

Q. Before the *trail?*

A. Yes, I believe he was appointed before the trial.

Court: You believe he was?

A. He was appointed before the trial.

Court: Let's say it then.

By Mr. Walker:

Q. Do you know the name of the attorney appointed?

Eugene Claude Toran

A. Yes sir, Mr. J. L. Rainey.

Q. Did you have an occasion to talk to Mr. Rainey before this trial?

A. Yes, I did.

Q. Tell the Court where you were when you talked to Mr. Rainey?

A. Newport News City jail.

Q. Subsequent to your arrest, were you at any time released on bond?

page 31] A. No, I were not.

Q. Would you state how many times you discussed the case with Mr. Rainey prior to trial?

A. Once in the jail and once here in the Courtroom prior to the trial.

Q. I didn't get the last part of your answer.

A. Once in the City jail and once here in the Courtroom prior to the trial.

Q. And do you recall how long that conversation lasted?

A. I would say approximately 15 minutes.

Q. Now I believe the record will show that subsequently your first conviction was set aside. You were given a second trial?

A. Yes sir.

Q. Did you have an attorney at that time?

A. Yes sir, I did.

Q. And who was your attorney then?

A. Mr. J. L. Rainey.

Q. And during the course of both trials, how many times did you see Mr. Rainey?

A. Those were the only two times except on the morning of June 17, at my last trial I conferred with him before trial. Excuse me. In answer to your question again, I just recall when I was committed to Petersburg for observa-

page 32] tion I spoke with him here in the Courtroom then.

Q. All right, sir. At your trial, do you recall whether or not any objection was made with reference to any alleged statements or confessions that were made by you?

Mr. Witt: Your Honor, I think—I don't want to impede the wheels of the trial but I do think he's leading him too much on some critical questions. I think if he wants to get at this matter, he should ask him in the proper way.

Court: All right, sir.

Mr. Walker: All right.

Eugene Claude Toran

By Mr. Walker:
Q. With reference to your trial in the Corporation Court, would you state what, if any, evidence was given by the Commonwealth with reference to any confessions made by you?
A. Repeat the question, please.

Mr. Witt: That's leading again, your Honor.
Court: I'll let it stand.
Mr. Witt: I don't want to continue to bother about that.
A. Repeat the question.

page 33] By Mr. Walker:
Q. Would you state what, if any, evidence was offered by the Commonwealth with reference to any confessions made by you?
A. Yes sir, two confessions were offered in evidence by the Commonwealth Attorney.
Q. Would you state what, if any, action was taken by your attorney with reference to this evidence?
A. None that I know of.

Mr. Walker: May I see the warrant? I think it's Exhibit One.

(The document was then handed to Mr. Walker).

Mr. Walker: Would you answer Mr. Witt's questions.

A. Yes.

CROSS EXAMINATION

Q. When is your birthday, Mr. Toran?
A. June the 2nd.
Q. June the 2nd?
A. Yes, sir.
Q. Were you born in 1944?
page 34] A. Yes sir.
Q. That's your birthday, June 2nd, 1944, is that correct?
A. Yes, as far as I know.

Court: What?
A. Yes sir.

Eugene Claude Toran

By Mr. Witt:

Q. How old were you on November the 20th, 1962?

A. 17.

Q. You were 17?

A. Yes sir.

Q. How far did you go in school, Mr. Toran?

A. Eighth grade.

Q. Eighth grade?

A. Yes.

Q. Can you add and subtract?

A. Not very good, no.

Q. Not very well?

A. No.

Q. You know your birthday is June 2nd, 1944 though, don't you?

A. That's what I have been told that's what it was.

Q. You never thought it was any other date, page 35] did you?

A. No, I haven't. I never have seen my birth certificate.

Q. You always have known your birthday to be June 2nd, 1944, isn't that true, sir?

A. Yes sir.

Q. Now do you recall whether at your preliminary hearing bail was set for you or not?

A. Yes sir, it was.

Q. It was set at $5,000.00, was it not?

A. Yes, it was.

Q. And the reason you didn't get out on bail because you couldn't make bail, isn't that right?

A. That is correct.

Q. And you didn't have anybody here to go your bail, did you?

A. No, I did not.

Q. And you didn't have any money to pay any bail, did you?

A. No, I did not.

Q. So that's the reason you weren't on bail, wasn't it?

A. Yes, because I couldn't—

Q. Right, sir. Now, are you telling this Court from the

Eugene Claude Toram

page 36] time Mr. Rainey was first appointed to represent you until the time that you were finally convicted and committed to the penitentiary that you talked to him only two times?

A. Yes—I talked to him approximately three times at the most.

Q. Three times at the most?

A. Yes sir.

Q. Do you recall when those times were?

A. Yes sir, I do.

Q. When?

A. One was in the City jail. I can't remember the exact date.

Q. Was that before your trial?

A. Yes sir, it was.

Q. And how long did that last?

A. Approximately 15 minutes.

Q. All right, sir. What was the subject of that conversation, do you remember?

A. No, except the basis of the conversation was he said I would need a Court Stenographer in Court and he asked me if I could get $50.00 to get one and I gave him the name and address of my grandmother in Philadelphia, Pennsylvania and I guess at that time she could not get the $50.00. That was basically what we talked about.

page 37] Q. You didn't talk about your case at all, is that right?

A. Yes, we talked about the case.

Q. You talked about your case?

A. But I think—

Q. Do you remember what you said about it?

A. Very vaguely.

Q. It's very vague?

A. Yes.

Q. As to what you said?

A. Yes.

Q. Do you remember what he said?

A. I couldn't swear and give the exact—say exactly because I can't remember every word of it, no. Basically I think he said, "well, we'll try to do the best we can but it would be nice if we had a Court Stenographer." That was

all. Basically that was all.

Q. Now you were living here in Newport News in January of 1961, weren't you?

A. No, I was not living in Newport News, no.

Q. You were here in Newport News, were you not?

A. Yes, I was.

Q. What were you doing down here?

A. Well, I came down from New York City on—I was visiting more or less.

page 38] Q. Visiting?

A. Yes.

Q. Do you have relatives here at all?

A. No, I don't.

Q. Do you have friends here?

A. Yes.

Q. Are they friends from New York?

A. No, they live in Newport News.

Q. I'm sorry, I can't understand you.

A. They live in Newport News.

Q. In Newport News?

A. Yes.

Q. How did you know them?

A. I had met them in New Jersey during the summer.

Q. Were you working at the time?

A. At what time, sir?

Q. I'm sorry, I didn't hear you.

A. At what time?

Q. In January of 1961.

A. No, I wasn't working.

Q. You were not?

A. No.

Q. How were you supporting yourself?

A. I was living—well, until I left home I was

page 39] living with my mother and father.

Q. When you left home and came down here to visit, how were you supporting yourself?

A. My mother sent me money by Western Union.

Q. All right, so she knew where you were, did she not?

A. Yes, she did.

Eugene Claude Toran

Q. Now after January of 1961 you went to Detroit, didn't you?

A. Yes, I did.

Q. And you stayed there for a while, didn't you?

A. Yes, I did.

Q. What were you doing out there?

A. Well, I went up to Detroit also to see a friend. I was going with a girl that lived in Detroit and I didn't stay in Detroit very long before I was arrested.

Q. You were arrested in Detroit?

A. Yes, I was.

Q. On what charge?

A. Armed robbery.

Q. That occurred in Detroit, did it not?

A. Yes sir.

Q. And then after the time you were arrested for armed robbery in Detroit, the Detroit authorities were
page 40] notified that—or rather you notified the Detroit authorities that you had been involved in a similar incident in Newport News, didn't you?

A. Well, yes sir, after—long hours of interrogation, I did.

Q. All right, sir. And then from there you went to New Jersey Reformatory, is that right?

A. Yes, I did.

Q. And that's where Lieutenant Austin came to pick you up, isn't that true, sir?

A. Yes sir.

Q. Now do you recall when that was?

A. Yes sir, I do.

Q. When was it?

A. November the 9th, 1962.

Q. That was just eleven days prior to your preliminary hearing, isn't that true, sir?

A. Yes.

Q. Down here?

A. Yes sir.

Q. And at that time that you talked to Lieutenant Austin on November the 9th, you made a statement to the effect that you had been involved in this thing down here, didn't you?

Eugene Claude Toran

A. Yes sir, I gave him a statement.
page 41] Q. And you told him you did it, didn't you?
A. Yes, I did.

Q. Are you telling this Court Lieutenant *Austing* coerced you into making this statement?

A. No, I'm not.

Q. Then he didn't coerce you, did he?

A. No, not exactly he didn't.

Q. You made that statement of your own volition, didn't you?

A. I would say so, I mean, but not exactly because—he did—introduce various warrants and tell me that—well, he would press five charges of armed robbery against me and he had them—he went to a cabinet and pulled out several different robberies that had occurred during the month of January and—just practically said I and a gentleman named Percy Clark committed several robberies in Newport News and he would *persecute* me for these five charges and—he told me that I would get 60 years in the penitentiary.

Q. So you are saying in fact, Lieutenant Austin did coerce you then, is that right?

A. Not with violence. Just verbal coercion.

Q. Did you tell your attorney that?

A. Not that I can recall.

Q. Do you recall anything that you told your attorney?
page 42] A. Very vaguely.
Q. You don't remember anything about it?

A. No, not to state a fact and be positive.

Q. Do you remember your trial?

A. Yes sir.

Q. In this Court?

A. Yes sir.

Q. Who was the Judge?

A. The Honorable Judge Smith.

Q. Do you know who prosecuted you?

A. Yes sir.

Q. Who.

A. Mr. Marvin Murchison.

Q. How many witnesses were introduced?

Eugene Claude Toran

A. If I am not mistaken, I believe there were two.

Q. Who were they?

A. Mrs. LaVerne Martin and Detective Lieutenant George Austin.

Q. Lieutenant Austin?

A. Yes.

Q. All right, sir. Did you have any witnesses?

A. No, I did not.

Q. You didn't give any names to your attorney, did you?

page 43] A. No, I did not.

Q. When the confessions were introduced, did you complain to him at that time that you had been coerced into giving those confessions?

A. Not that I recall although I believe at one time—no, I couldn't state for a *postive* fact because I don't want to say yes or either no because I can't exactly remember and be sure about it.

Q. Mrs.—the victim of the crime identified you, didn't she?

A. No, she did not.

Q. She did not?

A. No.

Q. Now Mr. Toran, isn't it true that during the conclusion of the first trial that your attorney made a motion to have the verdict set aside as a result of the fact that there was some difficulty with the probation report?

A. Yes sir, I believe that is correct.

Q. And the case was—the verdict was set aside, was it?

A. Yes, it was.

Q. And you had another trial after that, didn't you?

A. I did.

Q. Between those two trials you were com-

page 44] mitted to Central State for observation, weren't you?

A. I was.

Q. And do you recall how much time took place between the—how much time elapsed between the two trials?

A. Yes sir, I do.

Q. How much?

A. From March the 5th until June the 17th.

Eugene Claude Toran

Q. March the 5th until June the 17th?

A. Yes sir.

Q. Of what year?

A. 1963.

Q. All right, sir. Now did you talk to your attorney in that time?

A. No, I did not.

Q. Were you at Central State all that time?

A. I was—

Q. Are you telling this Court you had no conferences with your attorney from the time that your first verdict was set aside until you were tried the second time?

A. Yes, I am.

Q. Now you testified that you talked to Mr. Rainey three times and you've told us that you talked to him once in the Newport News jail prior to trial. When were the other two times?

page 45] A. Oh, I mean—he didn't never come to the jail any more to talk to me. Just before the Judge came out of his Chambers on the morning of the trial of June 17, we discussed the case, if I am not mistaken. I believe we did.

Q. You discussed the case?

A. Yes, we did for approximately five minutes or so.

Q. Do you know what the subject to your discussion was or rather what the particulars were? I know you were talking about the case. Do you know what you were talking about?

A. No, I do not.

Q. Do you recall whether your attorney questioned witnesses for the Commonwealth in your trial?

A. Yes, he did question witnesses for the Commonwealth.

Q. Do you recall whether he made any objections?

A. No, I do not recall if he did or if he did not.

Q. Do you recall whether he made any summary statement to the Judge at the end of the trial?

A. Yes, he did.

Q. Did he argue your case?

A. Yes, he did make a summary statement to the Judge.

page 46] Q. Now, do you remember any questions that were put to you when you took the stand in your

trial by the Court?

A. A few of the questions, yes.

Q. You testified in your own behalf, didn't you?

A. Yes, I did.

Q. Now, in response to a question by the Court as to whether you had actually participated in this crime or not, you said you did, didn't you?

A. On the stand? No, I did not. Not on the stand.

Q. You did not admit to it in open Court?

A. Just prior to sentencing, not on the stand. Not here in the witness stand.

Q. You are certain that was prior to your sentencing and not — while you were on the witness stand, is that right?

A. Yes.

Q. Now Mr. Toran, did you draft this petition?

A. No, I—I draft the brief support of the petition and I had a little to do with it but—basically not all of it, no.

Q. Did you know what was in it when you signed it?

page 47] A. Yes, I did.

Q. You did?

A. Yes.

Q. Do you recognize of course all this is made under oath?

A. I do.

Q. Who advised you the *cropus delicti* wasn't proven according to the indictment?

A. I put that in there because I—I may be mistaken because I don't know that much about law and—I don't have that much education but I—I did look into it and I read my indictment which read with a gun loaded with powder and bullets and I mean *corpus delicti* I believe it's the body of facts. Well, I believe they have to be proven more or less as laid on the indictment so I relied on it because of *Commonwealth* vs *Butcher* and *State* vs *Brown* saying the prosecution states the offense with unnecessary particularity, they be bound by that statement and must prove it as laid. The indictment I thought said with gun and powder and bullets and if he made this statement, I thought it would have to be proven. No gun was introduced into evidence which would not constitute powder and bullets.

Q. Who did the legal research for you?

A. I did the majority of it.

Eugene Claude Toran

Q. You did the majority of it with an eighth
page 48] grade education?

A. I have been going to school while in the penitentiary and I learned to type and I have been taking courses on my own.

Q. You haven't been in the penitentiary but a year and a half, have you?

A. Well, I did a little studying also at Bordentown.

Q. You're talking too fast for me. I can't understand you.

A. I did a little studying. I was in Bordentown, I spent the majority of my time reading and studying trying to learn as much as I could while I was up there.

Q. You attended a few classes with some of the jail house lawyers over there at the penitentiary, didn't you,

Mr. Walker: I object to the form of that question.

Mr. Witt: I'll rephrase it, your Honor.

By Mr. Witt:

Q. There are—is it not true that you have discussed this matter with certain other individuals in the penitentiary?

A. I did discuss this matter with other
page 49] individuals, yes.

Q. And those other individuals are people who are involved in doing this kind of work, are they not?

A. Yes sir.

Q. In other words, this petition is not the only one that was drafted by the person that drafted it for you, isn't that true?

A. Repeat the question again, please. I didn't understand it.

Q. I said, the petition that was drafted for you is not the only one that was drafted, is it?

Mr. Walker: If your Honor please, I question the materiality of who prepared this petition in this proceeding. It is completely immaterial as to who prepared the petition.

Mr. Witt: I'm not necessarily concerned about the name of the individual who prepared the petition but I think it is a matter for the Court's consideration as to the relative facts as have been brought out here by the counsel for the Petitioner in which he states—I don't know whether he brought it out or I did but any rate, he states he has only an
page 50] eighth grade education and certain implications are drawn from this and I think we certainly

should be able to show that he has the capacity for understanding more or less than the eighth grade education and if he is going to sign statements under oath to present in Court to present his own case, then I think that—we ought to be able to question him as to whether he knew what was in the petition, whether he had given the facts to another person to put in or whether they just told him what should be in. I think it all goes to the veracity of the Petitioner.

Mr. Walker: If your Honor please — if counsel's statement are true, no litigant could sign a petition as far as that is concerned. The vast majority of people are not versed in the law. I suppose that vast majority of the people sign it, not only petitions such as this but — mere civil petitions, complaint that needs to be sworn to is in the same situation. He need not know all of the technicalities of law.

page 51] Court: That's very true but I think he has the right to determine just how much this man does know.

Mr. Witt: May I proceed, sir?

Court: Yes sir.

Mr. Witt: Thank you, your Honor.

Mr. Walker: Note an exception.

Court: Yes sir.

By Mr. Witt:

Q. Mr. Toran, exactly how much did you participate in presenting this petition?

A. Well, at first I sent for the Court records and after a while when I seen that my mother could not afford me a counsel, I began — looking around for books dealing with law and asking various other inmates who had put in petitions, if I may read their petitions and after I investigated, I say in a period of eight months or so then I finally sat down and I drew up more or less a skeleton copy of a petition and I kept this and when I was transferred back to the State Penitentiary in Richmond, I — got hold of a few law books and I was looking up some law and I talked with another fellow and I showed him the skeleton copy of what I had made up and so he — said, well, let him look at it so I gave it to him and I guess he kept it about three months and he gave it back to me and asked me if I could type it up and I said

yes, I could and I got it and I typed it up myself.

page 52] Q. So what you are saying is that you looked at a bunch of other petitions and drew *your's* up in skeleton form?

A. No, I didn't say that. I said I looked at other petitions and I also looked at other — people who had made similar allegations or cases that were almost similar to mine and also looked to see under what law they were fighting their cases on. I didn't look at another petition and copy it word for word.

Q. Where did you get this idea to file this petition?

A. Well, I guess I got the idea when I was at the State Farm.

Q. Did you read it? You said you typed it up, is that true?

A. Yes, I did.

Q. Now you said the man you gave the skeleton copy to kept it for about three months?

A. Well, it may have been two and a half months.

Q. And took him two and a half months to draft the petition from your skeleton copy, is that right?

A. Well, yes sir. He was — he was pretty busy.

Q. Now, how much of a copy did you give him?

A. Basically everything that is in the petition

page 53] that is presented to the Court this morning.

Q. Do you mean that your skeleton copy comprised everything that's on these typewritten pages?

A. Yes — not everything. I believe under the determination of jurisdiction, I — I knew nothing of that but, however, all the contentions with the exception of the contention of convicted upon an improper indictment I did not add that one.

Q. You didn't put that one in there?

A. No.

Q. So he changed some of your allegations too, is that right?

A. Well, he asked me and then — I read it to make sure that it was right because I also — he also told me anything in the petition was not true, I could be subject for perjury.

Q. He did tell you that?

A. Yes sir.

Mr. Witt: I don't have any further questions, your Honor.

Mr. Walker: I would like to redirect one question, your Honor.

REDIRECT EXAMINATION

By Mr. Walker:

page 54] Q. In answer to one of Mr. Witt's questions in reference to your conversation with Lieutenant Austin, I believe you stated that you told him that you did it. Did you do it?

A. No, I did not.

Mr. Witt: Your Honor, I object — it's already in but we can't get into the merits of the case as such. That's already been determined by the original Court.

Mr. Walker: Does your Honor have any questions?

Court: Yes sir, I have several. Where is the petition. Exhibit Number Two, I have it. I have it. All right, Mr. Toran, at your preliminary hearing do you recall Mr. Pierce giving a report to the Judge in reference to your history.

A. I remember something with Mr. Pierce but whether he gave a report or not, I cannot say because I didn't —

Court: You didn't deny that he gave one to the Judge at the preliminary hearing?

A. No, I can't deny it.

page 55] Court: All right, do you remember that after the — you had your first trial here, a Mr. Paul R. Burroughs of the State Probation *Officer* conducted a pre-trial investigation? Isn't that correct?

A. Yes, he did.

Court: And you read that report prior to your second trial?

A. No, I did not.

Court: You did not?

A. No, the first time I seen it was when you sent me a copy.

Court: This Court didn't ask you and your attorney in open Court whether or not you had seen the pre-trial report?

A. I can't remember if they did but I did not read it prior to — to the trial.

Court: Do you remember being sent to the Mental *Hygine* Clinic?

A. Yes.

Court: Doctor Lassen and several of them out there?

A. Yes sir.

Court: On two occasions?

A Yes sir.

page 56] Court: Do you remember going to Petersburg?

A. Yes sir.

Court: All of this was done prior to the trial in which you got 20 years?

A. Yes sir.

Court: And you do remember talking to Mr. Burroughs though of the State Probation Office?

A. Yes, I do.

Court: All right sir, now in reference to Mr. Rainey, did you ask him to subpoena any witnesses?

A. No, I did not.

Court: Did you in the first trial which as I recall was a complete trial from beginning to end, on the second trial did you bring anything to his attention that he should have brought out?

A. I — I asked him about one thing, yes sir, and he failed to bring it out. I think he told me it wasn't too important.

Court: Well — you all disagreed on whether it ought to be brought out?

A. Yes.

page 57] Court: And of course he was the attorney. You hadn't read your law books at that time, had you?

A. No sir.

Court: Now, did you ask him to do anything that he did not do other than this one thing you said you wanted to know?

A. Not that I can recall.

Court: All right, sir. Now suppose you tell me in your own words how he was inadequate?

A. Well sir, I feel he was inadequate for not raising the issue that the confessions taken by the police were inadmissible in evidence being that I was not advised of my right to counsel and also that I had asked Sergeant Austin.

Court: Now where do you get that note from?

A. Well sir, in the case of *Escobedo* vs *Illinois.*

Court: When was that decided?

Eugene Claude Toran

A. June — I believe it was June 22, 1963.

Court: When?

A. I believe it was June 22, 1963 or October 22. I may be slightly mistaken.

Court: It was after your trial though, wasn't it?

page 58] A. Yes sir but —

Court: All right. Go ahead.

A. And — however, still and all I would say that — being he also failed to bring out the fact that I was not represented by counsel at the preliminary hearing.

Court: And when did that decision come out from the Supreme Court of the United States?

A. Well sir — if I am not mistaken, I believe according to Section 19-1-163 point one of the Code of Virginia, that gives my right to said hearing and upon the docket to be heard would embrace the right to be heard by counsel and to be deprived of the right to be heard by counsel would be in effect, be deprived the right to be heard.

Court: Where, at a preliminary hearing?

A. Yes sir.

Court: The Code says that?

A. It says I have the right to be heard by counsel at the preliminary hearing, at the stage of the scene is the point and I believe a counsel should have been appointed to represent me.

Court: All right.

A. I can't say if the Code says that.

Court: I can tell you it doesn't.

page 59] Go ahead. What else.

A. I also feel that he should have made the motion to have the confessions ruled out as inadmissible evidence because they were taken before I was advised of my right to have counsel and I did ask Mr. Austin of the right to have counsel. Further, that both statements were very conflicting signed confessions.

Court: Lieutenant Austin has testified there was only one statement. You say there were two written statements?

A. Yes sir, one was taken by the Detroit Police Department and the other was taken by —

Court: That wasn't read here, was it?

A. Yes, it was.

Court: It was?

A. Yes sir. And one of them — was very — was conflicting to the other statement. They didn't coincide whatsoever and also I believe if more thorough investigation would have been made on the matter when Mrs. LaVerne Martin did not positively identify me as the man who was her alleged assailant, I believe he also should have raised the motion that the case be dismissed because I don't think that a mere confession, a signed confession is not sufficient evidence to sustain a conviction.

page 60] Court: And you have this note — you didn't have the note, did you?

A. What note, sir?

Court: "I have a gun." You didn't have that on you, did you?

A. No sir.

Court: All right, anything else?

A. Yes sir. Also, I — I believe in one of the confessions that were taken I told the man who had committed the robbery in Detroit, Michigan, and however the statement was just literally denied here in Court. I mean it was read but no one even failed to bring out the fact. I think you asked where was this fellow at. At the time Sergeant Austin told you he was presently confined in the penitentiary and — that's all about all I can say. I feel he was inadequate because he didn't even sit down and go over the case with me in detail. I think as a lawyer should go over the case in detail. As far as I can remember, I don't remember him making any points as far as asking the witness was she actually positive that I was the man although he did ask her to identify me but I think he should have stressed a lot more without identification.

Court: She did identify you, didn't she?

A. No, she did not and without evidence such as a gun or any —

page 61] Court: Don't you think that is my job?

A. Yes sir but I feel it was the attorney's job to present it if I am not mistaken.

Court: Didn't he?

A. I don't think he did it properly, no sir.

Court: Now let's clear up this little bit about the statement.

Eugene Claude Toran

Do you remember what you told me when I asked you whether or not you had anything to say before I sentenced you? What did you tell me?

A. The exact words I cannot remember although I think I did ask you to let me go back home and I said even though perhaps I was guilty or something like that, I'm not sure, then you said, "do you mean you did commit the robbery" and I believe I said, "yes sir."

Court: And I said, "you denied it all through the trial" didn't I and I asked you why and do you remember what you told me?

A. No, I do not remember.

Court: Well, I'll refresh your memory. You said, "Judge, I was just a young man I pulled this job and I — I want you to have mercy on me" and I said, "what do you mean you pulled this job" and you said and — and

page 62] I asked you because you had denied it all the way through and you said, "yes, I did it, Judge, but that was for self-preservation." Do you remember saying that, "for self-preservation?" Those are the exact words you used. Do you remember that?

A. Yes sir.

Court: Did you pull the job?

A. No sir.

Court: You did not?

A. No.

Court: Now you tell me you did not do it?

A. I have proof I didn't do it.

Court: Percy Clark do it?

A. Yes sir.

Court: He did?

A. Yes.

Court: And who else?

A. That's all I know.

Court: That's all you know?

A. Yes.

Court: Did you know he did it at the time?

A. Yes sir.

page 63] Court: You did? All right, sir. Step down.

Mr. Walker: If your Honor please, in reference to our next

witness I would like to make a brief statement to the Court. The next witness we'd like to call is Percy Clark. Now as your Honor knows, an order was entered by the Court directing that he be brought down from the State Penitentiary in Richmond. I understand he's serving a life sentence I believe. Mr. Clark volunteered to testify. I had previously talked to him and his testimony would be extremely damaging to himself and it would be self-incriminating. I have tried to explain this to Mr. Clark. He's not represented by counsel. In view of the seriousness of the statements which he might make, I would like to request the Court to state to him his right not to make such incriminating statements.

Court: All right, Percy Clark, have you been sworn?

Mr. Percy Clark: Yes sir.

Court: Come up here.

page 64] PERCY CLARK,

called as a witness by the Petitioner, being duly sworn, testified as follows:

Court: All right, how much time are you carrying in the penitentiary now?

A. Double life sentence.

Court: Double life?

A. Yes.

Court: You understand that if you on this testimony admit that you were on the armed robbery, that you can be tried and that the maximum for armed robbery is death in the electric chair?

A. Yes sir.

Court: You understand that?

A. Yes sir.

Court: You are willing to testify of your own volition?

A. Yes sir.

Court: You want a lawyer?

A. No.

Court: What?

A. No.

Court: You don't want a lawyer?

A. No.

Percy Clark

Court: You understand that now?

page 65] A. Yes sir.

Court: And you understand you can receive death in the electric chair on the admission from this stand that you were in on this armed robbery?

A. Yes sir.

Court: Anything else you want to ask him?

Mr. Witt: Yes sir, if I might, please. This is in the nature of advising him, as the Court has done. Mr. Clark, how old are you?

A. I'm 22?

Mr. Witt: 22?

A. Yes sir.

Mr. Witt: Are you familiar with your right to have an attorney at this point?

A. Yes, sir.

Mr. Witt: You are familiar with your right to have an attorney?

A. Yes sir.

Mr. Witt: How are you familiar with that right, sir?

A. Because against the Constitution.

Mr. Witt: What is against the Constitution?

page 66] A. Not having — if I — if I — if I did not —

Mr. Witt: Are you familiar with the fact if you make a statement against yourself that you are waiving your right to self-incrimination or not to incriminate yourself?

A. Yes sir.

Mr. Witt: Do you know what amendment to the Constitution you are allowed to be silent under?

A. No.

Mr. Witt: Have you ever heard of the Fifth Amendment?

A. Yes sir.

Mr Witt: Are you familiar with the fact that the Fifth Amendment allows you to be silent if you do not want to testify against yourself?

A. Yes sir.

Mr. Witt: How far have you gone through school, Mr. Clark?

A. About the sixth, seventh grade.

Mr. Witt: Seventh grade?

Percy Clark

A. Yes sir

page 67] Mr. Witt: For what charges were you convicted and sentenced to the penitentiary?

A. Armed robbery.

Mr. Witt: Did you have an attorney there?

A. Yes.

Mr Witt: Were you explained your Constitutional rights by your attornies at those two trials?

A Yes.

Mr. Witt: Did they tell you about the matter that you did not have to testify against yourself if you did not want to?

A. Yes.

Mr. Witt: And you are stating to the Court this morning that you do not want an attorney to represent you in this matter this morning, is that correct, sir?

A. Yes sir.

Mr. Witt: You understand that you are under oath at this point?

A. Yes sir.

Mr Witt: And you understand what that oath means?

A. Yes sir.

page 68] Mr. Witt: Have you ever taken an oath before?

A. Yes sir.

Mr. Witt: Have you ever testified in Court before?

A. No more than for myself.

Mr. Witt: You have been on the witness stand in a criminal trial before, is that correct?

A. Yes sir.

Mr. Witt: I have no further questions, your Honor.

Court: What did you draw your second life sentence for?

A. Armed robbery.

Court: How about the first one?

A. Armed robbery.

Court: Are you under any indictment now in the penitentiary?

A. No sir.

Court: What?

A. No sir.

Court: All right.

Percy Clark

DIRECT EXAMINATION

By Mr. Walker:

page 69] Q. Your name is Percy Clark?

A. Yes sir.

Q. How old are you, Mr Clark?

A. 22.

Q. You previously stated that you are now confined in the Virginia State Penitentiary, is that correct?

A. Yes sir, that's correct.

Q. Do you know Eugene C. Toran?

A. Yes sir.

Q. Do you recall when you first met him?

A. Yes sir.

Q. Will you tell us when that was.

A. It was in January in '61.

Q. And where did you meet him?

A. I met him at the New York Cafe, Jefferson Avenue.

Q. In what city is that?

A. Newport News, Virginia.

Q. Where did you last see him prior to coming to Court today?

A. In Richmond Penitentiary.

Q. I show you this document and ask you if you can identify the signature on that document?

A. That's my handwriting.

Q. And whose signature is it?

page 70] A. My signature.

Q. And would you tell us what this document is?

A. It's a confession.

Mr. Witt: Your Honor, just a minute. I think maybe I ought to have an opportunity to look at it before we reflect in the record what it is and also if I have any objection, I ought to be able to make it prior to that time.

Court: All right.

(The document was handed to Mr. Witt.)

Mr. Witt: Your Honor, I'm going to make an objection to the introduction of this statement on these grounds. That we

cannot take any evidence that goes to the sufficiency of the evidence by which Mr. Toran was convicted. Now if this is being introduced for the purpose of showing some facet of ineffective assistance, then I think the Court may well be able to accept it on that basis but in view of the testimony of the Petitioner that he did not give any witnesses to his attorney for the purpose of having him testify in his be-
page 71] half, I don't believe this could be introduced for that purpose either and as a result I must object to its admissibility.

Court: I don't think it can be introduced anyhow. He's here. He's the best evidence. Let him testify to what he has got in there.

Mr. Witt: All right, sir. I will object to his testimony on the same grounds.

Court: I don't think this is a matter of *habeas corpus*.

Mr. Witt: That's my objection, sir. I don't think — the only way that you can get him in to testify at all would be in the event that you are trying to support the allegation of ineffective assistance in that he was a witness who could have testified and didn't because the attorney was negligent in not calling him and there's been no evidence to support that theory whatsoever. The Petitioner himself says he gave no witnesses to his attorney.

Mr. Walker: If your Honor please, the total circumstances of this case, I submit, this evidence, this docu-
page 72] ment as the Court stated he is the best evidence, is admissible. In line with the Petitioner's allegations of ineffective representation, with reference to the objections as to the Petitioner's confessions, I think it substantiates that objection should have been made. Certainly without referring to what this document is, if it is shown to the Court that there exists another confession or if it is shown to the Court that — that there was substantial ground for believing that the confession was invalid, I believe that further substantiates his position in that particular regard. It's cumulative evidence. For that reason we feel that it is admissible.

Court: All right, sir. I'm going to let it in for the purpose of the record but I'll hold my ruling in abeyance as to whether I think it is proper evidence in *habeas corpus* or not.

Mr. Witt: I'll note my exception now if you please, sir.
Court: Yes sir.
Mr. Witt: Thank you.

page 73] By Mr. Walker:

Q. Mr. Clark, would you state where you were on January 24, 1961?

A. In January 24? I was in Newport News, Virginia.

Q. Would you state what, if anything, you did on the night of January 24, 1961?

A. I went into the Whittaker Memorial Hospital and robbed.

Q. Would you state — what, if anything, weapon or instrument was used in such robbery?

A. A revolver.

Q. What did you get from the robbery?

A. $24.00 in cash.

Q. Now, would you — tell the Court who, if anybody, was robbed at Whittaker Hospital?

A. Who?

Q. Yes sir.

A. Would you repeat that again?

Q. Do you know who was robbed at Whittaker Hospital?

A. Yes, when I went into the Whittaker Memorial Hospital, there was a woman.

Q. What, if anything, did you do?

A. I handed her a note and she got up and page 74] handed me the money and I *fleed.*

Q. Who was with you at that time?

A. No one.

Q. Did you see Eugene Toran at any time subsequent to that, to the time of the robbery?

A. I saw him two days previous, two or three days I think.

Q. And where did you see him?

A. At the Rainbow Inn on — between 25th and 26th Street, in Jefferson Avenue.

Q. And what, if anything, did you do?

A. Well, I talked to him and we drunk coffee. He told me that he were going to Detroit, on his way to Detroit and said he just had enough money to barely get there and *he appreciate* if I would lend him a couple of dollars for to buy sand-

wiches and soda and such like that on his trip and I — I lend him a couple of dollars, gave him a couple of dollars and I told him of the crime I had committed, armed robbery and — I ran every detail down to him and he told me I should be careful and we parted there and I haven't seen him since I met him in the institution.

Q. Were you ever arrested and charged with the robbery at Whittaker Hospital?

A. I was picked up for the robbery for suspicion of robbing Whittaker Memorial Hospital, three or four
page 75] days after I robbed it. I think it was the 28th or 29th of January and I stayed in jail 10 days and was dismissed.

Q. Do you remember the Officer who investigated that case?

A. Sergeant Austin at the time.

Q. Did you then admit to the Officer or to the Court —

A. No sir.

Q. That you had committed this robbery?

A. No sir because I know at the time that — if I probably didn't say nothing, anything, I didn't have — no one to testify against me or nothing, that I would probably go when I go back to the hearing.

Q. Why have you decided to admit it now?

A. Because I met Toran December the 17th when I was released from meditation.

Q. What year?

A. 1964, when I was released from meditation from Richmond State Penitentiary. He approached me and I was surprised to see him. He told me that they had him for robbing Whittaker Memorial Hospital and he got 20 years for it — and I — he told me that he had a petition here trying to get back to Court now to fight the case and I told him anything I could do for him to help him that I would because I knowed that he was not the man who robbed the place.
page 76] He definitely couldn't have been the man who robbed the place when I was the one that robbed the place.

Q. Were you offered anything by Mr. Toran?

A. No, I weren't.

Q. Prior to January 24, 1961 how long had you known Mr. Toran?

Percy Clark

A. I met Toran two or three days before I robbed the Whittaker Memorial Hospital. I met him at New York Cafe. He told me that he had just got into town and — he didn't have any money or anything or know where to stay and — that he would have some money as soon as he received some money from Western Union from his mother so I bought him coffee, something to eat and we went to different pool rooms and places and he spent two or three nights at my room. Then he left a day before I did the robbery and I saw him two or three days after the robbery in the Rainbow Inn and that's when we drunk coffee and I told him — showed him the clipping of the case, the robbery of the hospital and told him about it and I gave him two dollars for to have some money for — to go back home with, buy sandwiches and things with and I haven't seen him since December 17, 1964 after that.

Q. You next saw him at the penitentiary?

A. Yes.

Q. Where is your native home?

A. Newport News.

page 77] Q. You were born here?

A. Yes sir.

Q. You raised here?

A. Yes sir.

Mr. Walker: I have no further questions.

CROSS EXAMINATION

By Mr. Witt:

Q. How tall are you, Mr. Clark?

A. Well, I don't know directly. I would say about five nine or ten.

Q. Was there anybody else accompanying you in this robbery of Whittaker?

A. No, there wasn't.

Q. Just you?

A. Yes.

Q. That's all?

A. That's it.

Mr. Witt: I have no further questions, your Honor.

Court: You tell him about the note?

A. No sir.

page 78] Court: You didn't tell him about the note?

A. No sir.

Court: Then you don't know how he told the Detective out in Detroit about exactly the words that were on the note that was given to the girl in the hospital, do you?

A. You mean the note that was given to the girl?

Court: What other note have we been talking about? You haven't signed any bank notes lately, have you?

A. No.

Court: Did he know about that note?

A. No sir, I ran every detail down to him.

Court: You ran every detail?

A. Yes sir.

Court: Including the words on the note?

A. Yes sir.

Court: You told him the words on the note?

A. Yes sir.

Court: Suppose you tell them to me.

A. Well, "I have a gun. This is a stick-up."

page 79] This is most of the note I put up.

Court: "I have a gun. This is a stick-up."

A. "Give me your money."

Court: Is that all you put on it?

A. "Give me your money or I will shoot" or "kill you."

Court: For your information, the note reads, "I have a gun. Give me your money. Keep quiet. Move fast or I will shoot. Pass back my note and paper money."

A. Well —

Court: Is that it?

A. That could be. I didn't wrote — I didn't write the note.

Court: You didn't write the note?

A. No.

Court: Who wrote it?

A. I took and got another fellow to write the note for me.

Court: Who?

A. A stranger.

Court: Who?

A. A stranger.

Court: A stranger?

page 80] A. Yes. Fellow in the pool room.

Q. Did you get the note back from the girl?

A. No, I—I *flee* without the note.

Q. What?

A. I *fleed* without the note. I saw someone coming down the hall so —

Court: You fleed without the note?

A. Yes sir.

Court: You remember the language that the stranger wrote and told it to Toran so that he could quote it verbatim to the Detroit Police?

A. Well — I remember at the time. I remember everything that was on it at the time but it was approximately almost four years since I even heard of the note or seen the note.

Court: All right.

Mr Witt: I have another question, your Honor.

Court: All right, sir.

By Mr. Witt:

Q. Mr. Clark, do you know somebody named Youngblood?

A. Youngblood?

Q. Yes.

A. Sure.

page 81] Q. Who is he?

A. He was my room mate at the time.

Q. Your room mate?

A. Yes.

Q. At the time. Who was arrested with you at the time that you were arrested on the 27th of January?

A. Fellow named Linwood McClinnan and Johnnie Clark, Johnnie B. Clark. There was three of us.

Mr. Witt: All right, sir. Thank you.

Mr. Walker: We have no further questions.

Court: No further questions?

Mr. Walker: Your Honor have any further questions?

Court: No.

Mr. Walker: That's all for the Petitioner.

Court: Let me call Toran back to the stand just one minute.

Eugene C. Toran

EUGENE C. TORAN,
recalled as a witness in his own behalf, having been previously sworn, testified as follows:

page 82] Court: Didn't you write to me a letter, Mr. Toran, in reference to cutting off some of your time?

A. Since I have been confined?

Court: Yes sir.

A. Yes, I have.

Court: And didn't you put in that letter or did you, the fact that you had learned your lesson?

A. Well, I think I put in the fact that I had been rehabilitated.

Court: You had been rehabilitated?

A. Yes.

Court: From what?

A. Well, I mean it was evident I had been in trouble many times before.

Court: Not this one?

A. My attitude wasn't too good the last time I was here. That's what I was in reference to.

Court: That's what you meant?

A. Yes.

Court: When you said that you had learned your lesson?

A. Well, I mean — your Honor, I really didn't believe that I was going to get such a long sentence in the
page 83] penitentiary and — I just didn't believe that I was even going to go to the penitentiary because I knew that I had not committed the robbery and when I confessed to the Detroit Police that I had committed the robbery, that was merely for the sole purpose to get away from Detroit.

Court: What was the sole purpose of your confession to me in Court?

A. Well, I figured I had already been convicted and found guilty whether I contested my innocence or guilt, I didn't think that would have too much bearing because you had already convicted me so it remained on the scene I was guilty according to the minds of the Court.

Court: All right, sir. You can step down. All right sir, the Petitioner rests.

Mr. Witt: Your Honor, the Respondent calls Mr. Rainey, please sir.

Court: Mr. Rainey.

(At this time the Court declared a recess after which the Court reconvened.)

J. L. RAINEY, JR.,
called as a witness by the Defendant, being duly sworn, testified as follows:

page 84] DIRECT EXAMINATION

By Mr. Witt:

Q. Mr. Rainey, you have been sworn, have you not? You have been sworn, haven't you?

A. Yes sir, we were all sworn together.

Q. Can you hear me from there or do you prefer I come up there?

A. I think I can hear you.

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

A. J. L. Rainey.

Q. And what is your occupation, Mr. Rainey?

A. An attorney.

Q. How long have you been practicing law?

A. 43 years.

Q. 43 years?

A. Yes.

Q. Have you been practicing in this locality?

A. That's correct.

Q. Could you make an estimation for the Court please, sir, as well as you can in 1962 could you give the Court some idea of the frequency that you appeared in criminal cases on behalf of either indigent felons or as retained counsel?

page 85] A. No, I could not. It's hundreds of them, I can say that.

Q. Would you state that again? He didn't hear you.

A. Hundreds of criminal cases in which I have appeared at.

Q. All right, sir. Now do you recall having been appointed by this Court to represent Eugene Toran in the matter that he had before this Court?

A. Yes, I remember.

Q. Do you recall with any particularity the case that you represented Mr. Toran in?

A. Yes, this case is very vivid in my mind if you wish me to state.

Q. Yes sir, if you can give some of the particularities that you have recollection of, I would appreciate it.

A. The Court asked me to talk with this young man and appointed me to represent him. That is the — the Corporation Court Judge.

Q. Do you have any idea what date that was, sir?

A. No, I do not off-hand.

Q. Do you recall how long prior to trial it was?

A. About two or three weeks.

page 86] Q. All right, sir. Proceed if you will.

A. I went over and talked to Mr. Toran at the jail on one or two occasions before the first trial in the Court of Record here. On my investigation I found out that two statements were made. One in Detroit and another to Sergeant, now Lieutenant Austin of this City.

Q. Do you recall where you got that information from?

A. I got that from — information from Toran himself.

Q. All right, sir.

A. I was concerned about the admission he had made in Detroit, particularly and I was advised by Toran that he gave that statement in Detroit because of certain treatment or brutal handling there by the Department of Police, that he thought if he could come to Newport News with this offense, that he would be relieved of this treatment in Detroit. He advised me of course that they must have told the Newport News authorities. The rest of it of course is hearsay. On going over the statement which he had made to the authorities in Detroit, he informed them that, so he said, that he had committed a robbery in Newport News by holding up a clerk at the Whittaker Memorial Hospital. He said when he was brought from

New Jersey by Lieutenant Austin, that he had made similar statements to him or the same statement so I ques-
page 87] tioned him very vividly about the statement, especially to Lieutenant Austin and I asked him why he had made the statement to Lieutenant Austin and he told me that he made the statement because Lieutenant Austin was apparently nice to him. I said, "did he use any influence on you?" He said, "No." I said, "was he violent or brutal to you in any respect?" He said, "no." I asked him did he use any duress on him. He said "no."

Q. Any what?

A. I asked him if he used any duress on him and he told me no.

Q. Any duress?

A. Yes.

Q. All right, sir.

A. So I tried to — ascertain from him and we had one or two conferences on this particular situation, how he could reconcile the statement which he made in Detroit and the one he made to Lieutenant Austin. I advised him that I thought I could get around the one in Detroit but I was going to have some difficulty in getting around the statement in which he made to Lieutenant Austin. So we finally came to trial in that situation.

Q. Do you recall, sir, let me interrupt just a minute. Do you recall how many times you saw him prior to trial?
page 88] A. I talked to him on two occasions in the jail.

Q. On two occasions in the jail?

A. Before the first trial.

Q. Go ahead.

A. We went to trial. After we had gone into the evidence, the Court found him guilty. I ascertained that the provisions of the statute for probation had not been applied with. I think that Section is 16-176-B.

Court: That's the juvenile?

A. Yes sir.

Court: That's right.

A. So we — we had pre-trial on that situation in the Judge's office and I made a motion that the verdict be set

aside and we be awarded a new trial. The Court sustained the motion.

By Mr. Witt:

Q. Now let me ask you this. At this point, Mr. Rainey, did you at any time through your conversations with Mr. Toran ascertain from him as to what his age was in November of 1962?

A. He advised me that he was 16 years old. He said —

Q. In November of '62?

A. That's right.

page 89] Q. All right. You had no — excuse me. Go ahead. Excuse me. Did you have occasion to verify that?

A. No, I did not.

Q. All right. That was on his information?

A. That was on his information.

Q. All right, sir. Thank you.

A. I tried to ascertain, however, from him whether he had any parents or whether I could notify them. He suggested he had a mother but he did not want his mother to know about this situation and did not want me to advise her. So after the Court set aside the verdict and awarded us a new trial, I had two other conferences with this young man and on each of these conferences his mind seemed to be quite hazy to me as to some events and I was not altogether pleased as to his complete mentality about the situation so when we were called for a hearing on this trial, I motioned the Court that he be sent to Petersburg for observation. The Court sustained that motion and he was sent to Petersburg for observation. He was later returned and I was advised that he had been returned and I went over to talk with him again to see if his mind was altogether clear as far as I was concerned. I thought then he was ready for trial and the trial was again set by the Court and we went into the hearing. It was his contention all the while to the Court that he wasn't guilty of this offense so I put him on the witness stand to deny this situation

page 90] as I thought. So after we had gone into the evidence very carefully, the Court asked him the question on the stand whether he was there that night and had

the gun and put it on this young lady. He hesitated for a few moments and he said yes, he was. Of course I could have bounced out of my chair, excuse the expression, because I didn't think he was going to admit it but that's what he said so the Court found him guilty. I viewed the evidence after the Court found him guilty on that occasion and — I could not find any errors that the Court had committed so I thought it inadvisable to secure a writ of error to even apply for one and that is about the end of — of Mr Toran.

Q. Did Mr. Toran at any time prior to the time that you were first appointed until the conclusion of the second trial give you the names of any witnesses who could have appeared in his behalf?

A. No, he did not. I tried to ascertain that fact from him. He said the persons who with him that night in this robbery, they remained on the outside of the door. I tried to find out who they were. He said he did not know them. He had just met them that day or the day before so I said then three of you persons were there in that? He said yes but he never would give me the name of any witnesses that I could try to get for him.

Q. Did Mr. Toran testify in his own behalf?

A. Yes, he did.

page 91] Q. Do you recall how many witnesses were offered by the Commonwealth?

A. It was — I believe it was three witnesses by the Commonwealth. It might have been more but I think it was three.

Q. Did you cross examine those witnesses?

A. I did.

Q. Were you present with Mr. Toran after the pre-sentence report had been offered?

A. Yes.

Q. Do you know whether he was advised of the contents of that?

A. Yes, he was.

Q. Were you present when he was sentenced?

A. When he was sentenced?

Q. Yes.

A. Yes.

Mr. Witt: I have no further questions, your Honor.

J. L. Rainey, Jr.

CROSS EXAMINATION

By Mr. Walker:

Q. Mr. Rainey, I believe you stated that after your appointment when you first interviewed Mr. Toran, he
page 92] advised you or you learned that two statements had been made?

A. Yes sir, that's right.

Q. I take it from that, that these statements were made prior to your appointment as attorney?

A. That is correct, sir.

Q. You were not present at the time?

A. No sir.

Q. You were appointed prior to his trial in the Corporation Court, is that correct?

A. Yes sir, that's right.

Q. Did you represent him in the — at his preliminary hearing?

A. No, I did not.

Q. Did you know whether or not a preliminary hearing had been held?

A. No.

Q. You did not know whether or not he had an attorney at that preliminary hearing?

A. No, I do not.

Q. Did you make any inquiry as to whether or not he had an attorney?

A. No, I did not make that inquiry. I made inquiry as to the probation. That's why I asked the Court to set the verdict aside on learning that it had not been made.

Q. I'm referring back to the preliminary
page 93] hearing. Then do you know whether or not he had an attorney at that hearing?

A. I do not, sir.

Q. Did you know whether or not a guardian *ad litem* had been appointed for him at that hearing?

A. I do not, sir.

Q. Did you know whether or not either of his parents was present at that hearing or his legal guardian?

A. I do not, sir.

J. L. Rainey, Jr.

Q. In your testimony you referred to two statements. One taken in Detroit and one taken in Newport News?

A. No, one taken, given to Sergeant Austin.

Q. One —

A. I don't know whether it was taken in Newport News or whether it was taken on the way from New Jersey to Newport News after Sergeant Austin — Lieutenant Austin went after him.

Q. Now, I want to understand whether or not both statements were introduced into evidence in the Corporation Court trial?

A. No, the only statement that was introduced was that given to Sergeant Austin at the time.

Q. All right. Was any objection made to the introduction of Sergeant Austin's statement?

page 94] A. No, I didn't make any objection to the statement. In fact, I had no reason to.

Q. All right, sir. Was any objection made with reference to the fact that he had no attorney at his preliminary hearing?

A. I didn't make any.

Q. You said there were maybe three or four other witnesses. Who were these other witnesses, if you recall?

A. You mean the persons who testified at the trial?

Q. Yes sir.

A. I remember Sergeant Austin, a young lady who was at the hospital that night. I'm not so sure but I think there was another witness, Mr. Walker.

Q. Getting back on the evidence of your statement with reference to these — Detroit statement and the Austin statement, in fact, you referred to them in that manner. Did I understand you to say you found there was substantial differences in the Detroit statement and the Austin statement?

A. No, I found out the statement he made in Detroit and the one he had given to Lieutenant Austin were — similar, the same type statement.

Q. They were similar?

A. That's right.

page 95] Q. I see. Now you have heard Mr. Toran testify that he saw you — you saw him one time in New-

port News City jail. That you saw him here in Court immediately prior to his trial and that you saw him in Court immeprior to his second trial which would be three times. Now did I understand you to testify that you saw him on four occasions?

A. I saw him on more than four occasions, Mr. Walker. I saw him twice prior to the time I asked the Court to commit him and that was my reason for asking the Court.

Q. Where did you see him then?

A. In jail.

Q. On those two occasions?

A. That's right.

Q. And where else did you see him?

A. I saw him nowhere else but in jail. When I say jail, I mean the jail building, Mr. Walker. He was brought into the — into the room, visitor's room where I could talk to him over at the City jail. That's what I mean.

Q. Did Sergeant Austin ever interrogate him in your presence?

A. Beg your pardon?

Q. Did Sergeant Austin ever interrogate him in your presence?

A. No, he did not.

page 96] Q. Mr. Rainey, I believe you testified further that you have been involved in hundreds of trials of criminal cases?

A. That's correct.

Q. When you make that estimate, are you referring to your entire career or just over a certain period of time?

A. Well, I mean over a period of 42 years.

Q. I see. Well, how many cases would you estimate you have been involved in purely criminal cases in the past five years?

A. In the past five years? Maybe 60, 65.

Q. Now you are referring to cases in Courts of Record or does that include —

A. That also includes all Courts.

Q. All Courts?

A. Criminal Cases.

Q. Is your practice limited to criminal cases?

A. Well, up until about 10 years ago it was, Mr. Walker.

subsequent to that, why I got into title work mostly.

Q. You also handle civil cases?

A. Yes, I do.

Q. During the past five years, in addition to the trial of the 60 criminal cases you mentioned, you would
page 97] have also been engaged in title work and civil work also, is that correct?

A. Yes sir, certain civil work but I can say, Mr. Walker, I have only had a few civil cases to try.

Mr. Walker: Yes sir. I have no further questions.

Court: Have you been appointed as an attorney to represent indigent prisoners by every Judge which would be two Judges here and two in Hampton and — to defend indigents?

A. Yes, your Honor. I have been appointed by Judge Kearney, Mr. Herbert G. Smith.

Court: Judge Sheild?

A. Judge Sheild and by your Honor.

Court: As a matter of fact, the reference to the Detroit statement came about when Toran took the stand, isn't that correct?

A. That's correct.

Court: Mr. Murchison brought the Detroit statement up on cross examination of Mr. Toran?

A. Yes sir.

Court: And as a matter of fact, he at that time denied the statement on the same grounds that he told you,
page 98] that he was in fear of the Detroit Police and misconduct of the Detroit Police all was told to this Court at that time?

A. That's correct, sir.

Court: And I have a hazy — in the back of my mind he also accused Lieutenant Austin of something later on, on cross examination, didn't he? At first I think he said Lieutenant Austin was all right and then later on didn't he kind of change and say he wasn't too good to him?

A. Yes, he did have somewhat of a — a doubted situation as to his action. As I understood him, he said that Lieutenant Austin somewhat tried to persuade him because of the kindness, to get the statement out of him, something of that sort but it wasn't duress.

Court: All right, sir. Do you have anything further?

Mr. Witt: I have no further questions, your Honor.

Court: All right, sir. Thank you, Mr. Rainey. You may step down.

A. Judge, may I go?

Court: Yes; may we let him leave?

Mr. Walker: Yes.

page 99] Court: You may leave.

Mr. Witt: The Respondent rests, if your Honor please.

Mr. Walker: If your Honor please, I would like to make some argument.

Court: You have no rebuttal evidence?

Mr. Walker: No sir.

Court: All right, sir. The Court is ready to hear you on the argument.

(Counsel for both sides then presented their argument to the Court.)

Court: Well, I'm going to be brief in my remarks, while it may be tempting to be otherwise. I'm going to deny the petition for a writ of *Habeas Corpus*. I don't feel that he's had violated any Constitutional rights. The evidence has been that Mr. Pierce made the report to the Court. The Court considered the report and sent him on to the grand jury. Further, there is some evidence that a guardian was appointed for him and the only evidence to the contrary has been the written record but of course the lower Court is *is* not a Court of Record and things aren't written and I maintain that you

page 100] can look to oral evidence and have to because they don't — they don't record it. As far as Mr. Rainey is concerned, Mr Toran in his able dissertations from the stand in his speaking of the law, it's a shame he doesn't want to abide by the law a little bit rather than just read the law books. If he was all that well versed, he ought to have helped Mr. Rainey out a little bit. According to Mr. Rainey though there was no — witnesses that he wanted brought before. There

was no mention that Percy Clark committed it even though, according to Percy Clark and according to Toran, he had given him a complete run-down of the whole crime which to me is incredible. Of course we're here on the Constitutional grounds. We're not here on the evidence itself because he admitted to me standing right there that he did it and I'm convinced that he did do it. We're looking at it from the Constitutional grounds that he has raised.

This Court is not going to hold and make retroactive the fact that counsel was needed in the preliminary
page 101] hearing. This Court is not going to hold and make retroactive that counsel was needed at the time the statement was taken and all of his other grounds I deny too so I'm denying the petition for a writ of *Habeas Corpus* and remanding him back to the Virginia State Penitentiary.

Mr. Walker: If your Honor please, we note an exception to the decision of the Court and move to set the same aside as being contrary to the law and the evidence.

Court: All right sir, the Court overrules your motion. Now Mr. Witt, will you get me an order on that as soon as possible because I would like to get him right back up there.

Mr. Witt: That I will.

(The case was then concluded.)

page 102] JUDGE'S CERTIFICATE

I, Douglas M. Smith, Judge of the Corporation Court for the City of Newport News, Virginia, who presided over the foregoing trial in the case of *Eugene C. Toran* vs. *C. C. Peyton, Superintendent of the State Penitentiary,* tried in said Court in Newport News, Virginia, on February 11, 1965 do certify that the foregoing is a true and correct report of the evidence, together with the motions, objections and exceptions on the part of the respective parties and the action of the Court in respect thereto, and all other incidents during the trial of said case, on February 11, 1965 as therein set forth.

I do further certify that the attorney for respondent had reasonable notice, in writing, given by counsel for the Petitioner, of the time and place when the foregoing report of the testimony, objections, exceptions and other incidents of the trial would be tendered and presented to the undersigned for signature and authentication, and that the said report was

presented to me on the 2nd day of April 1965, within sixty days after the entry of final judgment in said cause.

Given under my hand this 5th day of April 1965.

DOUGLAS M. SMITH
Judge of the Corporation Court for the City of Newport News, Virginia.

page 103] This is to certify that the foregoing is the true and correct transcript of the testimony and incidents of trial in the *habeas corpus* proceedings in the Corporation Court of the City of Newport News, Va. on Feb. 11, 1965 of *Eugene C. Toran Petitioner* vs. *C. C. Peyton, Supt. of Virginia State Penitentiary.* I further certify that said transcript was presented to the Judge of the Corporation Court aforesaid on the 2nd day of April 1965, (within 60 days from the entry of the final order herein) signed by said Judge on the 5th day of April 1965 and delivered to me as clerk of said Court of April 5, 1965.

Given under my hand this 21st day of April 1965

S. B. BARHAM,
Clerk, Corporation Court
Newport News, Va.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk

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