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Supreme Court of Appeals
Richmond, Va.

209 VA 532

Record No. 6803

In the Supreme Court of Appeals of Virginia at Richmond

ALLEN CARROLL PRUITT

v.

C. C. PEYTON, SUPT., ETC.

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

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. 6803

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.

ALLEN CARROLL PRUITT, Plaintiff in error,

against

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

From the Corporation Court of the City of Norfolk
Linwood B. Tabb, Judge Presiding

Upon the petition of Allen Carroll Pruitt a writ of error is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk on the 1st day of February, 1967, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

RECORD

* * * * *

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* * * * *

ORDER

This proceeding came on for final determination on January 31, 1967, upon the petition of Allen Carol Pruitt for a writ of *habeas corpus* and the answer of the respondent, and pursuant to continuances granted from time to time, the petitioner appearing in person and by Harold Goodman, an attorney appointed by this Court to represent him, and the respondent appearing by W. Luke Witt, Assistant Attorney General.

Whereupon, the Court heard the evidence and argument of counsel and for the reasons stated from the bench, the Court is of the opinion that the writ should not issue as prayed.

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

It is further ordered that Harold Goodman be allowed a fee in the amount of $250.00 and $66.23 expenses out of pocket.

Enter: February 1, 1967.

LINWOOD B. TABB

page 68 } Let the Clerk of this Court certify a copy of this order to the petitioner, the respondent, Harold Goodman, and the Attorney General of Virginia

Entered this 1st day of February, 1967.

LINWOOD B. TABB

I ask for this:
W. LUKE WITT
Counsel for Respondent

Seen and objected to:
HAROLD GOODMAN
Counsel for Petitioner

* * * * *

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* * * * *

ASSIGNMENTS OF ERROR

* * * * *

Counsel for the Plaintiff assigns as error the court's action in entering its Order for Judgment for the defendant on January 31, 1967, on the following grounds:

1. The Court erred in not granting a Writ of *Habeas Corpus* because of plaintiff's unintelligent plea of guilty.

2. The Court erred in not granting a Writ of *Habeas Corpus* because of the lack of counsel in the proceeding in the juvenile court.

3. The Court erred in not granting a Writ of *Habeas Corpus* because the juvenile statutes of the State of Virginia relative to the trial of juveniles were not complied with and relative to certification of juveniles to the adult court were violated and the said proceeding was in violation of the due process provisions of the Virginia Constitution and the Constitution of the United States.

4. The Court erred in not granting a Writ of *Habeas Corpus* because the statements and confessions obtained from the plaintiff and used against him were illegal as violating of his right to counsel, his right not to incriminate himself, and were involuntarily given in violation of due process of law.

ALLEN CARROLL PRUITT

By JAMES MACK AUSTIN
Of Counsel for Plaintiff

JAMES MACK AUSTIN
1120 Sparrow Road
Chesapeake, Virginia
and
F. LEE BAILEY
40 Court Street
Boston, Massachusetts

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* * * * *

Filed 5-31-67.

W. L. PRIEUR, JR., Clerk

BY G. C. THOMAS, D.C.

* * * * *

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* * * * *

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled cause in said Court on May 5, 1966.

APPEARANCES:

HAROLD J. GOODMAN, Esquire
Counsel for the Petitioner

W. LUKE WITT, Esquire
Assistant Attorney General
Counsel for the Respondent

* * * * *

page 4 } The Court: The style of this case is "Allen Carroll Pruitt, Petitioner vs. C. C. Peyton, Superintendent of the Virginia State Penitentiary".

Mr. Harold J. Goodman, competent Attorney at Law represents the Petitioner, Allen Carroll Pruitt, by appointment of this Court, and W. Luke Witt, Assistant Attorney General represents the Commonwealth.

Is the Petitioner ready?

Mr. Goodman: The Petitioner is ready, Your Honor.

The Court: Is the Respondent ready?

Mr. Witt: The Respondent is ready, Your Honor.

(10 witnesses were duly sworn, but the Petitioner did not stand and raise his right hand to be sworn.)

The Court: How many witnesses do you contemplate, Mr. Goodman?

Mr. Goodman: Approximately 5, plus the Petitioner—approximately 6, Your Honor.

The Court: Am I correct, that you don't contem-
page 5 } plate finishing with your evidence until after lunch?

Mr. Goodman: Yes, that's correct, Your Honor.

The Court: Mr. Witt, how many witnesses do you contemplate calling?

Mr. Witt: I'll say 5 now, but I'm not exactly sure, Your Honor. In other words, there may be some others, but I'm not sure right now.

The Court: All right, gentlemen. I'm going to do this—there's no necessity for all these folks sitting here, and if you will indicate the witnesses that you desire to remain, Mr. Goodman, I'll excuse the others ones and recognize them to be back here, recognize them for their appearance back here today, at a later hour.

Just state their names, for the record, Mr. Goodman, of those witnesses you want to remain.

Mr. Goodman: Mr. Arthur Pruitt, Mrs. Alice Pruitt and Mr. Wickre.

The Court: All witnesses other than those witnesses named—gentlemen, I'm going to, I propose to ad-
page 6 } journ for lunch at 1:00 o'clock, so recognize the other witnesses for 2:30 this afternoon, Mr. Clerk.

Deputy Clerk: All witnesses are recognized, under penalty of $100.00 each, payable to the Commonwealth, for their appearance back in this Courtroom this afternoon at 2:30 P.M., for the further hearing and trial in this proceeding.

The Court: All right. Those witnesses may go, and the other named witnesses will please have a seat.

Now gentlemen, if you are ready, we will proceed.

Mr. Goodman, do you have any Opening Statement?

Mr. Goodman: Your Honor, I'd like to make a short Opening Statement.

The Court: All right. I'll be glad to hear it.

OPENING STATEMENT

By Mr. Goodman:

May it please the Court: The Court is aware
page 7 } that this matter was first brought to the attention of this Court, I believe, in 1952, when the crime was committed, and we allege that certain Constitutional rights of Mr. Pruitt were denied him from the time he was arrested, from then until the trial in August of 1953.

In this matter, and at that time, we are alleging that the Constitution of Virginia was not followed, and also that that the 6th and 14th Amendments to the U.S. Constitution were not followed, and so therefore his rights were denied him.

It is our contention that at the time of the offense, the Defendant was a juvenile, and that there was a violation of § 16.1-172.42 of the Code of Virginia.

Now § 16.1-172 and § 16.1-173 state that certain things should happen, certain things should be done, and they should have been done by the Juvenile and Domestic Relations Court before he, the juvenile, was sent on to the Grand Jury to be tried as an adult.

We will show, and the record shows that—it does not indicate that these things were done or followed, pursuant to the Statute.

We will also show that during his arrest and incarceration, he was held *incommunicado* for a matter of 48 hours, without seeking or having had an opportunity to seek legal advice, and wherein he did not have an opportunity to
page 8 } see his parents, and his parents were denied an opportunity to see him and also to obtain an attorney for him, or a lawyer.

Also according to the record, he was brought back to Norfolk, to the Juvenile and Domestic Relations Court, and that Court did not appoint a guardian *ad litem* for him, in the Juvenile and Domestic Relations Court, and that the only person in the Juvenile and Domestic Relations Court was an uncle, but as to why he was there, the record does not indicate, as he was not identified.

He did not have counsel in the Juvenile and Domestic Relations Court, nor did he have it when held for the Grand Jury. These records will indicate that consequently 2 attorneys were appointed; one was appointed for him in the early part of December, and then General Sands was appointed, I believe, on or about December 17th, some 17 days after he was incarcerated.

We will show, by evidence by the Petitioner, that General Sands, the attorney at that time, saw him for less than one hour in the overall 3 interviews he had with the Petitioner, and that will be stated here by the Petitioner.

We allege also, with the denial of Constitutional rights, that he was inadequately represented by counsel at the time of his trial.

That's all, and thank you, Your Honor.

page 9 } The Court: Do you have any Opening Statement, Mr. Witt?

John L. Wickre

Mr. Witt: The Respondent waives Opening Statement, Your Honor.

The Court: All right. Call your first witness, Mr. Goodman.

Mr. Goodman: I call Mr. John Wickre to the stand, Your Honor.

JOHN L. WICKRE, witness, appearing on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Goodman:

Q. Would you state your name, please sir?

A. John L. Wickre.

Q. And, your occupation?

A. Clerk, of the Juvenile and Domestic Relations Court.

Q. Did you have occasion to check the records of one Allen Carroll Pruitt?

A. Yes, I did.

Q. Tell us whether or not the record indicates
page 10 } that the Juvenile and Domestic Relations Court ordered an investigation of Mr. Pruitt, prior to his being sent on to the Grand Jury?

A. Our file has no investigation report, nor does it reflect whether or not one was ordered.

Q. Does your file have whether a guardian *ad litem* was appointed for Allen Carroll Pruitt?

A. From looking at this record, it does not specifically state that.

Q. Does it say that his uncle was present?

A. It does not specifically state that, sir.

Q. Do you have any indication as to whether he was present at that time, when the Petitioner was in Juvenile and Domestic Relations Court?

A. (witness looks at papers) Detective Benton testified; Willie B. Pruitt testified, and he stated 'I am the boy's uncle', and so forth, 'uncle of Allen Carroll Pruitt'.

Q. But nothing to indicate that his uncle was appointed as his guardian?

A. No, sir.

Q. And again, there's nothing in the record to show that an investigation report was made?

A. No, there is not.

Mr. Goodman: That's all I have, Your Honor.

John L. Wickre

page 11 } (Mr. Witt shows paper to Mr. Goodman.)

CROSS EXAMINATION

Examined By Mr. Witt:

Q. Mr. Wickre, in your capacity as Clerk of the Juvenile and Domestic Relations Court, is it necessary that certain records be kept in your office, with reference to the proceedings that take place?

A. Yes, sir. We are required to keep a Docket Sheet.

Q. Are you, as Clerk of Juvenile and Domestic Relations Court, the normal custodian of those records?

A. Yes, I am.

Q. And are those records kept in the normal course of business?

A. Yes, they are.

Q. (Mr. Witt hands paper to the witness) I show you a document entitled 'Court History', and—

The Court: Let's mark that 'R-1', for identification.

Mr. Witt: I was going to have it identified, before I introduced it, Your Honor.

The Court: I'll mark this for the purpose of
page 12 } identification, as 'R-1'.

By Mr. Witt:

Q. I show you a document entitled 'Court History', marked as 'R-1' for identification, would you tell us what this 'Court History' is please sir, and what this document represents?

A. This represents—this is just more or less a summary of what went on at the Court hearing, with respect to what went on at the proceedings.

Q. What took place at the Juvenile and Domestic Relations Court, in the City of Norfolk, Virginia on December 1, 1953?

A. That's correct, sir.

Q. Does that document indicate that Mr. Willie Pruitt was present, at the time those proceedings took place?

A. (witness looks at paper) Yes, it does.

Q. Now, were those proceedings—was that one in which the Petitioner, Allen Carroll Pruitt, was bound over to the Grand Jury for possible indictment?

A. These proceedings—yes, they were.

Mr. Witt: I offer this 'Court History' in evidence, as Respondent's Exhibit R-1.

John L. Wickre

The Court: This will be received in evidence, as Respondent's Exhibit R-1.

By Mr. Witt:

page 13 } Q. Now Mr. Wickre, how long have you been associated with Juvenile and Domestic Relations Court?

A. Since 1957.

Q. Since 1957?

A. Yes, sir.

Q. Have you had occasion to participate in the proceedings that take place with reference to certain occasions when a juvenile is bound over to the Grand Jury?

A. What do you mean by that, Mr. Witt?

Q. Have you been present, when such proceedings have taken place?

A. Yes, sir.

Q. Are you familiar at all, with the Statute which deals with the appointment of a guardian *ad litem* or the presence of parents, and so forth, at those proceedings?

A. Yes, I am.

Q. Do you know whether the Statute requires that a guardian *ad litem* be appointed, even though a close relative is present in the Court?

A. I can't specifically answer that right now, without the book here.

Q. Do you know whether the parents of Mr. Pruitt were in the State of Virginia, at the time of that hearing?

A. I believe, Mr. Witt, from last going over this material prior to coming here, it mentioned they were in

page 14 } Spartanburg, South or North Carolina.

Q. They were not within the territorial limits of the State of Virginia, then?

A. No, sir.

Q. Willie Pruitt though, who was Allen Carroll Pruitt's uncle, I believe he was living in Portsmouth at that time, was he not?

A. Yes, sir.

Q. Now, do you know if Willie Pruitt had any knowledge of the proceedings, or the events that led to the necessity for those proceedings?

A. I assume that he heard the testimony, prior to being called to the witness stand.

Q. Do you know whether Willie Pruitt had any prior knowledge of those matters, before coming to Juvenile and Domestic Relations Court?

John L. Wickre

A. No sir, I don't.

Q. Do your records reflect by what means his presence was obtained, at those hearings?

A. (witness looks at papers) No, other than the fact that his name—(pause, as witness looks at papers again) I'm sorry, it's not here, I was thinking about the Petition.

This—his name would be given in the Petition, but this does not reflect that.

page 15 } I can't answer that, Mr. Witt.

Q. Would your records reflect whether a subpoena was issued, or not? Do you normally keep that kind of record?

A. We did not, at that time.

Q. You did not, at that time?

A. No, sir.

Q. But you do know, as a matter of fact, that he was present at the time that hearing was conducted, you do know that?

A. Yes, sir.

Mr. Witt: I have no further questions of this witness, Your Honor.

(Mr. Goodman hands paper to the Court.)

The Court: I'll mark this 'P-1', for identification.

RE-DIRECT EXAMINATION

Examined By Mr. Goodman:

Q. (witness is handed paper by counsel) Could you identify that for me, please sir?

A. (witness looks at paper) Yes, this is the Court *Mittimus* paper, when he was sent in custody, waiting to go to Corporation Court.

The Court: You want to offer that?

Mr. Goodman: Yes, Your Honor.

page 16 } The Court: This is received in evidence, as Petitioner's Exhibit P-1.

By Mr. Goodman:

Q. When a guardian *ad litem* is appointed for a juvenile, would the records indicate it?

A. It does now, yes sir.

Q. It does, now?
A. It does now, but at that time it did not.

Mr. Goodman: I have no further questions of this witness, Your Honor.

RE-CROSS EXAMINATION

Examined By Mr. Witt:
Q. Do I understand your answer to mean, Mr. Wickre, that your records do not reflect whether a guardian *ad litem* was or was not appointed?
A. It's silent, right.
Q. By your records being 'silent', then Willie Pruitt could very easily have been appointed as guardian *ad litem,* and your records would not reflect it?
A. Yes, sir.

Mr. Witt: I have no further questions, Your Honor.
The Court: Mr. Goodman, do you have any further questions of this witness, do you have any further need
page 17 } of him?
Mr. Goodman: No, Your Honor.
The Court: Are you through with this witness, Mr. Witt?
Mr. Witt: Yes, Your Honor.
The Court: You may go, Mr. Wickre, you are excused.
Mr. Goodman: I call Mrs. Hollingsworth, Your Honor.

MRS. ANNE PRUITT HOLLINGSWORTH, witness, appearing on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Goodman:
Q. Would you state your name, please?
A. Mrs. Anne Pruitt Hollingsworth.
Q. And, where do you live?
A. I live on Finwick Lane, Route 3, Greenville, South Carolina.
Q. How old are you, mam?
A. I'm 28.
Q. In November of 1952, where were you living?
page 18 } A. 249 West—in 1952, I was living in Spartanburg, South Carolina.

Mrs. Anne Pruitt Hollingsworth

Q. Who were you living with?
A. With my parents, and family.
Q. On the 27th of November, where were you, on that particular day?
A. I was at home. It was Thanksgiving Day, and I was with my family.
Q. You were with your family?
A. Yes, sir.
Q. And, that included your parents and—

The Court: What other family members were there?
A. My parents, 4 brothers, 2 sisters and my grandmother.
The Court: All right. Go on, Mr. Goodman.

By Mr. Goodman:
Q. And, did that also include—tell us whether or not Allen Carroll Pruitt was with you at that time, mam?
A. Yes, he was.
Q. Could you tell us what happened, if anything, around 11:00 or 11:30 on that particular date?
A. I went out on the porch, and it was—well usually, there were times when I just wanted to get away, or
page 19 } to relax by myself, away from the family, so I'd go out on the porch, and I could get away—you know, I was a teenager at that time.
Q. And that's what you usually did, to get away from your family, you went out on the porch?
A. Yes, I did. I was out there on the porch for about 5 minutes, and about that time I noticed a car coming at a terrific rate of speed up the street, and so naturally, I wanted to see who it was, and about that time the driver threw on brakes and stopped in front of my house, and 5 or more policemen got out and came on up onto the porch.
I was quite terrified because I didn't know why they were there, and so I tried to go back into the house to notify my parents that the policemen had arrived but the door was locked, so I couldn't get back in.
I knocked on the door, and my mother came to the door, and—
Q. Were the police officers on the front porch, at that time?
A. Yes, they were on the front porch.
Q. What did they do, when your mother came to the door?
A. When she came, she was as frightened as I was by seeing so many officers there, and she asked them 'what did they want?', and they said 'they came to get Allen',

page 20 } and as I recall, she asked them, I believe she said 'do you have a warrant?', and they said 'they didn't, but they could get one'.

Q. Then, what happened?

A. They came on in, anyway.

Q. What happened, after that?

A. They took Carroll, and left. I believe one of the officers went to the back, and the rest came in the front door.

Q. So you say then, that they took Allen, or Carroll, and left?

A. Yes, sir.

Q. When was the next time you saw your brother?

A. I believe I saw him one time, while he was in jail here, but I don't know—

Q. Do you mean here, in Norfolk?

A. Yes, sir.

Q. And, do you know about when that was?

A. It was several months after that, that I came on up.

Q. Did your parents come, too?

A. No, sir.

Q. You mean then, you tried to see him while your parents were still in South Carolina?

A. Yes, sir.

page 21 } Q. And what happened, when you tried to see him?

A. Well I didn't actually go to the jail, sir.

Q. Then, you didn't try to see him?

A. No, sir.

Mr. Goodman: I have no further questions.

Answer Mr. Witt.

CROSS EXAMINATION

Examined By Mr. Witt:

Q. Mrs. Hollingsworth, you say you are Allen Carroll Pruitt's sister?

A. Yes, sir. I'm next to Carroll.

Q. And do I understand, that you were approximately 14 at that time?

A. Yes, sir.

Q. That is, at the time this incident occurred?

A. Yes, sir.

Q. Now, did your mother give you any explanation as to

why she locked the door, after you left the family and went out on the porch?

A. That was just normal procedure, because I was supposed to come in the back and not the front. Most children at home didn't go in the front of the house, and we usually came in the back door too.

page 22 } Q. Do you recall whether your brother Allen, had informed your parents just prior to Thanksgiving dinner, 'that he thought it best for him not to stay, because the police had been looking for him and he thought they were going to come'?

A. No sir, we knew nothing, only that Carroll at one time, was at an Industrial School, and I thought probably they had come after him for that reason.

Q. You knew nothing else?

A. No, sir.

Q. But you did know that Allen, during that week, you knew he had run away from the Industrial School, did you not?

A. Yes, I did.

Q. And you knew that the authorities would be looking for him, from the Industrial School, for that action on his part?

A. Yes, sir.

Q. So then you were not terrified by the police, by the fact that the law enforcement officers had come to the house, but rather you were frightened by the number of them, right?

A. I think what frightened me, sir, was that they were so—well, the sound of the brakes when they stopped, and when they did stop, that so many of them got out

page 23 } of the car, that's what really frightened me.

Q. So then it was the number of police that came up on the porch that gave you so much concern, rather than the fact that they had come at all, right?

A. Yes, sir.

Q. Then, that's true?

A. Yes.

Q. Now I didn't quite get the name of the place or town in which you lived, was it outside of Spartanburg, South Carolina, or was it in Spartanburg?

A. Well I'm married now, sir, and I live in Greenville, South Carolina now.

Q. But at that time, when your brother was at the home, was that in Spartanburg, South Carolina.

A. Yes, sir.

Q. All right. Now, do you know where the policemen took your brother, after they left the house?

A. My mother told me that she called, I believe, to the City Jail, and—

Q. But the officers didn't say where they were going to take your brother, did they?

A. No, sir.

Q. But, you say your mother called the City Jail?

A. Yes, sir.

page 24 } Q. And when she called the City Jail, after they took him, did they tell her that's where they had taken him?

A. Yes, sir.

Q. Then your mother knew first, that he had been arrested, because she was there when the police took him into custody?

A. Yes, sir.

Q. And, was your father also there?

A. The whole family was there.

Q. You say the whole family was there?

A. Yes, sir.

Q. And shortly after they had left, your mother did call the City Jail, and ascertained that he was there?

A. Yes, sir.

Q. Now, do you remember how soon after they left your house, your mother did that?

A. About 30 minutes.

Q. So within 30 minutes, or less than a half hour, she knew exactly where Allen was, right?

A. Yes, sir.

Mr. Witt: I have no further questions.

Mr. Goodman: You may step down, mam.

I call Arthur Pruitt.

page 25 } ARTHUR PRUITT, SR., witness, appearing on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Goodman:

Q. Would you state your name, please sir?

A. Arthur Pruitt.

Q. Where do you live, Mr. Pruitt?

Arthur Pruitt, Sr.

A. I live in Spartanburg, South Carolina.

Q. You live in Spartanburg, South Carolina, and you are the father of Allen Carroll Pruitt?

A. Yes, sir.

Q. On November 27th, of 1952 I believe you were living in Spartanburg, South Carolina, is that correct?

A. Yes, but I don't remember the name of the street.

Q. Were you there in your house, when your son was arrested by the police officers?

A. Yes, sir.

Q. Soon after he was arrested, what did you do, if anything?

A. Well I don't know how long after he were arrested, we were trying to find out where he was at, and so forth.

page 26 } Q. Mr. Pruitt, if you would please sir, try to speak clearly, as I can't quite understand what you're saying, would you?

A. I said, we tried to find out where he was at, after he was arrested, after they arrested him, but I don't know how long it was.

Q. Would you mind speaking a little bit louder, I can hardly hear you?

A. You can't? I said, after they arrested him at that time, we tried to find out where he was at, but I don't know how long it was before we knew, before we found out.

Q. You don't know how long it took you, to find out where he was at?

A. That's what I don't know. My wife, she called and said they had him at the City Jail.

Q. You say your wife called the City Jail, and found out he was there?

A. Yes.

Q. And then, did you all go there to try and see him?

A. (pause) Yes, I went to see him in 2 different jails, the City Jail—

Q. What 2 different jails are you talking about, Mr. Pruitt?

page 27 } A. I'm talking about the City Jail, and then he was transferred to the County Jail.

Q. But he was in the City Jail, when he was taken into custody?

A. Yes, sir.

Q. Now, did you try to see him while he was in custody?

A. Yes, sir.

Q. And, where was that?

A. Where was that?

Arthur Pruitt, Sr.

Q. Was that at the County Jail, or the City Jail?
A. The City Jail.
Q. All right. How many times did you try to see him, Mr. Pruitt?
A. Well, I tried to see him Thursday afternoon and then I went back Friday, about lunch time, and I still couldn't get to see him, and so I went back Saturday—I called down there, and they said something about 'holding him 72 hours, before they'd let me see or talk to him'.
Q. When you called Saturday morning, did you call Columbia, South Carolina?
A. Did I call Columbia? No, I didn't.
Q. And, you didn't go there?
A. No, sir. They didn't carry him to Columbia.
Q. Did you call anyone else concerning your son, or did anyone else try to see your son?
page 28 } A. I went to see a lawyer, sir.
Q. You went to see him, you didn't call?
A. No, I went to see Lawyer Lambreth.
Q. Was he in Spartanburg, South Carolina?
A. Yes.
Q. Do you know whether or not he went to see your son?
A. Well, he said 'he would', and then my wife called after that, she called him, and he said he didn't think he could see him.
Q. Did you question him, about an investigation—in other words, when were you first notified your son was in Norfolk?
A. Monday, after that Friday.
Q. On the Monday, after that Friday?
A. Yes, sir. And the policeman downtown called us, and—

Mr. Witt: Your Honor, I object to any statement made by any policeman down there.
The Court: Sustained.
You can't repeat what somebody else said.

By Mr. Goodman:
Q. How were you notified your son was in Nor-
page 29 } folk, Mr. Pruitt?
A. The police called me, and they said 'they carried him to Norfolk'.

Mr. Witt: Objection, Your Honor.
The Court: I'm going to strike that, as it's contrary—I'm going to strike that complete statement from the evidence.

Mr. Goodman: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

Examined By Mr. Witt:

Q. Mr. Pruitt, do you have any recollection of having talked to your son, Allen, on the telephone, at any time before he was transferred to Norfolk?

A. No, sir.

Q. You never talked to him, on the 'phone?

A. No, sir.

Q. You don't recall him calling you, to ask your advice as to whether to say anything to the police, or not?

A. No, sir.

Q. You didn't tell him, your son, 'to trust in God, and tell the truth'?

A. No, sir.

Q. You never did?

page 30 } A. No, sir.

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

The Court: All right, sir. You may come down.

Mr. Goodman: I call on Mrs. Alice Pruitt, Your Honor.

MRS. ALICE PRUITT, witness, appearing on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Goodman:

Q. Mrs. Pruitt, would you be kind enough to speak up loud enough so I can hear you, and so that Mr. Witt will be able to hear you, and would you state your name, please?

A. Mrs. Alice Pruitt.

Q. Where do you live, Mrs. Pruitt?

A. I live in Spartanburg, South Carolina.

Q. You were there on November 27th of 1952, isn't that correct?

A. Yes, that's right.

Q. Tell us what occurred around 11:00 or 11:30,

page 31 } on that particular date?

The Court: Let me ask one question here, first.

Mrs. Alice Pruitt

Are you the mother of Allen Carroll Pruitt, mam?
A. Yes, that's right.
The Court: All right. Now, you may answer the question.

By Mr. Goodman:
Q. Tell us what happened, Mrs. Pruitt?
A. Yes, sir. Well, I was cooking dinner—we were all getting dinner ready, and we had company. My mother was there, and my daughter-in-law, and all the family was there, and we were cooking dinner, Thanksgiving dinner, and my daughter had gone out on the porch.
There was a knock on the door, and when I went to the door, they were trying to get in, and a policeman was coming around the corner of the house, I would say, and—
Q. Prior to that taking place, prior to your opening the door, what was your reason, why did you keep the door shut?
A. I had children, and on that road, cars passed pretty fast, and I kept the door shut with a night lock on it, and the children were to use the back door.
Q. All right. Now, what happened when the
page 32 } police came to your door?
A: I asked 'what they wanted', and he said 'they wanted to come in to get Allen Carroll Pruitt', and I asked him 'if they had a warrant?', and he said 'no, he didn't have a warrant', and with that they just opened the door and charged in, and they almost pushed me down getting in.
Q. And is that when they went in and took your son, Allen Carroll Pruitt?
A. Yes, that's correct.
Q. Do you know where they took him?
A. Well I didn't, until I called, and I called the City Jail and they told me 'they had him there', and I asked them 'why they came and got him?'.
Q. You asked them 'why they came and got your son'?
A. Yes, but they said 'they couldn't tell me', and I had no way of knowing what they were getting him for.

Mr. Witt: Your Honor, I object to that conversation.
The Court: Sustained.

By Mr. Goodman:
Q. What did you find out, when you called the City Jail?
A. I found out he was there.
Q. You found out your son, Allen Carroll Pruitt,
page 33 } was there, is that correct?

A. Yes, that's right.
Q. Did you have an opportunity to see your son, in jail?
A. No sir, I did not.
Q. Did you try to see your son, in jail?
A. Yes, I sure did.
Q. When did you try to see him?
A. I tried to see him on Thursday and Friday, and on Saturday when I tried to see him, they said—

Mr. Witt: Objection, Your Honor.
The Court: Sustained.

By Mr. Goodman:
Q. You tried to see your son Thursday, Friday and Saturday, is that right?
A. Yes, that's right.
Q. Did you have any opportunity to see him, when you visited the City Jail?
A. No, sir.
Q. Tell us whether or not you tried to obtain legal counsel, for *you* son?
A. Yes, I did.
Q. Were you successful?
A. No, sir. No, I sure was not.
Q. Tell us whether or not—tell us why you were
page 34 } not successful, Mrs. Pruitt?
A. Well, he said 'he was not allowed to be seen, by anybody', and—

Mr. Witt: Objection, Your Honor.
The Court: Sustained.

By Mr. Goodman:
Q. And you say you tried to obtain an attorney, for your son?
A. Yes, I did.
Q. And—but, that you were unsuccessful?
A. Yes, sir.

Mr. Witt: Objection, Your Honor. He's leading the witness.
The Court: Sustained.

By Mr. Goodman:
Q. Tell us whether or not the attorney—whether you were successful in seeing him?

A. No sir, I did not see him.

Mr. Goodman: I have no further questions, Your Honor.
Mr. Witt: No questions, Your Honor.
The Court: You may step down.
Mr. Goodman: Your Honor, as my next witness, I'll call on Allen Carroll Pruitt himself, and this will take quite some time.

page 35 } Court Reporter: Your Honor, the Petitioner was not sworn earlier, with the other witnesses.

The Court: All right.
Allen Carroll Pruitt, do you swear that the testimony you are about to give in this hearing today, will be the truth, the whole truth, and nothing but the truth, so help you God?
Petitioner: I swear.

ALLEN CARROLL PRUITT, Petitioner, appearing on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Goodman:
Q. State your name, please?
A. Allen Carroll Pruitt.
Q. Are you the same Allen Carroll Pruitt who is now seeking a Writ of *Habeas Corpus* against C. C. Peyton, Superintendent of the Virginia State Penitentiary?
A. I am.
Q. Prior to—or, how old are you?
A. I'm 29.
Q. On November 27, 1952, tell us where you were?
page 36 } A. In my home in Spartanburg, South Carolina.
Q. Tell us what happened, if anything, around 11:00 or 11:30, while you were at your home in Spartanburg, South Carolina?
A. Yes, sir. I was talking to a girl on the 'phone, and the next thing I knew I heard the door slam, and 3 or 4 policemen rushed into the house.
Q. What did they do, if anything?
A. They took me out of the house, and took me to jail.
Q. They took you to jail, where?
A. Spartanburg.

Allen Carroll Pruitt

Q. To the City Jail?
A. To the City Jail.
Q. What happened to you, if anything, while you were in the Spartanburg City Jail?
A. Well, for about the first 3 or 4 hours I was questioned, and then I was sent back to the cell block.
Q. You were questioned, by whom?
A. I was questioned by the officers, in South Carolina.
Q. You were questioned by the South Carolina police officers?
A. Yes, sir.
Q. Did they give you any reason, or tell you
page 37 } why you were arrested?
A. No, sir. I asked, but they didn't say.
Q. Did they serve any type of warrant or summons, on you?
A. No, sir.
Q. After this initial examination, questioning or interrogation, what happened?
A. Then I went back to the cell block for a couple hours, and they came for me about 7:00 o'clock that night, and when they came and got me, they questioned me again for 3 or 4 more hours.
Q. And did they tell you at that time, why you were being questioned and what you were being held for?
A. No, sir.
Q. And this was on Thursday, right? That was Thursday, the 27th?
A. Yes.
Q. And after you were questioned for 3 or 4 more hours, what happened?
A. Then I was led down to the cell block, and when I got back to the cell block I layed down to go to sleep, and this jailor come up there and started to talk to me, and for a while I just talked to him, there was nothing else to do, and so then when we got to talking, he said—

Mr. Witt: Objection, Your Honor.
page 38 } The Court: Sustained.

By Mr. Goodman:
Q. Did they interrogate you any more, that night?
A. No, sir.
Q. What happened, the next morning?
A. The next morning, they started back over.

Allen Carroll Pruitt

Q. What do you mean, 'they started back over'?
A. They started questioning me again, that's what I mean.
Q. Until when—how long?
A. About 3 hours.
Q. What time did they start?
A. Sir?
Q. What time was it, when the interrogation started?
A. It was around 8:00 o'clock in the morning, until about 11:00 or 11:30, at which time it was dinner then, and I was sent back to the cell block.
Q. And at that time, did they tell you what you were arrested for?
A. No, sir.
Q. Did you have any idea, why you were arrested?
A. To start with, I thought I was arrested for running away from the South Carolina Industrial School for Boys, but after—the way I was being questioned, I knew
page 39 } I wasn't.
I asked 'to see a lawyer', and they refused. I asked 'to see my people', and they refused.
Q. When did you ask to see your parents?
A. I asked to see my parents right after I was transferred from the City Jail to the County Jail, which was 2:00 o'clock in the afternoon.
Q. Was this Thursday afternoon, or Friday?
A. Thursday afternoon.
Q. And did you have—did you ever see your parents while you were in the Spartanburg City Jail?
A. No, sir.
Q. Did you—who else did you request to see?
A. I requested a lawyer.
Q. Did you have occasion to see one?
A. No, sir.
Q. After you were transferred to the County Jail, what happened?
A. This questioning took place at the County Jail, not the City Jail.
Q. The County Jail?
A. Yes, sir. And then about 6:00 o'clock on Friday night, that's when the officers from Virginia come down, 2 detectives and a stenographer.
Q. On Friday?
page 40 } A. On Friday night.
Q. And what did they do, if anything?
A. They questioned me, for several hours?

Allen Carroll Pruitt

Q. And how long—until when?

A. Late Friday, from early Friday night, to 10:00 or 11:00 o'clock that night.

Q. Until 10:00 or 11:00, Friday night?

A. Yes.

Q. And then you went to sleep, I presume?

A. No sir, I didn't get to sleep. They come up and started again, and I didn't get to go to sleep until daybreak Saturday morning.

Q. Then, what happened?

A. I was fed breakfast, and then I was told 'to get ready, they was going to take me out of jail', and I assumed I was going back to the South Carolina Industrial School for Boys, and then after the trip started, because of the way we was going, instead of going to Florence, which is where the Industrial School is, they took the road to Columbia, South Carolina.

Q. They took the road to Columbia, South Carolina?

A. Yes.

Q. What happened to you, there?

A. In Columbia?

page 41 } Q. Yes. What happened to you, if anything, in Columbia, South Carolina?

A. I was given a lie detector test.

Q. Did you consent, to the lie detector test?

A. No, sir.

Q. After the lie detector test, what happened?

A. They started back again, questioning me. At first, there was the Virginia officers and the stenographer that came down, and then after several hours the one, I believe it was Detective Benton and the stenographer too, went to *Columbis,* and left me with the detectives from South Carolina and one of the detectives from Virginia.

Q. And this was still while you were in Spartanburg, and then you went to Columbia?

A. Yes.

Q. When the Norfolk police officers came down, did they give you any indication as to why you were arrested?

A. Yes, they said that—they claimed—they said 'I killed a man'.

Q. After they had taken you from Spartanburg, I believe you made a confession. What time did you give the confession?

A. It was Saturday afternoon, it seems like it was about 5:00 or 6:00 o'clock in the afternoon. The time was late.

page 42 } The Court: Was that the day following Thanksgiving?

A. 42 days later, Your Honor. No sir, 42 hours later, sorry.

Q. Two days later, 42 hours later?

A. Yes, sir.

By Mr. Goodman:

Q. From the time you were placed in custody at 11:00 or around 11:30 on Thursday, until 3:00 o'clock, you did not have an opportunity to see your parents?

A. No, sir.

Q. Did you talk to your parents?

A. No.

Q. Did you talk to anyone, in your family?

A. I talked to—I called—they let me make a 'phone call, and—

Q. Was that before the confession was made?

A. It's been a long time ago, and this is to the best of my recollection, but he told me that—

Mr. Witt: Objection, Your Honor.

The Court: You can't testify as to what somebody else said.

Mr. Witt: Your Honor, I object to going along with hearsay any more.

The Court: Sustained.

page 43 } By Mr. Goodman:

Q. They allowed you to make a telephone call, is that correct sir?

A. Yes, sir.

Q. Do you know who you talked to?

A. Yes, sir.

Q. Who did you talk to?

A. I think my sister answered the 'phone, and then I talked to Dad for a couple minutes.

Q. Was that the only conversation you had, with him?

A. That's correct, yes sir.

Q. And after you made the confession, what happened to you?

A. I was brought back—I was taken to Raleigh, North Carolina and placed in jail, and then brought back to Virginia on Sunday.

Allen Carroll Pruitt

Q. You were taken to Raleigh, North Carolina en route to Norfolk, Virginia, is that correct?

A. Yes, sir.

Q. And then on Monday morning you were taken to Juvenile and Domestic Relations Court, is that correct?

A. Yes, sir.

Q. And on the same date, I think you were, I believe you were—that would have been December 1st?

page 44 } A. Yes, sir.

Q. And, you were sent on to the Grand Jury?

A. Yes, sir.

Q. Did you have any legal advice or counsel, at the time you were in the Juvenile and Domestic Relations Court?

A. No, sir.

Q. When was the first time that you saw an attorney, concerning these matters?

A. It was a couple weeks—you mean the first time?

Q. The first time, yes?

A. There were 2 men that came to the jail, 2 or just about 3 or 4 days later, after I had been brought back from South Carolina.

They told me 'they were lawyers', and they said 'they had been'—I'm pretty sure they said 'they had been appointed, and someone called them about my case.'

They asked me 'did I know that it was first degree Murder?', and I told them 'no', and so then they left, and it was about 10 days later that this other lawyer came over to see me.

Q. Who was the other lawyer?

A. General Sands.

Q. Where did you talk with him, Mr. Pruitt?

page 45 } A. I talked with him in the jail, on the 4th tier of the old Norfolk Jail.

Q. You talked with him in the Norfolk Jail, the old Norfolk City Jail, the first time?

A. Yes, sir.

Q. How long was your conference with him, on that particular time?

A. It was maybe 20, or 25 or 30 minutes, about that.

Q. This was in December of 1952, is that right?

A. Correct, about the middle part.

Q. Did you have any other occasions to see General Sands?

A. I saw him again when I come back from Marion, for observation tests, sometime in May, the latter part of May, for 15 or 20 minutes, and then the week before I was tried in August, I saw him for maybe 5 minutes.

Allen Carroll Pruitt

Q. Is that the only three times, since he first took the case, your case, in December of 1952, is that correct?

A. Yes, sir.

Q. At that time, did you know the difference between the principal of a crime and an accessory of a crime?

A. No, sir.

Q. Was that ever explained to you?

A. No, sir.

page 46 } Q. Was it explained by the Judge, to you?

A. Yes, it was explained by the Judge to me the day I was tried, that 'an accessory could receive the same amount of time that a principal could', but I did not say anything, so—

Q. Was that explained to you after the trial, or before the trial?

A. Before the trial began, in the Courtroom that morning.

Q. Before the trial began, it was explained to you by the Judge?

A. Yes, sir.

Q. And that's the first time you knew that being guilty as a principal or an accessory, for all practical purposes, was the same?

A. Yes, sir.

Q. Still, why did you give the confession on November 29, 1952?

A. I gave it, because I was told that—

Mr. Witt: Objection, Your Honor, to what he was told.

The Court: You were told by whom?

A. By detectives of Virginia, Your Honor.

The Court: I overrule your objection, Mr. Witt.

page 47 } Mr. Witt: All right, sir.

By Mr. Goodman:

Q. Go on, Mr. Pruitt.

A. I was told by Lt. Bention and another detective, 'that what I had done, what they thought I had done, that in Virginia, it was not constituted as Murder because the man had a cap pistol, and it was presumed that he was pointing it, and that whoever he pointed it at, acted in self defense'.

He also said 'that I was young, and the worst that could happen to me was Reform School'.

I didn't want to return to the Industrial School. After running away from there, I didn't want to do anything that would make me go back there, because I knew what they'd do to me down there.

Q. What was that?

A. They'd cut a cross on my head, and shave my hair and then they'd beat me and put me in solitary, and I didn't want that, so I decided to go back to Virginia and go to Reform School.

They told me 'you're a minor, and it was clearly self defense against the man with the cap pistol, and he was a big man and I was a child with a knife'.

So I could see I was in the middle there, but after I was told it was not Murder, and I could get Reform School, I took a chance of getting Reform School from the
page 48 } Court. I figured I'd rather come up here and go to Reform School, than go back to the Industrial School and be cross-cut on the head, and shaved, and not be able to see people, and so for those reasons, I gave them the confession.

Mr. Goodman: I have no further questions, Your Honor.

CROSS EXAMINATION

Examined By Mr. Witt:

Q. You had an opportunity to tell Judge Spindle about that on the day of your trial, didn't you?

A. No, sir.

Q. Didn't Judge Spindle question you, somewhat in length, concerning the original statement that you made, and you answered him in normal words?

A. Yes, I answered the best I could.

Q. And didn't Lawyer Sands come to the Norfolk City Jail, and didn't he have papers with him, and didn't you say 'you wanted to plead guilty'?

A. I told him, 'after I found out it was first degree Murder I was facing, I made that confession because I thought I was going to get Reform School', but he said 'after this confession, there's nothing I can do, you done signed your life away', and he said 'the only thing you can do now is to plead 'guilty', and I'll try to get you a life sen-
page 49 } tence, but you could get the death sentence, you know'.

Q. You told your attorney then, that the only reason that you made any statement at all, was because of that then, is that what you mean?

A. Yes, I did.

Q. And, he made no effort to present that to the Court at all, you say?

Allen Carroll Pruitt

A. No, sir. When he brought the paper over there to me, and asked me to sign it, pleading 'guilty', he said 'he would try to get me a life sentence', but I refused to sign, and I said 'I would not sign it'.

And then there was something else on that paper, that said 'that if I was not going to plead 'guilty', I waives and demands something', and then there was a dotted line below, but I didn't know any difference in the words 'waives' and 'demands' until I talked to Mr. Goodman a few months ago. I thought 'waives' at first, was something you put waves into.

The Court: With reference to that paper, didn't you know your lawyer was talking about a Judge trial or a jury trial, and whether your plea was going to be 'guilty' or 'not guilty'?

page 50 } A. My plea was 'not guilty', Your Honor, and when this occurred, he left the space out where you put the word 'guilty' or 'not guilty', and I did not know until I appealed the case in '61, and the Supreme Court sent the papers back, that there was a signature on the paper, and 'waives' and 'guilty' was printed in, but I did not put 'guilty' in and I did not plead 'guilty' to the Court in the status of principal, that was not my plea.

I wanted to plead 'not guilty', but my lawyer said 'he could not do anything for me, on a plea of 'not guilty', so you plead 'guilty', and so I says 'yes'.

Q. Your lawyer said 'if you do not plead 'guilty', he could not do anything for you, and that you could get the death sentence or the death penalty'?

A. He said 'you signed the confession, and since you signed the confession, the only thing can be done for you when you go in Court, so as not to get the death sentence, was to plead 'guilty as an accessory', but I didn't know that constituted the same sentence.

page 51 } Q. Didn't your lawyer explain to you, how much punishment you could get, on a plea of 'guilty', and didn't the Judge, when you were asked 'how do you plead, guilty or not guilty?', and as you say, you pleaded 'guilty as an accessory', didn't he explain to you at that time, when you pleaded 'guilty as an accessory', that it was the same thing as being a principal', didn't he explain that to you?

A. Yes, sir.

Q. And he told you 'that you could get the same thing, the same punishment, as if you pleaded 'guilty as a principal', didn't he?

Allen Carroll Pruitt

A. Yes, sir.
Q. And then you sat down, and—
A. Right.
Q. —didn't your lawyer, didn't he tell you then, that 'if you wanted to change your plea to 'not guilty', that it would not be held against you'?
A. He didn't tell me that.
Q. He didn't?
A. No, he didn't tell me nothin'.

page 52 } Q. With the Judge sitting right there telling you these things, you mean to tell me your lawyer didn't explain to you—

A. The Judge explained to me, and then I sat down.
Q. —why didn't you tell him then, if that was the case, that you wanted to change your plea?
A. I didn't even know I entered a plea.
Q. Are you saying now, that you did not enter a plea?
A. He just told me, and I pleaded 'guilty as an accessory'.
Q. Didn't he explain to you, that to plead 'guilty as an accessory, was the same as pleading guilty as the principal'?
A. That's a legal point.
Q. I understand your testimony to be then, that you pleaded 'guilty as an accessory', that's what you told the Judge when he asked you 'how did you plead?', and you said that you were 'pleading guilty as an accessory'?
A. Yes, sir.

page 53 } Q. And the Judge at that time, at that moment, told you 'that by pleading guilty as an accessory, that you could get the same thing as you could get if you were the principal'?

A. He said 'I could get the same thing', right.
Q. He told you that, that's what he told you. And what did you understand that to mean, Mr. Pruitt?
A. That I was 'not guilty as the principal'.
Q. But, didn't he explain that being guilty as an accessory, didn't he say 'being guilty as an accessory was the same thing, and you could get the same penalty as an accessory'?
A. All I know is that I was tried, and found 'guilty as the principal'.
Q. I'm not talking about that point now, I'm talking about the Judge giving you the advice that you were given in open Court, which I have just mentioned to you—why didn't you tell the Judge that you wanted to change your plea?

page 54 } A. Because I was 16 years old, and I was confused, and I didn't realize what was going on.

Allen Carroll Pruitt

The Court: I see. That's all I have.

By Mr. Witt:

Q. Now Mr. Pruitt, isn't it true that you had a conference or consultation with your attorney, concerning whether you were going to plead 'guilty' or 'not guilty'?

A. No sir, that's not true.

Q. Is it not true that you signed a statement, that your father witnessed, in the presence of your father, wherein you advised your attorney that you not only decided you wanted to plead 'guilty to the Murder Indictment', but that you fully understood what the plea of 'guilty' meant?

A. I never—I don't remember anything like that.

Q. You don't?

A. I talked with my father 2 weeks before the trial and begged him to get a lawyer for me, and he said 'he would do something for me', and even with 8 children, he paid $300.00 to a lawyer in South Carolina to come up to Virginia, Lawyer Watt, just trying to do something for me.

(Mr. Witt shows paper to Mr. Goodman.)

Mr. Witt: Your Honor, I'd like to have this paper marked as 'R-2' for identification.

The Court: I'll mark this 'R-2 for the purpose
page 55 } of identification.

By Mr. Witt:

Q. Mr. Pruitt, I hand you a document which has been marked 'R-2' for the purpose of identification, and I would like for you to look at that document and state whether that's your signature on it, or not?

A. (witness looks at paper) (No answer)

Q. What's the date on that paper, Mr. Pruitt?

A. August 27th—22nd, 1953. My father—that could not *possible* be his signature.

Q. Is that your signature, on that paper?

A. That's my signature, but my father could not possibly have been there.

Q. What's your father's name?

A. Arthur Pruitt.

Q. And, is not that his signature?

A. Yes, but my father—that is, this is the same paper that was brought and handed to me with another paper to sign, on August 22nd, 4 days before the trial, if this is the same

paper—he said 'I had to sign a paper for his fees', and I signed the paper, the other one, and this had to have been signed later, it could not have been signed the same day.

Q. Is not that your father's signature?

A. I don't know, I don't know whether that's his
page 56 } signature or not, sir.

Q. Your father's name 'Arthur Pruitt' is on it, is it not?

A. That's his name, on it.

Q. All right, sir.

Mr. Witt: I offer this paper in evidence, as Respondent's Exhibit R-2, Your Honor.

The Court: This will be received in evidence, as Respondent's Exhibit R-2.

By Mr. Witt:

Q. You're telling this Court now, as I understand it, Mr. Pruitt, that you were not advised as to the contents of that statement which you just read, but rather you were told that 'you had to sign another paper, in order for your attorney to be able to get his fees', is that right?

A. Yes, sir.

Q. I see. And you're saying that your father could not possibly have signed that paper, right?

A. Yes, sir.

Q. All right, sir.

A. And not only that, there's no date that it was signed in my presence.

Q. Do you recall it ever having been discussed the question of your pleas, in the presence of your father?

A. We discussed it many times, and every time I
page 57 } wanted to plead 'not guilty', but this Lawyer
Sands, General Sands kept telling my people 'if I did not plead guilty, I would get the death sentence'.

Q. What do you mean by 'my people'?

A. My family.

Q. Your father?

A. Especially, my father. And, he kept on at me because he said 'he didn't want to see me die', and he kept telling me that 'if I did not plead guilty, that I was going to die, and that would', he said 'when that happened, that will be killing my mother, too'.

The Court: Who told you that, is that your father talking?

Allen Carroll Pruitt

A. Yes, Your Honor. Because my mother was—she was in the hospital a couple times, because of it.

By Mr. Witt:

Q. Now Mr. Pruitt, isn't it true that you made another statement or confession, when you got to the City of Norfolk?

A. I most certainly did.

Q. And isn't it true that statement was made as the result of a conference which you had with your attorney at that time, General Sands?

A. No, sir.

page 58 } Q. It was not?

A. No, sir.

Q. Now the only substantial change in the second statement which was made, from the first one, was this—you placed somebody else inside the house that actually committed the crime, and that you merely were a look-out, is that right? Was that the only difference, between the 2 statements?

A. I didn't think it was a house, sir.

Q. Well, a store?

A. Yes, sir.

Q. The man was living there, was he not?

A. Yes, sir.

Q. So the difference between the second and the first statements was that, instead of your being actually the killer, somebody else actually did that who was there with you?

A. Correct.

Q. And that you were outside, acting as a lookout?

A. Yes, sir.

Q. And what you said in the second statement, was true?

A. Yes, sir.

Q. Now, did you ever make that statement to the

page 59 } Commonwealth's Attorney, who at that time was H. Lawrence Bullock and who is now Judge of the Corporation Court here?

A. I don't think he was there, but I remember several people there.

Q. You remember being questioned about the confession, do you not?

A. The detective wanted to get confirmation on the confession, so he carried me to Berkley, through the Portsmouth Tunnel, and I was more or less to go to all the cab drivers where I was supposed to come back through the Tunnel, but no one identified me, and they said 'they were afraid the blood and footprints didn't match mine.'

Allen Carroll Pruitt

Q. Did you describe for them, where the knife was?

A. I told them where the knife was, on the street in Norfolk, thrown down the drain—there had been a heavy rain here, so when they came back here they looked down the drain, but it was about 2 blocks up the street by that time, when they looked for it.

Q. You identified the knife as the one that was used though, did you not?

A. I said 'it was the one that was used', yes.

Q. All right, sir. Do you know if Mr. Sam R. Watts, the Attorney from South Carolina, was present when you made the statement to the Norfolk Police, the second

page 60 } statement?

A. I don't think so.

Q. You don't think so?

A. He only came up, on Saturday.

Q. When you made the second statement or confession, did you or not, at that time, connect the death penalty with those charges?

A. No, sir.

Q. Did you talk to your attorney at all, before you made that statement?

A. No, sir.

Q. You had not?

A. No, sir.

Q. When did the stenographer take that statement down?

A. A couple weeks, before the trial.

Q. How long had General Sands been actively engaged in representing you?

A. Since he was appointed.

Q. Then he had been actively enagaged in representing you since about—up through or approximately say 9 months, and you talked to your attorney before you signed the second confession?

A. I did not talk to him.

Q. You had not talked to him, you had not talked

page 61 } to General Sands?

A. No, sir.

Q. I thought you said just now, that he was representing you at that time?

A. He was.

Q. All right, then.

A. But my family had paid Lawyer Watts in South Carolina $300.00 to come up here, and try to get General Sands to do something for me.

Q. Did you talk to him, to Mr. Watts?
A. Yes, I did.
Q. Before you made the second statement?
A. I think it was—(pause) I don't think I can truthfully say whether it was before or after, sir.
Q. Did you tell Mr. Watts 'the only reason you made the confession was because you figured you'd rather go to the Reform School in Virginia, than the Industrial School in South Carolina'?
A. Yes, sir.
Q. You did tell him that?
A. Yes, sir.
Q. And did you tell General Sands that, or not?
A. No, sir.
Q. But in any event, as far as you know, it was never brought to the Court's attention?
page 62 } A. I was like a fish out of water, I didn't know what was going on.
Q. Uh-huh. Now I believe you said that you talked to your father, before you made the confession down in South Carolina?
A. Yes, sir.
Q. Do you recall what that conversation with your father was about?

Petitioner: Before I say what my father said—he's right here in the Courtroom.
Mr. Witt: I didn't notice any objection, so we'll go ahead and let the Judge pass on the evidence, and you just answer the questions.

A. He said that—I told him what I was trying to do, I told him I wanted to plead 'guilty' to the Murder charge in Virginia, and that since I was a minor, I was going to be sent to Reform School; if I didn't, then I'd automatically go back to South Carolina to the Industrial School, which I didn't like, and upon being told that, and after telling him what the detective said, 'that I could get out on bond for $1,500.00 and he'd carry me back to the house and let me see my parents before bringing me back to Virginia', and my Daddy said 'he would raise the $1,500.00 bond for me', and then Daddy said 'if you would rather go to Reform School
page 63 } up there instead of going to the Industrial School in South Carolina, go ahead and do it'.
Q. Did you discuss with him, all these entire matters?

A. No, sir.

Q. You didn't?

A. I didn't discuss with him the entire matters, I just told him what the detective in Norfolk wanted me to do.

Q. Thereafter, having told him that, his advice to you was 'to use your own judgment', right?

A. Whether I'd rather go to Reform School in Virginia, or the Industrial School in South Carolina, and I told him I'd rather go to the Reform School in Virginia.

Q. Now, you said just now that when you talked to your father, that you told him that they were questioning you about a Murder charge in the State of Virginia?

A. Yes, sir.

Q. Well now, you testified a little earlier that a police officer told you that 'he didn't think it was Murder, it was self-defense', right?

A. I—this was then—I'm not speaking of Murder like the Court says, I'm talking about a man that was killed.

Q. Well Mr. Pruitt, you indicated here earlier that you were a teenager, and that you 'were like a fish out of water', and you had no idea what was going on or what they were page 64 } talking about, but you did not mention the word 'Murder' yourself, so how did you happen to use that word in talking to your father?

A. Because, the detective said 'it was not Murder, not in the first degree in the *sence* that the law calls it Murder'.

Q. But you told your father 'they were investigating a Murder charge, and that you'—

A. A killing.

Q. A Murder charge is a killing, and a killing is Murder.

A. That's your opinion, but that's not my opinion. That's an opinion for the Court to make.

Q. All right, sir. Now Mr. Pruitt, have you seen the records of your original trial?

A. There was no record, none was made.

Q. There was no transcript, you mean?

A. No. There was no transcript, or no record.

Q. There wasn't?

A. The only thing I ever seen—I wrote to the Norfolk Corporation Court, but I never—the only thing I ever got back was photographic copies of newspaper clippings.

Mr. Witt: May I have the record, Your Honor?

The Court: Yes sir, they are all right here.

Allen Carroll Pruitt

page 65 } (The Court hands papers to Mr. Witt.)

By Mr. Witt:

Q. Now, did you file any copies of the record that represents what took place at your trial, with your Petition or Writ?

A. Sir?

Q. Did you file anything with your Writ or with your Petition for a Writ of *Habeas Corpus?*

A. I can't say, it's been over 10 years.

Q. Since you had your Writ of *Habeas Corpus* filed?

A. Yes, sir.

The Court: Here's the Petition gentlemen, that you're looking for.

(The Court hands paper to Mr. Witt.)

By Mr. Witt:

Q. Mr. Pruitt, I show you a document which has been filed with our Answer in this matter, which is dated August 31, 1953 and which shows that Richard B. Spindle was Judge of the Corporation Court.

A. (witness looks at paper) I understand that, sir.

Q. This is in answer to a question which I mentioned earlier, when I said that there was an inquiry made page 66 } as to the voluntariness of the statement which you made in South Carolina.

A. Right.

Q. There were no threats or promises, as far as you know?

A. As far as I know, that's correct.

Q. It was stated to you by the Judge at that time, in a memorandum opinion filed in this case, 'that you had never questioned the confession made in Spartanburg as being involuntary'. Would you say that was right, or wrong?

A. I—didn't he have, or add something else on there?

Q. The statement is this, 'Defendant never questioned the confession made in Spartanburg as to being voluntary, he only repudiated the statements in the confession as to the activities he had described therein. As to this, he was cross examined by the Attorney for the Commonwealth for nearly 2 hours, during all of which he showed a quickness of response and alertness, and a general grasp of all involved that would be unusual in any person of his age'.

A. It seems highly unusual, when a lawyer has to go to college for so many years to become a lawyer, and then to become a Judge,—

Allen Carroll Pruitt

Q. Mr. Pruitt, on the question of the voluntariness of the confession which you made in Spartanburg, South
page 67 } Carolina,—

A. It didn't state that I denied the scrutiny of the Court, did it?

Q. That's not what I asked you. Have you ever had anyone ask you, as you recall, whether you were positive the confession was made voluntary or not?

A. I made the confession voluntarily, after the detective said 'that I would only go to Reform School'.

Q. Well are you telling the Court then, that you don't recall whether your confession was inquired into by the Court, or not?

A. I don't remember anyone ever asking me whether it was voluntary, or not.

Q. You mean you oppose that fact then, is that right?

A. I wrote to the Corporation Court of Norfolk, asking for all the records and transcript, and everything.

Q. And in what you got, it never had in there where you were questioned?

A. No.

Q. And your'e telling us that from what the record showed, as opposed to your memory, right?

A. From the records I received, from the Norfolk Corporation Court.

Q. I want to read to you from the record now,—
page 68 } A. It was unsigned.

Q. —and for your information, there was a memorandum opinion by the Judge of the Corporation Court who presided over the trial, and that memorandum opinion indicates 'that the confession taken at Spartanburg, South Carolina was inquired into'.

Mr. Goodman: Your Honor, I think the record speaks for itself, and I object to that line of questioning.

The Court: Before I rule, let him answer whether it was, or not inquired into by the Court.

Mr. Goodman: I think he has already answered 'no', Your Honor, but that the confession was given voluntarily for the reason that—

The Court: No sir, the question was not as to the voluntariness of the statement, but whether it was inquired into by the Court at the time of trial.

By Mr. Witt:

A. I don't remember it.

Allen Carroll Pruitt

Q. You don't remember it?

A. There was no transcript, and it wasn't in the record, so—

page 69 } Q. What happened at the time of trial, is in the memorandum opinion filed by the Court.

Do you now tell me that what the Court stated, did not actually take place?

A. No, I only know of my own knowledge, that no one ever asked me that.

Q. All right, sir. Now, is it my understanding that you're telling this Court that you saw your attorney only 3 times prior to trial, and that one of those days was on the day of the trial, for 5 minutes?

A. No, I didn't say that, I didn't see him the day of the trial.

Q. The trial was on the 22nd of August?

A. On the 22nd of August was when all the papers were signed.

Q. I see. And that time, it was for only 5 minutes?

A. Yes, sir.

Q. Where were you, at that time?

A. I was with the rest of—I mean, I was in the bull pen.

Q. How about the other 2 times—I believe you said the first time was in the middle of December?

A. Yes, sir.

Q. And where was that, when you talked to

page 70 } General Sands?

A. Where was that?

Q. Yes.

A. That was on the 5th tier, or the 5th section in the old Norfolk City Jail.

Q. The old Norfolk City Jail, you say?

A. I think it was the City Jail. I've never—well, I never was in Jail in Norfolk before.

Q. And the other time was in the bull pen, right?

A. Yes, and I was by myself.

Q. You were by yourself?

A. Yes.

Q. Did General Sands come into the cell when he talked to you, or did he talk to you some place else?

A. He was outside the bars, when I talked to him.

Q. General Sands stood outside the cell bars, and you talked to him about it?

A. Yes. He asked me about the case, and said he had been appointed.

Allen Carroll Pruitt

Q. And what else did you talk about, Mr. Pruitt?

A. We had a conference about different things, and he said—

Q. You can't say actually what was said, but substantially what did you talk about?

A. Well, he said he had been appointed as my
page 71 } counsel, and I asked him to call my mother for me.

Q. What else did you all talk about?

A. I told him about the confession at Spartanburg, and why I had made it.

Q. Did you tell him that it was voluntary, when you told him why you made it?

A. We were just talking about the case, you know.

Q. And as you were talking about the case, you were talking about the confession as well as other matters involved in the case, right?

A. Yes, sir.

Q. Now I want to be sure I understand you correctly. Did your attorney question you, as you talked about the confession—and this is during the discussion you all had at the jail about your case—when you all had the conference about the confession being made, did your attorney question you as to whether the confession was voluntarily made?

A. I told him why I had made it.

Q. When did you tell him that? When are you talking about?

A. In May. I talked to him about it in May, after I returned from Marion.

I was supposed to go to Court—(pause) I was
page 72 } supposed to be tried in June, I believe it was the first week in June or sometime right around then, and when he came on down there—

Q. Who came down?

A. When General Sands came down—and, he wanted to know 'if I made my mind up about how I was going to plead'.

Q. And, that was in May?

A. Uh-huh.

Q. Did General Sands tell you, in either one of those conferences, that you were charged with a capital crime and that you could get the death penalty?

A. (pause) I think that lawyer that came there the first time, told me that I could get the death penalty.

Q. That was before General Sands came into the case, then?

A. Yes, sir.

Q. That was before the middle of December?

A. Yes.

Q. Then before General Sands got into the case, you knew you could get the death penalty, after conferring with the first attorney, right?

A. Yes, sir.

Q. Why in the world did you not tell him in December or May then, about this question of another person being involved in your case, if that's what really happened?

page 73 } A. (pause) (No answer)

Q. Why didn't you tell him that, if that's what your defense was going to be?

A. For the simple reason that after talking to him there was—well, Johnson changed his mind, and he said 'when the confession was made, that was it', and so that's why I didn't see him but about 3 times I guess, because he said 'there was nothing he could do, once I signed the confession'.

Q. When was it, that you decided to make the second confession?

A. (pause) Being just 16 years old and a stranger in Virginia, I felt like—well, I was trying to get somebody to help me, and—I mean a lot of fellows figure things like this, there's —well, I've seen a lot of movies and television and in the comic books too, where there's always a fellow who comes up like a champion to defend the innocent, and see that nobody gets him, but then it was getting late, it was getting pretty close to the time of trial and I was getting worried and I could see nothing was getting done, because I got my Daddy to pay a lawyer in South Carolina to try to help me, and I mean my people tried to help me, and I was afraid, and I never in my life was afraid before, and my people, well it's only natural they didn't want to see me put to death, and so that's why I told them about Dooley.

page 74 } Q. Now this Dooley, this Johnson or Dooley that you implicated in this matter, how well did you know him?

A. (pause) I was in his company one time, I knew him to speak to him, but I didn't bum or run around with him, I'd just run into him while I was working.

Q. You say you did not bum around together, but you had been in his company more than one time, had you not?

A. Yes, I seen him more than one time.

Q. Is it not true, Mr. Pruitt, that the reason you made the first confession and later changed it, was because you had an agreement with this fellow Dooley that if either one

was caught, regardless of which one was caught, that he would take the rap, wasn't that the whole deal, and isn't it also a known fact that the other one would do what he could to help the imprisoned one, but that evidentally it appeared this was not going to happen in your case, and as a result you gave the second confession?

A. Yes, sir.

Q. Was that the reason you gave Judge Spindle when I asked you 'why you didn't tell him', Judge Spindle 'about that before'?

A. The time I made the second confession?

Q. Did you tell Judge Spindle that was because you and Mr. Dooley had a pact wherein if one was caught and took the rap, the one that was not caught and who was

page 75 } free, would do the best he could to see that the other one got out of jail?

A. I'd say, Mr. Witt, that Dooley—as a matter of fact, it's a little hard to explain after all these years exactly what we did and why.

Q. But you still had that agreement, didn't you, that only one of you would be tried for it?

The Court: Do you understand the question?

A. Yes, I understand the question.

Q. Let me check, to see if this is the question.

Did you not tell Judge Spindle that you and a man named Dooley had a pact whereby if one of you got caught, he would take the full rap and the one that did not get caught and remained outside would do whatever he could to help the one that was taking the rap?

Did you ever discuss such a question with Judge Spindle?

A. I think so.

By Mr. Witt:

Q. You think you did?

A. (no answer)

page 76 } Q. Was the reason you gave Judge Spindle for the second confession, which you made—was that because you said 'you had gotten to the point where you knew you were in serious trouble, and you didn't want to take the full rap'?

A. Yes, sir.

Q. Is that what you told Judge Spindle?

A. (no answer)

Allen Carroll Pruitt

Q. Was it?

The Court: Read the last question.

(The stenographer read the last question to the witness.)

A. I probably did, if he said I did—I don't know.

Q. I want you to say whether you made that statement, Mr. Pruitt, I don't want to put words in your mouth, I just want you to tell us.

A. I can't remember everything that happened in Court, that was 14 years ago.

Q. But you seem to remember, and you have fully testified with reference to everything else that took place.

A. People can be faulty, when it comes to a lot of things.

Q. Do you mean by that, that you were faulty when it came to the question of what the Virginia police officer told you with reference to this particular case, and the
page 77 } promise you say he made?

A. There never would have been a confession made, and that's the whole point, and that's why I've been in the 'Pen for 14 years, for believing that.

Q. Well the trial also had something to do with your being sent to the Penitentiary for 14 years, now didn't it?

A. (pause) Yes, but in my opinion, if you want my opinion of it, the way the Judge stated the facts, I guess it could have.

Q. You're not contesting the Court's opinion of your trial, are you?

A. I'm contesting that I was put in the 'Pen, and had no more fair trial that I had.

Q. I see. Now Mr. Pruitt, let's go back to the date you were arrested. Isn't it true that you were expecting the South Carolina law enforcement authorities, or officers, in view of your running away from the Industrial School there?

A. Yes, and because I had been talking to several girls on the telephone.

Q. And you knew that those people were looking for you too, because you had escaped from the Industrial School, right?

A. I had just cause for running away from the Industrial School.

page 78 } Q. But you ran away from the Industrial School or Reform School without permission, right?

A. Yes, sir.

Allen Carroll Pruitt

Q. And you were placed in the Industrial School for violation of some law, were you not?

A. I was put there, for running away from home.

Q. You were a run-away, from home?

A. Yes, sir.

Q. And so you were not there voluntarily—the point I'm trying to get to, is that was a State Institution, was it not?

A. Yes, sir.

Q. And you were placed there by action of the Court, were you not?

A. Yes, sir.

Q. And you left there, without permission?

A. Yes, sir.

Q. So then you knew the authorities were looking for you, and your parents wanted you to go back, didn't they?

A. Probably.

Q. All right, sir. You were not the least bit surprised when the police officers came—you were expecting somebody to come in other words, were you not?

A. Not the police from Norfolk. I didn't know, I thought I might have—I mean, I had traveled all over
page 79 } South Carolina, but when the police came to my home—well, somebody else could have seen me and everything, but what I mean is, I had no idea anyone else was looking for me.

Q. Now isn't it true also, Mr. Pruitt, by what I understand from your testimony, when you answered Mr. Goodman's questions, that you didn't know why the police officers had—you said 'you didn't know why the police officers were holding you, and you had no idea why they came and picked you up', isn't that what you said?

A. Except for being a run-away from the Industrial School.

Q. All right, sir. So then they at least, had a perfectly good reason for taking you into custody, didn't they?

A. Well, if one or two law officers came to your house, you wouldn't think about it, however to have so many darn near break the front door down, it makes you wonder.

Q. I see. Now, who was with you when this lie detector test was given to you by the South Carolina law enforcement detective agent—that is, were any Virginia police officers there, at that time?

A. They were there, but I don't remember them being in the room.

Q. Did they go with you, when you went to where the lie detector test was given?

Allen Carroll Pruitt

page 80 } A. They were there, after I got there.

Q. You mean, after the lie detector test was given?

A. Yes.

Q. Did you talk with them, the detectives from Virginia?

A. Not before the test was given, no.

Q. Do you know who they were?

A. I don't know who they were, but they questioned me for hours, the day before my trial.

Q. Now, do you know who the lawyers were in your case, before General Sands got into it?

A. No sir, I forget their names.

Q. If you don't know their names, do you know if they were Norfolk lawyers or not?

A. I don't know.

Q. You don't know when it was when they were there, you don't know who they were or where they were from, right?

A. No, sir.

Mr. Witt: Your Honor, I don't believe I have any more questions, at this time.

RE-DIRECT EXAMINATION

Examined By Mr. Goodman:

page 81 } Q. Tell us when and where the first confession took place again, would you?

A. You mean when I was taken into custody, in South Carolina?

Q. Yes.

A. That was November 29th, in Columbus, of '52.

Q. Columbia, South Carolina?

A. It took place in Columbia, South Carolina, yes sir.

Q. And was that on Friday following the Thursday of Thanksgiving, or Saturday following that Thursday?

A. On Saturday, following that Thursday.

Q. Saturday, following that Thursday?

A. Yes, sir.

Mr. Goodman: I have no further questions, Your Honor.

The Court: All right. Step down.

How many more witnesses do you have, Mr. Goodman?

Mr. Goodman: I would like to have an opportunity to get my thought together in my mind, Your Honor.

The Court: Go right ahead, sir.

(Mr. Goodman looked over papers, and then held a conference with the Petitioner.)

page 82 } Mr. Goodman: May I request a recess, Your Honor?

The Court: All right. It's 1:25 now gentlemen, suppose we adjourn for lunch, and reconvene at 2:30 P.M. this afternoon.

(At 2:30 P.M. Court reconvened, and the following occurred.)

The Court: Are you gentlemen ready to proceed?

Mr. Goodman: Your Honor, the Petitioner rests.

The Court: All right, sir.

The Petitioner having rested, Mr. Witt, who is your first witness?

Mr. Witt: The Respondent would like to call Mrs. Mary McDevitt.

MRS. MARY H. McDEVITT, witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Witt:

page 83 } Q. Would you state your name please, for the record?

A. Mrs. Mary H. McDevitt.

Q. What is your occupation, Mrs. McDevitt?

A. I'm a secretary in the Detective Bureau, of the Norfolk Police Division.

Q. And in that capacity, do you act as a police stenographer?

A. Yes, sir.

Q. Were you employed in your present position by the Norfolk Police Department, in the year 1952?

A. Yes, sir.

Q. Did you have occasion to accompany 2 Norfolk police officers, Lt. T. J. Hipple and Detective Lawrence Benton, to South Carolina, for the purpose of inquiring into the investigation of a case involving one Allen Carroll Pruitt?

A. Yes, sir.

Q. Did you go, in the capacity of a stenographer?

A. Yes, sir.

Q. And do you recall at what time you arrived in the company of Lt. Hipple and Detective Benton, at your destination?

A. To which place, sir?

Q. With reference to Spartanburg, South Carolina, what time did you get there?

page 84 } A. I'd say we got there—it was in the afternoon, but I'm not exactly certain — between 2:00 and 4:00 o'clock, at the Police Station.

Q. Could you say approximately what day of the week it was?

A. Friday, the Friday after Thanksgiving.

Q. And you say you arrived at your destination, the police station, between 2:00 and 4:00 o'clock in the afternoon, in Spartanburg, South Carolina?

A. Approximately, yes sir.

Q. And did you see Allen Carroll Pruitt, at that time?

A. Yes, we saw him a short while later in the Spartanburg City Jail.

Q. Now what was your connection with the investigation that was taking place down in Spartanburg when you arrived there—what did you do, personally?

A. I did nothing, until a statement was taken from him.

Q. And, when was a statement taken?

A. (pause) Well, there was a statement taken at about 5:00 o'clock or 6:00 o'clock, that afternoon.

Q. Friday afternoon, in Spartanburg, South Carolina?

A. Yes, sir.

page 85 } Q. And who—what 2 detectives were responsible for the statement being given?

A. Well, there were only 2 detectives from the Norfolk Police Department that were there, Lt. T. J. Hipple and Detective Lawrence Benton, from the Homicide Squad.

Q. And was Officer Hipple present, when the statement was given and transcribed by you?

A. Which statement are you talking about, sir?

Q. The statement that was made in Spartanburg, on Friday afternoon.

A. Yes, I'm pretty certain he was.

Q. All right.

A. A copy of the statement will show whether he was present, or not.

Q. I see. Now, would you describe for the Court please, under what circumstances a statement was given, as far as you have personal knowledge of?

Mrs. Mary H. McDevitt

A. With respect to what, Mr. Witt?

Q. With respect to the reluctance or nonreluctance of the individual to give it, mam?

Mr. Goodman: Your Honor, I believe Mr. Witt is calling for a conclusion, on the part of the witness.

The Court: Sustained. Rephrase the question.

page 86 } By Mr. Witt:

Q. Was Mr. Pruitt present at the time that you actually typed the statement out?

A. No sir, I typed it out in another room I imagine—it's right hard to remember, after 14 years.

Q. Did anyone, in your presence, make any promises or threats to Mr. Pruitt?

A. No, sir.

Q. Do you know whether the statement contains—or the confession contains a statement to the effect that 'no threats or promises were made'?

A. I'm pretty sure it does, sir.

Q. Did you ever hear either Detective Hipple or Detective Benton, make any statement to Mr. Pruitt to the effect that 'they felt that whatever he had been involved in, he probably would not get anything more than Reform School detention resulting from it'?

A. No sir, I certainly did not.

Q. Do you know whether Mr. Pruitt was fully advised as to the nature of the statement that he was giving?

A. I'm sure that he was, sir.

Q. Do you know whether he was advised as to the crime that he was being asked about?

A. I'm certain, that he was.

Mr. Goodman: Your Honor, I object to both
page 87 } answers, and ask that Your Honor strike both answers.

She said 'she's certain' in one instance, and 'she's sure' in another, but she does not know.

The Court: I don't know how much more affirmative she can state it, than 'I'm sure', and 'I'm positive'.

I overrule your objection, Mr. Goodman, to strike.

Mr. Goodman: Your Honor, I think that she either knows, or—

The Court: I have ruled on it, Mr. Goodman.

Mr. Goodman: I note my exception, Your Honor.

Mrs. Mary H. McDevitt

By Mr. Witt:

Q. Mrs. McDevitt, do you know whether Mr. Pruitt had an opportunity to talk to his father on the telephone prior to the time that any statement or confession was made by him?

A. Mr. Witt, I can't remember that.

Q. All right. Now after you left Spartanburg, South Carolina, did you all go to Columbia, South Carolina?

A. Yes, sir.

page 88 } The Court: Let me be certain, if I understand you correctly now.

You were taking down questions, in shorthand?

A. Yes, Your Honor.

Q. And, you were taking down the answers in shorthand?

A. Yes, Your Honor.

Q. And, the detectives were asking the questions?

A. Yes, Your Honor.

Q. And, this Petitioner was answering the questions?

A. Some of them, yes sir.

Q. And later on—what you had taken down in shorthand, later on was reduced to writing, or typewriting?

A. Yes, Your Honor.

Q. And, who typed that?

A. I did, Your Honor.

The Court: All right. Go ahead.

By Mr. Witt:

Q. After you left Spartanburg, South Carolina, would you tell the Court what happened from that time on?

page 89 } A. Well, on Saturday morning we left for *Columbis,* the Capitol, and went to the State Law Enforcement Agency Headquarters.

Q. And, what was the purpose of that trip?

A. Well, to make a further investigation.

Q. Do you know whether or not a lie detector test was given to Mr. Pruitt?

A. I couldn't say that a lie detector test was given to him or not, sir. I couldn't testify, to that.

Q. All right. After having gone to Columbia, South Carolina, did you then go back to Spartanburg, South Carolina?

A. No, sir.

Q. You proceeded from Columbia, South Carolina to Norfolk, Virginia, right?

A. Right, and I think we stopped overnight in Raleigh.

Q. I see. Now Mrs. McDevitt, at a time later in the year of 1953, some time in the summer of 1953, did you have occasion to transcribe another statement or confession which was made by Mr. Pruitt?

A. (pause) I don't recall that one, at the moment.

Q. All right.

A. I commenced on, with other cases.

Q. Not necessarily that one?

page 90 } A. I just can't recall, off hand.

Q. Now, while you were in Spartanburg, South Carolina, did Mr. Pruitt, in your presence, make any complaint about the way he had been treated there by the Spartanburg police?

A. No, sir.

Q. Did he make any request, for an attorney?

A. Not in my presence.

Q. Do you know whether he made such a request, or not?

A. No, sir.

Q. Did he make any request to be allowed to see his parents, prior to the time that this statement was given?

A. Not in my presence, and I don't know whether he did or not.

Q. All right.

Mr. Witt: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

Examined By Mr. Goodman:

Q. You say you arrived at Spartanburg, South Carolina on Friday afternoon?

A. Right.

Q. Between 2:00 and 4:00 o'clock, in the after-

page 91 } noon?

A. Approximately, yes sir.

Q. Could it have been later than that?

A. Possibly, I can't say exactly.

Q. Where was it that you went, to the County or City Jail, at that time?

A. I—we went out first to the City Police Headquarters and talked to Chief of Police Prince, and then we were taken from Headquarters over to the Spartanburg County Jail, which was about 6, or 7 or 8 blocks, approximately, to where Mr. Pruitt was.

Q. Were you there, when Officers Hipple and Benton were first interrogating Mr. Pruitt?

A. I was not in the room with them at first, no sir.

Q. How long were you there, before they called you in?

A. (pause) It's hard for me to say, sir. I would say not over an hour, or an hour and a half.

Q. And after an hour or an hour and a half, he proceeded to make a statement?

A. Yes, sir. It could have been less time, than that.

Q. Now, did you say he also made a statement in Columbia, South Carolina?

page 92 } A. Yes, sir.

Q. Did you type one or two statements, which you say were taken in South Carolina?

A. Two.

Q. You typed 2 statements?

A. Yes, sir.

Q. Do you have—do you know where the first statement was typed?

A. In Spartanburg.

Q. In Spartanburg?

A. Yes, sir.

Q. Do you have a copy, of the first statement?

A. I do not have it, I never kept copies myself as I give it to the officers.

Q. And, did Mr. Pruitt sign the 2 statements?

A. I couldn't testify to that, sir. That was handled by the police officers.

Q. When did he make the second statement?

A. Saturday afternoon, in Columbia.

Q. Do you know approximately what time he made the second statement?

A. I—between 3:00 and 4:00 o'clock, I believe it was between 3:00 and 4:00 o'clock.

(Mr. Goodman shows paper to Mr. Witt.)

Q. Do you know which statement it was, that

page 93 } was used in the trial of his case, or was introduced in the trial of his case?

A. No, sir.

Q. Did you testify as to the taking of the statement, in the trial of his case?

A. I don't believe so.

Mr. Goodman: Your Honor, I'd like to have this marked 'P-2' for identification.

The Court: I'll mark this, as 'P-2' for the purpose of identification.

By Mr. Goodman:

Q. Would you identify this for us, please mam?

A. (Witness looks at paper presented by counsel) This is a statement I took in shorthand, yes sir.

Q. The questions and answers were taken down in shorthand and reduced to this typewritten version—is this a copy of a statement you took and transcribed?

A. This is a Thermo-Fax copy, of the statement.

Q. A Thermo-Fax copy?

A. Yes, sir.

Mr. Goodman: Your Honor, I offer this in evidence, as Petitioner's Exhibit P-2.

The Court: This will be received as Petitioner's Exhibit P-2.

page 94 } By Mr. Goodman:

Q. Do you know or remember, whether or not the first statement that he gave was substantially the same as the statement just handed you?

A. No sir, it was not.

Q. It was not?

A. No, sir.

Q. And, do you have any idea what happened to the first statement that you took down and transcribed?

A. I do not, sir. Certainly I would not be able to say, after 14 years.

Q. Do you have any idea what the first statement consisted of?

A. No sir, I don't.

Q. Yet you say there is a difference between this statement and the other statement?

A. Yes, sir.

Q. But, you can't say what that difference is?

A. No sir, I couldn't say.

Q. And you were in Mr. Pruitt's presence only, in effect, when you were called in to take the statement down, is that correct?

A. If you're speaking about the time in Spartanburg, that's approximately correct, yes sir.

Q. When they were interrogating him in the be-
page 95 } ginning, you were not present in the room?
A. No, sir.

Mr. Goodman: I have no further questions, Your Honor.
Mr. Witt: I have no further questions of this witness, Your Honor.
The Court: Gentlemen, if you are all through with this witness—you may go, you are excused.
A. I'll be over in the Detective Bureau's Office if you should need me, Your Honor.
Mr. Witt: Your Honor, I call Mr. T. J. Hipple.

T. J. HIPPLE, witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Witt:
Q. Would you state your name, sir?
A. T. J. Hipple.
Q. And your occupation, sir?
page 96 } A. Retired Lieutenant, Norfolk Police Department.
Q. Were you a Lieutenant, employed actively by the Norfolk Police Department during the year 1952?
A. Yes, sir.
Q. And specifically in November, of 1952?
A. Yes, sir.
Q. With what particular squad or department of the Norfolk Police Department were you actively associated, at that time?
A. I was in the Burglary Squad, of the Detective Bureau.
Q. Did you have occasion to go to Spartanburg, South Carolina concerning the investigation of one Allen Carroll Pruitt?
A. Yes, sir.
Q. Do you recall when you arrived in Spartanburg, South Carolina pursuant to this investigation?
A. We left Norfolk approximately, or about 9:15 on the 27th of November, 1952, Thanksgiving Day, arriving in Spartanburg, South Carolina approximately, or about 1:15 or 1:20 on the 28th.
Q. The day after Thanksgiving, right?

A. Yes, sir.

Q. Did you proceed to the Police Station in Spartanburg, at that time?

page 97 } A. Yes sir, and talked with Chief Prince.

Q. Did you find Mr. Pruitt at that place?

A. No sir, he was in the Spartanburg County Jail.

Q. And how far was that, from where you were?

A. Half a mile, or a mile.

Q. Now, did you talk to Mr. Pruitt that afternoon after you arrived in Spartanburg?

A. Yes, sir.

Q. Did you participate in the interrogation of Mr. Pruitt, at that time?

A. I interrogated him, yes sir. I asked him several questions.

Q. What advice did you give Mr. Pruitt, at that time?

A. Other than introducing Benton and myself and telling him the reason we were down there, we'd gone ahead and asked him 'whether he had participated in this individual crime?', after we advised him of that.

Q. Were any threats or promises of anything made to Mr. Pruitt, at that time?

A. None whatsoever.

Q. Did you offer to make any?

A. No, sir.

Q. Did anybody else, in your presence?

A. Not in my presence, no sir.

page 98 } Q. Were you with Officer Benton from the time you all started your interrogation, until it was concluded?

A. Yes sir, through the interrogation at the County Jail we were together.

Q. How long did you interrogate Mr. Pruitt, before he gave a statement?

A. Well, we stayed at the County Jail two and a half to three hours, that was on the 28th, and then on the morning of the 29th we went and left Spartanburg about 10:00 o'clock and got into the South Carolina Highway Patrols, outside of Columbia, South Carolina, approximate or about 11:05 A.M.

Q. What was the purpose of going to Columbia?

A. To put on a polygraph.

Q. Did he know why you were going?

A. Yes, sir.

Q. Did he consent, to that?

A. Yes, sir.

T. J. Hipple

Q. Did you ever tell him, 'you didn't think anything were concerned, that it did not amount to first degree Murder, but looked more like self defense'?

A. No, sir.

Q. Did you ever tell him, you didn't think anything would happen to him, except he might go to Reform School'?

page 99 } A. No, sir.

Q. Was he advised as to the nature of the crime that you were asking him about?

A. Yes, sir.

Q. Did you ever apply psychological coercion?

A. No, sir.

Q. Did Mr. Pruitt, at any time in your presence, request the services of an attorney?

A. No, sir.

Q. Do you know whether he asked for an attorney, or not?

A. I can't say that, sir.

Q. Did he, in your presence, ever request an audience with his family?

A. (pause) No, only on one occasion—Lieutenant Faulk came out of the interrogating room and stated that Pruitt said 'he wanted to call his father', and that was on Saturday the 28th, or on Saturday the 29th rather, and he asked me 'would it be all right, for him to call his father?', and I said 'yes, go ahead and let him use the telephone'.

Q. Did he call his Dad, and talk to him?

A. Yes, sir.

Q. He did talk to his father?

A. Yes—well, he talked to someone, I don't know whether it was his father or not, I can't say that.

page 100 } Q. Did he say if he wanted to talk to his father, do you know that?

A. No sir, I do not.

Q. Was that before *of* after he gave a statement to you, do you recall?

A. He called before, prior to giving the statement to me.

Q. Do you know whether or not he was interrogated by Lt. Faulk, at the particular time he was charged and identified by the South Carolina Patrol?

A. No, sir.

Mr. Witt: I have no further questions of this witness, Your Honor.

T. J. Hipple

CROSS EXAMINATION

Examined By Mr. Goodman:

Q. You stated that you arrived in Spartanburg between 1:15 and 1:30, approximately?

A. Right, yes sir.

Q. And you went to the City Jail, or the County Jail?

A. To the Police Headquarters, and then to the County Jail.

Q. How long after you arrived at the County Jail, did you interrogate Mr. Pruitt?

page 101 } A. Well, we had gotten a furnished room and we stayed there for a while just to get fixed up.

Q. When you interrogated him, how long would you say it lasted?

A. Well I'd say maybe for 2 and a half, or maybe 3 hours.

Q. Did he make a statement to you?

A. No statement was taken from him, just queries was all, with regard to this here individual crime that had been committed.

At that time, we did take a pair of shoes from him.

Q. And you say you interrogated him for 2 and a half, or 3 hours?

A. Yes, sir.

Q. Did you interrogate him any more, on that particular date?

A. No, sir.

Q. Do you know whether or not the South Carolina Police Officers interrogated him, after you left?

A. I'm not sure of that—no, I don't know.

Q. Did he, at that time, ask you whether or not—did he say he wanted to see his parents, or that he wanted to call his parents?

A. He was in the custody of the County Jail

page 102 } Authorities at that particular time, and I didn't have any authority over him to say whether—

Q. Well, do you know whether or not he did request to see his parents?

A. No, sir.

Q. Did you advise him of his Constitutional rights, that he didn't have to give you a statement, did you make any threats or promises to him, or did you or anyone else tell him 'he could keep silent, if he wanted to'?

A. I told him 'he could keep silent, and that he didn't have to tell me anything if he didn't want to', I know I did tell him that, sir.

T. J. Hipple

Q. And, did you tell him 'he had a right to seek an attorney, if he wanted to'?

A. Well, he was very friendly when we were questioning him there in Spartanburg, and—

Q. But my question was, 'did you tell him he had a right to seek an attorney'?

A. No sir, I did not.

Mr. Goodman: I have no further questions, Your Honor.

The Court: Mr. Hipple, do you know whether Detective Lawrence Benton is here today?

page 103 } A. No, sir. I have not seen him, Your Honor, since he resigned from the Norfolk Police Department. He is now connected with the Norfolk and Western Railroad in Columbus, Ohio and has been for the last 2 years.

The Court: I see. I have no further questions.

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

The Court: You may step down, sir.

Mr. Goodman: I'd like to ask Mr. Hipple one more question before he leaves, Your Honor. Since he has come down from the stand, do you want me to call him back?

The Court: He can have a chair right up here, by the witness box. Go ahead, Mr. Goodman.

By Mr. Goodman:

Q. The reason you went to Spartanburg, South Carolina was in order to arrest Mr. Pruitt, was it not?

A. He was in custody down there, he was being detained by the authorities in Spartanburg, South Carolina as an escapee from the Vocational School.

page 104 } We went down to interrogate him, in reference to a particular crime which had been committed in the City of Norfolk.

Q. But you more or less had information first, that he was the one you were seeking, didn't you?

A. Yes, sir.

Mr. Goodman: That's all I have, sir.

Mr. Witt: No further questions by the Commonwealth, Your Honor.

And now Your Honor, I call on Mr. Sands, General Sands.

William H. Sands

WILLIAM H. SANDS, witness, appearing on his own behalf, having been called by the Respondent and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Witt:

Q. State your name, please sir?

A. William H. Sands.

Q. What is your occupation?

A. Attorney at Law, and my office is at 713 Virginia National Bank Building, Norfolk, Virginia.

Q. How long have you been practicing law?

A. Since 1916, with the exception of 2 Service periods.

Q. During your practice of law, have you had
page 105 } occasion to represent those accused of felonies?

A. Many times, yes sir.

Q. Both as retained counsel, as well as appointed counsel?

A. Correct.

Q. Did you have occasion to be involved as an attorney in the defense of one Allen Carroll Pruitt, for several indictments returned against him?

A. I was appointed by Judge Richard B. Spindle to represent Allen Carroll Pruitt on these various indictments, on December 17, 1952.

Q. General Sands, do you have any notes in your file from which you can testify, concerning your participation in this Petitioner's defense?

A. Mr. Witt, I have a very voluminous and somewhat extensive file here of longhand notes that I had written out, as well as letters and copies of letters, newspaper clippings, and so forth.

Now on anticipating that I would be called upon to testify, I made a summary of those longhand notes which I have in my file and also of the letters, and I do have a copy here with me, as it may be more convenient to testify from this summary, if you want me to do so, and I might add that this summary is in chronological order.

page 106 } Q. Does that summary contain all the information that you have in your file, on Allen Carroll Pruitt?

A. I think it does, I think it contains all the information which was written in the file, plus a memorandum on all of the pertinent letters which are in the file.

Q. That summary was made up then, using all the information in your file, is that correct?

William H. Sands

A. That's correct, the summary and the notes in the file and the letters—they're both the same.

Q. All right, sir. Using those notes which you have made, would you tell the Court please sir, the particularities of your participation in the defense of Allen Carroll Pruitt from the time that you first got into the case, until its conclusion?

A. If Your Honor please, in testifying from these notes and from information I have contained therein, before reviewing my files, I wish to state that I did not have an independent recollection of this case, but in choosing and making my notes and in going over my file, naturally my memory has been very much refreshed.

On December 17, 1952 I was appointed by Judge Spindle, and also on December 17, 1952 I had a conference with the father.

The Court: With who?

A. With Mr. Pruitt's father, Your Honor.

page 107 } On December 18, 1952 I had a conference with the accused and his father at the jail, and I talked to Mr. Lawler, the City Sergeant at that time, regarding a possible suicide attempt.

On December 19, 1952 I had a conference with Judge Spindle regarding use of money for medical examination, and advisability of Marion. Also on December 19, 1952 I had a conference with Bullock, who was then the Commonwealth's Attorney, who indicated that he would not oppose a motion for Marion. Mr. Bullock loaned me, on that occasion, Pruitt's confession from Carolina, and then on December 19, 1952 at 12:30 P.M. I returned the confession to Bullock.

On December 19, 1952 there was a hearing before Judge Spindle, and the mother and father testified and requested their son be sent to Marion for observation, and the Commonwealth concurred. The Clerk was directed to make the necessary arrangements, and the mother and father than returned to see Mr. Lawler regarding the possibility of suicide.

On April 18, 1953 there was a letter to Judge Spindle from Blalock, who reported that 'Mr. Pruitt is not now insane, and that he has not been insane or psychotic since admission'.

On April 28, 1953—

The Court: Let me ask one thing, when you

page 108 } were referring to 'Blalock', were you referring to Dr. Blalock?

A. Yes, Your Honor.

I had a note I made, and this is what I copied *verbatum*

'Judge Spindle said to see Blalock's letter, and not to set until June 11th'.

Then on April 28, 1953 there was a letter to Mr. Arthur Pruitt in Spartanburg, South Carolina regarding the report of Blalock.

On May 7, 1953 there was a letter to the father, advising him that the case would be set in June, in the June term of 1953, and that I wanted to talk to both he and his wife before going to jail to see Pruitt, on his return from Marion.

On May 15, 1953 I telephoned Mr. Pruitt, Sr., and an appointment was made for May 18, 1953 and then on May 29, 1953 there was a telephone call to Mr. Pruitt, Sr., regarding the result of my conversation with young Pruitt.

The Court: General Sands, just one minute, do those notes reflect what those conversations concerned?

A. They do not, Your Honor.

The Court: All right. Go ahead.

On May 29, 1953 I made a telephone call to Bullock, and as I say, I do not have any independent recol-
page 109 } lection about what I did talk to him about, but I do know that I telephoned Bullock on May 29, 1953 telling him 'to disregard my previous call until June 3rd, regarding no plea of guilty, and that I would advise'.

Then on June 3, 1953 I talked with Mr. Pruitt, Sr., by long distance, who said 'he would be in Norfolk on June 4, 1953'.

On June 4, 1953 I received a telephone call from one C. Y. Brown, an Attorney at Spartanburg, South Carolina. But, I never heard anything further from him—that's all I heard.

On June 5, 1953 Pruitt and Mrs. Pruitt—2 hour conference, arranged with Lawler for them to visit the boy. That's Mr. and Mrs. Pruitt, to see their boy.

On June 9, 1953 there was a letter from Bullock to Blalock, advising that the case had been continued to July 22nd from June 16th.

June 9, 1953—letter to Pruitt, advising him that the trial had been continued to July 22nd and that his mother and father had been notified. Previously, on July—no sir—

On July 8, 1953 I had a conference with young Pruitt in the jail, and he still wanted to plead 'not guilty' and have a jury trial.

On July 11, 1953 there was a letter to Lawler,
page 110 } advising him that Pruitt desired to plead 'not guilty' and that he desired a jury.

On July 16, 1953—

The Court: Who is this 'Lawler' you mention?

A. Mr. Lawler was the City Sergeant at that time, Your Honor.

Then on July 16, 1953 there was a telephone call from Mr. Watt, a South Carolina Attorney, concerning a conference arranged with Bullock for July 19th.

On July 17, 1953 there was a 'phone call from Watt, and I told him that the conference for July 19th was off, there was to be no trial on July 22nd, Watt was not to come up and that I would advise him of a future date, and also that this was cleared with Bullock.

On July 17, 1953 Bullock said 'to tell Watt he would see him either with or without Sands'.

July 20, 1953 a letter to Pruitt, advising him that the case was set for the 22nd, but had been continued, due to the death of Mrs. Sands.

On August 3, 1953 there was a letter to Watt with a copy to Pruitt at the City Jail, advising that a new trial date was Tuesday, August 25th.

On August 7, 1953 a letter to Watt, arranging for a conference between Watt and Bullock on August
page 111 } 15th, and on August 10, 1953 there was an acknowledgment from Watt.

On August 15, 1953 a conference with Bullock and Watt, and—

The Court: When you refer to 'Watt', who is that?

A. Mr. Watt is the lawyer down in South Carolina, Your Honor.

Bullock said 'nothing less than life', and Sands and Watt went to the jail to interview Pruitt, who refused to consider life and insisted on a jury trial, and stated 'he did not kill Ganley, he was only the lookout, and that a boy named Johnson from Portsmouth,' who was later identified as 'Dooley', he said 'he was with him, he would confront this other boy Dooley and tell the story to the Commonwealth's Attorney and to the detectives, and that he had previously kept silent because he did not realize how serious the case was'.

Sands and Watt contacted Bullock, and again visited the jail with Bullock, and Pruitt told the same story. Bullock checked the information received, and turned the matter over to the detective, Sergeant Benton, for investigation.

Q. Let me interrupt you for just one minute, if you don't mind sir. With reference to this particular note, were you

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physically present at the time that Mr. Pruitt, that is Allen Carroll Pruitt, gave the information that you
page 112 } have made reference to, to Judge Bullock?

A. Yes, I was present along with Watt when Bullock went back to the jail, and Pruitt gave him the same information.

Q. What do you mean, by the 'same information'?

A. Pruitt gave Bullock the same story he told Watt and myself. When Watt and I contacted Bullock, then we all went back to the jail together, and Pruitt told Bullock then the same story he had told us.

Q. Now was that particular information that Pruitt gave to all, in your presence—that is the information that he gave you, Mr. Watt and Judge Bullock, was that later reduced to writing, or do you know that?

A. I do not know that, sir.

Q. Well, do you know whether that information was presented to the Court, during the course of the trial or not?

A. Well, I know that the information was certainly testified to, because as a result—let me carry on here a moment—Dooley was in Court, and—

Q. All right, sir. Go ahead.

A. Well, on August 16, 1953 Watt returned to South Carolina, and on August 17, 1953 there was a 'phone call from Watt, saying 'he would contact Bullock direct'.

On August 21, 1953 Pruitt, Sr. came to see
page 113 } Sands, and wanted the boy to have some wit-
nesses, and he suggested a doctor in Portsmouth in connection with Pruitt, Jr.'s neck, but Sands informed Pruitt 'that he does not intend, as attorney for Pruitt, Jr., to put on any testimony pertaining to any possible insanity or mental condition, as that such testimony would be inconsistent with the story the boy told Mr. Watt and Sands as well as Bullock, at the jail the previous Saturday, and which was the only story we had to rely on'.

Sands told Pruitt, 'that if he is not satisfied, he'd better to see the Judge and tell him he's not satisfied or hire another attorney, but to be quick about it', and Sands said 'I am perfectly willing to tell you, that both Mr. Watt and myself have advised young Pruitt that he does not have a single witness other than himself, and we advised him that before he told the story about Dooley'.

Sands told Pruitt, Jr. that 'he had not summoned or subpoenaed any witnesses, and had no statements from any witnesses'.

William H. Sands

Sands told Pruitt, Sr., 'that he did not expect to have any doctors, nor did he anticipate cross examining Dr. Blalock, because to do so would only be for the purpose of questioning Blalock's statement that Pruitt was sane, and in view of Pruitt's statement on the 15th, his last statement in jail when Bullock was present, that he had to rely
page 114 } not on Pruitt's insanity, but on his sanity and that Sands still recommended, and now recommends to young Pruitt, sending the message to him by his father as of August 21, 1953, to take a plea of guilty and life imprisonment, if the Commonwealth will agree to it at this late date'.

Sands later called Sam Watt in Spartanburg, South Carolina and repeated the conversation, and Mr. Watt concurred and agreed that the parents should not go on the stand.

August 22, 1953 there was a letter prepared by Sands to Sands, and signed by Pruitt, in the presence of his father, stating that 'he would like to have his cases heard by Judge Spindle without a jury', copy attached, and I think you have a copy in your file there, Mr. Witt.

On October 5, 1953 there was a letter to Allen Carroll Pruitt, State Penitentiary, Richmond, Virginia with a copy to Watt and to the Clerk of the Corporation Court, signed by Sands, stating 'that Judge Spindle had advised him that his duties and responsibilities had ended, upon the termination of Pruitt's cases in his Court, and that Sands had no further responsibility in connection with his motion for an appeal', and a copy of that letter is also attached.

Q. Now General Sands, this document here which is designated as 'R-2' for the purpose of identification, or which has been introduced in evidence rather—do you recog-
page 115 } nize this document?

A. Yes, I recognize it. This is the original of that document, and from which a photostat was made in my office.

Q. So then, would you identify this please sir?

A. I identify this as the letter addressed to me, on my stationery, signed 'Allen Carroll Pruitt' and also 'Arthur Pruitt', and it's dated August 22, 1953.

The Petitioner signed this in my presence and in the presence of Arthur Pruitt—all 3 of us were present.

Q. You yourself were present then, at the same time?

A. Correct, and you have the original.

Q. Now General Sands, did Mr. Allen Carroll Pruitt at that time, or at any time, indicate to you during your con-

ferences, that he had signed the statement which you had talked to him about, for any particular reason?

A. Signed which statement?

Q. The one that was taken in Spartanburg, South Carolina?

A. No, sir. I saw that statement, because Mr. Bullock loaned it to me. I looked at it, and then I returned it to Mr. Bullock.

Q. Uh-huh.

A. I have no independent recollection whatso-
page 116 } ever, that young Pruitt ever made any comment on it.

Q. Did he ever tell you 'that he signed that statement, because he thought he was just going to go to Reform School'?

A. The first time I ever heard about that was this morning, sitting here in the Courtroom.

Q. Did you discuss the question of the statement with him, at that time?

A. I questioned the confession, I discussed that with him at the time I was preparing for trial.

Q. And, about going to Reform School?

A. Sir, did I? I discussed the confession,—

Q. The one that was signed by Pruitt?

A. Yes, sir. I discussed the confession with him a number of times, and considering the facts I had up to the time I had the surprise information which was gotten by Watt and myself, which we got a couple days before the trial, as I recall, when we had Bullock come down, and as a result of that, Dooley was brought into the case on the day after that, as I recall, I think that was about the same time, August 26, 1953.

Q. Do you recall Judge Spindle discussing the question of Mr. Pruitt's plea with him, at the time his plea was entered?

A. No, I do not recall that. It might be in the
page 117 } transcript, but I don't recall it.

Q. I see.

A. Young Pruitt, in discussing this previous statement which he said he made down in South Carolina, I understood he reenacted the crime while he was at the Police Department.

Q. Did he ever tell you that 'they forced him into doing that'?

A. I never heard that before in my life, that they forced him to make any confession at all.

Q. Did he tell you that?

A. No, never.

William H. Sands

Q. Did his parents ever indicate to you that they had been denied the opportunity to see him, or that they felt he had been treated harshly in any way?

A. I never heard anything like that until this morning, and I think my recollection is pretty correct on that point, because I was in touch with the parents, and particularly his father, we communicated back and forth, and then Watt came up here and I had the resultant conversation with him, as he was the local attorney from the father's home.

Q. Now did Mr. Pruitt, or anybody on his behalf, request you to appeal his case?

A. I don't recall that, but I do recall—just a moment please (witness looks at papers). I had a conference

page 118 } with the Judge, after having made a motion to set aside the verdict and so forth, and as a result of that conference, this letter was written to Mr. Pruitt, young Pruitt, and that was the letter which was sent to him at the Penitentiary, which was in ample time to provide for him any appeal that he wished.

I have that here, somewhere (witness looks through papers) yes, here's the original copy. But before I get to that, I don't see what relevancy that would have to this hearing.

The Court: It might be. What date is that? It was my understanding that one of the complaints that he had, concerned the question of appeal, and I think—

Mr. Witt: Your Honor, I'm not saying that, I'm not raising that question.

The Court: But isn't that the same letter you already referred to, and testified to before?

A. Yes, Your Honor. I'm just trying to explain.

The Court: All right, sir. Go on, Mr. Witt.

By Mr. Witt:

Q. Now General Sands, do you have in your

page 119 } possession there, clippings from the newspapers concerning the trial of this case?

A. I have a copy of The Virginian-Pilot, of Wednesday, August 26, 1953 and also one, I think it's The Virginian-Pilot also, it must be, of September 1, 1953 which I think was the time that he was sentenced—no sir, that was after the Judge had taken it under advisement.

Q. Now, did you take those newspaper articles from the newspapers yourself?

A. I did, sir.

William H. Sands

Q. Does not one—or, is there not one which reflects what took place on the day in Court, does not one of them reflect, as far as you know, a very accurate account of what took place?

Mr. Goodman: I object to that, Your Honor. I think the Court has the record, and also a newspaper record, but those 2 newspaper clippings may not be the same.

The Court: Suppose you look at them, and then we'll see.

(Counsel compared newspaper clippings.)

Mr. Witt: They appear to be the same date, and compare, and I offer them in evidence.

Mr. Goodman: They appear to be the same, but I note my exception, Your Honor.

page 120 } The Court: All right. This will be received in evidence, then.

Witness: May I have a photostatic copy made from the one in my file, Your Honor?

The Court: If you wish. I'll receive the photostatic copy, I'll permit a photostatic copy to be made and substituted for this original, and I'll mark this as Respondent's Exhibit R-3.

By Mr. Witt:

Q. General Sands, I hand you what appears to be the original of notes, which you testified from earlier—

A. Yes, sir.

Q. —and I'd like for you to identify this, tell us what this is.

A. I made up this summary only yesterday, that's when I dictated it.

The Court: Do you wish to enter the original of that, Mr. Witt?

Mr. Witt: As R-4, Yes, Your Honor.

The Court: Any objection, Mr. Goodman?

Mr. Goodman: No objection, Your Honor.

The Court: This summary will be received in evidence, as Respondent's Exhibit R-4.

Mr. Witt: I have no further questions, Your

page 121 } Honor.

The Court: Mr. Goodman, any questions?

Mr. Goodman: Yes, Your Honor.

William H. Sands

CROSS EXAMINATION

Examined By Mr. Goodman:

Q. General Sands, according to your summary, from the time you were appointed, which was on December 17th, is it your recollection or do you know whether or not, prior to December 17th, any other attorneys were appointed?

A. I do not, sir. I just heard that today, in this Courtroom, and I—

Q. Would you—

A. —have no information whatsoever on the subject, other than I was appointed by Judge Spindle on December 17th, and of course that was after the days of Juvenile and Domestic Court, and I immediately contacted his parents—his father, I got in touch with him that same day, as he was in town, I believe, and then I did hear by telephone from this attorney who telephoned me from down in Spartanburg, but he never followed it up, and I don't even recall whether he actually wanted to be in the matter.

Q. You gave the name, a few minutes ago, of a 'C. Y. Brown, Attorney from Spartanburg', on June 4th of '53 General Sands—didn't you know then, that he page 122 } was one of the first ones to interview Allen Carroll Pruitt?

A. I did not, sir.

Q. Do you mean you didn't know some other attorneys had seen him, a week or 10 days before?

A. I mean that the Petitioner never mentioned to me, that he had been seen by some other attorneys.

Q. I see.

A. The only person I knew about, was Mr. Watt, and this other chap did 'phone me, but he didn't follow it up.

Q. Do you know whether or not he was local?

A. As far as I know, he was.

Q. Then as far as you know, you were the first attorney who interviewed Pruitt, after you were appointed on December 17, 1952?

A. Well, I had no way of knowing if any other attorney had been appointed, so I would not be able to say.

Q. But Judge Spindle did appoint you on December 17, 1952 and Pruitt's trial was on August 25th, and you saw him 4 times, is that correct?

A. I wouldn't say that's correct, no sir. If—

Q. Would you say that if this summary shows it to be 4 times, that would be it?

William H. Sands

A. —if it shows 4 times, that means—these notes in my file, let me look in my file here for a moment. (witness looks at papers) I have here a total of 4, but now
page 123 } whether this is a complete set of notes here—I say that I do not have any independent recollection, but other than what is here,—

Q. Well then, do you have any recollection of how long you talked with Allen Carroll Pruitt?

A. I'll say this, that the first time I interviewed him, on the 17th of December, that I have not the slightest idea, and I don't think they kept a record on the time in the old Jail, and this occurred of course, subsequent to the building of the new Jail, but now the City Sergant's Office may have a record of the time.

Q. In other words, of the times you saw him, you don't have any recollection of how long you saw him, is that it?

A. I do not, sir.

Q. And up to the time, up until the time he made the statement concerning — that's the second statement, about Johnson or Dooley, he was going to plead 'not guilty', and he wanted a jury trial, is that correct?

A. Mr. Goodman, I was doing my best to see if I could work, through the Commonwealth's Attorney's Office, for a life sentence, or for anything, but I simply could not get the Commonwealth's Attorney to agree to anything.

I was always trying, but of course first I had to get the consent of Mr. Pruitt and I could not, nor did I
page 124 } anticipate any change in his story at the last minute. I knew nothing about the story which he then told, nor did I know the reasons which were subsequently set forth in the press, in a newspaper clipping, which was introduced, the reasons he gave to somebody, some reporter, as to why he changed his story, but I had no inkling of it.

The Commonwealth's Attorney, Bullock, had cross examined Pruitt for an hour and a half or 2 hours, in the Courtroom, and I have every reason to believe that information—if his story and his reasons for it at that time, if there had been a transcript, I think probably that would have been in there.

Q. But up until that time he had not changed his statement to you and Lawyer Watt from South Carolina, and then subsequent to that, or thereafter, within 7 days, he signed a statement saying 'he was going to plead guilty, and waive a trial by jury', correct?

William H. Sands

A. Well, he indicated that in one of the letters here—that information was discussed with his father, as I recall, that he did not know what to do, until after he talked with his father, and I think it's in the testimony that not until after I talked with Watts and Bullock, was the statement signed by him and his father about his pleas, and that was dated August 22, 1953 and that letter said 'Since talking with my father',

page 125 } Q. That was dated August 22, 1953, correct?

A. That's the letter, yes sir. And I also had a conference with Mr. Pruitt, Jr. and Lawyer Watt on August 15th, and let me see (witness looks at papers) there was, according to my notes here, there was a conference between Watt and Bullock and myself, and my notes indicate that was on August 15th, and that's the time the new story was turned over to Sergeant Benton for investigation.

That letter was dated the 22nd of August of '53, and was after the date of August 21, 1953 when Mr. Pruitt, Sr. came to see me, according to my notes, and we also went together, down to see the boy.

Then, he signed this letter saying 'Since talking with my father, I have decided to enter a plea of guilty to the Murder Indictment and also to the other 2 Indictments for Robbery and Burglary. I would like to have them all tried together.

I would also like to have these cases heard by Judge Spindle without a jury. I fully understand that when I enter a plea of guilty, and the Court hears my case without a jury, that it is entirely up to the Judge as to the amount of punishment which I receive, and that the Judge has full authority to give the maximum punishment, should this be his decision.

I am signing this paper in your presence, and

page 126 } in the presence of my father', and it's signed 'Allen Carroll Pruitt'.

Q. Was there any discussion about a plea of 'guilty as an accessory' and not as a 'principal'?

A. I don't recall a single word on that subject, but I do recall the Judge in the Courtroom, which I think the transcript shows, told him 'that he could be guilty of one without the other', and so forth, but I don't recall, I don't have any recollection of any questioning by Mr. Pruitt on that subject to me, because this letter was dated August 22, 1953 and that was subsequent to the time he told the Commonwealth's Attorney about Dooley.

Q. Then do you have any recollection of what went on in the Courtroom with Pruitt, that is what the Judge said to

Pruitt when he asked him 'what is your plea?', and Pruitt said 'guilty as an accessory', do you know whether or not the Judge told him 'there was not any difference as an accessory, that it was the same as the principal'?

A. I don't recall or remember Judge Spindle questioning him, the only way I know about that, is from what I have in the newspaper clippings, and it may be in the transcript, but I don't know.

Mr. Goodman: I have no further questions of this witness, Your Honor.

The Court: All right, sir. Step down.

page 127 } Did you have any further questions, Mr. Witt?

Mr. Witt: No, Your Honor.

The Court: All right.

Mr. Witt: Your Honor, the Respondent calls H. C. Gornto.

HARRY C. GORNTO, witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Witt:

Q. Would you state your name, please sir?

A. Harry C. Gornto.

Q. What is your occupation?

A. Justice of the Peace, City of Norfolk.

Q. Were you formerly associated with the Norfolk Police Department?

A. Yes, sir.

Q. And were you associated with the Norfolk Police Department, in 1952?

A. Yes, sir.

Q. And at that time, you were a Captain?

page 128 } A. Yes, sir.

Q. Do you recall having had occasion to be associated with the case involving Allen Carroll Pruitt, after he was returned from South Carolina to Norfolk?

A. Yes, I was at the reenactment scene.

Q. By that, do you mean you were present at the reenactment of the crime, by Allen Carroll Pruitt?

A. Yes, sir.

Q. And, were you in the company of Pruitt at the reenactment scene?

Harry C. Gornto

A. Yes, I was.

Q. Were any threats or promises made to Pruitt at that time, to your personal knowledge, in order to get him to perform the reenactment?

A. No, sir.

Q. Do you mean there were not any threats or promises made to him, at that time?

A. That's correct, there were not.

Q. Do you know whether Pruitt assisted the police in finding the weapon, that was used in the stabbing of the deceased?

A. I was not there, when that was recovered.

Q. Do you know whether it was recovered?

A. It was recovered.

Q. But, you say you don't know whether Pruitt
page 129 } assisted the police in finding it?

A. No, but my recollection on it is that he probably did.

Q. But you don't know yourself, for sure?

A. No sir, not personally.

Mr. Witt: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

Examined By Mr. Goodman:

Q. Did you, or do you remember when, just prior to or before the investigation, when Pruitt was taken by the police out of the lock-up and taken out for the reenactment?

A. I was present at the scene of the crime, at the reenactment of it, but I was not present when the weapon was recovered.

Q. I realize that sir, but just prior to being at the scene of the crime, were you present at the jail when they took Pruitt from custody at the jail, and took him out for the reenactment?

A. No sir, I was not there then. I met them, at the scene.

Q. You met them all, at the scene?

A. Yes, sir.

Q. Was any statement made to the effect that
page 130 } 'he did not have to show them, or give a reenactment of the crime' Mr. Gornto?

A. Not to my knowledge, no sir.

Q. Was any statement made, to your knowledge, that 'he could have a lawyer present, if he wanted one'?

Harry C. Gornto

A. No, sir. He actually seemed eager, to make the reenactment, to me.

Q. That is, as far as you were concerned?

A. Yes, sir.

Q. And was that as far as you went, in any *accociation* had by you, in the case involving Allen Carroll Pruitt and the reenactment of the crime?

A. Yes, sir.

Mr. Goodman: Thank you, that's all.

Mr. Witt: No further questions, Your Honor.

The Court: If you gentlemen are through with this witness—you may go, you may be excused Mr. Gornto.

Mr. Witt: The Respondent rests, Your Honor.

Mr. Goodman: We rest, Your Honor.

The Court: All right, gentlemen.

(Counsel presented argument to the Court, after which the following occurred.)

page 131 } The Court: Gentlemen, I'm going to ask each of you to present legal memorandums to the Court, and they can be brief or lengthy, but they are to be based upon your findings and examination of the exhibits which are in evidence in this case.

As far as the Court is concerned, I have a very clear recollection of the testimony that has come before the Court, but all that has to be interrelated with the exhibits which are before the Court.

I'd like your legal memorandums on law, and I'm especially interested in and I'd like to have the Statutes as they now exist, with respect to the Sections which were quoted by Mr. Goodman in his argument, their relation with, if any relation, to § 16.1-176 and its related Sections.

I'm going to give you gentlemen plenty of time on that, and I'm going to take time to seriously consider all the evidence before me, and I'm also going to delve into the law.

page 132 } Gentlemen, I would like you to reset this matter by agreement, if you can, and if you cannot agree or if you should disagree, I will set the date.

I'm going to remand the Petitioner, Allen Carroll Pruitt, back to the custody of the Superintendent of the Virginia State Penitentiary, until such time as these memorandums may reach the Court, and the Court takes under advisement the questions of law as well as the evidence.

Petitioner: All right, sir. Thank you, Your Honor.

The Court: Anything you, or anyone else in your position, have to say to me, I'll be glad to hear it, but it will be said to me through your lawyer.

Mr. Goodman: Your Honor, I think the Petitioner only wishes to thank you, as a matter of fact.

I'm very sorry, Your Honor, but if the custodian of the prison or if anyone else is in the Court, that might—

The Court: I have nothing to do with either custody or security, and any such questions which may in
page 133 } fact concern the Petitioner, are matters that are certainly strictly between the prisoner and those who do have custody or security control.

And now gentlemen, this Court is adjourned.

(Court adjourned at 4:00 o'clock P.M.)

page 134 } January 31, 1967

Deputy Clerk: This is Allen Carroll Pruitt vs. C. C. Peyton, Superintendent of the Virginia State Penitentiary.

The Court: Gentlemen, testimony was heard in this matter early in May of last year and then at the time of hearing of the evidence and before disposition, I think I'm correct in this, before disposition in this matter or before my decision was forthcoming, as we were not aware of what the implications of certain witnesses' testimony would be, that would be involved in the decision, the matter was taken under advisement and I offered to each side, the right to reopen.

Since then, there has been taken depositions in this matter, in the presence of both attorneys, and this morning those sealed depositions were opened in their presence and it was agreed between counsel that these depositions would be admitted into evidence the same as if fully read,
page 135 } without the same having to be heard, subject of course to ruling on any objections which were taken by you, Mr. Goodman, as propounded at the time of the depositions—is that correct?

Mr. Witt: Yes, Your Honor.

Mr. Goodman: With one exception, Your Honor—that in addition to the objections that I made in the depositions, that I have a right to state my objections to other questions in the depositions at the time of the hearing of these depositions by the Court.

Mr. Witt: That's correct, Your Honor.

The Court: All right, gentlemen—subject to ruling, you may make your objections, Mr. Goodman.

Gentlemen, for the purpose of identification, I'm going to mark these: the deposition of Lt. J. Frank Faulk, will be marked R-9; the deposition of Lewis E. Jett, will be marked R-10, and the deposition of James B. Driscoll will be marked as R-11; and it is stipulated that these will be admitted into evidence, subject to objections taken by the At-
page 136 } torney for the Petitioner, the same as if fully read.

Now at this time, we can refer to these depositions and I will rule on the objections: take R-9, the deposition of Lt. J. Frank Faulk, what objection there would you like to point out, Mr. Goodman?

Mr. Goodman: Your Honor, the only objection I might have is on page four, approximately two-third's of the way down:

'Q. Do you know of any advice given Mr. Pruitt, concerning that statement?

A. He was advised, of his rights.

Q. You heard the Norfolk Police officials do that?

A. Yes'.

Your Honor, I think 'what he heard the Norfolk police officials do', was my objection.

The Court: All right, sir.

Mr. Witt: Your Honor, the objection of course, was 'if it was done in the man's presence and if he heard the advice given'—there was no stipulation, and I honestly don't know if it was a question as to 'what exactly the advice
page 137 } was', only 'did he heard the advice given'.

The Court: There was consent; the fact is that the test was given rather, on consent—I overrule your objection as contained in R-9 on page four, and I'll mark it here to show where the objection was, by a check mark on that page.

Mr. Goodman: Exception noted, Your Honor—there's nothing else in R-9, Your Honor.

The Court: All right—R-10, now.

Mr. Goodman: In R-10, Your Honor, on page three—actually, it starts with the question on page two:

'Q. Whatever transpired in your presence, please tell us, just state what the Chief told you in your presence'.

I objected to 'what the Chief told us', on top of page three, Your Honor.

The Court: Mr. Witt, what's your position?

Mr. Witt: Well Your Honor, again, that had to do with how it was that the particular police officer went to Allen Carroll Pruitt's house to start off with, to effect arrest, and my only purpose of asking the question was that

page 138 } they had been advised that Pruitt was there; they already knew, as it developed further into the testimony, that he was wanted, and my only purpose was to show that he had been advised where he was and that he could be picked up; and again, these two individuals were present at the time that the statement was said to him by the Chief of Police and he heard it himself.

The Court: With reference to the objection taken to the Exhibit R-10, the deposition of Lewis E. Jett, as shown on page two; I sustain the objection, Mr. Goodman, and I'll strike the answer following that objection.

Mr. Witt: Note my exception if you will please, Your Honor.

Mr. Goodman: That's all I have on that, Your Honor.

The Court: Now as to R-11, the deposition of James B. Driscoll.

Mr. Goodman: Your Honor, on page two, at about the middle of the page, 'the Chief of Police at that page 139 } time, had a telephone conversation', and so forth —I object to the rest of that answer, to that question.

The Court: Where, is your objection?

Mr. Goodman: I didn't object to it, at that time, Your Honor.

The Court: It says, here:

'Q. Would you state, please sir, the circumstances under which you became involved with Mr. Pruitt on Thanksgiving Day in 1952?

A. Some of it now, is a little bit vague—the Chief of Police, at that time, I believe he had a telephone conversation with the Norfolk, Virginia police in reference they were wanting one Carroll Allen Pruitt, whatever his name be, whom we knew he was at that time a runaway from the Reform School in the State of South Carolina, and had been for several months. They were wanting an investigation into a murder and burglary, a man had been stabbed to death'.

Mr. Goodman: Yes, Your Honor—I now object to that, Your Honor.

The Court: All right, Mr. Goodman—I'll mark that with a checkmark, beginning with the word 'Some', page 140 } and ending with the word 'death'.

Mr. Goodman: Yes, sir.

The Court: And, you now object to that?

Mr. Goodman: Yes, Your Honor.

The Court: All right, sir—Mr. Witt, what do you have to say?

Mr. Witt: Well Your Honor, of course our position at

that time and at this point, is that no objection was made at that time; but the purpose of our question, would be to the same particular act, and it was tying in information and so forth.

The Court: I'm going to put a checkmark beside that, on page three—I'll sustain your objection, Mr. Goodman, and I'll strike that.

Mr. Witt: Note my exception to your ruling, please sir.

Mr. Goodman: On page six, Your Honor, the question was:

'Q. Do you know if he communicated with his parents, while he was here?

A. I don't know. I understand that he called his father in Spartanburg, while he was here'.

page 141 } I'd like to object to this, because of what he said—he didn't know whether he called his father or not, and it was just hearsay information that he said he knew.

The Court: That's also in R-11, in the deposition of James B. Driscoll—what's your position on that, Mr. Witt?

Mr. Witt: I don't know where you are now, Your Honor.

The Court: You're not objecting to the part where he said 'I don't know', are you, Mr. Goodman?

Mr. Goodman: No, Your Honor—just the part where he said, 'I understand that he called his father in Spartanburg, while he was here'.

The Court: I'll sustain your objection, Mr. Goodman, and I'll enclose that part in brackets 'I understand that he called his father in Spartanburg, while he was here', and I'll strike that.

Mr. Goodman: That's all I have, Your Honor.

The Court: All right, gentlemen—do either page 142 } of you, have any further evidence?

Mr. Witt: Yes, Your Honor—at this time, Your Honor, and as I mentioned to Mr. Goodman, I had occasion to inquire into the file that was lodged in the Commonwealth's Attorney's Office, as part of their regular filing system and as part of their records that are kept in their normal course of business, in an effort to show the Court the preparation and investigation that was made into this particular individual's background prior to the time of trial; not prior to the time of his Juvenile and Domestic Relations Court hearing, but prior to the time of trial, and I would like to offer certain documents which have been kept as a matter of record in these files, now.

I have talked with Mr. Goodman about these, this morning, and he stated objection to the introduction of any of these

things on the ground of their inadmissibility, and posed that 'they could not be identified', and I stated that 'I could get someone from the Commonwealth's Attorney's Office to come over and testify that 'these were the files on this
page 143 } matter, that were in the files', if he felt it necessary for me to do that', but it's my *understand* now, that he's not going to require me to do that.

The Court: His position is, that he's not going to question the authority then, and will certify the facts in the file of the Commonwealth's Attorney's Office, but his position is that he objects to the introduction on the basis of them having been part of the regular filing system there, as not being identified for admissibility?

Mr. Witt: That's right, Your Honor.

The Court: I follow you.

Mr. Witt: I have also had occasion to talk with Judge Bullock, who was the Commonwealth's Attorney at the time of the maintaining of these files, and I also told Mr. Goodman the result of my conversation with him, in substance, which is; Judge Bullock would not be able to offer any evidence as such, as unfortunately, he did not have any independent recollection of what took place.

There are communications, between four signatures; Judge Bullock and various other personnel from South
page 144 } Carolina and the City of Richmond, dealing with the background of this particular individual, in the preparation and investigation that was done into his background.

Also, there was one further document which does not deal with this man's background, but which does have some bearing on what took place at the December 1st, 1952 hearing date, at which time he appeared in the Juvenile and Domestic Relations Court, and that is the Petition that was filed as Exhibit I to our Answer and indicates that on that date a hearing was held, and that he was certified to the Grand Jury on that date.

I have two documents in my possession, that are also part of this file, and which indicate that he was present at the hearing just mentioned, and what testimony was taken at that time, and I would consider that to be significant in the determination by the Court as to this, and pertinent to the allegations concerning that particular hearing.

I would like the opportunity to offer these
page 145 } things for the Court's consideration in making its final determination on the completed evidence in this case.

The Court: On the theory of these being incorporated into

the Commonwealth's Attorney's files, as files kept in the regular course of business?

Mr. Witt: That's correct, Your Honor.

Mr. Goodman: As to those two documents, Your Honor, I don't know whether he offered them the last time or not—I don't remember.

Mr. Witt: I know I had two documents that I offered, and I think one of them was the transcript of what went on in the lower Court, I'm not too sure; but I think I had that in mind, to show that there were certain persons that were there as witnesses.

Mr. Goodman: That may be true, Your Honor.

The Court: Let me check here, and see:

(The Court looks through papers) Mr. Goodman, I think there was a document on that point; but as far as the other documents are concerned, I don't believe they have anything to do with this particular case—whatever may be
page 146 } presented as trial work and preparation, I don't think has anything to do with this matter here—this is strictly another matter, and those records are not saying anything as to what we are concerned with here today.

Mr. Goodman: I object to any of it being introduced, Your Honor.

The Court: All right, sir—if there isn't anything further, I sustain your objection, Mr. Goodman, and in order that the record may be kept straight, I'll allow you to state into the record what you have to offer in the way of proof, and if I'm wrong, then it will be before the Appellate Court.

Mr. Witt: I see no reason to do that, Your Honor.

The Court: But, I don't know that—so gentlemen, after we finish this other matter, and if it's agreeable with counsel and in the interest of saving time, I'll be glad to allow that to be done.

Mr. Witt: I'll be glad to, Your Honor.

Mr. Goodman: It's perfectly all right, with me.

The Court: Anything further, now?—Mr. Witt, do you have anything further?

page 147 } Mr. Witt: No, sir — nothing further, Your Honor.

The Court: All right—any Argument, gentlemen?—let me say this, to you gentlemen: in order to keep myself abreast of what we have done, I have kept almost *verbatim* notes and I have studied those notes very carefully so that my mind could be completely refreshed in going back to the date of the first hearing, as well as everything that's been involved with this case, but I'll be glad to hear any Argument counsel wishes to make.

Mr. Goodman: Your Honor, I think that Argument has been made previously by both of us, and I think we both have written briefs on the matter and presented them to the Court; I don't have anything further to offer and I don't see any point in presenting the same Argument again.

The Court: Mr. Witt?

Mr. Witt: Your Honor, of course I offered Argument in response to Mr. Goodman's Argument, and I think the entire case is very much in the mind of the Court any-
page 148 } way; the only possible point that the Court might have some interest in, might have to do with the application of the Juvenile and Domestic Court laws at that particular time, with reference to something that occurred in 1952—I'm prepared to make comment on that, if the Court would like to hear it.

The Court: I'll be very glad to hear it, Mr. Witt.

(Mr. Witt presented Argument to the Court, after which Mr. Goodman made a brief statement.)

The Court: All right, gentlemen.

JUDGE'S DECISION

This Court makes the following findings of fact and conclusions of law: this matter came on before this Court upon a Petition for a Writ of *Habeas Corpus,* prepared and filed by the Petitioner; Mr. Harold J. Goodman, a discreet and competent Attorney at Law, was appointed by the Judge of the Corporation Court of the City of Norfolk to represent the Petitioner, by Order dated June 3, 1964, and by
page 149 } this same Order, the Judge of that said Court disqualified himself from presiding over these proceedings and I am thus sitting on behalf of, at the request of and instead of, the Honorable H. Lawrence Bullock, Judge of the Corporation Court of the City of Norfolk.

This Petitioner's Petition was broadened by the Opening Statement of his counsel, and rests basically upon the following contentions: (1) that the Petitioner, in his Petition, claims he plead 'guilty' only as an accessory; (2) that he was not appointed counsel, at preliminary hearing; (3) that the Juvenile Statutes were not followed, or complied with; (4) that he was held in Spartanburg, South Carolina for 48 hours, and was denied the right to obtain an attorney, and (5) that his confession which was given in Spartanburg, South Carolina, was not voluntarily given.

A sworn Answer, together with Exhibits I through IX

attached thereto, to be read as part of the Answer, was also filed before this Court; this Answer, denies each and every allegation of the Petition.

This matter was continued from time to time, by both the Petitioner and the Respondent and then by agreement between counsel, came on to be heard in part, upon the Petition and the Answer, on May 5, 1966.

The Respondent as well as the Petitioner, both were allowed to reopen, and as a result of this allowance page 150 } to reopen, depositions were taken in South Carolina by counsel for the Respondent, with the Petitioner's counsel being present during the taking of these depositions; by stipulation and agreement by both attorneys, these depositions have been received into evidence here today, the same as if fully read, as Respondent's Exhibits R-9, R-10 and R-11; the Court has ruled on the objections made by counsel for the Petitioner and the depositions have already been introduced and made a part of the record in this matter.

The Court, at the time of trial, had an opportunity to observe the witnesses on the witness stand, their demeanor and manner of testifying, and their interest or bias, if any; and from all the facts and circumstances during the trial, to determine which witnesses were more worthy of credit and to give credit accordingly.

The Court adopts the following findings of fact: Allen Carroll Pruitt was born June 3, 1935 in Landrum, South Carolina; commencing on November 20, 1952, he resided in Portsmouth, Virginia with a brother and his wife, for about three weeks; he left Virginia, and then on April 6, 1952, he came back to Virginia to live with his uncle, one Willie B. Pruitt, at 554 Elliott Street in Portsmouth, Virginia, and he was later self-employed as a painter, in the Norfolk area.

This Petitioner's father, Arthur Pruitt, and his mother, resided in Spartanburg, South Carolina; his page 151 } parents were residents there then, and at the time of this hearing, were residents of the City of Spartanburg, South Carolina, and *neither of his parents has ever been a resident of the City of Norfolk or the State of Virginia.*

This *Petitioner had been committed to the Industrial School* at Florence, South Carolina *by the South Carolina authorities, and was an escapee and fugitive* from those authorities over a period of time, including the period of from November 20, 1952 up until his apprehension on November 27, 1952 at his mother's home, while visiting in Spartanburg, South Carolina.

On November 27, 1952, while the Petitioner was visiting

his mother's home in Spartanburg, South Carolina, the South Carolina police arrived, looking for him; his family knew that he had escaped from the South Carolina Industrial School and that the police were looking for him; he was taken into custody by the South Carolina police, with his mother and family being present when he was taken into custody at his mother's home and his mother and father both knew that he was taken and put in the City Jail at Spartanburg.

This Petitioner then claims that the South Carolina authorities questioned him for several hours,but that he did not know what they were questioning him about—he 'thought it was for running away', and from this, it would appear by the Petitioner's own statement, that the alleged

page 152 } questioning by the South Carolina police must have related to his running away from the South Carolina Industrial School at Florence.

These depositions herein referred to previously, Respondent's Exhibits R-9, R-10 and R-11; referring to R-9, the deposition of Lt. J. Frank Faulk, he stated on page three of that deposition, that 'this Petitioner was advised of his rights, concerning the taking of a polygraph test', he was further advised that he was entitled to counsel' and 'that he was asked 'if he had counsel', to which the Petitioner stated 'no' and then he freely took the test.

In reference to this Petitioner being advised of his rights concerning the polygraph test, in that same deposition, on page seven, it is noted that 'after he had taken the polygraph test, the Norfolk police were called in; that a statement was given amid congeniality and they then left together', referring to the Norfolk police and this Petitioner.

It is also noted in R-10, the deposition of Lewis E. Jett, that 'at no time', on page six, 'did the Petitioner make any complaints, nor did he complain of any physical ills'.

And it is noted in R-11, the deposition of James B. Driscoll, on page three, that 'there was no physical abuse or threats of violence used, as far as this Petitioner was

page 153 } concerned', and it is further evident on page four, that 'this Petitioner's father came to the City Hall and talked to the Chief of Police about his boy having run away from the Industrial School' and 'that was right after the call came from the Norfolk police'.

Following that evidence, as shown in depositions R-9, R-10 and R-11 and as was pointed out by the Court, two Norfolk detectives, one 'Benton', who is no longer a member of the Norfolk Police Department and who is now a resident of another State, and who was not present as a witness at the

time of this hearing, along with T. J. Hipple, another detective from the Norfolk Police Department, and Mrs. Mary McDevitt, a police stenographer who took the Petitioner's statement in Spartanburg, South Carolina, testified.

These witnesses arrived in Spartanburg, South Carolina on Friday, November 29, 1952 approximately between the hours of 5:00 and 6:00 o'clock P.M.; Lt. T. J. Hipple talked to the Chief of Police, and then he talked to this Petitioner; and the evidence establishes by the testimony of this officer as well as by other evidence, that this Petitioner was advised of his rights and further, of the fact that 'he had participated in a crime'; no threats or promises were made to this Petitioner, and these transactions took approximately two-and-a-half to three hours.

The Petitioner then consented to a polygraph
page 154 } test, and the Petitioner along with the Norfolk detectives, went to the Highway Patrol where the polygraph test was made at approximately 11:05 A.M., the next day; again, he was advised of the nature of the offense of which he was suspected, no physical coercion was used and the Petitioner *never requested an attorney in the presence of the Norfolk officers,* but the Petitioner did request of them that 'he be allowed to call his father' and he was allowed to do this and did make a call (Tr. p 42, Line 15), *this was all before any statement was made to the Norfolk detectives* (Tr. p 43, lines 2 through 9).

At no time did the Petitioner make any complaints to the Norfolk detectives, about the South Carolina police; a statement was given to the Norfolk officers freely, and without any threat or promise on their part or on the part of any officer in their presence; the questions were asked by Lt. T. J. Hipple and were taken down in shorthand by Mrs. McDevitt, the police stenographer, and the answers given by the Petitioner were also taken down in shorthand, the statement was then transcribed and typed.

The evidence establishes that this Petitioner 'was not told that the offense did not amount to first degree murder, or that it looked like self defense' (Tr. p 98), or that 'nothing would happen except that he might go to Reform School' (Tr. p 98).

page 155 } The Petitioner was taken into custody on Thanksgiving Day, November 27, 1952 and returned to Norfolk the following Sunday, November 30, 1952; upon being brought to Norfolk, the Petitioner admitted to *having seen two lawyers within two, or just about three or four days* after he had been brought back to Virginia from South Carolina (Tr. p 44, lines 12 through 18).

It is significant that it was estimated to be about ten days later, before he saw General Sands, the Attorney appointed by the Corporation Court of the City of Norfolk.

The element of time within which he saw the first two attorneys was estimated vaguely by the Petitioner (Tr. p 44 lines 12 through 15), but it is significant as to what the Petitioner said they told him (Tr. p 44 lines 16 through 22), these lawyers told him 'they had been appointed' and *they further advised him of the charge,* and it seems evident that these attorneys saw the Petitioner shortly after his arrival in Norfolk and it was about ten days later, before the lawyer appointed by the Corporation Court saw the Petitioner for the first time, on December 17, 1952.

The Petitioner herein stated that 'he had no legal advice or counsel, at the time he was in Juvenile Court' (Tr. p 44 line 4), nor do any Orders of Appointment appear in the Corporation Court other than the appointment of

page 156 } William H. Sands, Attorney at Law.

After the appointment of this attorney on December 17, 1952, by Judge Richard B. Spindle, Judge of the Corporation Court of the City of Norfolk, now deceased, this attorney, on that same day of his appointment, had a conference with the father of the Petitioner; on December 18th, he had a conference with the Petitioner and his father together, in the City Jail; on December 19th of 1952, this attorney had a conference with Judge Spindle and the Commonwealth's Attorney, concerning a medical examination of the accused and on December 19, 1952 there was a hearing, with the *father and the mother of the Petitioner testifying,* and then the Petitioner was sent to Marion for observation.

It is obvious that whatever occurred in the Juvenile Court, that in the Corporation Court, by this hearing, they had complied with Title 16.1-176 (b) as to the physical, mental and social conditions, and so forth and also as was required by the case of *Commonwealth* vs. *Tilton,* 196 Va., 774.

There were detailed communications between counsel, the Petitioner and the Petitioner's parents, throughout the entire pre-trial representation (Tr. p 109 lines 5 through 24).

On July 16, 1953 this Petitioner's appointed counsel was contacted by a Mr. Watt, an Attorney from South

page 157 } Carolina, who had also been retained by the Petitioner's father (Tr. p 54 lines 16 through 20); Petitioner had *not only an appointed attorney, but an employed attorney of his own choosing,* who participated in conferences not only with the appointed attorney but also with the Commonwealth's Attorney (Tr. p 110 lines 24 through 111 line 7).

The Petitioner then desired to make another statement or confession to the police, after having the benefit of the advice of the attorney of his own choosing as well as his appointed attorney, William H. Sands; he admitted to being the lookout for one 'Dooley' during the alleged killing, but stated he didn't do the actual stabbing (Tr. p 111 lines 9 through 17); he then, in the presence of both of his attorneys and the Commonwealth's Attorney, told the same story (Tr. p 111 lines 18-19); this story was checked, and investigated; these two attorneys advised this Petitioner concerning the defense (Tr. p 113 line 25 through p 114 to line 9).

It appears that after his second confession, denying the killing and implicating one 'Dooley' and admitting to being only a lookout, that he then sought to rely on insanity, especially when counsel had the benefit of seeing the medical reports from Marion that would have been an inconsistent and poor defense.

The defense and the trial tactics were discussed
page 158 } by the appointed attorney and by the attorney of
the Petitioner's own choosing, and they were also discussed with the Petitioner and his father; there were no witnesses for this Defendant, and both attorneys discussed this with the Petitioner (Tr. p 113 lines 14 through 19), and the Petitioner's father was also advised, as to how the defense would proceed (Tr. p. 113 lines 20 through line 9 p 114).

After repeated visits and conferences, as shown by Respondent's Exhibit R-4, the Defendant decided and so stated in writing, in the presence of his father, that 'he did not desire a jury trial' (Tr. p 114 lines 10 through 14) and Respondent's Exhibit R-2, and that 'he wished to enter a plea of guilty, with the full understanding that the amount of punishment would be entirely up to the Judge and that the Judge had full authority to give the maximum punishment'.

The complete narrative of the trial and proceedings prior thereto, were written in detail by the presiding Judge, Judge Spindle, and is included as Respondent's Exhibit IV attached to the Answer, and read as a part thereof and as evidence; this shows clearly, that there was an experienced attorney appointed for the Petitioner; that the Court committed this Defendant for observation; that the Petitioner entered a plea of 'guilty' to the Indictments, and that the Petitioner was questioned by the Court as to *'whether he fully understood the import of such pleas', and he said 'he*
page 159 } *did';* the Court then explained the law applicable,
and the punishment (P 2 of Exhibit IV of Respondent's Answer).

This Court further considered the Defendant's *mental responsibility and his school record, his I. Q., his school grades and whether he was a disciplinary problem;* Dr. Joseph Blalock *testified in detail, concerning the Defendant's mental condition;* then the Petitioner took the stand and testified, but *never questioned the confession in Spartanburg as being involuntary,* he only repudiated this confession as to the activities described therein, *he showed a quickness of response, alertness, and a general grasp of all involved that would be unusual in any person of his age.* (I have been quoting the 'mental responsibility' quotation, from the trial Judge's Findings in this case).

The Defendant reenacted the crime here in Norfolk, including showing the police where the knife used in the slaying had been thrown into a drain, and the knife was recovered.

An elaborate report of the trial was written by a newspaper reporter, which gave an accurate account of all the proceedings, and as was so stated and incorporated as a part of Judge Spindle's Opinion (Respondent's Exhibit R-3).

This Court had the opportunity of observing all the witnesses as they testified from the witness stand, their demeanor and manner of testifying as well as completely
page 160 } examining in detail the transcript of the testimony and all the exhibits involved herein; based upon a complete examination of all the evidence and the law involved, this Court makes the following findings and conclusions of law:

In the Petitioner's original Petition, filed by himself on May 25, 1964, it is alleged that Petitioner 'was denied due process of law', in that he was not *accorded adequate and effective assistance of counsel* (P 2 of Petition).

This Petitioner was interviewed within two to four days by two attorneys, after his arrival in Norfolk the last part of November, 1952. After the matter had been sent on to the Corporation Court of the City of Norfolk, William H. Sands, an attorney of many years' practice and experience, was appointed to defend this Petitioner; he made several visits to the Norfolk City Jail and had interviews and conferences with the Petitioner, and also with the Petitioner's parents; he had the opportunity to examine the confession of the Petitioner that was taken in Spartanburg, South Carolina, and he also had the benefit of frequent consultations with the attorney of the Petitioner's own choosing, Mr. Watt, of Spartanburg, South Carolina; he took steps to have the Petitioner medically examined, and he had the benefit of seeing this medical report prior to the time of trial.

These two attorneys, Mr. Watts, who was employed by the Petitioner and Mr. Sands, who was his Court-
page 161 } appointed counsel, discussed not only their evidence, but they explained their trial tactics to the Petitioner and also to the Petitioner's father. With the full representation of two capable attorneys, the Defendant then expressed his desire to 'make another confession' in which he sought to exonerate himself as the killer and implicated one 'Dooley', who testified in the trial and merely implicated himself as a lookout.

This Petitioner's appointed attorney's memorandum of visits, conferences and preparation for trial, is quite lengthy and is based on his files (Respondent's Exhibit R-4). This Petitioner had the services of not only an *effective, experienced and most competent appointed attorney, but also the services of an attorney of his own choosing, who was employed by his father* and both these attorneys were in complete agreement as to the handling of the case and the preparation of the case for trial, and the appointed attorney kept not only the Petitioner completely informed, but the father of the Petitioner was also kept advised.

This Petitioner fully understood his defense and he fully understood the gravity of the punishment of the offense thereof when he decided to enter a plea of 'guilty' and to waive trial by jury; this was fully understood and is clearly evident not only from conversation reported, but also by Respondent's Exhibit R-2 which was executed by the Petitioner himself, and witnessed by his own father's signature.

page 162 } This Petitioner was further, fully questioned by the trial Judge, as to 'whether he fully understood the import of his pleas', and the Petitioner answered that 'he did' (Respondent's Exhibit IV attached to Answer); the Court further explained to the Petitioner that 'if he permitted the pleas to stand, it would be the duty of the Court to apply the law and fix the punishment', and the Petitioner understood that. (This is quoted from the trial Judge's Opinion)

The Defendant took the witness stand in his own behalf, and was vigorously cross-examined for nearly two hours, *during all of which he showed a quickness and alertness, and a general grasp that would be unusual in any person of his age.* This Court holds, that this Petitioner had effective counsel.

In addition to this Petitioner's original Petition, he filed a 'Supplemental Brief, in support of the Petition for *Habeas Corpus*' and while this perhaps technically should not be

regarded as a Petition, it is felt that in the interest of justice, the Court should not deal in technicalities but should allow Petitioners a full and complete hearing.

Judges are free to adopt any appropriate means, for going into the legality of detention in order to ascertain all possible grounds upon which prisoners claim to be entitled to relief, *Sanders* vs. *U. S.* (1, 963), 373, U. S. 1, 22.

page 163 } It is contended, in effect here, that this Petitioner was 'forced to make an involuntary confession and was not allowed to contact his family', as well as further allegations concerning the 'ineffectiveness of counsel'.

This Petitioner, who is now 29 years of age, at the time of his arrest in Spartanburg, South Carolina, was 17 years of age, he was born June 3, 1935.

This Petitioner was an *escapee from an Industrial School* in the State of South Carolina; his family was aware that he was an escapee and the *Petitioner himself, expected to be picked up as a fugitive,* and he was arrested as such by the South Carolina police.

He was interrogated the following day by Norfolk detectives concerning the offense of Murder, and he was advised of his rights (Tr. p 102 lines 6 through 12); he was advised of the nature of the offense and he never requested an attorney; he did request to call his father, and he was allowed to do this (Tr. p 42 line 15).

A statement was freely and voluntarily given to the Norfolk detectives; no threats or promises were made to this Petitioner nor was there any coercion, mental or physical and this statement which the Petitioner signed, further shows on its face, that no threats or promises were made to this Petitioner by either the South Carolina police or the Norfolk police, it further showed that no threats or prom-

page 164 } ises were made; this statement was taken in shorthand, and in the Petitioner's own words.

This Petitioner then, on a later date and after consultation with his appointed attorney and the employed attorney of his own choosing, gave a further statement or confession in which he reiterated the facts concerning the crime; the lawyers never attacked these confessions and it is apparent from this, as well as the Opinion of the trial Judge, that no such attacks were made on either confession. I hold therefore, that the confessions involved herein and complained of, were freely and voluntarily given by this Petitioner without any threats or promises and were properly before the Court at his trial, and that there is no merit to this contention.

I further find that this Petitioner was allowed to com-

municate with his family both in Spartanburg, South Carolina and on numerous occasions including visits, prior to his trial in Norfolk.

Allegation No. 1 of this Supplemental Brief, is without merit and is not supported by the evidence; allegation No. 2 was not supported by any evidence, offered by this Petitioner; allegation No. 3 was not supported by any evidence offered in the hearing, but in the same Brief on page 5, this Petitioner alleged and wrote:

page 165 } "On the 31st day of August, 1953, the Court imposed sentence. Speaking very clear and plain, the sentence imposed was 'Allen Carroll Pruitt, I hereby sentence you to serve natural life in the State Penitentiary, for the crimes of Murder and Robbery'.

The Petitioner's parents were present in Court, and many other persons heard the sentence pronounced from the Bench.

The Petitioner left the Court, with one life sentence to be served in the State Penitentiary.

I hold, that there is no merit to this contention.

Allegations No. 4 and No. 5, are not supported by credible evidence; on the contrary, the Petitioner had a fair trial and the Court was not in error in imposing separate sentences for the separate offenses of Murder and Robbery; nor is there any sound contention that because the Court imposed one sentence, it lost jurisdiction to impose another sentence; there is no merit to either of these contentions.

The contentions, as raised by the pleadings, have been decided; however, in the Opening Statement by this Petitioner's counsel, it was asserted that in addition to the contentions already discussed and disposed of,

page 166 } that (1) this Petitioner only plead 'guilty, as accessory'; this is without merit, the Order, Exhibit VIII of Answer as well as the narrative of trial written by the trial Judge, refutes this (Exhibit IX of Answer); (2) in the Opening Statement, counsel for the Petitioner pointed out 'there was a failure to appoint counsel, at preliminary hearing'; there was no Statutory requirement, for counsel at preliminary hearing; (3) also in the Opening Statement, it was stated that 'the Juvenile Statute, was not followed'; perhaps it is unfair to Respondent to have allowed any evidence concerning this, in the absence of allegations and sufficient factual background in substantiation, but considering that this is the second *Habeas Corpus* hearing for this Petitioner, the Court finds that the *uncle* of the Petitioner, *with whom he resided here in Virginia, was present and testified at the Juvenile Court hearing,* as is shown by the exhibit of Respondent (Court History), and this person, the Petitioner's

uncle, was the only person in Virginia with whom this Petitioner resided and he was the last person with whom he had resided here, even though it is to be noted that the Petitioner had previously lived in Virginia with a brother.

Following the Petitioner's residence with his uncle, at 554 Elliott Street, Portsmouth, Virginia, the Petitioner was self-employed as a painter.

page 167 } *This Petitioner's parents, at the time of the Petitioner's hearing and prior thereto, were residents of Spartanburg, South Carolina, and they are today, still residents of Spartanburg, South Carolina.*

This person, his uncle, and natural guardian of this Petitioner, lived in this area wherein the Petitioner had been gainfully employed and wherein he resided, was present at the Petitioner's hearing in the Juvenile Court and *there was no further requirement on the Juvenile Court to appoint a competent Attorney at Law or a Probation Officer as a guardian ad litem,* because the person required to be notified under § 16.1-172 was obviously notified, was present at the hearing and in fact, testified.

It was also contended in the Opening Statement of this Petitioner's counsel, although it was not alleged in the Petition itself, that 'no report pursuant to § 16.1-176 of the 1950 Code of Virginia as amended, had been done by the Juvenile Court. *This allegation has not been proven,* but the Court notes that when this matter came on before the Corporation Court of the City of Norfolk, that the Judge of that Court, Judge Spindle, had this Defendant *examined and observed by a physician specializing in psychiatry* and *this was prior to any plea or any trial,* and the *report of this doctor* was shown to the accused's attorney prior to any trial; certainly it cannot be contended that such a report by a

page 168 } physician so trained, would not reveal the physical and mental personality and so forth, of this Petitioner, as required under the aforesaid Section.

It is clear therefore, that the Corporation Court Judge complied with this Section and that the experienced trial Judge, prior to conviction, had not only this report, but evidence in detail showing this Petitioner's *I.Q., his school record, his social status as it related to him being or not being a disciplinary problem, and other background material concerning this Petitioner* and the testimony of his parents at that hearing, prior to trial.

For the purpose of argument, and for this purpose only, because *it has not been proven that the Juvenile Court did not make such an investigation,* it must be born in mind that this *Petitioner was an escapee from a Training School* in

South Carolina (§ 16.1-176 would be significant concerning this status, as of today), and no such report would be required.

It cannot be assumed that such records concerning status, personality, mental and social development, were not accessible and available to the South Carolina authorities as well as to the Virginia authorities and Courts; the presumption, would actually be otherwise. In any event, the requirements were met by the Court of record (and there now is a new Section, § 16.176, Michie 1950 Code of Virginia, as amended).

page 169 } In *Tilton* vs. *Commonwealth,* 196 Va., 774, the Court stated that 'the duty devolved upon the proper Court having jurisdiction of the case', and in this case, the Corporation Court had jurisdiction. The facts in this case are distinguishable from the *Tilton* case, because here, the investigation was prior to trial and prior to conviction; here also, the investigation required under § 16.176 (b) had the additional and broader purpose of furnishing information which the Juvenile Court might use in determining whether the child should be tried as a juvenile, or as an adult.

It is also significant that since the *Tilton* case, that the same Section, which is today § 16.1-176 has been amended by the word 'may', unless information is otherwise available, have such an investigation and report, and the mandatory 'shall' is no longer a part of this law now, as it was then. (See *Tilton* vs. *Commonwealth,* 196 Va., 774 at page 784, last sentence).

The attorney had the benefit of seeing and talking to the Judge concerning the report, and the information and clearly, the purpose of this Section is as was stated in *Tilton,* supra, at page 787:

"Under § 16-172.41 and § 16-172.43 the discretion lodged in the Court of record is a sound judicial discretion, to be exercised not arbitrarily or willfully, but based
page 170 } upon knowledge of facts upon which the discretion may properly operate".

The real question, on a view of the entire case, is *whether there was a sound judicial discretion exercised,* and not so much a mere question of technicalities; on an examination of the entire proceedings, there was a sound exercise of judicial discretion.

This Court is aware of the recent decision of *C. C. Peyton, Superintendent* vs. *Leonard French,* Record No. 6167, decided

April 25, 1966 by the Virginia Supreme Court of Appeals; these facts have been analyzed carefully with this Opinion, and the facts there are totally different from the facts here. The Opinion, on page 14, points out that 'even though the Petitioner there could not be retried as a juvenile because of his age, that the proper procedure would be to follow the criminal procedure applicable to an adult, and that he be tried on new Indictments'.

It should be noted perhaps, that the law often confers rights and remedies; often by conditions precedent or subsequent; rights are waived over or forfeited, and remedies no longer serve for the enforcement of such rights which may even be distinguished by the passage of time, and the failure to exercise them.

This poses the question here, as in that case, for purposes of argument, 'what conditions exist that will give page 171 } the Petitioner back such rights, if any, which he has slept on for a period of years, during which time he failed to exercise the remedies which were available to him? How will a retrial today, restore such so-called rights or remedies to any Petitioner?'; it is clear and obvious, that it will not.

The cause would be different perhaps, for purpose of argument, if the Petitioner were a juvenile; it would then appear that, at such a stage, while such rights and remedies once existed, they no longer exist and pose only a moot question.

In effect, because this right and also remedy, depends upon age, as one being a juvenile and within purview of the Act, to now seek a remedy which no longer exists puts forth a doctrine, it would seem, of retroactivity, which is futile. *Mapp* v. *Ohio,* 368 U. S. 643, established the Exclusionary Rule.

There is no doubt that thousands of Defendants in this country were convicted, and are serving time in cases wherein evidence was used in violation of this Rule in the *Mapp* case; but the Supreme Court of the United States did not apply this retroactively.

Linkletter vs. *Walker,* 381 U. S. 618; the Constitution neither prohibits nor requires, retroactive effect.

The rationale in this case, is *if the State's* page 172 } *prior conduct cannot be remedied, the conviction should stand if the evidence is reliable.*

How can the past be so remedied here, by setting aside the conviction?

This has been, perhaps, an academic *disgression* because the facts here are different from the *French* case, *and here, the Petitioner did not carry the burden of proof on this issue,* but it has been discussed because there was a substantial compliance by the Corporation Court.

In the overall, this Petitioner had a fair trial; his Constitutional rights were not violated; and in closing, it is well perhaps, to note the following: *McCue's Case,* 103 Va., 870 at page 1011.

". . . . . while those accused of crime have rights which should be inviolable, society has rights which are no less sacred.

While the accused is entitled to a fair and impartial trial, the safety of the law-abiding citizen demands that the accused, having had a fair and impartial trial, and been adjudged guilty according to the law of the land, should suffer with certainty and without delay the penalty imposed by the law upon his offense".

page 173 } Accordingly, I find that this Petitioner has not sustained his burden of proof and his Writ of *Habeas Corpus* is *hense* dismissed.

Mr. Goodman: Your Honor, I'd like to note exception to the Court's ruling; also, on behalf of my client, I wish to note an appeal, and I do so now.

The Court: Go right ahead, sir.

Mr. Goodman: Your Honor, should it be on the record, my expenses incurred in this matter, or should I wait until the whole matter is completed?

The Court: I would do that, now.

(Sidebar conference, held out of hearing by the Court Reporter)

The Court: That's all, for this record.

page 174 } JUDGE'S CERTIFICATE

I, Linwood B. Tabb, Judge sitting for the Corporation Court of the City of Norfolk, who presided over the *Habeas Corpus* trial of the case of Allen Carroll Pruitt vs. C. C. Peyton, Superintendent, Virginia State Penitentiary, on May 5, 1966, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all of the evidence adduced, together with all motions and objections of the parties, all rulings of the Court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of the said cause.

As to the original exhibits introduced in the evidence as shown by the foregoing report, to-wit: Petitioner's Exhibits

P-1 and P-2 and Respondent's Exhibits R-1, R-2, R-3, R-4, R-9, R-10, and R-11, it is agreed between the attorney for the Petitioner and the attorney for the Respondent that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this case in lieu of certifying to the said Court copies of said exhibits.

I further certify that this certificate has been tendered to and signed by me within the time prescribed by Section 5:1 paragraph 3 (f) of the Code of Virginia for tendering and signing bills of exception and certificates of rec-
page 175 } ord, and that reasonable notice in writing has been given to the attorney for the Respondent of the time and place at which said certificate has been tendered.

Given under my hand this 3rd day of April, 1967.

LINWOOD B. TABB
Judge Sitting for the Corporation
Court of the City of Norfolk,
Norfolk, Virginia

page 176 } CLERK'S CERTIFICATE

VIRGINIA: IN THE CLERK'S OFFICE OF THE CORPORATION COURT OF THE CITY OF NORFOLK, ON THE 3rd DAY OF APRIL, 1967.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, do certify that the foregoing report of the testimony and other evidence of the trial in the case of Allen Carroll Pruitt vs. C. C. Peyton, Superintendent, Virginia State Penitentiary, Respondent, was lodged and filed with me as the Clerk of said Court on the 3rd day of April, 1967.

W. L. PRIEUR, JR.
Clerk of the Corporation Court of
the City of Norfolk

By G. C. THOMAS
Deputy Clerk

* * * * *

EXHIBIT NO. R-9

Initialed for Identification—L. B. T., Judge

Lt. J. Frank Faulk

DEPOSITION OF LT. J. FRANK FAULK, taken before Norma C. Russell, Notary Public, at The South Carolina Law Enforcement Division Headquarters, Broad River Road, Columbia, South Carolina, on Wednesday, December 7, 1966, commencing at 12:00 o'clock noon.

APPEARANCES:

For the Petitioner: Harold J. Goodman, Attorney

For the Respondent: W. Luke Witt, Assistant Attorney General, State of Virginia

It is stipulated that the signing of the testimony is waived and all objections are preserved.

J. Frank Faulk, being duly sworn, testified as follows:

Mr. Witt Examining:

Q. State your name for the record, please, sir?

A. J. Frank Faulk.

Q. What is your age, please?

A. Fifty.

Q. What is your occupation?

A. I am a lieutenant with the South Carolina Law Enforcement Division.

Dep. 12/7/66 page 2

Would that correspond with the Virginia State Police in Virginia, is that the level, you are a statewide organization?

A. That's right.

Q. Lt. Faulk, how long have you been employed by this organization?

A. Approximately 20 years.

Q. Are you an investigator, and by that I mean do you do investigative work, or what exactly are your duties?

A. I am in charge of the polygraph section and communications division.

Q. Were you employed in this same capacity in the year 1952?

A. I was employed as a polygraph examiner in 1952. We didn't have the communications division at that time.

Q. I direct your attention to Thanksgiving weekend of 1952, I believe Saturday of that weekend. I believe that's correct. Did you have occasion to become involved with an investigation involving one Allen Carroll Pruitt?

Lt. J. Frank Faulk

A. I did not become involved in an investigation. I did run the polygraph test on Allen Carroll Pruitt.

Q. At whose request was that test made?

A. At the request of the officials from Norfolk, Virginia. I don't have their names on this file. It was at the request of the police department in Spartanburg, S. C. and police Department in Norfolk, Virginia.

Q. Do you have any records before you that reflect what took place on the day I mentioned?

A. Yes, that was on November 29, 1952.

Q. Do you happen to know what time of day it was?

A. I don't have that information.

Dep. 12/7/66 page 3

Q. Do you have any independent recollection of what took place while Mr. Pruitt was here at this headquarters?

A. Yes, the officers from Spartanburg and the officers from Norfolk came down to our Division on this particular date and they had with them a stenographer and they requested that we examine Allen Carroll Pruitt on the polygraph.

Q. Did Mr. Pruitt agree to be examined on the polygraph?

A. Yes, sir, he did.

Q. Was there any force or threat employed to encourage him to agree to this?

A. No, sir.

Q. Was there any kind of advice given to Mr. Pruitt in preparation to taking this test?

A. Yes, I advised him of his rights, that he did not have to take a polygraph test, and that he was entitled to counsel. I asked him if he had counsel and he said no, and that he would take this test freely and voluntarily and without anyone forcing or threatening him and without reward or hope of reward, and to this he agreed and signed a waiver that he would take this test.

Q. Do you have any record of Mr. Pruitt's physical condition at the time he arrived at this headquarters?

A. To my recollection it was good.

Q. Did he appear to understand you when you talked to him?

A. Yes.

Q. Was he coherent when he talked to you?

A. Yes.

Q. Did he manifest any indication of being unaware of what was going on at that time?

A. No, sir.

Lt. J. Frank Faulk

Dep. 12/7/66 page 4 } Q. After Mr. Pruitt signed this waiver, what took place?

A. Then I explained to him the procedure in running a polygraph test, how the instrument worked, and explaining the various attachments to him, and then I read the questions to him that would be asked him prior to the test so that he would be familiar with each one and that he would understand them, and he said he did understand them.

Q. Did he ever in effect take the polygraph test?

A. Yes, he did.

Q. After taking the polygraph test did Mr. Pruitt at any time make a statement to you with reference to the charges made in Norfolk?

A. Yes, sir.

Q. Was any advice given to him at the time the statement was taken from him?

A. The statement he gave to me was an oral one after the polygraph test was taken. After that, the Norfolk officers were called in.

Q. Were you present when they were called in?

A. Yes, I called them in.

Q. Do you know of any advice given Mr. Pruitt concerning that statement?

A. He was advised of his rights.

Q. You heard the Norfolk police officials do that?

A. Yes.

Mr. Goodman: I object to that. My argument is on the admissibility of that is, was Lt. Faulk present at that time and heard the advice given. I think this is strictly what somebody else said even if Lt. Faulk was there.

Dep. 12/7/66 page 5 } Q. Lt. Faulk, do you personally know whether Mr. Pruitt was allowed to talk to any member of his family while he was here?

A. Yes.

Q. To whom did he talk, do you know?

A. I believe his father.

Q. Were you there when he talked to his father?

A. I can't definitely state. I was in and out at the time. I believe O. L. Brady was the Chief at that time and he was in the room. I do know the call was made and I was in there during part of the conversation. I can't state that I was there during the entire conversation.

Lt. J. Frank Faulk

Q. Did you hear Mr. Pruitt talking to anybody on the telephone?
A. Yes.
Q. Was that at his request, do you know?
A. I believe he requested to talk to his father.
Q. Do you know at what point in time that call was made? Was it before or after the polygraph test?
A. After the polygraph.
Q. Was it before the statement was given to the Norfolk police department?
A. I believe so, to the best of my recollection.
Q. What happened after this took place?
A. The investigating officer from Norfolk and the stenographer proceeded to take a statement.
Q. Then what happened after that?
A. That's as far as I can tell you.
Q. Did they leave from here and go back to Norfolk?
A. They left from here and I don't know where they went from here.

Dep. 12/7/66 page 6

Q. You had no further contact with Mr. Pruitt after that date?
A. No, sir.
Q. Did Mr. Pruitt appear to be reluctant to participate in these proceedings at all, as far as you could determine?
A. No.
Q. Did he at any time ask for counsel?
A. No.
Q. Did he at any time ask that his family be present?
A. No.
Q. Now, this headquarters to which we refer in this testimony, it is not a jail is it, or penal institution?
A. No, sir.
Q. You would describe this as the administrative headquarters for the South Carolina Law Enforcement Division?
A. Yes.
Q. It is composed of office space and normal administrative buildings?
A. True, and laboratory.
Q. There are no bars on the windows and no solitary cells at this location?
A. Not at that time.
Q. This is the same location to which we refer that Mr. Pruitt came in 1952?
A. That's correct.

Lt. J. Frank Faulk

Q. Was Mr. Pruitt, in so many words, closeted with uniformed officials or a number of police officers at any one time while he was here?

A. No, sir.

Q. Was there anything unusual about the way the polygraph test or interviews were conducted with Mr. Pruitt as far as you know?

Dep. 12/7/66 A. No, sir.

page 7 } Mr. Goodman Examining:

W. When you were here, you were here for the specific purpose to give Mr. Pruitt the polygraph test?

A. Yes, sir.

Q. You were not with Mr. Pruitt and Detective Driscoll and Jett and the Norfolk police officers all the time that Carroll was here, were you?

A. Not all the time.

Q. Your main purpose was to give him the polygraph test and you told him of his rights and then after the polygraph test he gave you an oral confession, at which time you called in the Norfolk officers?

A. Correct.

Q. Then the statement was given amid congeniality between you all and they left together?

A. That's correct.

Q. Do you know how long they were here at this headquarters from the time they arrived until the time they left, approximately?

A. I could not answer that with any conclusive reply. It was not a long time, but I could not state the exact hours that they were here.

Q. Was it as much as two or three hours?

A. I would say possibly two or three hours. I would not be positive on it.

Q. You say you saw and heard Carroll talk to someone on the phone and it seemed he was talking to his father?

A. As far as I knew he was talking to his father.

Dep. 12/7/66 Mr. Goodman: I have no further questions.

page 8 } Mr. Witt: I have no further questions. Let the record show one fact for me, please, Mrs. Russell, that O. L. Brady, former Chief of SLED, of Spartanburg, S. C., was unable to be here by reason of physical inabilities and for that reason his testimony was not taken.

ADJOURNED:

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

I, Norma C. Russell, Notary Public, certify that I did have Lt. J. Frank Faulk to appear before me at 12:00 noon on Wednesday, December 7, 1966, at the South Carolina Law Enforcement Division Headquarters on Broad River Road in Columbia, S. C.; that the witness was duly sworn and cautioned to tell the truth, the whole truth and nothing but the truth; that the foregoing pages constitute a true and correct transcript of his testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 9th day of December, 1966.

NORMA C. RUSSELL
Notary Public for South Carolina

* * * * *

EXHIBIT NO. R-10

Initialed for Identification—L. B. T., Judge

DEPOSITION OF LEWIS E. JETT, taken before Norma C. Russell, Notary Public, at The South Carolina Law Enforcement Division Headquarters, Broad River Road, Columbia, South Carolina, on Wednesday, December 7, 1966, commencing at 11:30 o'clock A.M.

APPEARANCES:

For the Petitioner: Harold J. Goodman, Attorney

For the Respondent: W. Luke Witt, Assistant Attorney General, State of Virginia

It is stipulated that the signing of the testimony is waived and all objections are preserved.

Lewis E. Jett

Lewis E. Jett, being duly sworn, testified as follows:

Mr. Witt Examining:

Q. State your name for the record, please.

A. Lewis E. Jett.

Q. What is your age?

A. Fifty-seven.

Q. What is your occupation, sir?

A. City Policeman for the City of Spartanburg, S. C.

Dep. 12/7/66 page 2

Q. Have you ever been a member of the Detective Division for the City of Spartanburg?

A. I am now.

Q. How long have you been a detective, total number of years?

A. I would say about 21 years.

Q. You have been a detective 21 years?

A. Yes.

Q. Were you employed by the city police prior to becoming a Detective?

A. Yes.

Q. For how long?

A. I believe maybe four years.

Q. You have approximately 24 or 25 years' service then in law enforcement?

A. Complete law enforcement closer to 30 years.

Q. Were you on duty and actively engaged in your routine duties in the year 1952?

A. Yes, sir.

Q. I direct your attention to Thanksgiving day of 1952. Did you have occasion to become involved with Allen Carroll Pruitt on that day?

A. Yes.

Q. Would you state from your memory the circumstances under which you became involved with this man, please?

A. Do you want the background as to why we went there that day?

Q. Yes, sir, please tell us that.

A. On Thanksgiving morning of 1952 we were called to Chief Ralph Prince's office.

Q. Whatever transpired in your presence, please tell us.

A. Chief Prince summoned several of us to his office on this particular morning . . .

Mr. Goodman: I want to object to what he was told.

Lewis E. Jett

Dep. 12/7/66 page 3 } Q. Just state what the Chief told you in your presence.

A. The Chief told us he had received positive information that Carroll Pruitt was at the home of his parents and that at the same time, about the same time, he had a communication from the Norfolk police department to the effect that Carroll Pruitt was wanted in connection with a burglary and murder case there.

Q. Upon receipt of that information, what action was taken by you?

A. I don't recall just how many policemen were along, but some six or seven of us proceeded to Pruitt's house on West Centennial Street.

Q. What took place when you arrived?

A. When we arived there *Carroll s* mother, and as I recall, two of his sisters were out on the front porch, and on being told that we had come for Carroll they at first said he was not there. I don't recall who was asking the questions of Pruitt's relatives, but they were told we would have to look over the house.

Q. You were told by them that you would have to look over the house?

A. They were told by us. When we entered the house . . .

Q. How did you gain entrance to the house?

A. As I recall, the front door was shut, but they opened it and we went into the hallway part of the house.

Q. Did they tell you you couldn't come in or they didn't want you to come in?

A. No, sir. As the group I was with entered the hall I tried the first door on the right, which was shut. I opened the door and noticed that the shades were drawn and the room very dark. I walked over to the sofa, pulled it away from the wall, and Carroll Pruitt was lying prone on the floor.

Dep. 12/7/66 page 4 } Q. At that point what action did you take?

A. I told him to get up, which he did, and offered no resistance.

Q. Did you have to apply any physical force?

A. None whatever. We walked back out on the front porch and Carroll had some conversation with his mother and sisters. I don't recall exactly the details, but he had some conversation with his mother and sisters and then we carried him to the city jail.

Q. Did anyone inform his mother and sisters that he was being taken down to the city jail?

Lewis E. Jett

A. I don't recall any exact wording. They might have asked where we were taking him and we told them to the city jail.

Q. Did you know the Pruitt family personally?

A. I knew of them. I had never met any of them.

Q. Now, did you ride down to the city jail with Mr. Pruitt in your car?

A. I am not positive on that point, but I believe Pruitt went in the car that I was in.

Q. Do you recall whether any conversation was had with Mr. Pruitt at that time with reference to the charges placed against him in Norfolk?

A. None to my knowledge.

Q. Upon arrival at the city jail what occurred?

A. We routinely booked him and that was all as far as we were concerned.

Q. Did you have any further conversation or contact with Mr. Pruitt after he was placed in the city jail?

A. Not until the following morning.

Dep. 12/7/66 page 5 } Q. Do you know if anyone else did with reference to the allegations pending in Norfolk.

A. Not of my own kowledge, no.

Q. You said you saw him the next morning. What was the occasion for that?

A. The next morning Captain Smith, who is now deceased, instructed Detective Driscoll and myself to bring Pruitt to SLED Headquarters here in Columbia.

Q. That is the South Carolina Law Enforcement Division Headquarters?

A. Yes.

Q. Did you drive Detective Driscoll and Mr. Pruitt up here?

A. I don't remember who drove, but Detective Driscoll and myself brought Pruitt to this Headquarters.

Q. During the course of that trip from Spartanburg to here was there any conversation carried on between you or Detective Driscoll and Mr. Pruitt with reference to the charges in Norfolk?

A. No, sir.

Q. Do you know of any conversation had with Mr. Pruitt pertaining to his arrest?

A. No, sir.

Q. What was Mr. Pruitt's physical condition at the time he was arrested?

A. He seemed to be normal.

Q. Did he manifest any indication to you that he was un-

aware of the situation in which he was placed at that time? Did he understand what was going on?

A. I think he did.

Q. Did he appear to be coherent when you talked to him?

Dep. 12/7/66 page 6

A. Yes, sir.

Q. Did he have any bruises or lacerations, or any signs of physical violation on him when he was arrested or the time you brought him here?

A. None that I saw.

Q. Did he make any complaints of any such physical ill?

A. No.

Q. Were you familiar with the routine policies of the city jail in Spartanburg, South Carolina as a result of being a member of the police force there?

A. Well, in general, I would say.

Q. Do you know whether Mr. Pruitt was denied any conversation with his parents or any other individual while he was in the city jail in Spartanburg?

A. If he was I didn't know of it.

Q. What was the policy of communication with attorneys with reference to interrogation at the Spartanburg city jail?

A. I don't know of any attorney being denied seeing any person they were interested in.

Q. Do you know if any have been denied?

A. I don't know of any time one would be denied or had been denied.

Q. After you arrived at this Headquarters, The South Carolina Law Enforcement Division in Columbia, what did you do personally?

A. As I recall, the Norfolk detectives followed us and when we arrived at this Headquarters we turned Mr. Pruitt over to them and Lt. Faulk when we arrived.

Q. Did you have any further conversation with Mr. Pruitt after that?

A. No.

Dep. 12/7/66 page 7

Q. Do you know if he was denied communication with his parents or anyone else while he was here?

A. No, sir, not to my knowledge.

Q. How long were you at this Headquarters on the day you arrived here?

A. After 14 years I don't know. I would say maybe two hours. That would just be a guess.

Q. All right, sir, thank you.

Lewis E. Jett

Mr. Goodman Examining:

Q. When you arrested Mr. Pruitt did you have any conversation with Carroll Pruitt or his family concerning his arrest or why he was arrested?

A. I believe the only thing that I can tell you on that is that after I asked him to get up from where he was on the floor he got up and we walked to the porch where his mother and sisters still were, and the only thing I recall that was said then was "where are you taking him" and we told his people "to the city jail". The only other incident I recall taking place on the porch, he asked his mother be allowed to keep his billfold and one of the officers looked through it and gave it to his mother.

Q. Do you know whether or not Pruitt made any telephone calls, to your knowledge, or saw anyone other than the police officers while in the Spartanburg city jail?

A. I don't know.

Q. Of your own knowledge, do you know if his parents or sister came to the city jail before the Norfolk officers arrived?

A. I do not know.

Dep. 12/7/66 page 8

Q. To your knowledge, do you remember whether the Norfolk officers ever came to Spartanburg? If you remember.

A. I don't recall if and when they came to Spartanburg, but as I say, to the best of my recollection, the following morning they followed us into Columbia from Spartanburg.

Q. Did you have any conversation with Carroll Pruitt while he was in the Spartanburg city jail?

A. No, sir.

Q. You said you had a routine booking. What did you book him for?

A. At that time, in a case of an escapee we would put them in the jail and mark hold for proper authorities.

Q. You actually picked him up primarily for the industrial school?

A. Yes, primarily.

Q. No warrant had been issued on this other charge when you went to the house?

A. Not to my knowledge.

Q. Do you know whether or not any extradition papers were ever issued on Pruitt?

A. I don't know, sir.

Q. Just for the record, the city jail at Spartanburg when he was arrested, at the time, it was a smaller jail, am I

correct? Was the jail—this was 14 years ago I know—but were there many other inmates in the jail besides Pruitt?

A. The jail also serves as a *stokade* and there were other prisoners.

Q. Do you know whether Pruitt was in a cell by himself?

A. That, I don't know.

Q. Usually, if a juvenile is arrested, is the information given to his parents as to why he was arrested or for what reason?

Dep. 12/7/66 page 9

A. I would say in most cases, but in this case I think all parties knew he was an *escappe* and had run for several months.

Q. To your knowledge, you don't know if this information was ever given to his parents?

A. I don't recall that any such information was given on the occasion of his arrest due to the fact that it was common knowledge to all concerned that he was an escapee.

Q. Do you know whether or not the Norfolk officers interrogated Pruitt in the Spartanburg jail?

A. I have no knowledge of it.

ADJOURNED:

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

I, Norma C. Russell, Notary Public, certify that I did have Lewis E. Jett to appear before me at 11:30 A.M. on Wednesday, December 7, 1966, at the South Carolina Law Enforcement Division Headquarters on Broad River Road in Columbia, S. C.; that the witness was duly sworn and cautioned to tell the truth, the whole truth and nothing but the truth; that the foregoing pages constitute a true and correct transcript of his testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 9th day of December, 1966.

NORMA C. RUSSELL
Notary Public for South Carolina

* * * * *

James B. Driscoll

EXHIBIT NO. R-11

Initialed for Identification—L. B. T., Judge

DEPOSITION OF JAMES B. DRISCOLL, taken before Norma C. Russell, Notary Public, at The South Carolina Law Enforcement Division Headquarters, Broad River Road, Columbia, South Carolina, on Wednesday, December 7, 1966, commencing at 11:00 o'clock A.M.

APPEARANCES:

For the Petitioner: Harold J. Goodman, Attorney

For the Respondent: W. Luke Witt, Assistant Attorney General, State of Virginia

It is stipulated that the signing of the testimony is waived and all objections are preserved.

James B. Driscoll, being duly sworn, testified as follows:

Mr. Witt Examining:

Q. State your name for the record, please, sir.

A. James B. Driscoll.

Q. What is your age?

A. Fifty-six.

Q. What is your occupation?

A. I am a detective with the City of Spartanburg.

Dep. 12/7/66 page 2

Q. How long have you been employed in that capacity?

A. Twenty years next month.

Q. How long were you employed as a police officer before that?

A. Close to nine years.

Q. Were you employed and on duty in the year 1952 with the Spartanburg Police Department?

A. I was.

Q. I direct your attention to Thanksgiving day of 1952. Do you recall coming in contact with Allen Carroll Pruitt at that time?

A. I do.

Q. Would you state, please sir, the circumstances under which you became involved with Mr. Pruitt on Thanksgiving day in 1952?

James B. Driscoll

A. Some of it now is a little bit vague. The Chief of Police at that time was Ralph D. Prince. I believe he had a telephone conversation with the Norfolk, Virginia police in reference they were wanting one Carroll Allen Pruitt, whatever his name be, whom we knew he was at that time a runaway from the reform school in the State of South Carolina and had been for several months. They were wanting an investigation into a murder and burglary. A man had been stabbed to death.

Q. Just put what you know of your own knowledge, please, sir.

A. As a result of this telephone conversation several officers, Mr. Jett, myself and other officers, went to the Pruitt home on West Centennial Street in Spartanburg.

Q. Were you familiar with this family before this time?

A. Yes. On quite a few occasions when the boy in question was a juvenile he had gotten into several difficulties with the law, a little thievery. We had come in contact with the parents because of this and some of that was unpleasant.

Dep. 12/7/66 page 3 } The parents, particularly the mother, did not seem to want to cooperate too much. She couldn't believe her son was as bad as he was being pictured. As a result we arrived at the home on West Centennial Street around noon time on Thanksgiving day of 1952 with enough officers to surround the house because of knowing previously if he had a chance he might run. Some of the family was out front. I remember one of the girls, a sister of Allen Carroll Pruitt, told the police officers he was not there, that he had been there earlier but he had gone. The front door was locked.

Q. At this time was Allen Carroll Pruitt the object of your investigation wanted in the State of South Carolina for runaway? Had a warrant been issued at that time for him?

A. The circuit solicitor, Sam R. Watt, was contacted before the officers went to the Pruitt home to determine whether we needed an additional warrant. He advised that under the circumstances we did not need one. We proceeded and after gaining entrance to the house—I remained outside with others to surround the house—others went in and found Carroll and brought him out and put him in the police car and carried him to the city jail.

Q. Did you ride with him in the car to the jail?

A. I don't recall.

Q. Did you proceed to the city jail yourself?

A. Yes, there were three or four carloads of police going.

James B. Driscoll

Sometime after riding back to the city and he was in custody the Virginia police were notified. I don't recall at this time whether they arrived the next day, I believe they did. Anyway, Lt. L. E. Jett and myself had Carroll in the city of Spartanburg police car and come to Columbia here with the Norfolk police following us.

Dep. 12/7/66 page 4

Q. At the time of his arrest, and from that point until the Norfolk police officers arrived, do you know of any physical abuse or threats or violence used as far as Mr. Pruitt was concerned?

A. No, I don't. We don't abuse anybody, and especially a boy of that age. He did not resist. I understand he had been under the sofa in the living room on his hands and knees when the officers got him. Knowing the family had ill will with the police because of the boy's earlier trouble, we were extra careful to be easy with him because of his age.

Q. Was he denied any communication with his parents or any other individual?

A. No. His father, before this message from Norfolk came in, had come into the City Hall to talk to Chief Prince about his running away from the industrial school, and right after that this call came from the Norfolk police.

Q. His parents were home the day he was arrested?

A. Somewhere there, yes, sir.

Q. Were they informed as to what was happening, why he was being arrested, and where he was being taken.

A. I couldn't tell you that, not being in the house, but they did know he was a fugitive from the school. It is my belief that the father knew about this.

Q. I believe you said that immediately upon your return to the police department that the Norfolk authorities were notified?

A. Yes. Chief Prince handled that.

Q. Do you happen to know when they arrived in Spartanburg, South Carolina?

A. I don't. I know it was not the same day because they drove down and that was noon time one day, unless it was late that night when they arrived. This is all from memory. As to how many days I am sure they got there as soon as possible. I believe it was the next day.

Dep. 12/7/66 page 5

Q. Do you know whether Mr. Pruitt was interrogated with reference to the alleged crimes in Norfolk at the time he was in custody at Spartanburg?

James B. Driscoll

A. As far as I know he was not, because we knew nothing about it but *heresay.*

Q. Were you present when the people from Norfolk arrived?

A. I am not sure of that, but Jett and I were working together and on the hours we worked we brought Carroll down in the car to Columbia and the Norfolk police followed us, two detectives and some lady stenographer.

Q. You said they followed you?

A. Yes. They were in their car and we were leading to Columbia, to this location at SLED Headquarters.

Q. What was the purpose of coming to this law enforcement headquarters in Columbia?

A. As far as I know interrogation and a lie test.

Q. Your purpose in bringing him up here was to get the Norfolk authorities in touch?

A. Yes, sir.

Q. Were you present when Mr. Pruitt gave any statement concerning the Norfolk investigation?

A. No.

Q. What kind of physical condition was Mr. Pruitt in after he was arrested and after he got here to the Columbia location?

A. Physically, his outside appearance, he looked hardy enough. He was calm enough. He was looking at a paperback book pertaining to crime on the way down.

Dep. 12/7/66 page 6 } Q. Did he manifest to you any indication that he was frightened or excited about what was going on?

A. No.

Q. Did you have any conversation with him?

A. Very little. Most of the time he was reading something I believe entitled "Something Happened At Midnight".

Q. Did he have any lacerations on his body?

A. I didn't notice any.

Q. Did he make any complaints of any physical ill?

A. Not at that time. I don't remember any.

Q. When you arrived at this headquarters what did you do personally?

A. Lt. Faulk was called prior to that to tell him we were on the way and we introduced Carroll and the Norfolk police when we arrived to Lt. Faulk, and from there on they used the room at the back and right of the hall. I don't know if Lt. Faulk was present at that time. I know the two Norfolk police and this lady stenographer were in the room. That's all. We don't know what transpired back there or what was

said. I don't know anything about the statement except *hearsay.*

Q. Do you know if he communicated with his parents while he was here?

A. I don't know. I understand that he called his father in Spartanburg while he was here.

Mr. Goodman: I object to that.

Q. Then after you arrived here did you have any further contact or conversation with Mr. Pruitt?

A. Nothing more. I don't remember because we left and went back to Spartanburg and the Norfolk police, with Carroll, went their way heading back to Virginia, as I recall.

Dep. 12/7/66 page 7 } Q. Are you familiar with the jail procedures and routine which are followed in the Spartanburg City Jail where Mr. Pruitt was detained awaiting the arrival of the Norfolk officials?

A. Not too much, except then we had an old building. It might be a little difference in the new one now.

Q. Do you know what the policy would have been in event an attorney had made an effort to see Pruitt at that time?

A. I am sure he could have seen him. That is our policy.

Mr. Goodman Examining:

Q. Lt. Driscoll, on the day of arrest when you took Mr. Pruitt back to the city jail did you have any conversation with him at all concerning why he was arrested?

A. I don't recall that I did. A lot of this is from memory. This has been fourteen years. I don't remember if he was in the police car I was in. I believe he was in another car bringing him in. We didn't want to foul this up for the other investigators.

Q. While in jail, until the Norfolk officers arrived, did you talk to him?

A. I don't recall it.

Q. Do you remember him making any phone calls, or did you see his parents at the police station, prior to the Norfolk police officers arriving in Spartanburg.

A. I did see his father in the hall prior to the Norfolk officers calling and notifying us they wanted him.

Q. Did you have any conversation with his father?

A. No, sir.

James B. Driscoll

Dep. 12/7/66 page 8 } Q. In other words, you had no conversations at all with Mr. Pruitt pertaining to his arrest and why he was arrested?

A. If I did I don't remember, because I am sure that at that point he would have taken that to the chief of police instead of me.

Q. You mentioned that fact that you saw his father talking to Chief Prince before the phone call from Norfolk?

A. Yes, it was not over an hour before.

Q. At this time you don't know whether or not Chief Prince . . . To your knowledge no orders were issued from the chief's office to pick up Mr. Pruitt at that time?

A. No, there was some debate going on there, this thing happened so quick. Mr. Pruitt didn't come out and say his boy was there, but he had no more than got out and Chief Prince got some men to go see if he was there on the running away from the industrial school before he got this call from Norfolk.

Q. To your knowledge no one from the Spartanburg police or South Carolina police department talked with Pruitt concerning why he was arrested or anything pertaining to the arrest and charge made against him by the Norfolk police?

A. To my knowledge not by the Spartanburg police. The State officers here, I don't know. I couldn't say to that.

Q. How long did you stay in Columbia?

A. The day we brought him down I would say roughly not over two hours after we got here until we left.

Q. That was on a Saturday morning?

A. I believe it was. I am not sure.

Mr. Goodman: I have no further questions.

Mr. Witt: Thank you, sir.

Dep. 12/7/66 ADJOURNED:

page 9 } STATE OF SOUTH CAROLINA) CERTIFICATE
COUNTY OF RICHLAND)

I, Norma C. Russell, Notary Public, certify that I did have James B. Driscol to appear before me at 11:00 o'clock, A.M. on Wednesday, December 7, 1966, at the South Carolina Law Enforcement Division Headquarters on Broad River Road in Columbia, S. C.; that the witness was duly sworn

and cautioned to tell the truth, the whole truth and nothing but the truth; that the foregoing pages constitute a true and correct transcript of his testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 9th day of December, 1966.

NORMA C. RUSSELL
Notary Public for South Carolina

* * * * *

EXHIBIT NO. P-1

Initialed for Identification—L. B. T., Judge

CORPORATION COURT *MITTIMUS*

STATE OF VIRGINIA:
CITY OF NORFOLK, To-Wit: Bond $5,000.00

To any Police Officer of said City, and to Keeper of the Jail of said City:

THESE ARE TO COMMAND YOU, in the name of the Commonwealth of Virginia, forwith to convey and deliver unto the custody of the Keeper of the said Jail together with this warrant, the body of Allen Carroll Pruitt charged before me, H. G. Cochran, Judge of the Juvenile and Domestic Relations Court of this City, on the oath of Lt. T. J. Hipple & L. Benton with a Felony by him committed in this, that he did on the 21st day of November, in the year 1952, in the said City, feloniously break and enter, commit larceny and did stab, wound and murder, and you, the said Keeper of the Jail, are hereby required to receive the said Allen Carroll Pruitt into your Jail and custody, that he may be tried for the said offence by the Corporation Court of the City of Norfolk, and there safely keep until he shall be discharged by due course of law.

Given under my hand this 1st day of December, 1952.

H. G. COCHRAN
Judge of the Juvenile and
Domestic Relations Court.

A True Copy Teste:

BY JOHN L. WICKRE,
Clerk of the Court
Juvenile and Domestic Relations
Court Norfolk, Virginia

* * * * *

EXHIBIT NO. P-2

Initialed for Identification—L. B. T., Judge

* * * * *

Statement of Allen Carroll Pruitt, W-M, made to Det. L. Benton of the Norfolk, Virginia Police Department and Lieut. J. Frank Faulk of the Identification Bureau, South Carolina Law Enforcement Division, at the South Carolina Law Enforcement Headquarters, Columbia, S. C., November 29, 1952 at 3:10 P.M., regarding the murder of Harry J. Ganley in Norfolk, Virginia, November 21, 1952.

Q. What is your name?
A. Allen Carroll Pruitt.
Q. How old are you?
A. 17.
Q. When were you born?
A. June 3, 1935.
Q. Where were you born?
A. Landrum, South Carolina.
Q. How long did you live in Landrum, S. C.?
A. Nine years.
Q. Where were you living on November 20, 1952?
A. 1006 Washington St., Portsmouth, Va.
Q. Where were you employed on November 20, 1952?
A. I quit before November 20th, the day before.
Q. With whom did you live at 1006 Washington St., Portsmouth, Va.?
A. My brother, Arlon Pruitt, and his wife, Vera Lee.
Q. How long had you lived at 1006 Washington St., Portsmouth, Va.?
A. Three weeks.
Q. When did you come to live in the State of Virginia?
A. April 6, 1952.
Q. Where, at this time, did you live?

A. 554 Elliott St., Alexander Park, with my uncle, Willie B. Pruitt, and my aunt, Lillie May.

Q. Did you ever live in Norfolk, Virginia?

A. Yes, sir.

Q. When did you live in Norfolk?

A. In July, 1952.

Q. Where in Norfolk did you live?

A. 326 Freemason St.

Q. With whom did you live at 326 Freemason St.?

A. I had a room to myself.

Q. How long did you live at 326 Freemason St., Norfolk, Va.?

A. A month and a half or two months.

Q. Were you employed in July of 1952, when living in Norfolk, Va.?

A. Yes, sir.

Q. By whom?

A. Caligari and Sons, Painting and Construction Co.

Q. Did you at any time ever go to a news stand at the corner of Boush St. and Brambleton Ave. operated by an elderly man by the name of Harry J. Ganly?

A. Yes, sir.

Q. Did you know Harry J. Ganly?

A. No, sir.

Q. Did you ever spend any time at this establishment?

A. Yes, sir.

Q. What was your reason for being there?

A. Playing the pin ball machine and waiting on the bus.

Q. Where did you catch the bus for?

A. Colonial Spillway Bowling Alley.

Q. Carroll, I want you to tell us in your own words your activities from the time that you got up Thursday morning, November 20, 1952, up until the present time.

A. I stayed in bed until about 3:00 in the afternoon with a cold. Then went to the drug store and talked to a boy that worked in the drug store, until about 6:00. His name is Johnson. Went from there to the Y.M.C.A. and stayed until about 6:15. Then went with a boy named Burt down to his job a few blocks down and came back to the Y.M.C.A. at 6:30 and stayed until 9:30. Then I caught the ferry and went to Norfolk and went to the Roxy Theater and got out about 12:00. "Passage West" and I believe it was the Bowery Boys in the "Gas House Kids Go West", I believe, I'm not sure. Then I walked down the street, window shopping like, it wasn't raining then, just cold and it was hot in the theater. Went down by the Navy Y.M.C.A., cut down Boush St. and came to the corner there and it started raining. I sat on the

bench at the news stand at Brambleton and Boush. I looked inside and could see the cash register didn't have the money taken out of it, because it didn't have a "No Sale" sign on it. I had seen the back window broken out several times when I passed by there, so I went behind the building and pushed the board out that was nailed on to it where it had been broken. The board was nailed on the inside. There was some sharp pieces of glass, pointed, on each side of it, so I broke those off and then climbed through the window. I got the money out of the cash register and then out of the cabinet and under it. Then started to go out the window again and the same policeman that picked me up July 27th, I saw him coming toward the building. So I went back into the room in the back and shut the door so nobody could see me in there. My foot hit a Coca Cola crate and made a racket. Then Mr. Ganly said, "Who's there?" and shined a flashlight or match or something and he said, "Open the door and walk out to the light". He said he had a gun so I had better not move. I turned around and walked out of the door into the light and he did have something in his hand, something shiny. I thought it was a pistol. Then something hit me cross the back of the neck and I fell to the floor unconscious, because my neck had been fractured at the industrial school and if I was hit on the right side of the neck, it made the leaders in my back go together, because there was a bone broken in there. Then I woke up and Mr. Ganly was still standing over me and the money and the billfold and everything I had in my pocket was on the candy counter. Then he told me to get to the door in the light, move on out further, and I asked him not to turn me in, and I told him that was the first time I ever did that I never would do it again. He said I acted too cold to be the first time I broke in anything. He said if I didn't march on toward that door, he was going to shoot and he said if he didn't turn me in, I would still be doing other things. I reached my hands down from my neck and rubbed them together and pulled my knife out. I had it strapped to my arm with rubber bands, under my coat. He said to put my hands back up and I put them way up behind my neck, and asked him one more time not to turn me in, and he said he was anyway. With that I heard a click and I thought he pulled the hammer back on the gun and I thought he was going to shoot and I threw the knife and stuck it up in his left arm. Then I lunged for him when I heard a click, and the gun didn't go off. He grabbed my left arm and my neck, and pushed me back, bending my back across the candy counter and I pulled the knife out of his arm and had it between my right chest and his left chest. Then he tried to push my back

further toward the candy counter and while he was pushing toward me and I was pushing toward him, the knife went in his left chest. With this he cursed and started struggling and he still held me like that and I jabbed him with the knife on the shoulder. The knife stuck up in the back of his shoulder and then my hand slipped and the knife fell to the floor while we struggled. After it fell to the floor, I got away from him at the candy counter because he was pretty weak from losing the blood and he was still standing up and I kicked him in the stomach with my right knee. He dropped to his knees and I put my arm around his neck and drug him in the back room and let him fall. Then I got $64.00 out of his pants pocket and a watch on the dresser, a wrist watch. Then I took and started to go out the window again and there was two men across the street in front of some kind of office building. I thought they might see me and I went back in there where he was and he was standing up. When he saw me, he got a Pepsi Cola bottle out of a crate and started coming towards me. I pulled a saw, but then I saw I could run and get out, so I ran and went out of the window and went through several parking lots and came out beside the Roxy Theater. Then I *Caught* a taxi and went to Portsmouth and got home at 2:30. I knocked on the door and my brother let me in and the lights were off. I went in the bathroom and I had blood on this green sweater and I washed it off and washed it off this yellow shirt and poured kerosene on the pants and put them in the heater in my room and turned them up. That's about all. I threw the knife and the $60.00 had blood on it, in a sewer over there in Norfolk on Boush St. I would know it if I would see it again; on the corner close to the church. The knife had split my pants. I don't know where I lost the watch. It was only $20.00 left. The next morning I got up at 8:30 and then I didn't eat any breakfast that morning. I went to the cleaners and got my pants out of the cleaners, then brought my clothes home and dressed, then went up to Rogers Clothes Store and bought a new pair of pants and then bought a jacket and went to a show and stayed there until 2:30. From there I went on home and my brother said that he was going back that night to South Carolina, so I said I would go with them and packed my stuff. Then about 5 o'clock I went up there and got my pants that had to be fixed. Then went home and waited until my uncle came there. He got there at 6 o'clock. He helped us take the baggage up to the bus station. I got the tickets while my brother checked in the baggage. I bought three tickets costing $29.44 and my brother gave me back $19.75 for his and his wife's tickets. Then I came on the bus and got off at Gaffney, caught a ride on into Spartanburg. I didn't want

to go in there on the bus because I had been picked up there before. I got home about 8 o'clock Saturday morning, the 22nd. Then stayed home until 5:15 Saturday afternoon, and went to my aunt's and stayed until 1 o'clock the next day, at Tryon, North Carolina. Daddy came after me with the family and went out to a friend of theirs at Hendersonville and stayed until 4:15. Then got home at 5 o'clock Sunday afternoon. My brother caught the bus and came back to Norfolk and I stayed at home until Monday morning at 8:30 and my Daddy took me to my aunt's on Shirley St. and I stayed there until 2 o'clock as my mother worked on the first shift. I came home Monday night and stayed until 8:30 Tuesday morning and went back to my aunt's and it was the same routine until Thursday. Then Thursday I stayed home and my sister-in-law, Vera Lee Pruitt, came over and said my brother had called from Portsmouth, Va. and said they was fixing to pick him up for investigation about me, something about escaping from the industrial school at Florence, S. C. Then she came over there at 10 o'clock and told me and she called back up at Portsmouth; he told us to call back, and my uncle answered the phone and said they had already picked my brother up. He said that my brother said I had better leave the house as quick as possible. I picked my clothes and started to leave about 11 o'clock. My mother asked me to stay for Thanksgiving dinner. I told her the police would be there soon. She asked to me to stay anyway, so I stayed. She had dinner on the table and the police came before I ate.

Q. During the fight with Mr. Ganly on the night of November 20th or early hours of November 21st, did you at any time choke him?

A. No, sir.

Q. Where in the building was Mr. Ganly at the time you left?

A. In the back room, standing up.

Q. Were there any lights on in the building at the time you made your exit?

A. I believe I cut the lights off, I am not sure. I cut it off once and cut it back on. The light must have been on though, because I saw him and ran out.

Q. How many times did you stab Mr. Ganly?

A. I don't remember, I threw the knife at him, while we were scuffling it went in him again, then I stabbed him several times. I don't think it was eight.

Q. At the time that you left the building, did you know, or have reasons in your mind to know as to whether Mr. Ganly was in serious condition that might result in his death?

A. No, sir, he was standing up and I thought he might call an ambulance. I thought there was a phone in there. The next morning I didn't see it in the paper, so I thought he was just in the hospital. I just looked on the front page.

Q. Did you open the second drawer to the dresser in Mr. Ganly's bedroom and remove a cigar box containing money?

A. No, sir, it was a cigar box in the cabinet, but it only had change in it.

Q. Did you remove the money from his trousers hanging on the back of the chair by his bed?

A. Yes, sir.

Q. When you left the building after this assault, did you secure the window that you made entry into?

A. No, sir, there were two men across the street when I came out the window. I thought they saw me and I ran as fast as I could. Blood came through on my jacket and my sweater.

Q. Was the window left open at the time you jumped through and left?

A. I never opened the window, I went through the hole in the window. When I pushed the board in I left it as it was.

Q. These two men you refer to who you thought might have seen you, can you tell me where they were standing?

A. On Brambleton Avenue in front of the building where the lights stay on all night.

Q. Carroll, do you know what the name of the cab was that you took?

A. Yellow Cab, I caught it at Granby and City Hall. There was another man caught the same cab with me and went to near where the Portsmouth Tunnel Bus goes on Brewer St. It was about 1:45 A.M. I was home at 2:30. The man came out of some place there in the vicinity of City Hall and Granby and he was an Italian. He had a lot of money in a cloth bag.

Q. Was the light on or off in the news stand when you went in?

A. It was off.

Q. When did you first learn that Mr. Ganly was dead?

A. I was fixing to catch the bus and went over across the street and got a shoe shine and saw a late edition paper and bought one. It was a final. They was calling out for the bus and I put it in my pocket and got the bus. I looked at the headlines and it said, "Elderly Man Stabbed to Death", and it had a couple of pictures.

Q. Did your brother question you as to blood being on your clothes?

A. I told him I had been in a fight.

Q. Did you at any time, tell your brother, Arlon Pruitt, that you had done something terrible and you couldn't tell him what?

A. He asked me what I had been into and I told him I couldn't tell him; I told him I had been in a fight and couldn't tell him. He said, "You washed blood out of your clothes and burnt your clothes". I said, "He cut them with a knife". He said, "Didn't you know better than that", and asked me when was I going to stop getting into fights and things. I told him I couldn't help it. That was all.

Q. Did your aunt or uncle, Mr. and Mrs. Willie B. Pruitt, of 554 Elliott St., Alexander Park, have any knowledge of your being in trouble?

A. No, sir.

Q. Is this statement the truth to the best of your knowledge and belief?

A. Yes, sir.

Q. Was this statement given without threats or promises on the part of the South Carolina Law Enforcement Division officers or any member of the Norfolk Police Division?

A. No, I haven't been threatened or promised anything.

.....

Witnesses

.....

Foregoing statement transcribed by Mary H. McDevitt.

A True Copy Teste:

BY JOHN L. WICKRE,
Clerk of the Court
Juvenile and Domestic Relations
Court Norfolk, Virginia

* * * * *

EXHIBIT NO. R-1

Initialed for Identification—L. B. T., Judge

COURT HISTORY

ALLEN C. PRUITT

NORFOLK, VA.
12/1/52
M.W.

CHARGE: 1. MURDER
2. BREAK AND ENTER

DET. L. BENTON On 11/21/52 there was a car sent to 622 Boush St., found the body of Harry J. Ganly who had been murdered. We received certain information leading to the apprehension of this boy. He signed a waiver and came voluntarily from South Carolina. He signed the following statement 11/29/52 in South Carolina. "I am 17. Born June 3, 1935 in Landrum, S. C. I lived there nine years. I lived in Portsmouth, Va. (1006 Washington St.) for three weeks. I came here in April 1952, I had a room to myself at 326 Freemason St." Did you ever go to Harry J. Ganly's restaurant? "I went to play the pinball machine there and catch the bus. I stayed in the bed until three P.M. then went to the Y.M.C.A. until nine thirty. Went to the Roxy Theatre and stayed until midnight. I window shopped. I came to Boush St. and looked in the window and saw the" see balance of statement attached.

WILLIE B. PRUITT I am the boy's uncle. I am 37, live at 554 Elliott Ave., Portsmouth, Va. I don't know why he was in the Industrial School in South Carolina. He came to my house this past summer and lived with me two or three months. He worked as a painter for several contractors.

ALLEN C. PRUITT I went to the Industrial School for running away from home. I ran away from the school in March. I came to Norfolk to get a job.

DISPOSITION: SENT ON TO GRAND JURY.

* * * * *

COMMONWEALTH OF VIRGINIA:

In the Juvenile and Domestic Relations Court of the City of Norfolk

COMMONWEALTH OF VIRGINIA

In re PETITION

Allen Carroll Pruitt 249 Centenial St., Spartanburg, South Carolina. Child or minor of 17 years of age (born 3rd day of June, 1935)

To the HONORABLE H. G. COCHRAN, Judge:

NAME ADDRESS

Your Petitioner, Detective L. Benton & Lieut. T. J. Hipple Police Dept.—law enforcement officer—respectfully represents unto your Honorable Court as follows:

NAME W-C ADDRESS (if unknown so state)

That Allen Carroll Pruitt White 249 Centenial St., Spartanburg, S.C. whose parents are

NAME W-C AGE ADDRESS

Father Arlon Pruitt White 249 Centenial St., Spartanburg, S.C.

Mother Mrs. Alice Pruitt " " " " " " "
or whose guardian/custodian/person having control and supervision, or nearest known relative is

NAME W-C AGE ADDRESS

.....

is in need of the care and protection of the State in that he/she is within the purview of the Juvenile and Domestic Relations Court law of 1950 and is in need of the care and protection of the State in that 1. he did on 11/21/52 break and enter a store at 622 Boush St., in the night time and did steal, take and carry away $20.00 in U. S. Currency. 2. in that he did on 11/21/52 break and enter in the night time a store at 622 Boush St., and did steal, take and carry away $64.00 in U. S. Currency and a man's Hamilton wrist watch, value $75.00 3. in that he did on 11/21/52 break and enter in the night time a store at 622 Boush St., and did stab, wound and murder one Harry J. Ganly, a white man. That conditions are such that his/her welfare demands that custody be immediately assumed by the Court.

WHEREFORE, your petitioner prays:

That summons may issue to said child or minor;

That his/her custody be immediately assumed;

And that the said parents/guardian/custodian/person having control and supervision be summoned to appear before your Honor's Court and show cause why said child or minor should not be dealt with according to the provisions of the above mentioned law, and that the Court have the necessary investigations made and hear and determine the matters

herein set forth and shall enter such judgments and orders as will best conserve the welfare of said child or minor.

Given under my hand, this 1st day of December, 1952.

STATE OF VIRGINIA, to-wit:

T. J. Hipple, L. Benton, Petitioner.

This day personally appeared before me, E. A. Henry, Notary Public of the aforesaid Court, the above-mentioned petitioner, and made oath (affirmation) that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand, this 1st day of December, 1952.

E. A. HENRY, Notary Public

A True Copy, Teste: D. J. GRIGG, Clerk

A True Copy Teste:

BY JOHN L. WICKRE,
Clerk of the Court
Juvenile and Domestic Relations
Court, Norfolk, Virginia

Exhibit R-1 CONTINUED

* * * * *

EXHIBIT R-3

PRUITT DENIES MURDER OF HARRY GANLY, SAYS PORTSMOUTH YOUTH WIELDED KNIFE

Claims He Was Only
A Lookout in 1952
Newsstand Slaying

By Richard R. Cobb

Repudiating his first confession, smooth-faced Allen Carroll Pruitt, 18, yesterday testified in Corporation Court that another teen-aged boy, not he, fatally stabbed Harry Ganly, 70, in his newsstand at Boush Street and Brambleton Avenue on November 21.

After hearing all of the evidence and arguments, Judge Richard B. Spindle, hearing the case on guilty pleas, took the matter under advisement until Monday at 10 a.m.

Ju

ns Court of the City of Norfolk:

n petition, duly held, it appearing to the Court that

roll Pruitt is present in Court, that

CC

are present in Court— has/have been

anner prescribed by law that

non-resident of this State,

o locate and notify the parents of said child or minor

Pe or is in Court by reason of coming within the purview

s Court law of 1950, that

Re

officer, a discrete and competent attorney-at-law

em to represent the interests of said child or minor,

present at said hearing and represented said child

Pe

in named is within the purview of the aforemen-

Pe alleged, and that the welfare and best interests of

tate should assume guardianship, and it is

rand Jury to

In controlled in the manner prescribed by law.

st day of December, 19 52

H. G. Cocnran, Judge.

Do

Su, 19, on motion of

an appeal is granted to the

Se Court of said city.

Do

, Judge.

Pruitt, who made a finely detailed statement of admission shortly after his arrest nine months ago, yesterday shifted the blame for the actual death to Millard Earl ("Johnson") Dooley, 18, saying that Dooley did the knife-work when he was interrupted during the looting of the newsstand. Pruitt said he was the lookout on the job.

Dooley, of the 300 block of Douglas Avenue, Portsmouth, testified that there is no truth to the allegations. He said he knew Pruitt only slightly and refused two invitations to join him on criminal expeditions.

Pruitt Quizzed

Pruitt's court-appointed attorney, William H. Sands, Commonwealth's Attorney H. Lawrence Bullock, and Judge Spindle quizzed the long-haired defendant on his reasons for maintaining silence so long if he did not kill Ganly.

The boy assigned these reasons: (1) He thought Dooley had been the police informer, and brooding over this had led him to change his original story.

(2) Dooley and he purportedly had a pact whereby the first one caught would assume entire responsibility for the crime, and the one still at liberty would try to get the imprisoned one free.

Court Takes Case
Under Advisement
Until Monday

---

(3) Until he talked to a lawyer sent by his father who suggested that he plead guilty and try to get a life sentence, he had not realized the seriousness of the crime.

(4) He thought he could cover up for Dooley since there was no need for both of them to get into trouble.

Pruitt was arrested at his parents' home in Spartanburg, S.C., on Thanksgiving Day as he delayed his flight from police to have Thanksgiving dinner with his family. He never got the dinner.

When he was arraigned yesterday on charges of murder, robbery, storebreaking and burglary he answered guilty to each indictment. When Judge Spindle questioned him about the pleas in view of the seriousness of the offenses, Pruitt said, "I was pleading guilty as an accessory."

The judge explained that under the law an accessory is equally guilty with the principal, so the boy sat down.

Dr. C. D. J. McDonald, medical examiner, described the eight stab wounds found in Ganly's body, one of which penetrated the chest five inches and struck the heart. Harvey L. Lindsay, real estate broker, who maintains his office next to the newsstand, told of Ganly's customers coming to his office on November 22 and inquiring about the closed shop until he called the police to investigate.

Detective Lawrence Benton said he and Detective L. L. Jones were assigned to the case, made an examination of the premises and found a toy pistol on the floor 97 cents in loose coins on the floor, a large quantity of blood and a pair of bedroom slippers in the blood. In a room in the rear of the newsstand Ganly's bloody body was sprawled on the floor near a blood stained handsaw.

Interview Brother

"Working on certain information" the detectives made a pre-dawn visit to Portsmouth where they interviewed Arthur Arlon Pruitt, brother of the defendant with whom he had been living, and Willie B. Pruitt, an uncle, of Alexander Park. A second interview was held later in the day and statements of the two were taken by a police stenographer. Then a call was made to police in Spartanburg, S. C.

Benton and Lt. T. J. Hipple and the stenographer went to Spartanburg where young Pruitt was in custody. The defendant made a lengthy statement that said, in part:

He lived with Arlon Pruitt at 1066 Washington Street, Portsmouth, during most of the eight months he was in Tidewater. On the day of the crime he stayed abed with a cold until mid-afternoon, went by a drug store, the YMCA, and then caught a ferry to Norfolk and saw a double feature movie at the Roxy Theater.

Rambling down Boush Street he came to the newsstand where he had played the pinball machine often while waiting for buses. He sat on a bench outside and noticed through the window that the cash register had not been emptied for the night. . . . the "No Sale" tab did not show. Pushing in the back window, he entered the building, rifled the cash register and took a cigar box of change and was about to leave when he saw a policeman outside. He waited until the policeman passed and then started out again but his foot struck a bottle crate and a voice sounded, "Who's there!" from the back room.

Ganly, dressed in slippers and pajamas, came out with a shiny object in his hand (apparently the toy pistol) and held it on Pruitt, ordering him to move into the light.

Something struck the boy on the back of the neck, the statement continued, and he fell unconscious. Pruitt said he has a neck condition caused by an injury in industrial school that makes him vulnerable to any pressure on the area.

When he regained consciousness he found Ganly standing over him with a pistol (toy, presumably) with the boy's wallet on a merchandise case. The statement said Pruitt pleaded for leniency but the aged old man said he acted "too cool" to be a first offender.

Pruitt told the police he heard a click of the pistol and thought the hammer was being drawn back preparatory to firing. He kept a sheath knife up his left sleeve fastened to his arm with rubber bands. Slipping the knife out, he hurled it at Ganly, and it lodged in his left shoulder.

The boy followed up the knife with a rush at the old man, grabbed the knife again and struck several more times. Ganly fought like a tiger, bending the intruder back over a counter until the repeated stab wounds began to take effect. Pruitt said he landed a blow to the stomach with his knee and the old man collapsed.

Took $65

He dragged the news dealer to the rear room, took $65 from his pants, and was about to leave when the elderly merchant stood up again and threatened him with a soft drink bottle. Pruitt said he grabbed a handsaw and was about to fight again when he found that he could escape instead. He said he last saw Ganly standing and assumed that he would call for medical aid.

Running to Boush Street and Brooke Avenue, the statement said, Pruitt dropped the bloody knife and three blood-stained $20 bills in a storm drain. A short while later he caught a taxi to Portsmouth where he burned his bloody pants in a stove in his brother's home.

Benton said Pruitt showed him the drain in which he purportedly dropped the knife and money. A knife was found there. The detective said he asked Pruitt if the knife was the lethal weapon . . . the boy balanced it on his fingers and replied affirmatively.

Pruitt then re-enacted the crime in the presence of Benton, Detective E. M. Towe, Lt. Tommy Hipple, Detective Capt. H. C. Gornto, Jr., and a disinterested witness, W. T. Rice, of the 600 block of Boissevain Avenue.

On August 17, 1953, Pruitt made a supplemental statement in the presence of Dooley in which he made his accusation of the other boy. It said that both were armed with knives and

blackjacks and came to Norfolk to break into a store to get money. A flip of a coin determined that Dooley, known to Pruitt as "Johnson," was to enter. There was a scuffle inside and Dooley ran out, later explaining that he "had to cut a man to get out."

Dooley made a statement to police flatly denying Pruitt's statement and saying that the defendant had frequented the drug store where he was employed but they had never become intimate friends. He said Pruitt had told him that he had killed a man showed him a large quantity of money, and had displayed a knife and length of pipe on a previous occasion.

No Fingerprint Check

The prosecution brought out that due to a mixup in orders and responsibilities, the police investigators never checked the newsstand for fingerprints.

Pruitt was his only defense witness. Looking younger than his age, he twisted his neck violently at times and often pressed the flat of his hand or his forearm against it. He wore emerald green slacks and a white sport shirt during the morning session, changing his shirt to a green one during the luncheon recess.

He testified that he spent most of his life in Landrum, S.C., and is one of 20 children in the family. While he was in Norfolk and environs he worked for a roofing company and a painting contractor.

On August 15 he conferred with Sam R. Watts, a Spartanburg lawyer, sent to Norfolk by the Pruitt family and there told his second story for the first time in the presence of Walters and Sands. He repeated it for Bullock and later for Benton and a police stenographer.

"Did you ever proposition him (Dooley) about going on breakins?" Sands inquired.

"No, I made pretty good money on my job, and he asked me about getting money," Pruitt said, continuing that Dooley had asked him about breaking into stores as a source of quick revenue. The defendant said he told Dooley that he had broken into stores (in South Carolina) but was not interested any more.

All a Fake

"That was all just a fake," Pruitt declared when asked about his first confession.

How could he put so many details that seemd to be corroborated by evidence if the confession was phony?, the defense lawyer asked.

Pruitt said Dooley had supplied enough of the details to make any story convincing and he had supplemented his knowledge by reading newspaper stories.

"Where did you get the details about throwing the knife?"

"I used to throw a knife a lot."

"Where did you get the pipe (one used in the re-enactment of the crime found by Pruitt near the scene where he had thrown it on November 21)?"

"I just picked it up off the street . . . I carried it because I had been in fights with boys and I always got knocked down and I just got tired of it." Pruitt said he used the pipe to tap warnings to Dooley while he was acting as lookout.

Sands asked why the nine-month delay in telling what he now claims to be the truth, and Pruitt replied, "There is no use getting two people in trouble." The defendant said he then began to think about the seriousness of the offense and brooding about who informed the police.

"In South Carolina when you made this confession, was it your intention to go through with it?"

"Yes, sir . . . this isn't the first time I've covered up for somebody."

Cross examination brought out the facts that Pruitt has completed the eighth grade in school, has normal IQ and has been committed to an industrial school for juvenile crimes. He escaped from the school after serving 97 days and has been dodging South Carolina police since.

Pruitt revealed that he had been listening to the advice of "jail lawyers" and had assumed that he could not be convicted of first degree murder. He was unaware that a killing committed during the commission of certain felonies also constitutes first degree murder.

"I didn't think I would get over 15 or 20 years . . . it couldn't be anything more than second degree, could it?" he asked.

Bullock picked at the seeming accuracy of his first confession and told Pruitt that it was not Dooley who informed on him, in fact, "did you know that the police never heard of Dooley until you told me about him last Saturday at the jail?"

Pruitt said it was easy making the police believe his "bogus" confession since they knew very little about the crime . . . "they didn't even check for fingerprints . . . I think that's a pretty dumb move for any cop, especially a detective."

Judge Spindle asked the defendant why he had asked to be sent to the Southwestern State Hospital for mental observation.

"I didn't . . . my father did . . . ," Pruitt said.

Judge Spindle pointed out the several delays in the trial date and asked why he hadn't come forth with his story about Dooley then?

". . . Like I said, I hadn't talked to Lawyer Watts then," the boy answered.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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