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Record No. 6776

In the
Supreme Court of Appeals of Virginia
at Richmond

MARTIN PETE CARDWELL

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF BRISTOL

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. 6776

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of October, 1967.

MARTIN PETE CARDWELL, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Corporation Court of the City of Bristol
Joseph L. Cantwell, Jr., Judge

Upon the petition of Martin Pete Cardwell a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Bristol on the 13th day of February, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

page 6 } COMMONWEALTH OF VIRGINIA,
CITY OF BRISTOL, to-wit:

The grand jurors of the Commonwealth of Virginia, in and for the body of the City of Bristol aforesaid, and now attending the Corporation Court of said City, upon their oaths present, that MARTIN PETE CARDWELL in the nighttime on the 9th day of January, 1966, in said City of Bristol, did, unlawfully and feloniously, commit the crime of burglary, by then and there, in the nighttime of that day, feloniously break and enter the said Euclid Avenue Baptist Church, being the property under the control of the trustees of said church with intent the goods and chattels of the said Church, then and there being, then and there unlawfully and feloniously to steal, take, and carry away, one $5.00 roll of 5¢ stamps, of the said goods and chattels, in the said Church, in the City aforesaid, then and there being, then and there unlawfully and feloniously did steal, take, and carry away, against the peace and dignity of the Commonwealth.

Witnesses: Vernon Knight, Capt. Jack Stigall

* * * * *

A true bill

D. U. Webster, Foreman

* * * * *

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* * * * *

Corporation Court of the City of Bristol, on Monday the 7th day of November, in the year of our Lord, Nineteen Hundred and Sixty-six.

* * * * *

This day came the Attorney for the Commonwealth and the accused was led to the bar in the custody of the Sergeant of this City, he having been returned to the jail of this City,

by order of this Court entered October 27, 1966, from the Virginia State Penitentiary where he is confined in execution of another sentence.

Accused was represented by J. D. Bowie, Esq., counsel heretofore assigned by the Court at the request of the accused.

It appearing that there is ground to question the sanity of the accused, it is ordered that the defendant, Martin Pete Cardwell be committed to Southwestern State Hospital at Marion, Virginia, for the purpose of determining his mental condition and for report thereon to the Court.

It is ordered that a certified copy of the indictment and of this order be transmitted to the Superintendent of said hospital by the Sergeant of this City along with the prisoner.

Thereupon, he was remanded to jail.

* * * * *

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* * * * *

COMMONWEALTH OF VIRGINIA

Department of
MENTAL HYGIENE AND HOSPITALS

January 9, 1967

Mrs. Bertha R. Drinkard, Clerk
Corporation Court of the City of Bristol
Bristol, Virginia

Re: Martin Pete Cardwell
Reg. No. 28114

Dear Mrs. Drinkard:

The above named was admitted to our Criminal Insane Department on November 8, 1966, having been committed by your Court for observation and report pursuant to Section 19.1-228 of the 1950 Code of Virginia, as amended. His charge is burglary.

Since admission, he has been carefully studied and history obtained so far as practical. As a result of our observations, we beg to report that he is not now psychotic or insane, and that he has not been psychotic or insane since admission.

Our official diagnosis is "Sociopathic Personality Disturbance, Antisocial reaction (with alcoholism)". He is, in our opinion, mentally competent and able to return to Court to stand trial and to testify in his own defense. Using the Wechsler Adult Intelligence Scale, he scores a Full Scale I. Q. of 92, indicating average intelligence.

In accordance with Section 19.1-230 of the 1950 Code of Virginia, as amended, it would be most appreciated if you would send for Mr. Cardwell in the next few days, at which time it will be necessary for us to have an Order for his release.

Respectfully,
Joseph R. Blalock, M.D.
Superintendent
Zygmunt Wegielski, M.D.
Clinical Director
Maximum Security Division

JRB/jsr

CC: Honorable Jos. L. Cantwell, Jr., Judge
Mr. Dick B. Rouse, Commonwealth's Attorney
Dr. Hiram W. Davis, Commissioner & Mr. C. C. Peyton

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* * * * *

Corporation Court of the City of Bristol, on Wednesday, the 11th day of January, in the year of our Lord, Nineteen Hundred and Sixty-Seven.

* * * * *

It appearing from the report of the Superintendent of Southwestern State Hospital dated January 9, 1967, that the defendant, Martin Pete Cardwell, is sane for trial, said superintendent is authorized to release him to the Sergeant of the City of Bristol, Virginia, who is hereby directed to return the defendant to the jail of this city for trial.

A copy hereof shall be certified to Dr. Joseph R. Blalock, Superintendent of Southwestern State Hospital.

Enter: 1/11/67. J. L. C., JR.

* * * * *

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* * * * *

MOTION

* * * * *

Martin Pete Cardwell, by counsel, respectfully represents:

I

That he has been indicted by a grand jury in Bristol, Virginia, for the felonious crimes of statutory burglary, forgery and uttering a forged instrument; that trials in these matters are to commence on Monday, February 13, 1967, in Bristol, Virginia; that the defendant needs the following named witnesses, who are convicts of this state, to appear on aforesaid date and testify in his behalf; that the testimony of these witnesses are material to his defense;

1. Betty Hicks
   State Farm
   Goochland, Virginia
   (Sentenced in Bristol, Virginia, in October, 1966, on charge of vagrancy)
2. Luther S. Hilton, 87409
   State Penitentiary
   Richmond, Virginia
3. Curtis Brewer
   State Penitentiary
   Richmond, Virginia
   (Was in Hillsville, Virginia Jail in February, 1966, on writ of *Habeas Corpus*)

WHEREFORE, pursuant to Section 8-300, 1950 Code of Virginia, as amended, the defendant, Martin Pete Cardwell, moves the Court to order the Director of Welfare and Institutions, Commonwealth of Virginia, to deliver
page 18 } aforesaid witnesses to the City Sergeant of Bristol, Virginia, who shall transport them to aforesaid Court to testify in his behalf.

MARTIN PETE CARDWELL
By Counsel

J. D. BOWIE
R. RUSSELL MYERS
Counsel for Martin Pete Cardwell

Filed: February 7, 1967.
BERTHA R. DRINKARD, Clerk

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* * * * *

MOTION

Your defendant, Martin Pete Cardwell, respectfully represents the following:

1. That indictments have been returned against him in this honorable Court charging him with statutory burglary, forgery and uttering;
2. That trials upon these charges have been scheduled to commence on February 13, 1967;
3. That certain witnesses which the defendant believe to be material to the prosecution of said charges are residents of and situated in states other than Virginia, to-wit:

Roger Smoot
11229 Parkview
Cleveland, Ohio

Ralph Cardwell
905 Helena Drive
Silver Springs, Maryland

NOW, THEREFORE, your defendant prays that this honorable Court will issue a certificate under the seal of this Court pursuant to Section 19.1-274 of the Code of Virginia and will direct the Clerk of this Court to issue appropriate warrants for the mileage and per diem allowance to such witnesses pursuant to Section 19.1-275 of the Code of Virginia.

MARTIN PETE CARDWELL
By Counsel

page 20 } J. D. BOWIE
R. RUSSELL MYERS
Counsel for Defendant

Filed: February 7, 1967.
BERTHA R. DRINKARD, Clerk

* * * * *

page 26 } I, Martin Pete Cardwell, in support of my written motion filed February 7, 1967, in the Corporation Court of Bristol, in the pending cases of Commonwealth vs. Martin Pete Cardwell, wherein I am charged with Statutory Burglary, Forgery, and Uttering a Forged Instrument, do hereby make oath that Rodger Smoot, 11229 Parkview, Cleveland, Ohio, can testify to the fact that he was present when I was contacted by Captain Jack Stigall, Police Department, Bristol, Virginia, and knows that he promised, before and after questioning me, to have certain of my personal belongings sent to me; that I was induced to sign statements for Captain Stigall as a result of this promise; that this witness is material and his testimony is necessary for my defense.

MARTIN PETE CARDWELL

Filed: February 8, 1967.
BERTHA R. DRINKARD, Clerk
By: EDWINA F. MULL, D.C.

* * * * *

page 27 } I, Martin Pete Cardwell, in support of my written motion filed February 7, 1967, in the Corporation Court of Bristol, Virginia, in the pending cases of Commonwealth vs. Martin Pete Cardwell, wherein I am charged with Statutory Burglary, Forgery, and Uttering a Forged Instrument, do hereby make oath that Betty Hicks, a convict at the State Farm, Goochland, Virginia, can testify to the fact that she was with me during the entire evening and night of the alleged Statutory Burglary for which I am indicted and that I could not have committed this offense; that Curtis Brewer, a convict, State Penitentiary, Richmond, Virginia, was present when I was contacted by Captain Jack Stigall, Police Department, Bristol, Virginia, and knows that he promised, before and after questioning me, to have certain of my personal belongings sent to me; that I was induced to sign statements for him as a result of this promise; that these witnesses are material and their testimony is necessary for my defense.

MARTIN PETE CARDWELL

Filed: February 8, 1967.

BERTHA R. DRINKARD, Clerk
By: EDWINA F. MULL, D.C.

* * * * *

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* * * * *

Corporation Court of the City of Bristol, on Friday, the 10th day of February, in the year of our Lord, Nineteen Hundred and Sixty-Six.

* * * * *

It appearing that from the *affadavit* of the defendant, Martin Pete Cardwell, that Betty Hicks is a necessary witness for the defense, and that she is confined at the Virginia State Farm at Goochland, Virginia, this shall operate as authority to the Superintendent of said Institution to surrender her to the custody of the Sergeant of this City, who is directed to transport her to Bristol for said trial and return her to the former custody after she has testified.

Enter Feb. 10, 1967.

JOS. L. CANTWELL, JR., Judge

* * * * *

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* * * * *

Corporation Court of the City of Bristol, on Monday, the 13th day of February, in the year of our Lord, Nineteen Hundred and Sixty-Seven.

* * * * *

This day came the Attorney for the Commonwealth and the accused was led to the bar in the custody of the Sergeant of this City. Accused was represented by J. D. Bowie, Esq. and R. R. Myers, Esq., counsel hertofore assigned by this Court at the request of the accused.

Thereupon, upon questioning by the Court, said counsel

stated that they had had sufficient time to prepare for trial, had made all the desired preparations, and were ready for trial, in which statement the accused personally concurred. Thereupon, the parties announced that they were ready for trial.

Thereupon, the accused, being duly arraigned, pled not guilty to the charge in the indictment.

Thereupon, the following jury was summoned, selected and impanelled in the manner prescribed by law, to-wit: Robert J. Marshall, J. L. Brumet, Payton Terry, John A. Hawkins, James C. Lane, Jess R. Fleenor, Cecil Hensley, M. T. Repass, Ralph S. Draper, Lewis Keesling, William M. Horner, Jr. and James Tilley, Jr., who were sworn to try the case, and after hearing the evidence of the Commonwealth, defendant, by counsel, moved the Court to strike the evidence of the Commonwealth, which motion the Court doth overrule. Defendant, by counsel, excepts. Thereupon, after hearing the remainder of the evidence, receiving instructions from the Court, and hearing the argument of counsel, the jury retired to their room to consider of a verdict, and after
page 40 } some time, returned into Court having found the following verdict, to-wit:

"We the jury find the defendant guilty as charged in the indictment and fix his punishment at 7 years in the Penitentiary.

S/ Payton A. Terry, Foreman."

Defendant, by counsel, moved the Court to set aside the verdict as contrary to the law and the evidence, and without evidence to support it, which motion the Court doth overrule. Defendant, by counsel, excepts.

Thereupon, it being asked of the said Martin Pete Cardwell if anything for himself he had or knew to say why the Court should not 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 Martin Pete Cardwell suffer a punishment by confinement in the Penitentiary of this Commonwealth for a term of seven (7) years, and that he pay the costs of this prosecution.

This conviction is upon a charge of breaking and entering Euclid Avenue Baptist Church.

Accused was personally present throughout the trial, and his counsel did in a competent and efficient manner represent the interest of the accused.

The entire proceedings were taken down by Alice Gordon,

Court Reporter, as ordered by the Court.

Thereupon, the prisoner was remanded to jail.

* * * * *

page 43 } I, Martin Pete Cardwell, having been convicted and sentenced to seven years in the penitentiary on the charge of Statutory Burglary, in the Corporation Court for the City of Bristol, Virginia, on Monday, February 13, 1967, do hereby make oath that I am financially unable to pay attorney fees, costs and expenses incident to an appeal; that I intend to petition for a writ of error on aforesaid conviction.

MARTIN PETE CARDWELL

STATE OF VIRGINIA
CITY OF BRISTOL

Personally appeared before me, R. Russell Myers, a Notary Public in and for the City and State aforesaid, in my City aforesaid, Martin Pete Cardwell, who after being duly sworn, acknowledged his signature to the above writing and made oath that the matters contained therein are true and correct to the best of his knowledge and belief.

Given under my hand this 17th day of February, 1967.
My commission expires February 10, 1970.

R. RUSSELL MYERS
Notary Public

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* * * * *

Upon the written motion of Martin Pete Cardwell, this day filed and an attached affidavit of poverty, it is hereby ordered;

1. That Mrs. Alice Gordon, Court Reporter, who recorded the proceedings held on Monday, February 13, 1967, in the Corporation Court of Bristol, Virginia, in the case of Commonwealth of Virginia vs. Martin Pete Cardwell, on an indictment for statutory burglary, prepare a transcript of said proceedings and deliver it to J. D. Bowie or R. Russell Myers, counsel of record for the defendant, within the next 30 days;

2. That the costs of aforesaid transcript shall be paid by the Commonwealth of Virginia.

The Clerk of this Court shall mail a copy of this order to aforesaid Court Reporter and same shall constitute notice thereof.

Enter this 24th day of February, 1967.

JOS. L. CANTWELL, JR., Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

* * * * *

Counsel for Martin Pete Cardwell, the defendant in the above styled case in the Corporation Court for the City of Bristol, Virginia, hereby gives notice of appeal from the jury verdict and judgment entered in this case on February 13, 1967, and sets forth the following assignments of error:

1. That the Court erred in permitting Vernon D. Holloway and Orvil Hutton to sit as members of the jury panel selected to try this case;
2. That the Court erred in admitting into evidence the written confession of the defendant dated February 1, 1966, and the testimony of Captain Jack D. Stigall in reference to same.
3. That the Court erred in refusing to grant defendant's Instruction No. F.

J. D. BOWIE
R. RUSSELL MYERS
Counsel for defendant

Filed: March 23, 1967.

BERTHA R. DRINKARD, Clerk

* * * * *

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ADDITIONAL ASSIGNMENTS OF ERROR

* * * * *

Counsel for Martin Pete Cardwell, the defendant in the above styled case in the Corporation Court for the City of Bristol, Virginia, in addition to the Assignments of Error filed herein on March 23, 1967, set forth the additional assignments of error:

4. That the Court erred in refusing to grant the defendant's motion requesting that Roger Smoot, a non-resident, and Curtis Brewer, a state convict, be compelled to attend this trial and testify in defendant's behalf.

J. D. BOWIE
R. RUSSELL MYERS
Counsel for defendant

Filed: April 13, 1967.

BERTHA R. DRINKARD, Clerk

* * * * *

page 3 } The following cause came on to be heard on the 13th day of February, 1967, before the Honorable Joseph L. Cantwell, Jr., Judge of the Corporation Court of the City of Bristol, Virginia, and a jury of twelve.

The court reporter, Mrs. Alice R. Gordon, was duly sworn.

IN CHAMBERS:

Mr. Rouse: A motion to amend the indictment to read, "being the property under the control of the trustees of said church."

The Court: Any objection to that amendment?

Mr. Bowie: I don't feel, Your Honor, that we can agree on anything.

The Court: It may not be necessary, but it certainly doesn't make any difference in the merits of the case, and the court will permit the amendment to be made.

Before we go into the courtroom, I want to take up a

matter in connection with the charge against Mr. Cardwell here.

Mr. Cardwell, I believe you are an inmate of the Virginia State Penitentiary, are you?

The Defendant: Yes, sir.

The Court: And you have on penitentiary clothes this morning.

page 4 } Swear the sergeant.

MARSHALL HONAKER having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By The Court:

Q. Marshall Honaker—

A. Yes, sir.

Q. Deputy Sergeant, I should say, Mr. Sergeant, I understood at one time that Mr. Cardwell requested that he have other clothing so that he wouldn't have to appear in penitentiary clothing to face these charges.

A. Yes, sir, that's right.

Q. Is that correct?

A. Yes, sir.

Q. Is other clothing made available and available to him this morning?

A. Yes, sir.

Q. What was his response to that offer?

A. Well, let me say first—

Q. Just answer my question and then add your explanation.

A. All right, sir.

Q. First let me ask you this, did you offer him civilian clothes?

A. Yes, sir.

Q. What was his response?

page 5 } A. He said he wasn't going to wear them.

Q. That's all I want to know. If you have anything else to add, you can do so.

A. On Thursday, I talked to Jimmy Cardwell's mother, who is a cousin to Pete, and told her, asked her to bring some clothes down and she said she would. She did not. We made the clothes that we had available to him.

Q. That's all.

The Court: Any questions, gentlemen?

Mr. Bowie: No, sir.

The Court: I don't want any objection in the record or question raised over it after he has had the opportunity to appear otherwise.

Just a moment. In addition to the grounds which the court heretofore assigned for refusing to have, to allow certain witnesses to be brought back, I want to add into the record that the court had intimation that if certain of those prisoners were brought here, there was probability of an effort at a jailbreak. And that's an additional ground.

Mr. Myers: Show exception.

(Thereupon, the court, counsel, and the defendant entered the open courtroom where the following proceedings were had in open court.)

The Court: Are you ready for the arraignment? Stand up, please.

page 6 } The Clerk: Martin Pete Cardwell, you stand indicted as follows:

"COMMONWEALTH OF VIRGINIA,
"CITY OF BRISTOL, to-wit:

"The grand jurors of the Commonwealth of Virginia, in and for the body of the City of Bristol aforesaid, and now attending the Corporation Court of said City, upon their oaths present, that MARTIN PETE CARDWELL, in the nighttime on the 9th day of January, 1966, in said City of Bristol, did, unlawfully and feloniously, commit the crime of burglary, by then and there, in the nighttime of that day, feloniously break and enter the said Euclid Avenue Baptist Church, being the property under the control of the Trustees of said Church, with intent the goods and chattels of the said Church, then and there being, then and there unlawfully and feloniously to steal, take, and carry away, one $5.00 roll of 5¢ stamps, of the said goods and chattels, in the said Church, in the City aforesaid, then and there being, then and there unlawfully and feloniously did steal, take, and carry away, against the peace and dignity of the Commonwealth."

What is your plea? Are you guilty or not guilty?

page 7 } The Defendant: Not guilty.

Calvin Bailey

The Court: Are you ready for the jury to be sworn to answer the questions, Mr. Rouse?
Mr. Rouse: Yes, sir, Your Honor.
The Court: You gentlemen for the defense?
Mr. Bowie: Ready, Your Honor.

(Thereupon, the jury was sworn to answer questions.)

The Court: Gentlemen of counsel for the defendant, have you had full opportunity to make all the preparations that you feel are desirable for the trial of this case?
Mr. Bowie: Yes, Your Honor.

(Thereupon, a jury of twelve was duly impaneled and sworn.)*

(All witnesses were called sworn and excluded from the courtroom under the rule.)

The Court: Proceed with your opening statement, gentlemen.

(Thereupon, the Commonwealth's attorney presented an opening statement; counsel for the defendant waived opening statement.)

The Court: All right. Call your first witness.
Mr. Rouse: Rev. Calvin Bailey.

CALVIN BAILEY having been duly sworn, was examined and testified as follows:

page 8 } DIRECT EXAMINATION

By Mr. Rouse:
Q. Please state your name and residence, please, sir.
A. I am Calvin Bailey, residing at 117 Brookdale Circle, Bristol, Virginia, pastor of the Euclid Avenue Baptist Church, Bristol, Virginia.
Q. Rev. Bailey, do you recognize the gentleman sitting over there by Mr. Myers in the courtroom?

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* See Appendix.

Calvin Bailey

A. Yes, sir, I do.

Q. Do you recall when you first came into contact with him?

A. Yes, sir, I do.

Q. Just go ahead and tell the court and the jury when you first came into contact with him, and what that led to.

A. The first that I knew of Mr. Cardwell was in the revival service which was going on at the Euclid Avenue Baptist Church between the dates of January 2nd and 9th of 1966. I do not recall the night that Mr. Cardwell was present, but he came to the front making a profession of faith in the Lord and on January the 9th approximately at 7:35, I baptized Mr. Cardwell. And this is the contact, at least most of the contact, that I have had with Mr. Cardwell.

Q. Rev. Bailey, on the night of January the 9th or the early morning of January 10th, was the church broken into?

A. Yes, sir, it was.

Q. Tell the court and the jury how entrance was
page 9 } gained to the church.

A. We do not know how entrance was gained to the church. We only know that the church was broken into. And by that I do not mean from the outside but the offices inside. And after the breaking into the offices from the inside, the exit was made through one of the back doors of the building.

Q. What were the conditions of the offices on, when they were discovered, Mr. Bailey?

A. We have several offices up at our church. Two of the offices were particularly damaged and some one item was left in another office. Getting in from the hallway into the first office, the glass was broken out. A little damage was done to the woodwork. Going into the next office, the glass was broken out.

Q. Was anything disturbed in the offices, Reverend?

A. Yes, there was. The desks were disturbed, and some drawers, file cabinets.

Q. Well, in what manner had they been—

A. It looked as if someone had been pilfering, going through them.

Q. Oh—what was missing, Mr. Bailey?

A. The only thing that we found missing was, in the day, we discovered that some stamps were missing.

Q. Approximately how many, if you know?

A. We estimated that approximately $17.00
page 10 } worth of stamps were missing.

Frank Wright

Q. All right, sir.
A. After we had the final count.

Mr. Rouse: You may ask him.
The Court: Was there a roll of five-cent stamps missing?
The Witness: Yes, sir, Your Honor, and I wouldn't be sure about this phase of it, but I think some others were missing that had been broken from the original roll, but I am sure that there was one roll definitely.

CROSS EXAMINATION

By Mr. Bowie:
Q. Rev. Bailey, when was an inventory taken of these stamps before the breaking?
A. I do not know, sir.
Q. So you have no knowledge of whether these stamps were stolen on the night of January 9th, they could have been stolen sometime earlier than that?
A. They could have been.
Q. That's all.

The Court: Who is next?
Mr. Rouse: Mr. Wright, Frank Wright.
Your Honor please, may Rev. Bailey be excused?
The Court: Any objection to Rev. Bailey being excused, gentlemen?
page 11 } Mr. Myers: No, Your Honor.
The Court: All right, sir. He may go.

(Witness excused.)

FRANK WRIGHT having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rouse:
Q. What is your full name, please, sir?
A. Frank Wright.

The Court: Look around this way, Mr. Wright, and talk to the jury.
Mr. Bowie: I didn't hear his name, Your Honor.

Frank Wright

The Court: Frank Wright.
The Witness: Frank Wright.

Q. (By Mr. Rouse) If you will talk up toward Judge Cantwell—Mr. Wright, where do you live?
A. 2008 King Mill Road.
Q. Mr. Wright, what is your occupation?
A. I am janitor at Euclid Avenue Baptist Church.
Q. How long have you been so employed?
A. Let's see, I believe about three years.
Q. Look up there at Judge Cantwell.
Mr. Wright, were you so employed on the night of January the 9th and 10th?
A. Yes, sir.
page 12 } Q. What did you, when did you go to the church after the Sunday on the 9th?
A. How did you say that was?
Q. I say what time of day did you go to the church after the 9th of January, 1966?
A. Oh, that was Monday morning. I go in Monday morning about between 7:30 and 8:00.
Q. Well, did you go in on January the 10th at about 7:30?
A. Yes, sir.
Q. Or 8:00?
A. Yes, sir.
Q. What did you find relative to the condition of the church on that morning?
A. Well, when I went upstairs to clean the office, I noticed a pop bottle laying on the steps. And it's unusual, so I went to pick it up. I did pick it up. I happened to look up the hallway and there was glass scattered all over the hallway on the floor. And I went on, and the door was, two glass doors were broken into in the office.
Q. What about the, what was in the offices? Was there any indication in there that some intruder had been there?
A. No, sir, I couldn't see nothing only just the glass was scattered on the floors.
Q. And what did you then do?
A. I called the preacher.
page 13 } Q. You mean Rev. Bailey?
A. Yes, sir, I called the preacher and explained it to him.
Q. All right. Is the Euclid Avenue Baptist Church located in Bristol, Virginia?

A. Yes, sir.

Mr. Rouse: You may ask him.
Mr. Bowie: No questions.
Mr. Rouse: Come down, sir. That's all, Mr. Wright.
May Mr. Wright be excused?
The Court: Do you all have any objection?
Mr. Bowie: No objection, Your Honor.
The Court: He may go then.
The Witness: May I be excused?
Mr. Rouse: Yes.
The Witness: Thank you.

(Witness excused.)

JACK STIGALL having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rouse:
Q. Captain Stigall, you are a member of the Bristol, Virginia Police Department, are you not?
A. Yes, sir.
Q. What is your full name?
A. Captain Jack D. Stigall.
page 14 } Q. Were you so employed on the, on January the 9th and 10th of 1966?
A. Yes, sir.
Q. Did you investigate the breaking and entering of the Euclid Avenue Baptist Church?
A. Yes, sir, I did.
Q. As a result of your investigation, did you go to the jail in Carroll County, Virginia, and talk to Pete, Martin Pete Cardwell?
A. Yes, sir, I did.
Q. On what date was that?
A. That was on the 1st day of February, 1966.
Q. Had any warrants been issued for him at that time?
A. No, sir.
Q. Now, Captain Stigall, just tell what you did when you arrived at, I believe that's at Hillsville, in Carroll County, is it not?
A. Yes, sir, that's correct.

Jack Stigall

Q. Just tell the court where you went and what you did.

A. I went to the jail at Hillsville, Virginia, and requested to talk to Martin Pete Cardwell. The sergeant on duty at that particular time took me upstairs and in a room. He brought Martin Cardwell into the room. He locked the door after us, and Cardwell and I were the only ones in the room.

I told Mr. Cardwell at that time, I advised him
page 15 } that he didn't have to make any statement, that
any statement he might make could be used against him at court of law, that he had a right to an attorney, and that if he made any statement, it had to be free and voluntarily on his part without any threats, promises, or rewards being made to him by me.

Q. And did he make a statement relative to the breaking and entering of the Euclid Avenue Baptist Church?

A. Yes, sir, he did.

Q. Did he sign that statement?

A. Yes, sir, he did.

Q. Now, what time of day or night was this statement taken?

A. It was taken about two, p.m., in the afternoon on the first day of February.

Q. What year?

A. '66, 1966.

Q. Captain Stigall, I'll hand you that statement, and ask you to read it to the jury.

Mr. Bowie: We object, Your Honor, to the admission of the statement.

The Court: Do you have any evidence that you want to offer in regard to the voluntary nature of the statement?

Mr. Bowie: We have some remarks we'd like to make to the court in the absence of the jury, Your Honor.

The Court: Mr. Sergeant, see that the jury room is clear, and let all the jury—go in the jury room, gentlemen.

page 16 } (Thereupon, the jury retired from the open
courtroom, and the following proceedings were had out of the presence of the jury.)

The Court: What's the ground for the objection, gentlemen?

Mr. Bowie: Your Honor please, in light of the *Escobedo* case and the *Miranda* case and their interpretation in the *Johnson* vs. *State of New Jersey* case, all three of these cases

having been heard and decided by the Supreme Court of the United States, we contend that the statement or the rights to which the defendant was advised are not adequate in that he was not advised that he had the right to the presence of counsel then and there and further, that before making any statements, he had the right to have a counsel appointed for him.

The witness, Captain Stigall, has testified as to the extent of the remarks he made to the defendant.

He also has printed at the top of the form on which the statement was made and signed certain rights set forth. None of these include, however, the information that an attorney would be appointed for the defendant if he did not have the means with which to employ one. And neither do they advise him that he had the right to the presence of an attorney during the interrogation.

page 17 } The *Escobedo* case and the *Miranda* case set forth the right to have the attorney present. They hold that prior to any questioning by the police, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him. But further the case that he has the right to the presence of an attorney either retained or appointed.

We contend that this defendant did not have his right and, therefore, did not waive that right at the time he signed the statement which the city would introduce at this time.

Mr. Rouse: If the court please, just—

The Court: In the light of his objection, are you going to offer any more detail as to the nature of the statements by the officer to the accused?

Mr. Myers: Your Honor please, we would object to any additional evidence from the officer subsequent to our objection. We were deliberately waiting until he testified as to the circumstances in order to make our objection. Any additional testimony from Captain Stigall would be contrary to his previous remarks, contrary to the statement which he is attempting to read from, and would most certainly be self-serving on the part of the Commonwealth.

Mr. Rouse: If Your Honor please—

The Court: I don't know what the evidence will be. I don't know whether it will be contradictory or not.

page 18 } What did you start to say, Mr. Rouse?

Mr. Rouse: I was just fixing to say no warrants

had been issued for this man. This was purely investigatory. He was making an investigation of this and even though no charge at that time had been lodged against this man, Mr. Stigall, as he testified to here, advised this man of his rights that, in that he was entitled to an attorney and that he didn't have to make any statement, any statement that he might make might be used against him, and et cetera, and it's also set out in the preamble to the written statement he has made.

The Court: Well, what, if anything—there was no evidence on, as to whether anything took place with reference to the printed matter in the preamble to the statement.

Mr. Rouse: He recited what he advised the man.

The Court: I understand that.

Mr. Rouse: Which is *verbatim* as to what is in there.

The Court: Mr. Stigall, did anything take place between you and the accused with reference to the printed matter at the top of that statement?

The Witness: Your Honor, at the time the statement was taken, Mr. Cardwell read the entire statement prior to signing it.

The Court: That's all I want to ask.

Mr. Rouse: Yes, sir.

page 19 } The Court: Overrule the objection.

Mr. Bowie: We save exception, Your Honor.

The Court: Call back the jury.

(Thereupon, the jury returned to the open courtroom, and the following proceedings were had in open court before the jury.)

The Court: The objection to the statement was overruled. One question asked by way of evidence in the absence of the jury, you are entitled to, if you want the jury to have anything that was said in that regard, you can go over it yourself, Mr. Rouse.

Mr. Rouse: Yes, sir.

Q. (By Mr. Rouse) Captain Stigall, I believe the statement itself other than the printed material at the top is in your handwriting. Is it not?

A. Yes, sir.

Q. Was that taken down as he related it to you?

A. That's correct.

Jack Stigall

Q. After, after you had taken it down, was it read to him or by him before he signed it?

A. Yes, sir, he read the statement prior to signing it. After reading it, he signed it in my presence.

Q. All right, sir. Go ahead and read it, read it from the top.

A. "DATE February 1, 1966; TIME 2:00, p.m.; page 20 } PLACE Carroll County, Virginia Jail

"I, Martin Pete Cardwell, am 20 years of age and my address is D-6 Rice Terrace, Bristol, Virginia. I have been advised and duly warned by Capt. Jack Stigall, who has identified himself as Police Officer, City of Bristol, Va., of my right to the advice of counsel before making any statement, and that I do not have to make any statement at all, nor incriminate myself in any manner.

"I hereby expressly waive my right to the advice of counsel, and voluntarily make the following statement to the aforesaid person, knowing that any statement I make may be used against me on the trial or trials for the offense or offenses concerning which the following statement is herein made.

"I declare that the following statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

"On January 9, 1966, Sunday night, I had been to the services at Euclid Ave. Baptist Church, after I went home, I decided to go out again. I then walked over to the Euclid Avenue Baptist Church and tried all the doors page 21 } except the doors M. C. on Euclid Avenue side, all the doors were locked. I found a window unlocked in the old part of the church and went into the church, I got a case knife and a putty knife from the nursery and I took the wood from around the window in the door that leads into the church office. I was unable to get the window out so I tried to get the window out by running the case knife under the edges of the glass, I kept working the knife until the corner of the glass cracked than I finally knocked this out with my knife.

"Then I reach in and opened the door, after getting into the office in order to get into another office I tried to get another window glass out of the door and broke the window out. I searched all the desk drawers. I found a roll of 5¢ stamps and a check book with about four checks in the book, M. C.

Jack Stigall

"I was in the building about 3 or 4 hours and when I left the building, I went out the side door that leads to the driveway, here I left a child's scarf or head piece, I had used this to try and wipe my fingerprints off. M. C.

"I have read this statement consisting of 2 pages, and I affirm to the truth and accuracy of the facts contained therein.

"This statement was completed at 2:30 p.m., on the 1st day of February, 1966." And signed Martin Card-
page 22 } well, and witnessed by Captain Stigall.

Q. Captain Stigall, will you file that statement as an exhibit to your testimony?

A. Yes, sir.

The Court: Let it be identified.

(EXHIBIT NO. 1-A and-B were marked for identification and filed.)

Mr. Rouse: You may ask him.

CROSS EXAMINATION

By Mr. Bowie:

Q. Captain Stigall, at the time you interrogated this boy in jail, how long did you talk to him before you started asking him questions concerning this incident?

A. I'd say it was maybe five minutes, something around five minutes. We talked just briefly there in reference to how he was and so forth. I knew Martin prior to talking to him on this date.

Q. Did he, at the time *time* you talked to him, indicate whether he had a desire to have counsel?

A. No, sir, at no time did he indicate that.

Q. Did he mention to you whether he had requested counsel from the jailer?

A. No, sir, that wasn't mentioned to me.

Mr. Bowie: That's all the questions we have,
page 23 } Your Honor.

Mr. Rouse: That's all.

One more question, Captain Stigall.

RE-DIRECT EXAMINATION

Jack Stigall

By Mr. Rouse:

Q. I believe you have stated that—told Mr. Cardwell that there was no warrant at that time outstanding against him. Is that correct?

A. Yes, sir, that's correct.

Q. And you were investigating this—

A. Right.

Q. Offense?

A. Yes, sir.

Q. All right.

Let me—I am sorry—but from your investigation, why, that was why you went to Hillsville to see the gentleman, wasn't it?

A. Yes, sir, that's correct.

Q. Come down.

Mr. Rouse: The Commonwealth rests, Your Honor.

The Court: Are you all ready to proceed with the defense?

Mr. Bowie: Before we proceed with the defense, Your Honor, we'd like to move to strike the evidence of the Commonwealth because of their failure to carry the burden.

page 24 } The Court: Do you care to argue it? The court, gentlemen, the court is getting ready to give you a recess, so while we are talking, we'll give you a recess. Go out in the hall and stay where you cannot hear what goes on in the courtroom.

During the recess, do not discuss the case with anyone nor allow anyone to discuss it in your presence. If you should hear anyone close by you talking about the case, stop them. If they should deliberately try to talk to you about the case, report them to the court.

We'll call you back when we are ready.

(Thereupon, the jury retired from the open courtroom and the following proceedings were had out of the presence of the jury.)

The Court: All right, gentlemen, proceed with your motion.

Mr. Bowie: If Your Honor please, absolutely the only evidence offered by the city to incriminate the defendant is his own statement. We, we contended in our earlier statement that this statement of the defendant should not be admissible and that he did not have his right to have counsel

appointed for him. He did not know of his right to have counsel present at the time that he made this statement or at the time of interrogation. The *Escobedo* case as interpreted by the *Johnson* case has held that the time
page 25 } in which the right arises is the time when it, where the investigation is no longer a general inquiry into an involved crime, but has begun to focus on a particular suspect. The suspect has been taken into police custody.

Well, here, Your Honor, we contend that it makes no difference that warrants at that time had not been issued. Certainly the defendant was the focal point of the investigation. It had narrowed down to him and at that time he was certainly covered by the protection of the *Escobedo* case and the *Miranda* case, and we contend that the statement should not be admitted. And without the statement, there is absolutely no case at all offered by the city with a conviction, for the conviction of the defendant. It is purely uncorroborated.

For that reason, Your Honor, we move that the evidence be stricken and the warrant dismissed.

The Court: Overrule the motion.

Mr. Bowie: Save exception.

The Court: The court's view is that regardless of the conditions with reference to the custody of the accused or the presence or absence of a warrant, whether or not the suspicion had focused on him, the statement is still shown to be a voluntary statement under which all the rights of the accused were preserved; and, therefore, it's admissible and sufficient if accepted by the jury to sustain a con-
page 26 } viction. So the motion is overruled.

Mr. Bowie: I respectfully note an exception.

The Court: We'll continue the recess and call you back.

(Thereupon, there was a short recess after which the following proceedings were had in open court before the jury.)

The Court: Are you ready to proceed with the evidence?

Mr. Bowie: Yes, Your Honor.

We'll call as first witness of the defendant, but before he takes the stand, we would appreciate it if the court would advise the defendant of his right not to testify.

The Court: You mean the accused himself?

Mr. Bowie: Yes, sir.

The Court: Well, of course, I suppose you have done so, and that's correct. If you want the jury instructed at the proper time as to that right, the court will give the usual

instruction.

Mr. Bowie: Well, for the record—

The Court: You are not offering him as a witness?

Mr. Bowie: Yes, Your Honor. We are offering the accused as a witness, Your Honor. We want it as a matter of record that he had been advised of his right to decline to testify.

page 27 } The Court: Oh, I didn't understand that you were calling him.

Well, have you advised him?

Mr. Bowie: Yes, Your Honor.

The Court: Mr. Bowie and Mr. Myers?

Mr. Myers: Yes, Your Honor.

The Court: His attorneys, that he has a right to refuse to testify and his failure to testify creates no presumption against him and should not be considered by the jury in weighing the evidence in the case.

Do you understand that, do you, Mr. Cardwell?

The Defendant: Yes, sir.

The Court: And you want to testify?

The Defendant: Yes, sir.

The Court: Proceed, gentlemen.

Mr. Bowie: Come around.

MARTIN PETE CARDWELL having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bowie:

Q. Are you the defendant or the accused in this case?

A. Yes, sir.

Q. State your full name, please.

A. Martin Pete Cardwell, Jr.

Q. You have been charged in this case and you page 28 } are now being tried for having broken into the Euclid Avenue Baptist Church in Bristol, Virginia, and, of course, you have heard the evidence of the preacher and the janitor and the captain of the Bristol, Virginia Police Force. What is your own statement as to whether you had any connection with the breaking and entering at that church?

A. I didn't have no connection at all with it.

Q. Were you, in fact, baptized on that evening?

Martin Pete Cardwell

A. Yes, sir.

Q. At that church. Following the services that evening, did you go back to the church at all?

A. No, sir.

Q. Do you have any knowledge of who did break into the church?

A. No, sir.

Q. Now, you heard Captain Stigall testify about his obtaining a statement from you in Hillsville, Virginia. Did you give him that statement?

A. Yes, sir.

Q. Prior to the time you had given him the statement, had you requested a lawyer?

A. Yes, sir.

Q. Had you been given an opportunity to confer with a lawyer?

A. No, sir.

Q. To whom did you address your request for an attorney?

page 29 } A. James Surrat, the jailer.

Q. Was that request denied or was anything done about it?

A. There wasn't nothing done about it is all I know.

Q. At any time prior to the questioning, were you served with a warrant?

A. No, sir.

Q. Was any kind of a promise made to you by Captain Stigall prior to making the statement?

A. Yes, sir.

Q. Tell the court what that promise was.

A. He promised he'd have my clothes and my personal belongings here from Bristol sent up there to me while I was awaiting trial up there.

Q. Well, did that have anything to do with your making that statement?

A. At first when he was talking to me, he told me how the place was broke in, what it looked like on the inside.

Q. Do you now deny the truth of that statement?

A. Yes, sir.

Mr. Bowie: You may ask.

CROSS EXAMINATION

By Mr. Rouse:

Martin Pete Cardwell

Q. Mr. Cardwell, when you joined the church over there or sometime prior to your joining the church, did, didn't the secretary show you over the church?

page 30 } A. I had helped her in the church a little bit.

Q. Uh huh.

A. Helped her put names on the benches.

Q. And you had been over it?

A. Yes.

Q. And had you been in the offices?

A. I had been there talking to her and Reverend.

Q. Was that how you knew where the nursery was?

A. Somebody showed me the nursery.

Q. Somebody showed you the nursery.

In your statement, you said that you got the putty knife and the case knife from the nursery. Did Captain Stigall tell you that that was where the implements came from?

A. He told me it looked like a knife had been used is all I know.

Q. But you told him what kind of knife it was, a putty knife and a case knife that you had gotten in the nursery, didn't you?

A. I don't know what I told him actually now.

Q. Well, I'll hand you your statement and let you read it and then ask you if you told him those things that are in it.

A. (The witness examined the statement.)

Q. First, let me ask you, is that your signature

page 31 } there at the bottom of this statement?

A. It's part of my initials.

Q. Well, that Martin Cardwell, didn't you sign that, isn't that your signature?

A. Yes, I signed it and hoped to get my stuff.

Q. Uh huh. In hopes of getting what stuff?

A. Personal belongings.

Q. Well, what in particular?

A. Well, shirts, tee shirts, uniforms, and stuff like that.

Q. And you confessed to a felony in the hopes of getting a tee shirt and a shirt?

A. Not just a tee shirt, tee shirts and shirts.

Q. Uh huh. Sent up from Bristol to the Hillsville jail, is that correct? Is that why you signed that statement?

A. Uh huh.

Q. It was?

A. (The witness nodded indicating the affirmative.)

Martin Pete Cardwell

Q. Now, do you deny that Captain Stigall told you you were entitled to an attorney before you made any statement to him?

A. He might have told me. I don't exactly remember.

Q. Well, you don't remember it?

A. Not exactly, no.

Q. He told you that anything that you told him could be used against you in a court of law, didn't he?

A. Something like that.

page 32 } Q. Uh huh. As a matter of fact, he told you all that's in this typed portion of this statement, didn't he, before he began talking to you about this?

A. (The witness examined the statement.)

Q. Didn't he?

A. Not to my knowledge right now, he didn't.

Q. You read the statement before you signed it?

A. I read what he wrote.

Q. Uh huh. You didn't read the top part?

A. And then I didn't care whether I signed it.

Q. You didn't care, uh huh, you didn't care whether you could be sent to the penitentiary?

A. I was interested in getting my stuff and that was—

Q. When did Captain Stigall tell you he'd send you your clothes?

A. He told me as soon as he come back down here he'd see about it.

Q. When did he tell you?

A. I asked him about the first of it. I asked him again as he was getting ready to leave there, leave to go down the steps.

Q. Mr. Cardwell, when did you request an attorney?

A. Before he ever come down there to see me.

Q. At that time, no warrant had been served on you from Bristol, though, had there?

page 33 } A. No, but I still requested one.

Q. Well, pertaining to this particular charge?

A. I don't believe it was that particular charge, I don't think so, anyway.

Q. So when Captain Stigall told you on that day that you were entitled to a lawyer before you made any statement to him why, why didn't you tell him then that you wanted a lawyer?

A. Because I was told I had to go to court to get one. The judge was out of town or something.

Martin Pete Cardwell

Q. Who told you that?
A. The jailer.
Q. Who?
A. James Surrat.
Q. When did he tell you that?
A. I told you when, I think that morning he said it, he said it was too much snow on the ground.
Q. But at that time you didn't ask for a lawyer pertaining to this particular case, did you?
A. I didn't feel I'd get one if I asked for one anyway.
Q. You didn't feel like you'd get one if you asked for one?
A. No.
Q. So you didn't ask Captain Stigall for a lawyer before you made the statement, did you?
A. All he could do was tell the jailer and I'd get the same answer.

page 34 } Q. I didn't ask you that. I am asking you if you told Captain Stigall you wanted a lawyer before you made any statement to him relative to breaking into the Euclid Avenue Baptist Church?
A. Not as I recall.
Q. Have you been convicted of a felony?
A. Yes, sir.
Q. How many?
A. Two, I think of. I wasn't convicted; I was railroaded.
Q. You were persecuted. Is that correct?
A. Well, the Commonwealth's attorney—
Q. The Commonwealth's attorney sent you to the penitentiary. Is that it?
A. No, I coped out to it.

The Court: What was your answer?
The Witness: I coped out to it.

Q. (By Mr. Rouse) To both charges?
A. No, that wasn't the one I am talking about.
Q. Oh. But you have been convicted of two felonies and been to the penitentiary for them?
A. Sure. The jury ought to know. They can look at the pen's clothes.

The Court: I couldn't understand what he said. Did you hear him, the gentlemen over here?
The Witness: I said sure they ought to know.

page 35 } They are looking at the penitentiary clothes. They ought to know I have been at the penitentiary. It's been all over the newspapers since I have been back here.

Mr. Rouse: That's all.

RE-DIRECT EXAMINATION

By Mr. Bowie:

Q. Mr. Cardwell, have you at any time been committed or referred to any mental institution?

A. Yes, sir, three times.

Q. When and where and for what purpose?

A. Well, one was in Washington County, one was here, there was one up in, let's see, Hillsville.

Q. Where did they send you?

A. Southwestern State Hospital.

Q. In Marion?

A. Yes, sir.

Q. Is that the place you went all three times?

A. Yes, sir.

Q. How long did you remain there those three times?

A. First time it was almost four months. The second time it was 59 days. This last time it was two months and four days.

Q. Who had you sent?

A. Well, in Washington County, it was people in the court.

Q. People in the court in Washington County?

page 36 } A. Yeah, the state witnesses.

Q. How about at Hillsville and at Bristol, who had you sent?

A. I requested it here and Hillsville both.

Q. That's all.

RE-CROSS EXAMINATION

By Mr. Rouse:

Q. You were sent there for observation, weren't you, by the court?

A. Yes, sir.

Q. At Hillsville and was observed for 60 days and then sent back for trial?

A. Fifty-nine days.

Q. Uh huh. And when you were brought here, I believe

Judge Cantwell sent you to Marion for observation before you were to be tried on this charge, didn't he?

A. Yes, sir.

Q. And the officials at that hospital sent you back here and declared that you were sane and able to stand trial, didn't they?

A. If you want to go into a test each time, it don't make any difference. They go by your first record.

Q. You mean that they didn't examine you this last time?

A. They give me a physical when I went through the door and that was it.

Q. Uh huh. All right, come down.

page 37 } JAMES SURRAT having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bowie:

Q. State your name, please.

A. James Surrat.

Q. I believe you are going to have to speak a little louder, Mr. Surrat, so the jury can hear you.

Are you the jailer up at Hillsville?

A. I am not now, sir.

Q. Were you on the 1st of February, 1966?

A. Yes, sir.

Q. Are you acquainted with the defendant, Martin Pete Cardwell, sitting over here to my left?

A. Yes, sir, I am.

Q. How do you happen to know him?

A. By being jailer at Hillsville when he was in custody there.

Q. Were you at the jail when Captain Jack Stigall from the Bristol, Virginia Police Department went to Hillsville jail to question Cardwell?

A. Yes, sir, I was.

Q. At that time or prior to that time, did the defendant, Martin Cardwell, request of you that an attorney be obtained for him?

page 38 } A. He had an attorney. I don't—to represent him there in Hillsville. I don't recall that I made the call to obtain the attorney.

Q. Did he have that attorney at the time he was interro-

gated by Captain Stigall?

A. No, sir, the best of my recollection the captain was there by himself.

Q. Well, had he made a request for an attorney prior to that time?

A. You mean did he request that I have his attorney there present when he was being questioned?

Q. No. Did he just request that an attorney be appointed for him prior to the time Captain Stigall questioned him?

A. He had an attorney. I don't—

Q. You are not answering my question, Mr. Surrat. Did he ask you to get him a lawyer before Captain Stigall questioned him?

A. To be present at that time?

Q. Any time did he ask you for a lawyer?

A. Yes, sir, I am quite sure he did ask me for a lawyer.

Q. Was that before or after Captain Stigall came up there? Do you remember?

A. I think he had an attorney that represented him before the captain came.

Q. Are you sure of that?

page 39 } A. No, sir, I couldn't swear to that.

Q. Do you have any knowledge of Cardwell making a request for some clothing and other personal belongings?

A. No, sir, I do not.

Q. Were you present during any part of the questioning by Captain Stigall?

A. No, sir.

Q. Was Cardwell committed to a mental institution while he was confined at Hillsville?

A. Yes, sir, he was.

Mr. Bowie: You may ask him.

CROSS EXAMINATION

By Mr. Rouse:

Q. He was sent to Marion for observation before he was tried on the pending charge at Hillsville, wasn't he?

A. Yes, sir.

Q. And was returned for trial, was he not?

A. Yes, sir.

Q. And was tried?

James Surrat

A. Yes, sir.

Q. Mr. Surrat, on the day that Captain Stigall came there, where did you allow or put the defendant and Captain Stigall to talk?

A. Our jail in Hillsville is in the upstairs, second floor, and upon entering at the front door, there is two
page 40 } rooms on either side of the door separate from the main, the major part of the jail, the cells. Those two rooms are used for anyone that the jailer wants to make a trusty out of.

I let the captain and Cardwell go in one of those rooms.

Q. Talk a little louder, please, sir.

A. They went into one of those rooms to have a conversation.

Q. Before, I assume you took Cardwell out of the cell block, did you?

A. Yes, sir.

Q. And out in, so he could go into this little room?

A. Yes, sir.

Q. Off the side. At that time, did he request an attorney be present before he talked to Captain Stigall?

A. The best of my memory, he did not.

Q. Uh huh. Was there anyone else in the room with Captain Stigall and Cardwell while he was being interrogated by Captain Stigall?

A. No, sir.

Q. I believe that's all.

RE-DIRECT EXAMINATION

By Mr. Bowie:

Q. During Cardwell's confinement in the Carroll County jail, did you notice anything peculiar or unusual about his conduct?

A. Yes, sir, I did.

page 41 } Q. Would you tell the court about that?

A. Well, he, I would have to say he was one of the two most arrogant people I have ever had in that jail.

Q. What do you mean by arrogant, Mr. Surrat?

A. Smart aleck.

Q. Well, did he cause you trouble or do anything?

A. Yes, sir, he was trouble continually.

Q. Is that your usual experience with other prisoners?

A. No, sir.

Q. That's all.

Mr. Rouse: That's all. Thank you.
Mr. Bowie: Marshall Honaker.
Mr. Honaker: I have not been sworn, Your Honor.

MARSHALL HONAKER having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bowie:
Q. Would you state your full name and address, please?
A. Marshall Edward Honaker, 104 Woodland Drive, Bristol, Virginia.
Q. What is your occupation?
A. I am deputy city sergeant for Bristol, Virginia.
Q. As deputy city sergeant, do your duties include the care or maintenance of the Bristol jail?
A. Yes, sir, they do.
page 42 } Q. Have you been fulfilling those duties during the time that Martin P. Cardwell was incarcerated in that jail?
A. Yes, sir, I have.
Q. And have you had any unusual experiences with Cardwell while he was in the jail?
A. Yes, sir, we have.
Q. Would you relate those experiences to the court?
A. Do you want them all, sir?
Q. Yes, sir.
A. Mr. Cardwell has been very uncooperative since we have been, since we have had him in the jail. On two occasions, he has torn up the cell block in which he is confined or the cell, the commode and plumbing in the cell. On February the 25th—January the 25th, he started two small fires in the jail, and we have had him in the disciplinary section of the jail on about three or four occasions since he has been there.
Q. Has he had the usual conduct so far as his bathing habits are concerned or his clothing or his personal, personal appearance while he was in the jail?
A. When he is, when he was in the, being disciplined, he was not afforded any of the *the* privileges of the other inmates; in other words, he couldn't get to the shower, he was not given a razor or writing paper, and so forth.
Q. Yet this didn't deter him from again going back down there or doing something which he knew would get

page 43 } him back down there?

A. That's exactly right, sir.

Q. Is his conduct usual in your experience as a jailer?

Mr. Rouse: If the court please, I object to that, what is usual.

Mr. Myers: We think it's material, Your Honor.

The Court: Well, that's a conclusion. Sustain the objection to the form of the question. You can question him all you want to about what his conduct has been, the facts, not conclusions.

Oh, let him go ahead and answer.

Overruled.

The Witness: Would you repeat your question, sir?

Q. (By Mr. Bowie) Is Cardwell's conduct usual in your experience with other prisoners in the past?

A. Not usual. He, in my opinion, he is just like anybody else that wants attention or just, just plain mean.

Q. Well, what do you mean when you say he is "plain mean"?

A. Just doesn't want to conform to the rules set forth for prisoners in the jail.

Q. Well, does he conform to any rules?

A. Those that we made him conform to.

Q. Does he conform to the normal behavior pattern?

A. At times, yes, sir.

Q. At times?

page 44 } A. Yes, sir.

Q. Has the defendant accused you or anybody else of stealing a blue composition notebook or any of his other belongings?

A. Not to my knowledge, he hasn't accused me. There is a blue composition notebook in his personal possessions that, that we won't permit him to have.

Mr. Bowie: You may ask him.

CROSS EXAMINATION

By Mr. Rouse:

Q. Sergeant, wouldn't incorrigible, the word incorrigible describe Mr. Cardwell?

A. Yes, sir, I think it would very good.

Marshall Honaker

Q. As you described, just plain mean, isn't he?
A. That's right, sir.
Q. And this isn't the first time that there has been prisoners in there that tried to wreck their cell?
A. Oh, no, sir; no, sir.
Q. Flood the jail?
A. That's right, sir.
Q. Anything?
A. That's right, sir.
Q. Set fires in the floor?
A. That's right, sir.
Q. And nothing unusual about that, is there?
A. No, sir, I would say not.
page 45 } Q. Come down.

RE-DIRECT EXAMINATION

By Mr. Bowie:
Q. You are not saying it is usual for a prisoner to go in there and do that, are you?
A. It's, it's usual for a prisoner to; if he wants attention and wants to be in my opinion a big man, it's not unusual for him to do these things to get attention.
Q. Well, how long have you been on the staff as the city sergeant?
A. Since 1962, sir.
Q. For four or five years?
A. Yes, sir.
Q. Well, during that time, how many times has something like this occurred to this extreme?
A. Oh, I can't remember exactly how many times it's occurred. I can give you another case just recently where a man cut his wrist and then would take the stitches out and so forth to get, to get attention, and to try to get moved from one section of the jail to another.
Q. All right, sir. You are putting these in the same category?
A. Yes, sir.
Q. That's all.

Mr. Rouse: Come down.
page 46 } Mr. Bowie: That's all, Your Honor.
The Court: No other witnesses?
Mr. Bowie: No other witnesses. We would like to make a

statement into the record in the absence of the jury at a time when it's convenient to the court.

The Court: All right. Let the jury retire to the room right now. Mr. Sergeant, see that the room is clear, please, and close the door.

(Thereupon, the jury retired from the open courtroom and the following proceedings were had out of the presence of the jury.)

The Court: All right, Mr. Bowie.

Mr. Bowie: We would like, Your Honor, for it to be made a part of the record that the counsel for the defendant subpoenaed all the witnesses which had been requested by the defendant. To be exact, there are in addition to Mr. Surrat, there were six other witnesses subpoenaed and in the courtroom and it was the decision of the defendant that these witnesses which were subpoenaed and which were here not be called and put on the stand.

And it was our opinion as his counsel that it would not be beneficial to him to put those witnesses on.

The Court: Did you confer with him as to whether or not those witnesses would be placed on the witness stand?

Mr. Bowie: Yes, Your Honor, we did, and it was
page 47 } his decision that they not be called.

The Court: And you say it was his decision?

Mr. Bowie: Yes, Your Honor.

The Court: And he is present in the courtroom, of course, at this time hearing the statement of counsel and the questions by the court?

Mr. Bowie: Yes, sir.

The Court: And your answers.

Mr. Bowie: And we concurred with his decision that it would not help his case to call these witnesses.

The Court: Well, just for general information in the record, did they, did the bulk of these witnesses deal with the merits of the case or with his mental condition?

Mr. Bowie: They dealt with the merits of the case, for the most part. We expected them to be able to testify as to his whereabouts at the time of the crime to establish an alibi for him. Yesterday was the first opportunity we had to interview the witness most material to the alibi. She, prior to that time, had been in custody in Goochland in the State Penal Institution. Yesterday is the first time we had had an opportunity to interview her and we found after having interviewed her that her testimony was not what we expected it to be. That's the primary reason for summonsing these

witnesses. Of course, without her's, without her testimony, the testimony of the other witnesses would have no
page 48 } bearing whatsoever on it and that was the primary reason that we went ahead and subpoenaed them. But after learning this, we felt that it would not be helpful to the case to put them on.

The Court: Well, we won't pause to go into this phase of the matter at the present time, but it was as a result, as the result of an affidavit filed by the accused that the court ordered Betty Hicks returned from the State Farm where she is a prisoner to appear here as a witness for him, and after this proceeding is over, the court will conduct an inquiry into that phase of the matter to see what further proceedings, if any, are advisable in regard to his affidavit requiring the court to order her brought back.

That's all. Have you completed your statement?

Mr. Bowie: Yes, sir.

The Court: Do you plan to present any further evidence?

Mr. Bowie: No, sir.

The Court: Mr. Rouse, do you have any rebuttal evidence?

Mr. Rouse: No.

The Court: If not, we'll just let the jury stay out while we consider the instructions.

All right, let's see what you have to offer on behalf of the—

page 49 } Mr. Rouse: Judge, I believe I will let the jury come back just for one minute.

The Court: Before we call them, Mr. Bowie, from the tenor of the evidence you anticipate presenting the issue of the, of the accused's mental condition before the jury by way of instruction?

Mr. Bowie: Yes, sir. This was an eleventh hour decision, but that's our present intent.

The Court: Well, we'll go into that at the proper time then.

Call back the jury.

(Thereupon, the jury returned to the courtroom, and the following proceedings were had in open court before the jury.)

Mr. Rouse: Come back around, Captain Stigall.

JACK B. STIGALL was recalled, and further testified as

follows:

DIRECT EXAMINATION

By Mr. Rouse:

Q. Captain Stigall, did you make Pete Cardwell any promise relative to some clothing and some items that he wanted sent to Hillsville?

A. No, sir.

Q. Was it discussed?

page 50 } A. Yes, sir, after the taking of the statement and after I called the jailer to unlock the door to the room where we were in, prior to the jailer coming upstairs there, Pete asked me if I would see his uncle who lives in Bristol in reference to three or four dollars that his uncle owed him, and see if he would send money to him. Also, in reference to some clothing that he had at his uncle's apartment. On coming back to Bristol the next day, I ran into his cousin, Pete's cousin, one of the Cardwell twins—it was either Billy or Jimmy—and delivered his message to him at that time.

Q. That's all.

Mr. Bowie: No questions.

Mr. Rouse: Come down.

That's all, Your Honor.

The Court: Gentlemen, you will retire while we consider the instructions, please.

* * * * *

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* * * * *

"INSTRUCTION NO. F (Refused)

"The court instructs the jury that if you believe from the evidence that the accused did break into the church and take the stamps and you further believe that at this time the accused is insane, then you shall find him not guilty, by reason of insanity, and your verdict must so state."

* * * * *

page 59 }

* * * * *

The Court: F is refused, because the question
page 60 } of his sanity has already been determined in one of the modes prescribed by law, and he has been found sane for trial. And the court has proceeded to try him on that basis.

And the question as to his present condition has already been resolved and this jury is not impaneled for the purpose of determining his present mental condition. He has already been adjudged sane for trial.

Mr. Bowie: Respectfully note an exception.

* * * * *

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* * * * *

JURY IMPANELMENT:

The Court: Lady and gentlemen of the jury, are all of you citizens of the Commonwealth of Virginia?

Have you resided in this commonwealth for the last year and in this city for the last six months?

Are you related by blood or marriage to the accused?

Let me have the indictment, please.

Are any of you officials of the Euclid Avenue Baptist Church?

Do any of you have any interest in the case?

Have you made up or expressed any opinion as to the guilt or innocence of the accused?

Do you feel any bias or prejudice in regard to the case?

Do any of you know of any reason why you cannot hear the case and render a fair and impartial verdict according to the law and the evidence? If so, please raise your hand.

Are any of you, do any of you know anything first-hand about the facts of the case? That is, were you witnesses to any part of it, or have you talked to anyone who purported to be an eyewitness to any part of it?

Any further questions from the Commonwealth?

Mr. Rouse: No, Your Honor.

page 73 } The Court: Any further questions from the accused?

Mr. Bowie: Are any members of the jury members of the Euclid Avenue Baptist Church?

Juror: I am a member of the church.

Mr. Bowie: You two gentlemen are members of the church? I'd like to challenge those two jurors for a cause, Your Honor, as having an interest in the case.

The Court: Are either of you an official of the church in any way?

Jurors: No, sir.

The Court: Which is, Mr., your name, please, sir?

The Clerk: Hutton and Holloway.

The Court: Who else held up his hand as a member of the Baptist Church besides Mr. Hutton?

Are you an official, Mr. Hutton?

Juror: No, sir.

The Court: Of the church? Do either of you two gentlemen know anything about this case? Have you heard it mentioned in the church, heard it discussed or know anything about the facts of the case?

Mr. Holloway: Not until I came over here this morning.

The Court: Sir?

Mr. Holloway: Not until this time.

page 74 } The Court: I'll ask that question about it to Mr. Hawkins and Mr. Hutton.

As a result of your membership in the church, does that cause you to feel that you have any particular interest in this case?

The Clerk: Mr. Holloway.

Mr. Holloway: No, sir.

The Court: Mr. Hutton?

Mr. Hutton: No, sir.

The Court: You feel like the fact that you are members of the church would influence you in any way in arriving at a verdict in this case that would cause you to be prejudiced against the accused or influence your verdict in any way?

Jurors: No.

The Court: They both say no.

Well, the court will deny the motion.

Mr. Bowie: I respectfully note an exception, Your Honor.

Are any members of the jury panel represented in any legal action by the attorney for the city, Mr. Dick B. Rouse?

Are any members of the panel related to Mr. Rouse?

That's all, Your Honor.

The Court: Well, let me ask Mr. Holloway a

page 75 } further question. Had you heard of this event before today?

Mr. Holloway: One time, I think this happened when I was off on vacation.

The Court: Sir?

Mr. Holloway: I think that occurred while I was on vacation. When I came back, I heard someone say there had been a robbery up there. That's all I knew about it.

The Court: Was that person anyone who purported to know anything about it? In other words, had that person made an investigation or state any of the details to you?

Mr. Holloway: No, he was just like I was, he just heard it.

The Court: Mr. Hutton, had you heard of this charge before today?

Mr. Hutton: Yes, sir.

The Court: Had you, who had you heard it from?

Mr. Hutton: Well, it was rumored over at the church. I just heard, different ones.

The Court: Did you talk to anyone who stated any of the facts to you as to what's supposed to have happened, that's supposed to have known about the facts?

Mr. Hutton: No, sir.

The Court: That's all.

Any further questions from the accused?

Mr. Bowie: No, sir.

page 76 } The Court: Well, pass the list, please.

There will be three strikes to each side, one at a time alternately beginning with the Commonwealth.

I should have said four instead of three.

(Thereupon, the list was passed to counsel for strikes.)

The Clerk: You gentlemen may step aside as your names are called: Jack C. Wygal; F. Randolph Belton; Vernon D. Holloway; J. W. Lester; John W. Anderson; Virginia Blevins; Roy K. Cooper; Orvil Hutton.

The Court: The remaining twelve fill up the swivel chairs.

* * * * *

EXHIBIT 1-A

2/13/67

VOLUNTARY STATEMENT

(Under Arrest)

DATE Feb. 1, 1966 TIME 2:00 PM PLACE Carroll Co. Va. Jail

I, Martin Pete Cardwell, am 20 years of age and my address is D-6 Rice Terrace Bristol, Va.

I have been advised and duly warned by Capt. Jack Stigall who has identified himself as Police Officer City of Bristol, Va. of my right to the advice of counsel before making any statement, and that I do not have to make any statement at all, nor incriminate myself in any manner.

I hereby expressly waive my right to the advice of counsel, and voluntarily make the following statement to the aforesaid person, knowing that any statement I make may be used against me on the trial or trials for the offense or offenses concerning which the following statement is herein made.

I declare that the following statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

On January 9, 1966 Sunday night I had been to the services at Euclid Ave. Baptist Church, after I went home, I decided to go out again. I then walked over to the Euclid Ave. Baptist Church *ad* tried all the doors except the doors M. C. on Euclid Ave side, all the doors were locked. I found a window unlocked in the old part of the church *ad* went into the church, I got a case knife *ad* a putty knife from the nursery *ad* I took the wood from around the window in the door that leads into the church office, I was unable to get the window out so I tried to get the window out by running the case knife under the edge of the glass, I kept working the knife until the corner of the glass cracked then I finally knocked this out with my knife.

Then I reached in *ad* opened the door, after getting into the office in order to get into another office I tried to get another window glass out of the door *ad* broke the window out. I searched all the desk drawers, I found a roll of 5¢ stamps *ad* a check book with about four checks in the book. M. C.

I have read this statement consisting of 2 page(s), and I affirm to the truth and accuracy of the facts contained therein.

This statement was completed at 2:20 PM, on the 1st day of Feb. 1966.

WITNESS: Capt. Jack Stigall

Martin Cardwell
Signature of person giving voluntary statement

EXHIBIT 1-B

2/13/67

I was in the building about 3 or 4 hours *ad* when I left the building I went out the side door that leads to the driveway, here I left a childs scarf or head piece, I had used this to try *ad* wipe my fingerprints off. M. C.

I have read this statemnt consisting of 2 page(s), and I affirm to the truth and accuracy of the facts contained therein.

This statement was completed at 2:30 PM, on the 1st day of Feb. 1966.

WITNESS: Capt. Jack Stigall

Martin Cardwell
Signature of person giving voluntary statement

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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