Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Virginia

209 VA 305

Record No. 6786

In the Supreme Court of Appeals of Virginia at Richmond

ALBERT WESLEY FARRIS, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6786

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1967.

ALBERT WESLEY FARRIS, JR., Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Rockbridge County
William S. Moffett, Jr., Judge

Upon the petition of Albert Wesley Farris, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Rockbridge County on the 12th day of February, 1963, 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 8 }

* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockbridge, now attending the Circuit Court of said County, at its May, 1962, term, upon their oaths do present:

That Albert Wesley Farris, Jr., on the 14th day of November, 1961, within the County of Rockbridge, then and there, unlawfully, feloniously, and maliciously, with force and arms, did make an assault upon one Vicki Lynn Farris, a female child, seven years of age, and then and there unlawfully, feloniously, and maliciously did ravish and carnally know her, the said Vicki Lynn Farris, against the peace and dignity of the Commonwealth.

This indictment is found upon the evidence of W. B. Auithrum duly sworn in open Court and sent before the Grand Jury this 7 day of May, 1962.

* * * * *

INDICTMENT FOR RAPE

A FELONY

A TRUE BILL

H. L. Hotinger, Foreman

* * * * *

page 31 } INSTRUCTION J

The Court instructs the jury that if they find the Defendant was insane at the time the offense was committed and if they acquit him on these grounds then they should state this fact in their verdict and the Court shall thereupon, if they deem his discharge dangerous to the public peace or safety, order him to be committed to one of the State hospitals for the insane and be confined there under special observation and custody until the Superintendent of that hospital and

the Superintendent of any other State hospital or feeble-minded colony shall pronounce him sane and safe to be at large.

Refused. W. S. M.

* * * * *

page 52 }

* * * * *

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY FEBRUARY 12, 1963.

* * * * *

This day again came the Attorney for the Commonwealth, the defendant, Albert Wesley Farris, Jr., was led to the bar in custody of the Sheriff of this Court and also came C. W. Gunn, Jr. and W. M. A. Romans, Jr. the defendants Counsel.

And the Court having on December 7, 1962 received a motion of the defendant, by Counsel, to set aside the verdict of the jury as handed down December 7, 1962 and on February 4, 1963, heard arguments of Counsel on said Motion and now having maturely considered the Motion of the defendant the Court doth overrule the Motion of the said Albert Wesley Farris, Jr.

And it being demanded of the said accused if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law and nothing being offered or alleged in delay thereof, it is accordingly ordered by the Court that the said Albert Wesley Farris, Jr., be and he hereby is sentenced to confinement in the penitentiary of this Commonwealth for life, at hard labor, the judgment of the jury as handed down December 7, 1962.

The Court certifies that the said accused was present during all stages of his trial.

It is further ordered by the Court that the Sheriff of this Court safely convey the said accused to the custody of the penitentiary of this Commonwealth wherein he shall be kept and treated in the manner prescribed by law.

And the said accused is remanded to jail to await transfer as aforesaid.

WILLIAM S. MOFFETT, JR., Judge

* * * * *

page 53 }

* * * * *

MOTION BY DEFENDANT TO SET ASIDE VERDICT AS CONTRARY TO THE LAW AND EVIDENCE.

* * * * *

The undersigned, Albert Wesley Farris, Jr., by Counsel, hereby moves the Circuit Court of Rockbridge County to set aside a jury verdict rendered in this case on December 7, 1962; said verdict being as follows:

"We, the members of the jury, find the Defendant, Albert Wesley Farris, Jr., guilty of rape and fix his sentence as life in the penitentiary. S/L. F. Glenn, Foreman, December 7, 1962."

The Defendant, Albert Wesley Farris, Jr., respectfully represents that said verdict is contrary to the law and evidence in this case and in support of said motion, alleges as follows:

(1) It was established by a *preponderence* of the evidence during the course of said trial that the Defendant was legally insane. The evidence upon the question of insanity was given by two expert witnesses.

Dr. John Novak testified that at the time the alleged act was committed the Defendant was suffering from an acute brain syndrome, *alcholic* intoxication with amnesia. Dr. Novak testified that this diagnosis results from a marked behavioral or psychotic reaction after *alcholic* intake, and that if the amount of *alcholic* intake was great enough, the Defendant would not know right from wrong and further would not know or understand the nature and consequence of his act.

Dr. Novak's qualifications were unquestionable and his evidence, although contested by Dr. Blalock as to diagnosis, was uncontested in the fact that if the Defendant did suffer from acute brain syndrome, *alcholic* intoxication

page 54 } with amnesia, he was probably legally insane at the time the act was committed.

Dr. Blalock, for the prosecution, stated that the Defendant was a sociopathic personality disturbance with *alcholic* addiction.

Upon cross examination Dr. Blalock stated that generally speaking a sociopathic personality is an individual who is ill

or sick, primarily in terms of society and in conforming with the existing cultural mores. That a person suffering from a sociopathic personality is an individual who does not recognize his responsibility to society. A person who refuses to do what society expects of him; *and* individual who is irresponsible, and generally speaking this is the usual criminal type.

The evidence of this case firmly establishes that the Defendant did not fit into this pattern. The Defendant, although remorseful in his relation with others, did recognize his responsibility and duties to society; he did provide for his family and did accept the responsibility of citizenship in society.

In hypothetical questions asked of Dr. Blalock, no mention was made of the fact that the individual involved did accept the responsibilities of supporting his family. Specifically a sociopathic personality in the words of a layman is a non conformist or a head strong individual who pretty much does what he pleases with complete disregard for the rights of others or the rules by which all of us are expected to live. The evidence in this case completely negates that Albert Wesley Farris, Jr., was this type of individual.

Mrs. Farris testified that the Defendant perhaps overdid himself in trying to provide the necessities of life for his family (i.e.—the testimony of Mr. Lotts stating that the Defendant would walk 3 miles to get water for his children), and further the undisputed evidence is that the Defendant worked hard and long hours to see that his family had what they needed.

page 55 } (2) The Defendant submits that by *preponderence* of the evidence in this case, he was shown to be insane; that he did not know right from wrong or the nature and consequence of his act at the time he committed the sexual assault upon his daughter, Vickie Lynn Farris.

The defense submits that the jury very likely would have and should have returned a verdict of not guilty on the grounds of insanity, had it not been for evidence introduced during the trial, mainly by Dr. Novak, that the Defendant could or might *committ* this act again. The defense feels that this evidence was *inadmissable* and further points out that the defense was refused an instruction to the effect that if the jury found the Defendant not guilty on the grounds of insanity, that if the Court deemed his discharge dangerous to the public peace and safety, the Court would order him to be committed to one of the State Hospitals for the insane.

Unaware that this could happen, the jury seeking to keep this dreadful act from reoccuring, found itself with no alterna-

tive but to impose the sentence it did, and the defense would point out that this was the least of the sentences it could have imposed in view of the fact that the jury recognized what it thought to be its responsibilities to society. That is to protect others from suffering such an infamous attack.

WHEREFORE, the Defendant, Albert Wesley Farris, Jr., respectfully moves the Court to set aside the verdict of the jury on the grounds that it is contrary to the law and evidence and find the Defendant not guilty on the grounds of insanity.

ALBERT WESLEY FARRIS, JR.

By W. M. A. ROMANS, JR.
Counsel

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 12 day of Dec., 1962.

ELLEN D. TOMLINSON, D. C.

page 56 }

* * * * *

MOTION FOR A NEW TRIAL

* * * * *

The Defendant, Albert Wesley Farris, Jr., respectfully moves the Court that he be given a new trial in this matter and in support of said motion sets forth as follows:

That during the course of the trial a witness for the Defense, Dr. John G. Novak, had testified upon direct examination that the Defendant did not know what he was doing and did not know the difference between right and wrong at the time the alleged crime was committed, and was not responsible for his actions. Upon cross examination the Commonwealth was allowed to question this witness as to whether or not the Defendant could have the same state of mind as when this alleged crime was committed if he were released to society, and this key defense witness testified that the Defendant could reach the same state of mind, the positive inference being that he would commit the same crime again. The Defense submits that the sole duty of the jury was to determine whether the Defendant committed the crime with which he is charged and upon finding that he did commit said crime while legally sane, to fix a punishment not for what he

might do in the future, but for what he had done in the past.

The fact that this crime might be committed again was brought up by the Commonwealth's Attorney in his closing argument and a copy of what the Commonwealth Attorney said in his closing argument, certified by the Court Reporter in this case, is attached to this motion and made a part hereof.

page 57 } The Defense is of the opinion that the statements made by the Commonwealth's Attorney in his closing argument were entirely improper, prejudicial and reversible error in themselves. (*Coffey* v. *Commonwealth* 188 VA 629; *McLane* v. *Commonwealth*, 202 VA 197). Counsel for the defense admits that they did not object or make an exception to the remarks, but Counsel was of the opinion at the time that the Court had already ruled in this matter. (See Vol. II, page 94 of transcript). Counsel for the defense now realize that the statements made by the Commonwealth's Attorney were not proper even in view of the Courts earlier ruling of what would be *permissable* evidence as to the future conduct of the Defendant; that is the Court had ruled that the Commonwealth might ask and point out whether or not the Defendant might return to the same condition of mind that the Defense had sought to prove that he was in at the time of the alleged offense.

The Defense points out, admitting for the sake of argument the Court's earlier ruling to be correct, that the Commonwealth, nonetheless, went far beyond this ruling in its closing argument and that the Defendant should not be penalized by the failure of his Counsel to object. The record shows that twice during the course of the trial that Counsel for the Defense had objected to the introduction of any evidence as to what the Defendant's course of conduct or state of mind might be in the future. (See Vol. II, page 94 of transcript, Refusal of Instruction J offered by defense).

The Defense attempted to introduce Instruction J which would clarify this error and make it clear to the jury that if they should find the Defendant not guilty on the grounds of insanity that he would not be released from preventive custody until it was certain that he could not reach the state of mind he was in when the alleged act was committed.

WHEREFORE, the Defense respectfully represents that the introduction of evidence that the Defendant might reach the same state of mind he was in when this offense

page 58 } was committed and further the statements of the Commonwealth Attorney in his closing argument in pointing out to the jury that they should keep in mind that this man, if allowed to circulate at large would be a potential

danger to every little girl, his own and others, was prejudicial error, so prejudicial in fact that any reasonable jury aware of its duty to society could not reach any conclusion except to make certain that this defendant would never be allowed to return to society.

This was a henious crime and the remotest chance that the same might occur again would be sufficient, in the opinion of the Defense, to justify the verdict of the jury, and it is submitted by the Defense that because this chance of *reoccurrance* was present and in evidence, that the jury never did consider the real issue in this case, that is whether or not Albert Wesley Farris, Jr., was legally sane and responsible for his actions at the time the alleged crime was committed.

The Defense further submits that in the course of the trial it was proven by *preponderence* of the evidence that the Defendant was legally insane at the time the alleged crime was committed; that he did not know the difference between right and wrong, and in view of this and what the Defense points out to be reversible error referred to hereinabove, Counsel for the Defense respectfully requests a new trial for the Defendant, Albert Wesley Farris, Jr.

ALBERT WESLEY FARRIS, JR.

By W. M. A. ROMANS, JR.
Counsel

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 4 day of Feb., 1963.

HARRY B. WRIGHT, Clerk

* * * * *

page 59 } EXCERPT FROM THE CLOSING ARGUMENT OF C. H. DAVIDSON, JR., COMMONWEALTH'S ATTORNEY, IN THE CASE OF COMMONWEALTH OF VIRGINIA V. ALBERT WESLEY FARRIS, JR., ON THE DATE OF DECEMBER 7, 1962, AT THE COURTHOUSE OF THE CIRCUIT COURT OF ROCKBRIDGE COUNTY, IN THE TOWN OF LEXINGTON, VIRGINIA.

—"I don't believe from the evidence you members of the Jury are going to have too much difficulty in determining guilt. Your principal difficulty will be in the extent of punish-

ment, and I ask you this: if you conclude from the evidence that this man is guilty of raping his own daughter, can you possibly conceive that he should be permitted to remain at liberty at any time? Can you possibly conceive that such a man should be permitted to circulate at large, a potential danger to every little girl, his own and others, where ever he might be? Think about that, reflect on it, and keep that in mind, along with other things, when you retire to your Jury room and—"

I certify that the above is a true and correct excerpt from the testimony of C. H. Davidson, Jr., given during his closing argument in the above case on the above date and at the above place.

GIVEN under my hand this 5th day of February, 1963.

RUTH A. UPSHAW
Court Reporter

Certified—3/6/67. W. S. MOFFETT, JR., Judge

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 4 day of Feb., 1963.

HARRY B. WRIGHT, Clerk

* * * * *

page 63 }

Rockbridge ..... COUNTY CIRCUIT COURT

COMMONWEALTH/COUNTY

Case No. C 1038

vs.

Albert Wesley Farris, Jr.

☒ Felony ☐ Misdemeanor

STATEMENT OF FINE AND COSTS

STATE/COUNTY

Fine	Account No. 105		$
Costs	Account No. 105a — Jury		335.94
Witnesses:			
List — Witnesses		$ 13.78	
			13.78
1/2 C. A. Fee	Acct. 109		5.00
Trial Justice	Acct. 110		1.00
Other	Acct.		$

COUNTY

Police Fees	Acct. 202		
1/2 C. A. Fee	Acct. 203		5.00
Sheriff	Acct. 206		12.00
Other	Acct.		$

CLERK

Clerk's Costs	Acct. 305	$ 13.75

OTHER COSTS

~~I.P. Acct. 5~~	Allowance for Def Counsel		150.00
Miscellaneous	Acct. 5 → Transcribing Testimony		$ 511.70

Total Fine and Costs $ 1048.17

Given under my hand, this 4 day of Feb, 1963

Harry B. Wright, Clerk.

page 108 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: HARRY B. WRIGHT, CLERK OF THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

Notice is hereby given that Albert Wesley Farris, Jr. appeals this case and will apply for a writ of error and *supersedas.*

ASSIGNMENT OF ERRORS

The following are the errors assigned:

The Circuit Court erred:

1. In permitting Dr. Novak to testify in regard to the future conduct of Albert Wesley Farris, Jr., the defendant.

2. In not instructing the jury to disregard that portion of Dr. Novak's testimony insofar as it pertains to the future conduct of the defendant.

3. In not granting the instruction as to what would happen to the defendant if he was found not guilty by virtue of insanity, this instruction being pertinent because the Court permitted Dr. Novak to testify as to the defendant's future conduct.

4. In not granting defendant's motion for a new trial based on prejudicial and reversible error committed by the Attorney for the Commonwealth in closing argument to the jury.

5. In not granting the instruction as to what would happen to the defendant if he was found not guilty by virtue of insanity, this instruction being pertinent because the Attorney for the Commonwealth committed prejudicial and reversible error in closing argument to the jury.

page 109 } 6. In permitting Dr. Novak, over objection of counsel, to testify as to what defendant would do on the future, the jury was exposed to such pressures as to render them incapable of acting other than through passion and prejudice in arriving at their finding of fact respecting defendant's plea of not guilty by reason of insanity, and as a result defendant was deprived of due process of law guaranteed by Article I, Section 8 of the Virginia Constitution and by the Due Process Clause of the 14th Amendment of the Federal Constitution.

7. In overruling defendant's objection to the admissibility of Dr. Novak's testimony as to what defendant's conduct would be in the future and thereby sanctioning the closing argument of the Attorney for the Commonwealth to the effect that defendant would repeat the criminal act of which he stood charged if he were found not guilty by reason of insanity, the jury was exposed to such pressure as to induce them to ignore evidence relating to defendant's mental capacity to distinguish right from wrong at the time of the crime for which he stood charged and to be motivated through passion and prejudice in arriving at their finding of fact respecting defendant's plea of not guilty by reason of insanity, and as a result defendant was deprived of a trial by a fair and impartial jury as guaranteed by Article I, Section 8 of the Virginia Constitution and by the 6th Amendment as incorporated by the 14th Amendment of the Federal Constitution.

8. In appointing counsel (to represent defendant at his felony trial) who were without any experience in the trial of a felony case and who were therefore incompetent counsel, defendant was deprived of the assistance of competent counsel in violation of Article I, Section 8 of the Virginia Constitution and in violation of the 6th Amendment as incorporated by the 14th Amendment of the Federal Constitution.

page 110 }

BERNARD J. NATKIN
Counsel for Albert Wesley Farris, Jr.

BERNARD J. NATKIN, P. D.
Attorney at Law
1 Court House Square
Lexington, Virginia

* * * * *

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 21 day of Feb., 1967.

HARRY B. WRIGHT, Clerk

* * * * *

page 116 }

AFFIDAVIT

Charles W. Gunn, Jr. being duly sworn, *desposes* and says: That he was licensed to practice law in the Commonwealth

of Virginia on the 22nd day of January, 1960; that he along with William M. A. Romans, Jr., in the month of May, 1962, was appointed by the Circuit Court of Rockbridge County to defend Albert Wesley Farris on a charge of rape. The trial of the case lasted from December 5th thru December 7th, 1962, and at the time of said trial, my jury experience was limited to three or four civil cases and to the best of my memory this was the first criminal case I tried in front of a jury.

CHARLES W. GUNN, JR.

STATE OF VIRGINIA
COUNTY OF ROCKBRIDGE

Taken, sworn to and subscribed before me, the undersigned Notary Public this 24th day of April, 1967.

My commission expires September 27, 1969.

ELLEN M. WATKINS
Notary Public

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 24 day of April, 1967.

HARRY B. WRIGHT, Clerk

page 117 } AFFIDAVIT

William M. A. Romans, Jr. being duly sworn, *desposes* and says:

That he was licensed to practice law in the Commonwealth of Virginia on the 8th day of June, 1959; that he along with Charles W. Gunn, Jr., in the month of May, 1962, was appointed by the Circuit Court of Rockbridge County to defend Albert Wesley Farris on a charge of rape. The trial of the case lasted from December 5th thru December 7th, 1962, and at the time of said trial, my experience was limited to three or four civil cases and to the best of my memory this was the first criminal case I tried in front of a jury.

WILLIAM M. A. ROMANS, JR.

STATE OF VIRGINIA
COUNTY OF ROCKBRIDGE

Taken, sworn to and subscribed before me, the undersigned Notary Public this 24th day of April, 1967.

My commission expires September 27, 1969.

ELLEN M. WATKINS
Notary Public

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 24 day of April, 1967.

HARRY B. WRIGHT, Clerk

* * * * *

page 51 }

* * * * *

DOCTOR JOHN G. NOVAK, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Romans:

page 52 } Q. Will you state your name, please?

A. John G. Novak, N-O-V-A-K.

Q. Where do you reside, Dr. Novak?

A. I live in Lynchburg, Virginia.

Q. What is your profession?

A. I am a physician, and I am engaged in the specialty of the practice of nervous and mental diseases known technically as neurology and psychiatry.

Q. Do you specialize in either neurology or psychiatry, one or both?

A. Well, I do both. Actually, with the demands of today's living, mostly psychiatry.

Q. Are you licensed to practice in the State of Virginia?

A. Yes, I am. I was licensed in the State of Virginia in 1956 on reciprocity with the license granted me in Pennsylvania in 1938.

Q. You are licensed to practice in Pennsylvania, also?

A. In Pennsylvania, in New Jersey, and the District of Columbia, also.

Q. When did you obtain your first license to practice?

A. In 1938 in the State of Pennsylvania.

page 53 } Q. Have you been practicing your profession continually since that time?

Doctor John G. Novak

A. Yes, I have.

Q. Of what medical school are you a graduate?

A. A graduate of the School of Medicine, University of Pittsburgh, in Pittsburgh, Pennsylvania, in 1937.

Q. And, where did you intern, and for how long?

A. I interned in one of the larger hospitals in Pittsburgh, St. Francis Hospital. I interned for the prescribed twelve month period.

Q. And, you stated your medical specialty is neurology and psychiatry. Did you do any further study in this field?

A. Yes. Following my internship, I did a prescribed period of three and a half years of study in hospitals in Pittsburgh and the Philadelphia area leading to the qualifications for certification as a specialist by examination. I am a Diplomate of the Board of Neurology and Psychiatry for the past eighteen years.

Q. You mentioned the Board of Neurology and Psychiatry. Do you belong to any other professional groups?

page 54 } A. I am a Fellow of the American Psychiatric Association, a member of the Virginia Neuro-Psychiatric Association, a member of the Medical Society in the State of Virginia, the Academy of Medicine in Lynchburg, Virginia. I am also a member of several other national societies having to do with epilepsy, alcoholism and mental diseases.

Q. Have you ever done any teaching in the field of neurology and psychiatry?

A. Yes, I have had the pleasure of teaching several places. I first taught as a young resident, teaching or helping to teach medical students, and I taught psychiatry in nursing in the Graduate School of Nursing at Seton Hall University, in Newark, New Jersey. I taught specified courses on a graduate level to other physicians under the auspices of Rutgers University, under the auspices of Seton Hall, and most recently gave a course in psychiatry for general practitioners in the City of Lynchburg.

Q. Doctor, have you ever been in the service?

A. Yes, sir. I served in the United States Army for a period of 62 months. During this 62 months, all of the time was spent in the field of psychiatry. I had two tours of

page 55 } duty at Walter Reed General Hospital in Washington, D.C. I had a tour of duty at St. Elizabeth's Hospital in Washington, D. C. I had a tour of duty at McGuire General Hospital in Richmond, where I was Chief of the Department of Psychiatry there. I was on a

hospital ship at the end of the war, and I was Chief of Psychiatry on the hospital ship. During part of my time at the Army Medical Center at Walter Reed General Hospital, I was an expert witness, appearing before the General Courts Martial.

Q. All right. At the present time, Doctor, do you hold any hospital positions?

A. Yes. I am on the active staff of the three hospitals in Lynchburg, the Virginia Baptist Hospital, Lynchburg General Hospital and Memorial Hospital. I hold two positions at the Lynchburg Training School Hospital, Chief of Psychiatry and Consultant in *Brave* Wave Electroencephalography. I hold positions that I have worked in in Newark, New Jersey, prior to coming here. I have the position of Consultant in Neuro-Psychiatry at St. Barnabas Hospital for Women and Children. I am an Attending in Neuro-Psychiatry at St. Michel's Hospital in Newark, New Jersey.

Q. And, on top of this doctor, do you have a
page 56 } private practice?

A. I have been engaged in the private practice of my specialty before and particularly since my service in the United States Army. When I came out of service in 1945, I went to New Jersey and practiced for 16 years before coming here to Virginia a little over two years ago.

Q. Thank you, Doctor. Now, Doctor, as a psychiatrist, have you had occasion to examine the defendant, Albert Farris?

A. Yes, I have.

Q. For what purpose did you examine Albert Farris?

A. I had a request from your office back in the middle of September of this year, asking that I examine Mr. Farris and render a report to you.

Q. When did you examine Albert Farris?

A. Albert Farris was examined in the jail here on the afternoon of November 10, 1962.

Q. Was this the only examination you have made of the defendant?

A. Yes, I examined him for a period of two hours at that time.

Q. Now, in connection with the request made from my office for the examination of Albert Farris, did you examine any other persons?

page 57 } A. Yes, I interviewed Mrs. Farris, Sr., his mother, and Mrs. Farris, Jr., his wife, and they were each interviewed for a period of approximately one

hour for each of them in my office in Lynchburg, Virginia. This interview was on October 31, 1962.

Q. Doctor, you stated that you examined the defendant, Albert Farris, on November 10, 1962. Did you at the time make a physical examination?

A. Yes, sir, I did. As part of my examination, I did a physical examination and a neurological examination, and this consisted of questions concerning his physical health, questions concerning his past medical history, questions concerning any present complaints of any type.

Q. Could you tell us briefly of the results of your physical examination?

A. Yes. The physical examination, I found the prisoner at the time I examined him to appear to be of the stated age in the thirties. He was alert, I found him to be cooperative, he answered the questions I asked him as readily as possible. He appeared to be somewhat sad and depressed, and when I questioned him concerning his mood, he indicated he was not too happy. At the time I examined page 58 } him, he was cleanly and neatly dressed, and he was wearing a short-sleeved tan sports shirt with open collar. He had green duck trousers, he was wearing loafers and socks. During the time that I talked to him, he smoked a few cigarettes. He smoked them rather slowly. On physical examination, without referring to any complaints that he had, I found his chest to be clear, his heart was not enlarged but there was what we call a murmur of the heart, which would indicate in all probability that he had some defect of one of the valves. His heart sounds were regular. I found his blood pressure to be 138/92. I did a neurological examination on him. Now, a neurological examination consists of testing the various facilities of the special senses, the ability to see, to hear, to talk, to feel, and that sort of thing. In checking this, I determined that he was able to walk without difficulty, that he was able to talk without any difficulty, his hearing seemed to be average and normal. I had no facilities for testing his actual eyesight in terms of whether he had 20/20 vision, but in answer to questions, he told me he could read a newspaper without dif- page 59 } ficulty. I examined his eyes externally with a flashlight, internally with my special instrument, the *opthalmoscope,* so that we could look directly back of the eyes, and I found them to be normal. I found that what we call the cranial nerves, his ability to see, hear, taste, the movements of his face, all to be as they should be. His

Doctor John G. Novak

ability to swallow, the movements of his tongue were as they should be. I also checked the reflexes in his arms and legs and determined that they were as they should be, normal. I checked his ability to determine and tell sensation of pain, of light touch, and the appreciation of a vibrating tuning fork. This he was able to do. I found that his neurological examination was essentially normal.

Q. Doctor, at the same time, November 10, 1962, did you examine Albert Farris for the purpose of determining whether or not he was sane on that date, that is November 10, 1962?

A. Yes, sir, I did.

Q. Have you formed an opinion as to whether he was sane or not?

A. Yes, I did. I found, in my opinion, that, on the basis of my examination on that date, it was my opinion
page 60 } that Albert Farris was of at least average intelligence, that he was sane at the time of the examination, November 10, 1962. That at that time, he knew the nature of the act with which he was charged, and that he knew the quality of this act which he was charged. He knew that the act was considered, in his community, to be wrong, and he was fully aware of how serious his situation, that is his predicament, is. I found, in my opinion, that he was mentally and emotionally capable of cooperating in his defense.

Q. Doctor, at this point I want to ask you to proceed very slowly with your testimony, as we are getting into an area where it will be necessary to ask hypothetical questions to establish certain facts, but first, I would like to ask you did you, at the time of your examination of Albert Farris on November 10, 1962, along with the information you have obtained from examination of his wife and his mother, did you attempt to form an opinion—

Mr. Davidson: Your Honor, before he answers that, I would like to object to his answering from the nature of the question as it was worded, his examination of the
page 61 } defendant, and also his interrogation of the wife and mother.

The Court: Possibly, I think we'd better let Mr. Romans finish asking his question, and then I'll ask the Doctor not to answer it until it is removed from the area of doubt.

Mr. Romans: Doctor, in the course of the examinations I have just referred to, that is of the defendant, the defendant's mother and the defendant's wife, did you obtain from all these sources certain facts which you considered to be important

in helping you make your determination as to whether or not Albert Farris was sane at the time the alleged act was committed?

The Court: Now, Mr. Davidson, do you have any objection to that question?

Mr. Davidson: Yes, sir. If the Doctor is going to answer that, his opinion is based on information received from the mother and the wife. If he could not exclude that completely from his answer in forming his opinion, I object to it, sir. As far as his interrogation, his observation, his examination of the defendant, and forming an opinion solely from that, certainly, as the question is now worded,

page 62 } I would have no objection, but the way the question is worded, if his opinion is based on information that he received from the wife and mother, that, of course, I object to.

Mr. Romans: Your Honor, by that question I am attempting to establish that Doctor Novak did, prior to today, attempt to ascertain the necessary facts he had to ascertain to make his opinion, if he could form an opinion, as to the insanity of the defendant on the date the alleged crime was committed. That's all I'm asking that he do. I am not asking what that opinion is. I'm just asking if he did obtain facts from others besides the defendant, and also did obtain facts as to current conditions from the defendant himself. And then, I would like to ask the hypothetical question, sir, and ask that he base it on the same facts he learned on his own direct examination of the defendant and other witnesses.

The Court: Mr. Romans, I—go ahead, Mr. Davidson.

Mr. Davidson: Now, sir, as soon as he says that, that's going to put into a hypothetical question an assumption of certain facts that have not been before the Jury and which would have to be excluded from the Doctor's testimony.

page 63 } The Court: I think you're right, Mr. Davidson. I think, gentlemen, the only way we can proceed with the opinions that you wish is by the condition that Dr. Novak has examined the defendant, he will have to give us his opinion, if he can, based on his examination of the defendant and certain facts which must be put into a hypothetical question. I will ask you to proceed along that line. Otherwise, factual information would be involved in this opinion which may or may not even be before the Court.

Mr. Romans: Your Honor, we would respectfully note an exception.

Doctor John G. Novak

The Court: Yes, sir. Of course, your question, Mr. Romans, as to whether you'd form an opinion, there would be no harm in permitting him to answer that, but it would be of no value, sir.

Mr. Davidson: That's what I meant, and we just might as well meet it head on now.

The Court: That's correct.

Mr. Davidson: His answer saying he hadn't—

The Court: We couldn't let him express his opinion.

(There was a short conference at the bench between the Judge, Commonwealth's Attorney and Defense Counsel, following which all read the hypothetical question silently.)

page 64 } The Court: Mr. Davidson, what's your view about the hypothetical question, sir?

Mr. Davidson: First, before making any observations as to the wording of the hypothetical question, I think it's proper and will ask the Court's opinion as to whether or not a witness should commit himself as to whether he can express an opinion, and disassociate himself completely any information he obtained from anyone other than the defendant.

The Court: I think that's certainly a proper subject for questioning.

Mr. Davidson: May I at this time propound the question, or the Court propound the question, or Defense Counsel. It makes no difference with me, I'd just like to—

The Court: I'll leave it to you gentlemen, either one of you, but I think the witness should be asked that question.

CROSS EXAMINATION

By Mr. Davidson:

Q. Dr. Novak, I question you out of order since the Court has given me the time and opportunity to explore the point connected with your testimony. My question at page 65 } this time, sir, is can you render an opinion as to the mental condition of Albert Wesley Farris, Jr., based solely upon your observations during the two hours at the local jail, and disassociate completely any additional information you obtained from his wife, his mother or relatives at our office on October 31, 1962, or elsewhere?

Mr. Romans: Your Honor, but he may consider—

Mr. Davidson: We haven't asked for that yet.

The Court: Let's not, let's let him answer.

Doctor John G. Novak

A. The information that I obtained in the direct examination of the prisoner is accepted in my examination of him as being as factual as it's possible for him to get. I had to take into account in formulating my opinion, substantiating information that necessarily had to be obtained from other sources, and these other sources were, specifically, his wife and his mother. It would be extremely difficult to completely disassociate that other information unless I had other data that would indicate that the information the prisoner gave me directly was absolutely as he gave it.

Mr. Davidson: That's a frank answer, Doctor.
page 67 } In other words, you might state that it would be extremely difficult for you to disassociate that other information?

A. Yes, sir.

Mr. Davidson: If that's the answer to the question, sir, and, in light of that, I object to the hypothetical question, first, on the grounds that the opinion by the witness, by his frankness, is that they would have to be based, to some extent, on other information that he received.

The Court: Gentlemen, what's your observation?

Mr. Romans: Your Honor, as I understand the Commonwealth's question, I could—

The Court: I think, gentlemen, it might be best to explore this out of the hearing of the Jury, and I am going to ask the members of the Jury to please retire in order that we might explore this question out of their presence.

(The Jury retired to the Jury room.)

The Court: Now, Mr. Romans.

Mr. Romans: As I understand the Commonwealth's question, it was basically, could Dr. Novak disassociate what was told him by the defendant's mother and wife
page 68 } in giving an answer. Now, there was no mention made of the facts contained in the hypothetical question, which, in essence, as has been established, are the same facts obtained by Dr. Novak in his own investigations, and he can answer the hypothetical question on the facts contained in the hypothetical question. That replaces the fact that he has to disassociate the facts that are given to him in the hypothetical question, and his answer would be

strictly based on facts of the hypothetical question, and all of the facts in the hypothetical question have been brought out today. The Commonwealth did say that he thought the hypothetical question, as far as the wording, was proper.

Mr. Davidson: No, I didn't. I said I hadn't commented on that part of it.

Mr. Romans: Yes, sir.

The Court: Gentlemen, I feel that maybe we might get at this matter this way. We might ask Doctor Novak if he has been able, as the result of his examination of the defendant, to diagnose this man's mental condition and appraise his condition, and then permit him to assume that this defendant, with that condition, is the hypothetical man, page 69 } and then, assuming that this set of facts and the hypothetical man in the condition that he finds the defendant is subjected to the facts as related in the hypothetical question. I think that might be the approach that we'd make to this.

Mr. Davidson: Well, now, if that is done, and the question is propounded to him as to whether he was able to arrive at a diagnosis, shouldn't that conclude from his examination solely of the defendant? The Doctor already has an opinion which is partially based on information received from others, and I can't see how he can eradicate or remove that completely.

The Court: We will have to permit the Doctor leeway and information to arrive at his diagnosis of the individual. Once he diagnoses the individual, and assumes that that individual is this hypothetical man who is subject to the facts set forth in the question, now, maybe Mr. Davidson, you have some comment to make?

Mr. Davidson: I follow the thinking of the Court there and wouldn't have any objection to that. There are certain—uh, I'm assuming still, I'm wondering whether or not page 70 } the diagnosis wouldn't be based on information he did not receive from the defendant.

Dr. Novak: If I could say something here, perhaps it would be helpful. On the basis of my direct examination of the prisoner, there were certain things that he told me that indicate a certain emotional state. Now, on the basis of what he told me, I have no way of knowing that this is actually factual. From just what he tells me, I form an opinion in terms of how he tells me on the basis of my experience. I did have certain information that I formulated on the basis of this; however, I had interviewed at length his wife and his mother, who gave certain information as to his conduct.

This did influence my opinion as to his state at the time. Now, just on what he told me alone, I certainly can express very definite thoughts about his emotional state, assuming that this is all factual.

Mr. Davidson: I certainly wouldn't have any objection to his expressing his thoughts as to his emotions from his observations.

The Court: Dr. Novak, might I ask you, sir, if you were able, from your examination of this man, to arrive at a diagnosis satisfactory to yourself?

page 71 } Dr. Novak: Let me answer that in giving a little explanation, Your Honor. My interest is in terms of understanding, the possible understanding of behavior and what goes into it, and, if possible, to explain it on this basis. Now, again confining what I know to what the prisoner told me and how he told me, and this is based on experience, I have reason to believe that what he was doing, what he was telling me, was as he recalled. In other words, and this is my opinion, was that under the circumstances I felt this man was trying to be honest as it was possible for him to be. Now, this is an opinion, of course. Now, I believe that he was depressed, I believe that this resulted from this feeling of guilt about the miscarriage that is said to have occurred, and that he told me occurred. I believe that this had a great deal to do with his drinking. I believe that as the result of this drinking, and this is based upon what he told me, but, of course, I did have other information beforehand, that he drew blanks, that he didn't know what happened on occasions. And, on this information, I feel that it is possible, entirely possible, that he could have done any number of

page 72 } things *any number of things,* that he would have no awareness of. Now, there isn't any question that you can't completely disassociate information—I don't care who you are. You can't completely disassociate it, once you have heard it. This is like one of those things like telling the Jury to disregard, to disregard this, but it's been said, you know, and it's bound to have some effect somewhere. We try to minimize the effect, but the way that I can answer the question is that, assuming and this was my belief and feeling, and I tried many, many ways to change or break down the story that what the man was telling me when I examined him directly was as honest as he was as capable of being, and this is what I have to offer. I say in all honesty that I can't completely disregard other information I have beforehand, but I do think that, putting that aside, and on the basis of

direct quotations that I have here in my records, I'd be able to throw some light on his condition. I'm trying to be helpful, because I interpret my position in terms of trying to be helpful, as far as the ending is concerned.

Mr. Davidson: I understand that, and we appreciate it.

page 73 } The Court: Doctor, I know that this is a complicated matter, and I don't mean to attempt to oversimplify it, but are you able, from the information you received from this man, to diagnose this man's mental condition?

Dr. Novak: I have an opinion about that, yes, Your Honor.

The Court: What would your diagnosis be?

Dr. Novak: I feel that the man has a problem with alcohol which I think of in terms of sickness, and that as a manifestation of his overdrinking, that he has definite periods of loss of memory or amnesia. And, that as such, it's highly probable that he has done things that he has no recollection of doing.

The Court: Then, you would have a medical term that you would use to describe this?

Dr. Novak: Yes, sir. The medical term that I use, this is based on the American Psychiatric Association official nomenclature, and the diagnosis, the medical diagnosis, is acute brain syndrome, alcoholic intoxication with amnesia.

The Court: Acute brain—?

Dr. Novak: Syndrome, with alcoholic intoxication. We call it acute brain syndrome, which is due to alcoholic intoxication.

page 74 } Mr. Davidson: Acute brain syndrome due to alcoholic intoxication?

Dr. Novak: Yes, sir. And, there is a difference between habituation, addiction, and intoxication in the way that it is set up.

Mr. Davidson: Does that diagnosis—may I ask a question, sir?

The Court: Yes, certainly.

Mr. Davidson: Does that diagnosis rule out that he is psychotic?

Dr. Novak: No, this is a diagnosis indicating that he is subject or that his mental state was such that with the amnesia, that he was, for our purposes, psychotic temporarily, temporarily psychotic, if you wish to express it that way. Acute brain syndrome, alcoholic intoxication with amnesia.

Doctor John G. Novak

Mr. Davidson: Your diagnosis was that, at the time of the act, he was insane?

Dr. Novak: Yes, and I could formulate this on the basis again, as I say, that I accepted and felt in my direct examination of him, and I tried very hard to cross him up in many ways, that what he was telling was the facts and he was telling them as he understood them. This information is all directly quoted here.

page 75 } Mr. Davidson: Psychotic is insane?

Dr. Novak: The two terms are—insane is the legal term, which I think means incompetent and not knowing what he is doing. Psychotic is the medical term which means that he is mentally ill, mentally deranged. Psychotic implies not knowing what he is doing. Insane, I think, actually means that he does know what he is doing, if I understand the two terms. One's legal, one medical.

Mr. Davidson: Does your diagnosis rule out the possibility of suffering from an *irrestible* impulse?

Dr. Novak: I did not consider *irrestible* impulse. I considered intent, the ability to form intent.

The Court: Dr. Novak, once you have diagnosed this man as acute brain syndrome with alcoholic intoxication, and so diagnose your hypothetical man and apply the facts in this hypothetical question to one who has been so diagnosed, could you give an opinion based only on the fact appearing in the hypothetical question for one who has been so diagnosed, disassociating all other testimony, all other facts or information which may have come to you?

Dr. Novak: Will you repeat that question again, sir?

The Court: I would like to find out, sir, assuming that this defendant has been diagnosed as alcoholic brain

page 76 } syndrome, with alcoholic intoxication, and then apply the facts in the hypothetical question to a man who has been so diagnosed, and consider only the facts appearing in the hypothetical question, disassociating any other factual information except those facts in obtaining your diagnosis, could you render an opinion in answer to this question? That would permit you to use the facts coming from the defendant and the relatives to obtain your diagnosis, and then apply the facts in the hypothetical question to one who has been so diagnosed.

Dr. Novak: I think I could, Your Honor.

The Court: In light of that, Mr. Davidson, do you have any observations as to the facts appearing in the hypothetical question?

Mr. Davidson: Yes, sir. Yes, sir.
The Court: All right. Will you give them to us?

(There followed a discussion at the bench between the Judge, Commonwealth's Attorney and Defense Counsel concerning the wording of the hypothetical question.)

The Jury returns.

The Court: All right, Mr. Romans.

page 77 } RE-DIRECT EXAMINATION

By Mr. Romans:
Q. When we left off, Dr. Novak, we had been through your many qualifications and the fact that you had examined the defendant. I now want to ask you that as a result of your examination of the defendant, if you have an opinion or a diagnosis of his mental condition at the time the alleged act is said to have occurred, which is November 14, 1961?
A. Yes, sir, I have formed an opinion as to his mental state based on my examination.
Q. What is that opinion?
A. My opinion was that at the time of the alleged act he was suffering with what we call acute brain syndrome, alcoholic intoxication with amnesia. Now, what this term means is this: in professional jargon, in the language of the specialty, we have to classify different types of illness affecting the emotional state or the mind of the individual in different ways. And, one of the ways or one of the terms we use is this acute brain syndrome. Now, the word syndrome merely means a group of symptoms or a group of things
page 78 } that occur together. Acute means something that is immediate and it's transient, it lasts over a definite period of time but does not continue indefinitely. Of course, brain has reference to the brain. Now, an acute brain syndrome can be caused by many different things, for example, it can be caused by a blow on the head, rendering an individual partly unconscious and leaving the individual befuddled and mixed up and not knowing who he is and where he is, that sort of thing. Or it can be caused by certain poisons or certain toxics, whether these were taken by mouth, or whether they were something that was inhaled, for example, certain gases, carbon monoxide and small amounts of carbon dioxide. Small amounts will cause a confused state.

Doctor John G. Novak

A very excellent example of acute brain syndrome that is induced by man to help another is when one takes an anesthetic, for example, if you inhale ether. In the certain stages of an anesthetic's effects, one goes through a period of confusion which is very short. But this is the way we classify it. Now, alcohol is actually a poison, a depressant, and in the taking of alcohol or the drinking of it, it can in certain concentrations, or certain solutions, cause a befuddled
page 79 } mental state or an acute brain syndrome. Now, I qualified the nature of this by the word "Amnesia". Amnesia is a pathological loss of memory. In a state of amnesia, the individual is, for all purposes, fully awake and conscious, but something interferes with his ability to remember and he has no remembrance for things that occurred while he was fully awake. For example, we don't remember things when we are asleep or when we have an anesthetic, but we don't call this type of not having a memory, we do not call this amnesia. But amnesia is when an individual is fully awake but does not remember everything or some things that occur during a specified time. So I come back to my diagnosis of acute brain syndrome caused by alcohol to a point of intoxication, with a specific type of thing occurring, that is pathological loss of memory. Now, I went on to say further that, in my opinion, with this amnesia related to the alcoholic intoxication causing this acute brain syndrome, that this man, in my opinion, was not capable of forming the degree of intent or *wilfulness* or deliberateness or premeditation, these being necessary to commit the act which he is
page 80 } charged with. In other words, the state of his mind, in my opinion, the state of his mind as a result of this alcohol intoxication and not having a complete memory of it, was such that it interfered with his ability to know the intent—

Mr. Davidson: If Your Honor, please, I object to the last remarks specifically referring to intent. I think they are improper.

The Court: I believe, gentlemen, we are getting a little premature. The hypothetical question is probably in order at this point.

Mr. Davidson: Well, what about the—respectfully, sir, what about the statements made by the witness with reference to intent?

The Court: Mr. Davidson, I think I am not going to disturb at the moment what he said to the Jury. I am going to leave

that, and we will, I think we will have to let the Doctor explain in his own way, in terms that are intelligible to us, just the effect of the conclusion that he has reached. But I think this had better be done at the conclusion of the hypothetical question.

Mr. Romans: Now, Doctor, I am going to ask you a hypothetical question. For the record, to make it clear, you and I have gone over this question this hypothetical question, before. At the present time, actually you understand what the hypothetical question is. Is that correct?

page 81

A. Yes, sir.

Q. I am going to ask you to take this hypothetical question and apply it to a man, a hypothetical man, suffering from the diagnosis you have just given, which you diagnosed. But, as you take the hypothetical question—the hypothetical question is going to be concerning facts similar to those in evidence in this case. In other words, I am going to ask you to assume certain facts, certain facts to be true and give an opinion on those facts in the hypothetical question, which is: I ask you to assume that a man, thirty-six years of age, in good physical condition, married with four children, a hard-working and devoted husband and father, a man inclined to be somewhat shy and bashful but otherwise perfectly normal in his relations with others. I ask you to assume further that this man, in his own mind at least, caused his wife to suffer a miscarriage, and his wife, to some extent, blamed him for the loss. And I ask you further to assume that this man, from the time of the miscarriage had become a heavy and excessive drinker of alcoholic beverages, especially on week-ends and when inclement weather kept him from working. And I ask you further to assume that this man, as the result of heavy drinking, did, on at least one occasion, strike and hit his wife and did not have a recollection or remembrance of striking her or of the things that he did while drinking. And, lastly, I ask you to assume that such a man, after four heavy days of drinking, takes his seven year old daughter, for whom he has the natural affection of any father for his daughter, out in an automobile and sexually attacks her. Doctor, assuming all of these facts to be true, and further assuming that this man, while drinking, but not intoxicated, was questioned by a law-enforcement officer, and this man admitted sexually attacking his daughter, but his recollection as to details, both before, dur-

page 82

ing and after the act was vague and not consistent, and in view of that fact that for the most part his admission consisted of answering yes to questions put to him by investigating officers, do you have an opinion as to whether or not this man would be capable of understanding what
page 83 } was being said by the investigating authorities, and further, would he be capable of voluntarily stating what had happened? Do you have such an opinion?

A. I do have an opinion.

Q. And what is that?

A. And my opinion is that I do not think that he would be able to understand the full extent of what was going on.

Q. And, do you have an opinion as to whether or not what he said would be voluntary on his part?

A. I think anything he would say would be voluntary, but, as to full knowledge of the implication of it, I don't think that he would fully realize the full extent of it.

Q. Now, Doctor, there is a second hypothetical question, that is basically the same as the first, and I want you to assume these facts to be true and apply them to a man, a hypothetical man, suffering from the diagnosis you gave of the defendant. I ask you to assume that a man thirty-six years of age, in good physical condition, married and with four children, a hard working and devoted husband and father, a man inclined to be somewhat shy and bashful, but otherwise perfectly normal in his relations with
page 84 } others. I ask you to further assume that this man, in his own mind, at least, caused his wife to suffer a miscarriage, and his wife, at least to some extent, blamed him for the loss. I ask you further to assume that this man, from the time of the miscarriage, had become a heavy and excessive drinker of alcoholic beverages, especially on weekends and when inclement weather kept him from working. I ask you further to assume that this man, as a result of heavy drinking, did, on at least one occasion, strike and hit his wife and did not have a recollection or remembrance of striking her or of other things he did while drinking. Assuming these above facts to be true, and assuming further that a sexual attack was made on his daughter, do you have an opinion as to whether or not this man would have any recollection of what he had done after four days of heavy drinking, and, if charged with an attack on his daughter, whether he would have any knowledge or remembrance of whether he had done said act?

A. I do have an opinion concerning that in keeping with

the diagnosis that I have made. I do not believe that he would have any memory or complete memory of
page 85 } it.

Q. He would not remember what had happened?

A. Not completely, no.

Q. He might have fragments?

A. He might have fragments of memory but not complete memory.

Q. Doctor, I have one more hypothetical question I will ask you as before. I ask you to assume that a man, thirty-six years of age, in good physical condition and married with four children, a hard working and devoted husband and father, and a man inclined to be somewhat shy and bashful but otherwise perfectly normal in his relations with others. I ask you further to assume that this man, in his own mind, at least, caused his wife to suffer a miscarriage, and his wife, at least to some extent, blamed him for the loss. I ask you further to assume that this man, from the time of the miscarriage, had become a heavy drinker and an excessive drinker of alcoholic beverages, especially on week-ends and when inclement weather kept him from working. And I ask you further to assume that this man, as a result of heavy drinking, did, on at least one occasion, strike his wife and
page 86 } did not have a recollection or remembrance of striking her or of other things he did while drinking. And lastly, I ask you to assume that such a man, after four heavy days of drinking, takes his seven year old daughter, for whom he has the natural affection of any father for his daughter, out in an automobile and sexually attacks her. Assuming all these facts to be true, do you have an opinion as to the mental condition of this man at the time he sexually attacked his daughter?

A. Yes, I have formulated an opinion based on this, and I feel that his mental state was one diagnosed as acute brain syndrome resulting from intoxication by alcohol and with an amnesia.

Q. Is this condition a disease, a mental disease?

A. It constitutes a transient disease or mental disease affecting the faculties, the higher faculties of the mind, and the specific higher faculties are first, judgment, memory, the ability to criticize oneself, the ability to recollect. These are the higher functions of the mind.

Q. And further, Doctor, do you have an opinion would this man at this time he sexually attacked his daughter and suffering from this acute brain syndrome have a

page 87 } knowledge of the difference between right and wrong? Would he be able to understand the difference between right and wrong?

A. No, I think this would depend on the degree of his intoxication, and if he had—and if, as I believe that his intoxication was to a point where he had partial, incomplete memory defect, it would certainly seem to me that other functions and the ability to tell right from wrong would be interfered with. But this would be dependent upon the degree of intoxication. It takes a high degree of intoxication for an amnesia, unless there is a particular sensitivity to it.

Q. Would a probable consequence of this disease be that such a man could not tell right from wrong?

A. This is highly probable.

Q. Highly probable?

A. Yes.

Q. Doctor, is there any method known by which one might determine whether or not this man did actually, I'm talking now about the defendant, suffer from an acute brain syndrome, and whether or not he actually had a degree of intoxication there that he would not know right from wrong?

A. Yes, there has been a great deal of work done, and it's done in some places in terms of investigating

page 88 } cases of this type. For example, it is an accepted method of study in cases under situations of security, for example, in a mental hospital, where a man is fed measured amounts of alcohol at definite intervals of time, and, simultaneously, he is questioned, he is observed, blood and alcohol concentrations are taken from his blood, and, at the same time, a continuous what we call brain wave tracing, or electroencephalogram, is taken. If I can digress for just a minute, this electroencephalogram records the electrical activity of the brain on a tape, very much as a cardiogram is taken of the heart. And, with the increased concentration of alcohol, this is a measured amount, this is under experimental conditions, determining what point, if any point, what changes occur in the particular person being investigated, and whether or rather what his mental state is at that time, and, if he has no remembrance, how long it takes to come back. This is a method of investigation that is carried out in some areas on cases of this type. This is a very definitely accepted procedure.

Mr. Romans: Doctor, correct me if I am wrong. Acute brain syndrome with amnesia is a mental disease,

page 89 } and a probable consequence of that mental disease is a man cannot distinguish right from wrong.

A. Acute brain syndrome is a definite mental disease of a transient nature. It can be caused by various things, injury, poisons of different types, and I am confining my remarks now to the ingestion of alcohol to a point of intoxication and with a manifested amnesia. It is highly probable that with an amnesia that the individual could not tell right from wrong under those circumstances.

Q. With an amnesia?

A. Yes, with the amnesia.

Mr. Romans: We have finished with the hypothetical question, and I would like to go back to some direct examination.

The Court: Yes, sir.

Mr. Romans: Dr. Novak, is it the usual custom in attempting to make a neurological and psychiatric diagnosis, to interview more people than just the patient?

A. Well, when you say is it the usual custom, I think this is dependent entirely on the circumstances under which you see the individual. Where there is any question page 90 } about the individual doing something that is not right, or of committing some crime, it has been my experience as much information as possible, well, you'd like to have as much information as possible so that you can give as complete a story and formulate as complete as possible the picture. Now, many times the people that come to my office, private patients, they tell me their story themselves, but many times I like to get additional information and will ask and secure that. So, I say it depends on the circumstances, but, it is my firm belief an effort is made to try and formulate an opinion in terms of something that falls in the community, I believe that it is important to get as much information as possible.

Q. Dr. Novak, did you undertake your examination of the defendant and everything connected therewith with a complete open mind with every effort to ascertain to the best of your ability a true and thorough diagnosis?

A. As a matter of record, when I was called and asked if I would look into this matter, that I wrote a letter stating that on the basis of the information that was given page 91 } to me in the telephone conversation with this man's Attorney, that I would endeavor to conduct

an examination to the best of my ability, to ascertain the facts as well as I possibly could, and, in keeping with my experience and knowledge and as a matter of my own conscience, give the opinion that I felt was indicated. I would guarantee in no way what this opinion might be, but it would be in keeping with the things that I specified. This is a matter of record.

Q. Thank you, Doctor. Your witness, Mr. Davidson:

RE-CROSS EXAMINATION

By Mr. Davidson:

Q. Dr. Novak, did your observation and your interrogation of Albert Wesley Farris, Jr., indicate that the intoxication on all occasions was voluntary on his part?

A. Yes, there was nothing to indicate that it was other than voluntary.

Q. Voluntary intoxication on his part?

A. Yes, sir.

Q. And, in connection with the days leading up to November 14, 1961, your information led you to believe that Albert Wesley Farris, Jr., voluntarily consumed alcohol

page 92 } to the extent upon which you are basing your opinion?

A. Yes, sir.

Q. Now, Dr. Novak, I believe you stated, sir, that you have been in Virginia for about eighteen months?

A. Since I opened my office in September of 1960. I took up residency in July of 1960.

Q. Have you had occasion to testify in Virginia in criminal cases of this nature before?

A. No, sir.

Q. Sir?

A. I—I was thinking, because I testified in Virginia a couple of times long before I came down here, but they were not criminal cases. No, sir.

Q. Do I understand you, sir, that this *if* your first appearance in a criminal case in Virginia?

A. In Virginia, yes, sir.

Q. All right, sir. Now, Dr. Novak, I believe you stated that you examined or interrogated Mr. Farris on one occasion for a period of two hours?

A. Yes, sir.

Q. That's the only time in your experience with him that you have even seen him?

Doctor John G. Novak

A. Yes, sir.

page 93 } Q. Limited to two hours. Did I understand you to state, Dr. Novak, that in your opinion Mr. Farris is sane, or rather, was sane at the time you examined him and is sane now?

A. Yes, sir, at the time of my examination I found him to be sane.

Q. What is your opinion as to his condition now?

A. I spoke to him briefly as Court was called for lunch, and, in just a greeting, I would assume he recognized me, shook hands with me, and I would assume that his state is similar to that when I examined him on November 10, 1962.

Q. And that is—

A. That he is sane, yes, sir.

Q. Now, Dr. Novak, I believe you have diagnosed his mental condition as being acute brain syndrome with amnesia. Would you describe or identify it as a mental disease or transient nature?

A. Yes, sir.

Q. What does the word transient mean?

A. It's self-limited in a sense. It begins, progresses, and then stops. It can be repeated and can recur.

Q. It can recur?

page 94 } A. It can recur, yes

Q. If this man were released to society, and if he became intoxicated again, would he be a potential danger as a sex—

Mr. Romans: Your Honor, I believe that's out of order.

Mr. Davidson: I can't see how it is possibly out of order.

The Court: Mr. Davidson, I believe you might ask him if he might return to the same condition that he has testified that he feels that he was in at the time of the alleged offense. Let's put it that way.

Mr. Romans: I'd like to note an exception, Your Honor, as testifying what—

The Court: Beg pardon?

Mr. Romans: As testifying what this man might do in the future.

The Court: We will note your exception. I'll ask you to re-phrase your question, please.

Mr. Davidson: Will the Court mind advising me how to word my question? You did so, and I didn't hear it completely, sir.

Doctor John G. Novak

The Court: I said that you might re-phrase your question so as to ask the witness if in the future he further indulged in the use of intoxicants to the extent to which he
page 95 } had earlier, whether or not he might return to the same condition as the Doctor described which had existed as of the 14th day of November, 1961.

Mr. Davidson: All right. Dr. Novak, in the event that the defendant, Albert Wesley Farris, Jr., would, on some subsequent date in the future, indulge in the use of alcohol to the extent that you were advised he did on November 14, 1961, would his condition then be the same as you state his condition to be on November 14, 1961?

A. I believe this man is ill, I believe that my diagnosis is a manifestation of his illness, his underlying illness. And, under the circumstances, I believe that the same thing could possibly recur.

Q. He's ill, but he's sane. How do you explain that?

A. Well, we get into the borderline of emotional illness and mental illness here, and it's entirely possible to have an underlying emotional illness with episodes of mental illness occurring. And I testified that I believe the man had an acute brain syndrome, which is a transient form of mental illness related to the ingestion of alcohol to a point of in-
page 96 } toxication with amnesia. I have indicated that this is, in a certain sense, a circumscribed type of thing. It occurs, it clears up, it—

Q. It could re-occur on any occasion he took excessive alcohol?

A. Yes, it could recur. Now, I believe that there is an underlying emotional problem as to the reason why he drinks.

Q. Dr. Novak, based on your examination, your information obtained, are you of the opinion that at the time of the act on November 14, 1961, at the time of the alleged act, that the defendant was aware of the consequences of his act?

A. I have testified that, on the basis of my opinion, that this man's point of intoxication was such that it interfered with his judgment, with his memory, and, believing this very thoroughly, I believe that he would not be aware of what he was doing.

Q. Doctor, based on your answer to my last question, do you have an opinion as to whether or not at the time of the act the defendant knew the difference between right and wrong?

Doctor John G. Novak

A. I believe that it is highly probable that he did not know the difference between right and wrong.

page 97 } Q. It is possible that he did know?

A. Anything is possible.

Q. Do you have an opinion that at the time of the act whether or not he was legally responsible for his actions?

A. It goes without saying on the basis of what I have already testified to that I couldn't see how he could be legally responsible.

Q. Do you have an opinion at the time of the act as to whether or not he was suffering from a psychosis or was insane?

A. I would say that I believe that he was suffering from a psychosis and was also insane. These are two different terms. The word psychosis is a medical term, and it has to do with mental disease. The word sane or insane are legal terms. They have to do with competence, so I say here that I believe that this man was both mentally ill and insane and psychotic in terms of the legal expression.

Q. Do you call that temporary insanity as distinguished from *irrestible* impulse?

A. I'm not too sure I understand Counsellor's question about temporary insanity and *irrestible* impulse.

The Court: Just one minute, Doctor. Mr. Romans:

Mr. Romans: I believe that's a legal question

page 98 } without any basis for the Doctor to understand.

Mr. Davidson: The Doctor's supposed to be the expert about all these problems dealing with insanity, sanity, alcoholism, or syndromes.

The Court: Gentlemen, up to this point, I don't believe there's any suggestion in this case about an *irrestible* impulse. I think, in view of that, possibly we should limit our attention to the complex matters that we do have before us.

Mr. Davidson: Well, may I ask whether or not he was of the opinion that he was suffering from an *irrestible* impulse at the time of the act, sir?

The Court: Yes, sir.

Dr. Novak: I do not think so.

Q. You do not think so?

A. That's correct.

Q. Doctor, as to your statement as to your opinion he was suffering, or rather he was psychotic at the time or sane at

the time, are there others under a similar state of facts that are qualified experts who could have a different opinion?

A. Oh, I am sure that there are many.

Q. Do you know Dr. Blalock, Superintendent of the Southwestern State Hospital at Marion, Virginia?

A. I introduced myself to the Doctor today. I
page 99 } met him today.

Q. Do you know anything about his background?

A. No, sir, I don't.

Q. Are you in a position to dispute what he might say if his opinion is different from yours?

A. I would say that the Doctor has every right to any opinion that he has formed.

Q. Dr. Novak, your answer, as I understood it to the first hypothetical question, was, in essence, that you were of the opinion the defendant did not fully understand what was going on, did not fully realize what he was saying when being interrogated by the law enforcement officers. Am I correct?

A. On the basis of the way the question was put, yes, sir.

Q. On the basis of assumed fact?

A. Yes, sir.

Q. Now, sir, would your opinion and answer to that question be different if the defendant was sober at the time he was questioned by the law enforcement officers?

A. I base my opinion not on his state of sobriety at the time he was questioned but on the basis of his ability to remember clearly, remember all the facts clearly.

page 100 } Q. Doctor, of course your opinion has to be based on what the defendant told you, to a great extent, doesn't it?

A. Yes, it does.

Q. And, of course, in reaching that opinion, have to assume, to a great extent, that the defendant is telling you the truth and not adding or withholding or shading. Is that true?

Mr. Romans: If the witness does answer that question, I believe we would be entitled to an expression of what the defendant said to the doctor.

The Court: Of what, Mr. Romans?

Mr. Romans: Of what the defendant said to the Doctor.

Mr. Davidson: I can't see that at all. All I'm asking is if, in his opinion, he is assuming that what the man told him is true. That's all. I don't think that opens the door to relate in detail what was said.

Doctor John G. Novak

The Court: I'll permit that question, Mr. Davidson, and I'll note your exceptions, Mr. Romans.

Dr. Novak: When I examine anybody, regardless of the circumstances under which I examine, whether they come to me voluntarily or whether I examine them for some particular purpose such as this today, I have to, of

page 101 } course, try to determine to my own satisfaction whether what is being told me is true or is not true. Now, on the basis of my experience of twenty-five years in the field of psychiatry, questioning hundreds and hundreds of people under different circumstances, I have certainly formed ways of determining in my own mind my own opinion whether these people are being honest or not honest. Now, I don't claim that this is absolute, and I don't claim that I can tell one hundred per cent with anybody, but I certainly did feel, in my opinion, that this man was, as well as he was able, telling me all the things that he could remember.

Q. Doctor, I anticipated your answer to this. Of course, you were not present and do not know of your own firsthand knowledge how much he had to drink, if he had anything to drink, or what he had to drink?

A. No, sir, I don't.

Q. And I believe you have testified this is the first criminal case you have testified in?

A. In Virginia.

Q. Thank you, Doctor. That's all.

RE-DIRECT EXAMINATION

By Mr. Romans:

page 102 } Q. Doctor, this is the first criminal case in Virginia. Have you testified in criminal cases in other states?

A. On many occasions, both in civilian life and also in the Army.

Q. In these, have you testified as an expert witness?

A. Yes, sir.

Q. Did you testify for the prosecution or the defense?

A. No, most of my testimony has been for the prosecution. I have been subpoenaed by the defense on similar cases. I remember a few cases, but most of my work has been for the prosecution.

Q. Doctor, you stated that the defendant is suffering from an emotional illness at the present time?

Doctor John G. Novak

A. I feel he is, yes, sir.

Q. Can this emotional illness be helped with treatment?

A. I believe that this man is in need of treatment, and, on this basis, I believe that he can be helped with intelligent treatment, yes.

Q. Now, Doctor, if this man did not drink any more, would it be possible for him, without drinking, to suffer
page 103 } another acute brain syndrome with amnesia? I mean foregoing a blow on the head and any other accident.

A. Alcohol is only one form of thing that can cause these, how shall I put it, cause these higher intellectual centers to suffer. A blow on the head might start it off, and any number of things I can think of might possibly cause this release, so that not drinking only removes one aspect.

Q. Well, if he did not suffer a blow on the head or had at least some overt act occurred to set it off, it would not occur again?

A. I frankly believe there is an underlying emotional illness here that leads to this need for drinking, and that this drinking results in this temporary state of insanity, the acute brain syndrome that I have spoken about, so that, on this basis, I feel that there is an underlying condition that is in need of help and treatment.

Q. But it can be helped?

A. I feel that intelligent treatment will help, yes.

Q. Doctor, is it possible that a man diagnosed as suffering from the same diagnosis you have diagnosed for Albert Farris, could have committed such a crime with
page 104 } which Albert Farris has been charged, without the intent to knowingly commit the crime? Could this be done?

Mr. Davidson: Objection.

The Court: What is your objection, Mr. Davidson?

Mr. Davidson: As far as this particular question is concerned, I feel it is immaterial.

The Court: Will you re-state your question, Mr. Romans?

Mr. Romans: Could a man, suffering from acute brain syndrome or diagnosed such as the defendant has been diagnosed, commit the crime that the defendant has been charged with without the intent to knowingly commit the crime?

The Court: Under the same set of facts appearing in the hypothetical question?

Mr. Romans: No, just a man with that diagnosis.

The Court: I will have to exclude your question unless you—

Mr. Romans: Go back to the hypothetical question?

The Court: Yes, sir.

Mr. Romans: Would it be necessary to re-read the hypothetical question?

The Court: No, I don't think so.

Mr. Romans: Doctor, assuming that the facts as set forth in the hypothetical question, could this hypothetical man as diagnosed with the acute brain syndrome, compitted such a crime with which the defendant has been charged without the intent to knowingly commit the crime?

page 105

A. Yes, I believe so.

Q. I have no further questions.

RE-CROSS EXAMINATION

By Mr. Davidson:

Q. Do you have experience working with people suffering from alcoholic sickness, sir?

A. I have done a great deal of work with the alcoholics and still do. Part of my first residency was on the acute alcoholic service in a large general hospital. I was Consultant for the first alcoholic clinic set up by the State of New Jersey, Psychiatric Consultant to that clinic, and I have worked with the Alcoholics Anonymous in various capacities, and I do see alcoholics in private practice in psychotherapy. I have two under treatment at the present time. I think I have had more than average experience along this line.

Q. I'm sure, I'm sure you had. Dr. Novak, do you have an opinion as to whether or not a person such as described in the hypothetical question, plus your knowledge of the personal history of the defendant, could stop drinking if he wanted to?

page 106

A. Not without help. Not without treatment. Not without some definite program that he voluntarily lends himself to.

Q. Doctor, do you have any interest in the outcome of this case, sir?

A. No, sir, as I stated, I have an interest in the outcome of the case insofar as the community is concerned. I feel a very definite responsibility to them, whatever belief that I have in terms of trying to see justice done, and what should

be done, done right. And, other than that, I have no personal interest.

Q. I am sure of that, but you don't have a little financial interest in it?

A. The understanding that I came over here was that I would be paid for the time that I spent, yes, sir.

Q. No further questions.

The witness stands aside.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error and Supersedeas Awarded	1
Record	2
Indictment	2
Instruction—Refused	2
Judgment—February 12, 1963	3
Motion to Set Aside Verdict as Contrary to the Law and Evidence	4
Motion for a New Trial	6
Excerpt from Closing Argument of the Commonwealth's Attorney	8
Cost Sheet	10
Notice of Appeal and Assignments of Error	11
Affidavit of Charles W. Gunn, Jr.	12
Affidavit of William M. A. Romans, Jr.	13
Witnesses:	
Doctor John G. Novak	14