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

209 VA 309

Record No. 6836

In the Supreme Court of Appeals of Virginia at Richmond

RAYMOND M. HOUGHTALING, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF WAYNESBORO

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. 6836

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 30th day of November, 1967.

RAYMOND M. HOUGHTALING, JR., Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of the City of Waynesboro
C. G. Quesenbery, Judge

Upon the petition of Raymond M. Houghtaling, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Waynesboro on the 5th day of June, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

page 4 } FILE HOUGHTALING

STATE OF NEW YORK

SUPREME COURT: MONROE COUNTY

IN THE MATTER OF THE APPLICATION FOR THE APPOINTMENT OF A COMMITTEE OF THE ESTATE

of—

RAYMOND McKINLEY HOUGHTALING
An Alleged Incompetent Person.

CERTIFICATE OF THE ADMINISTRATOR OF THE VETERANS' ADMINISTRATION

THIS WILL CERTIFY that RAYMOND McKINLEY HOUGHTALING is a veteran of the World War II and that the said RAYMOND McKINLEY HOUGHTALING has been incompetent by the U. S. Veterans' Administration on an examination dated the 12th day of July 1943 in accordance with the provisions of the World War Veterans' Act as amended, and Regulations promulgated thereto and governing said Administration, and that the appointment of a committee is a condition precedent to the payments of any monies due the said RAYMOND McKINLEY HOUGHTALING by the U. S. Veterans' Administration.

This certificate is issued pursuant to the provisions of Article 81-A, Section 1384-f of the Civil Practice Act of the State of New York.

Dated this 3rd day of August, 1943.

GUERNSEY T. CROSS, ESQ.
CHIEF ATTORNEY
U.S. VETERANS'
ADMINISTRATION,
BATAVIA, NEW YORK

page 5 }

* * * * *

MEDICAL BUILDING
Federal and Market Streets
WAYNESBORO, VIRGINIA 22980
September 6, 1966

Mr. Carter Allen
Attorney at Law
L. B. & B. Building
Waynesboro, Virginia

Dear Sir:

I have this date conversed by telephone with an attending physician of one Raymond Houghtaling of Waynesboro, Virginia, now a patient in the University of Virginia Hospital. We physicians are agreed (I have treated Mr. Houghtaling on past occasions) that he is mentally ill and disabled to such a degree as to make further hospitalization in a psychiatric hospital highly desirable if not mandatory.

J. POWELL ANDERSON, M. D.

JPA/md

cc Julius Stombock

* * * * *

page 27 }

* * * * *

In the Circuit Court of the City of Waynesboro, this 9th day of January, in the Year of Our Lord, Nineteen Hundred, Sixty-seven.

* * * * *

It is ordered that all evidence and indictents of trial in this matter be recorded *verbatim* by Gray Audograph electric recording machine, the reporter being duly sworn to operate said machine accurately and to the best of her ability.

This day came the Attorney for the Commonwealth and Raymond M. Houghtaling who stands indicted of a felony,

to-wit: "on the 20th day of August, 1966 and in the said City, feloniously and maliciously kill and murder Carol L. Taft, against the peace and dignity of the Commonwealth of Virginia", was led to the bar in the custody of the Sergeant of this City. And it appearing to the Court that before accepting any plea of the accused, J. B. Stombock and Humes J. Franklin, able, competent and discreet attorneys at law, practicing before the bar of this Court, were appointed in the Civil and Police Court to defend the accused and have consulted with and advised the accused in his defense. It is deemed advisable that the said J. B. Stombock and Humes J. Franklin be continued as his attorneys and they are appointed as counsel for the accused.

The Attorney for the Commonwealth moved the Court to amend the indictment to read "Raymond M. Houghtaling, Jr.", as the person charged in this indictment, which motion, concurred in by the accused and his counsel, is allowed by the Court.

Counsel for the defendant moved the Court to reduce the amount of the bond set for the accused from Ten Thousand Dollars ($10,000.00) to Five Thousand Dollars ($5,000.00), which motion was fully argued and overruled by page 28 } the Court, to which ruling of the Court, the defendant excepts.

Whereupon with the consent and approval of the accused after private consultation with his counsel and with the approval of the Attorney for the Commonwealth this case is set for trial on the 2nd day of March, 1967 at nine o'clock A.M.

The attorney for the accused moved that the Court allow funds for the employment of experts to be used in the defense of the accused, which motion was argued at some length and taken under advisement to give counsel an opportunity to explore the law on the subject.

On further motion of the accused, the Clerk is directed to furnish forthwith to the accused, copies of all Medical Reports filed in this matter.

And the accused is remanded to jail.

C. G. Q., Judge

* * * * *

page 29 } VIRGINIA: In the Circuit Court of the City of Waynesboro, this 2nd day of March, in the Year of Our Lord, Nineteen Hundred, Sixty-Seven.

* * * * *

It is ordered that all evidence and incidents of trial in this matter be recorded *verbatim* by Gray Audograph electric recording machine, the reporter being duly sworn to operate said machine accurately and to the best of her ability.

This day came again the Attorney for the Commonwealth and Raymond M. Houghtaling, Jr. who stands indicted of a felony, to-wit: "on the 20th day of August, 1966 and in the said City, feloniously and maliciously kill and murder Carol L. Taft, against the peace and dignity of the Commonwealth of Virginia", was led to the bar in the custody of the Sergeant of this City. And came also J. B. Stombock and Humes J. Franklin his attorneys heretofore appointed.

Whereupon the accused was duly arraigned and after private consultation with his said attorneys, pleaded "not guilty" to the indictment, which plea was tendered by the accused in person, and the Sergeant of this City having returned the writ of *venire facias* issued by order of this Court entered on the 7th day of February, 1967, together with the names of twenty-seven (27) persons summoned by him in pursuance thereof and taken from the list of thirty-six (36) names attached to said writ and drawn by the Clerk of this Court in the presence of the Judge of this Court from the box and in the manner provided for by law and of the veniremen so summoned and attending a panel of eighteen (18) qualified jurors, free from exception for the trial of the said defendant, was made up and completed. The jury panel

page 30 } being now exhausted, the Court, Clerk, Attorney for the Commonwealth, the accused and his counsel retired to chambers. Whereupon the Court selected from the current list of jurors as provided by law, seven additional jurors as follows: John C. Cabell, Z. J. Marshall, Guy L. Ryman, Lacy R. Dull, R. Howard Taylor, Herbert A. Pickford and James W. Wright, to be forthwith summoned for this case by the Sergeant of this City. Whereupon John C. Cabell and Guy L. Ryman appeared, qualified and were found to be free from exception, completing the panel of twenty (20).

And the Attorney for the Commonwealth and the Attorneys for the defendant having each alternately, beginning with the Attorney for the Commonwealth, stricking from the said panel the names of four of the said veniremen, the remaining twelve, to-wit: H. G. Hassett, Otho T. Hoy, Donald F. McKechnie, J. D. Diffee, Mrs. Laurene M. Walker, George H. Brownell, Harry A. Quick, III, Leo Lafferty, I. L. Janis, Leonard L. Sipe, Robert A. Rhodes and John C. Cabell, constituted the jury for the trial of the defendant, and were sworn the truth of and upon the premises to speak and having heard the evidence, the instructions of the Court and

argument of counsel, were sent to their room to consult upon their verdict and after some time returned into Court and presented their verdict in the following words, to-wit: "We the jury find the Defendant guilty of murder—1st Degree and fix his punishment at Life Imprisonment. D. F. McKechnie, Foreman". The jury was excused with the thanks of the Court.

The defendant, by counsel, moved the Court to set aside the verdict on the grounds that it was contrary to the law and the evidence, which motion was taken under advisement by the Court.

The Court certifies that at all times during the trial of this case the accused was personally present and his attorneys were likewise personally present and capably represented the defendant.

And the defendant is remanded to jail.

C. G. Q., Judge

* * * * *

page 32 } INSTRUCTION 1

The Court instructs the Jury that to constitute a wilful, deliberate, and premeditated killing, it is not necessary that an intention to kill should exist for any particular length of time prior to the actual killing; it is only necessary that such intention should have come into existence for the first time at the time of such killing, or at any time previously, and that it continue to the time of the killing.

C. G. Q.

page 33 } INSTRUCTION 2

The Court instructs the Jury that a mortal wound given with a deadly weapon in the previous possession of the slayer, without any provocation or even with slight provocation, is *prima facie* wilful, deliberate, and premeditated killing, and throws upon the Defendant the necessity of showing extenuating circumstances, unless it appears from the evidence of the Commonwealth.

C. G. Q.

* * * * *

page 37 } INSTRUCTION 6

The Court instructs the Jury that every unlawful killing of one person by another is presumed, in the absence of other evidence, to be murder of the second degree, and in order to elevate the offense to murder in the first degree, the burden is upon the Commonwealth; and in order to reduce the offense to manslaughter or to show justification or excuse for the killing, the burden is upon the accused to introduce evidence to show extenuating circumstances, unless it appears from the evidence of the Commonwealth.

C. G. Q.

* * * * *

page 41 } INSTRUCTION 10

The Court instructs the Jury that the accused could be convicted of any one of five offenses under the indictment in this case, if the evidence in the case so warrants: (1) murder in the first degree (2) murder in the second degree, (3) voluntary manslaughter, (4) involuntary manslaughter, and (5) assault and battery.

The Court further instructs the Jury that murder in the first degree is when one person kills another person wilfully, deliberately and premeditatedly; that murder in the second degree is when one kills another person unlawfully and maliciously, but not deliberately; that voluntary manslaughter is when a person unlawfully kills another person without malice, either express or implied, upon a sudden heat, on reasonable provocation; that involuntary manslaughter is where one person while engaged in an unlawful act, unintentionally causes the death of another person, or when engaged in a lawful act negligently causes the death of another person.

The Court further instructs the Jury that murder in the first degree is punishable by death, or confinement in the penitentiary for life, or for any other term not less than twenty years; that murder in the second decree is punishable by confinement in the penitentiary not less than five nor more than twenty years; that voluntary manslaughter is punishable by confinement in the penitentiary not less than one nor more than five years; that involuntary man-
page 42 } slaughter shall be punishable by confinement in the penitentiary not less than one nor more than five years, or in the discretion of the Jury, by a fine not

exceeding One Thousand Dollars, or confinement in jail not exceeding one year, or both; that assault and battery is punishable by confinement in jail not exceeding twelve months or by a fine not exceeding Five Hundred Dollars, or both, in the discretion of the Jury.

The Court further instructs the Jury that if the Jury believes from the evidence beyond a reasonable doubt that the Defendant is guilty of murder in the first degree, the Jury shall fix the punishment by death, or confinement in the penitentiary for life, or for any other term not less than twenty years; but if the Jury believes from the evidence beyond a reasonable doubt that the Defendant is guilty of murder in the second degree, the Jury shall fix his punishment by confinement in the penitentiary not less than five, nor more than twenty years; but if the Jury believes from the evidence beyond a reasonable doubt that the Defendant is guilty of voluntary manslaughter, the Jury shall fix his punishment by confinement in the penitentiary not less than one, nor more than five years; but if the Jury believes from the evidence beyond a reasonable doubt that the Defendant is guilty of involuntary manslaughter, the Jury shall fix his punishment by confinement in the penitentiary not
page 43 } less than one, nor more than five years, or in the discretion of the Jury by a fine not exceeding One Thousand Dollars, or confinement in jail not exceeding one year, or both; but if the Jury believes from the evidence beyond a reasonable doubt that the Defendant is guilty of assault and battery, the Jury shall fix his punishment by confinement in jail not exceeding twelve months, or by a fine not exceeding Five Hundred Dollars, or both, in the discretion of the Jury.

C. G. Q.

* * * * *

page 46 } INSTRUCTION NO. B

Burden proof

The Court instructs the jury that in this case no burden whatsoever rests on the accused to establish his innocence, on the contrary, the whole burden of proof, which never shifts, rests on the Commonwealth throughout the entire case, to prove to the jury by definite, unequivocal, clear and convincing legal evidence, beyond every reasonable doubt, that he is guilty as charged. Nothing is to be presumed or taken by implication against him. No suspicion of guilt, however strong, is ever sufficient to convict. No mere pre-

ponderance of the evidence will suffice as in the trial of a civil case. It is not sufficient that the jury may believe his guilt probable, or that he is more probably guilty than innocent, for in law no degree of mere probable guilt, however grave or strong, will authorize a conviction; nor can he be convicted upon proof of facts consistent with guilt, unless such facts are also inconsistent with his innocence and actually exclude every reasonable hypothesis or theory which is consistent with his innocence.

If, therefore, the evidence disclosed any reasonable hpothesis or theory of innocence, or if for any reason, the evidence or lack of evidence fails to produce upon the minds of the jury a reasonable doubt of his guilt, it is your duty to find him not guilty.

?

not proper - confusing

C. G. Q.

* * * * *

page 50 } INSTRUCTION NO. E

The court instructs the jury that before you can find the defendant guilty of murder in the first degree you must believe from the evidence that the killing of the deceased was wilful, deliberate and premeditated and with malic aforethought, and was the result of previous malignity of heart, without justification, excuse, palliation or alleviation.

C. G. Q.

* * * * *

page 52 } INSTRUCTION NO. G

The Court instructs the jury that to constitute murder in the first degree the evidence must prove, beyond any reasonable doubt, that the defendant was not only incited to the killing of the deceased by malice, and desperate wickedness of heart, but such killing must have been a wilful, deliberate, and premeditated act on the part of the defendant; in other words, at the time of the killing the defendant must have distinctly understood what he willed and intended to do; he must have also reflected, and deliberated, and premeditated that he would kill the deceased. And if there be a reasonable doubt whether he had willed, and deliberated, and premeditated to kill the deceased, they ought not to find him guilty of murder in the first degree.

C. G. Q.

* * * * *

page 57 }

* * * * *

MOTION FOR NEW TRIAL

The defendant moves that the jury's verdict of guilty of first degree murder be set aside and a new trial awarded on the following grounds:

1. That the verdict is contrary to the law and evidence;
2. That the court committed error in overruling the motion by the defendant to furnish funds for the employment by the defendant of independent expert witnesses in regard to his mental condition;
3. That the court committed error in denying the defendant reasonable bond;
4. That the court committed error in overruling during the trial motions of the defendant on the admissibility of evidence;
5. That the court committed error in commenting to the jury at the conclusion of Dr. Joseph R. Blalock's testimony (see page 95 of transcript of record);
6. That the court committed error in giving certain instructions by the commonwealth and on refusing to give certain instructions of the defendant, as set out in the record;
7. That the court committed error in not requiring that a transcript of all incidents of the trial be made, there being no transcript of the opening and closing remarks of the commonwealth or of the defendant; and
8. That the court committed error in permitting the commonwealth's attorney to make improper remarks to the jury.

RAYMOND M. HOUGHTALING, JR.
By Counsel

HUMES J. FRANKLIN
Counsel for defendant
P. O. Drawer 1140, Waynesboro, Virginia

J. B. STOMBOCK
Counsel for defendant
Waynesboro, Virginia

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, May 8, 1967.

Teste:

JEANETTE J. AKERS, Dep. Clerk

* * * * *

page 58 }

* * * * *

In the Circuit Court of the City of Waynesboro, this 5th day of June, in the Year of Our Lord, Nineteen Hundred, Sixty-Seven.

* * * * *

It is ordered that all evidence and incidents of trial in this matter be recorded *verbatim* by Gray Audograph electric recording machine, the reporter being duly sworn to operate said machine accurately and to the best of her ability.

This day came again the Attorney for the Commonwealth and Raymond M. Houghtaling, Jr. who stands convicted of a felony, to-wit: First Degree Murder, was led to the bar in the custody of the Sergeant of this City. And came also J. B. Stombock and Humes J. Franklin his attorneys heretofore appointed.

The defendant, by counsel, moved the Court to set aside the verdict of the jury and that a new trial be granted on the following grounds: (1) That the verdict is contrary to the law and the evidence; (2) That the Court committed error in overruling the motion by the defendant to furnish funds for the employment by the defendant of independent expert witnesses in regard to his mental condition; (3) That the Court committed error in denying the defendant reasonable bond; (4) That the Court committed error in overruling during the trial motions of the defendant on the admissibility of evidence; (5) That the Court committed error in commenting to the jury at the conclusion of Dr. Joseph R. Blalock's testimony; (6) That the Court committed error in giving certain instructions by the Commonwealth and on refusing to give instructions of the defendant; (7) That the Court committed error in not requiring that a transcript of all incidents of the trial be made, there being no transcript of the opening and closing remarks of the Commonwealth or of the defendant; and (8) That the Court com-
page 59 } mitted error in permitting the Commonwealth's Attorney to make improper remarks to the jury, which motions were fully argued by counsel for the defendant and the Attorney for the Commonwealth. The Court having heard the arguments of counsel on said motions, doth overrule all motions, to which ruling of the Court, the defendant, by counsel, objects and excepts.

It being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court in accordance with the verdict of the jury, that the said Raymond M. Houghtaling, Jr. is guilty of first degree murder and that he be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the remainder of his natural life, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Raymond M. Houghtaling, Jr. its costs by it about *is* prosecution in this behalf expended in the amount of $1,580.00.

Whereupon the accused, by counsel, moved the Court to reduce the bond set in this matter to Seven Thousand Dollars ($7,000.00) and suspend execution of the sentence aforesaid for a period of sixty (60) days in order that he might apply to the Supreme Court of Appeals of Virginia for a writ of error, which motions being fully argued are overruled by the Court and objections and exceptions noted thereto.

It is further ordered that as soon as possible after the entry of this order the prisoner be removed and safely conveyed according to law from the jail of this Court to the said penitentiary therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit from the 30th day of August, 1966 for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the accused was personally present and his attorneys were likewise personally present and capably rep-
page 60 } resented the defendant for which services each is allowed an attorney's fee of $200.00, said fee being included in the aforesaid costs in this matter.

And the prisoner is remanded to jail to await transfer to the penitententiary.

C. G. Q., Judge

* * * * *

page 63 }

* * * * *

NARRATIVE OF INCIDENTS OF TRIAL

A narrative report of incidents of the trial of the case of Commonwealth of Virginia v. Raymond M. Houghtaling, Jr.,

tried no the 2nd day of March, 1967, in the Circuit Court for the City of Waynesboro, at Waynesboro, Virginia, before the Honorable C. G. Quesenbery, and jury.

1. At the setting of the case for trial, a motion was made by Counsel for the Defendant, that funds be provided to enable the Defendant to hire a psychiatrist who was necessary in order for the Defendant to adequately prepare his defense. This motion was denied and Counsel for the Defendant excepted.

2. In his closing argument to the jury, at one point the Commonwealth's Attorney picked up the gun, waived it at the jury and stated that "this Defendant (pointing at the Defendant,) left the lot where the cars were parked behind the Municipal Building in the City of Waynesboro, went to his shop on East Main Street, got this gun, (more waving of gun), returned to the lot and shot the deceased." At this point, Counsel for the Defendant objected to *to* this statement on the grounds that there had been no showing or any evidence introduced tending to show, that when the Defendant left, he went to get a gun. This exception was overruled on the ground that the Commonwealth's Attorney could draw this reasonable inference from the evidence.

Given under my hand this 26th day of June, 1967

RAYMOND M. HOUGHTALING, JR.
By Counsel

HUMES J. FRANKLIN
L. B. & B. Building
Waynesboro, Virginia

page 64 } J. B. STOMBOCK
Virginia National Bank Building
Waynesboro, Virginia

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, June 30, 1967.

Teste:

BETSY N. JORDAN, Clerk

* * * * *

page 65 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * * *

Notice is hereby given that Raymond M. Houghtaling, Jr., appeals from a final judgment rendered by this court on the 5th day of June, 1967, and announces his intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR

1. The Court erred in overruling defendant's motion to set aside the Jury verdict as contrary to law and evidence because there was no showing of premeditation necessary for a verdict of first degree murder;

2. The Court erred in overruling the defendant's motion to furnish funds for employment by the defendant of independent expert witness in regard to his mental condition;

3. The Court erred in commenting to the Jury at the conclusion of the testimony of the Commonwealth's witness, Dr. Joseph R. Blalock;

4. The Court erred in refusing to give defendant's instructions B, E and G, as offered and in giving Commonwealth's instructions 9, 4 and 1, as offered; and in giving any instruction as to first degree murder;

5. The Court erred in failing to provide for the recording *verbatim* of the evidence and incidents of trial as required by Section 17-30.1, Code of Virginia, as amended, in that neither the closing arguments of the Commonwealth's attorney or the defendant were recorded;

page 66 } 6. The Court erred in inserting its narrative of the closing arguments to the Jury made by the Commonwealth's attorney, which narrative version was not submitted by either counsel for the Plaintiff or Defendant;

7. The Court erred in permitting the Commonwealth's attorney to make improper remarks to the Jury in his closing argument; and,

8. The Court erred in failing to postpone the execution of the Defendant's sentence in violation of Section 19.1-281, of

the Virginia Code, Annotated, and in failing to rule on the Defendant's motion that he be returned to the Augusta County Jail in order to apply for Writ of Error.

RAYMOND M. HOUGHTALING, JR.
BY J. B. STOMBOCK
Of Counsel for Defendant

J. B. STOMBOCK
Virginia National Bank Building
Waynesboro, Virginia

HUMES J. FRANKLIN
Law Offices
L. B. & B. Building
Waynesboro, Virginia

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, July 3-1967.

Teste:

BETSY N. JORDAN, Clerk

* * * * *

page 67 }

* * * * *

NARRATIVE OF INCIDENT OF TRIAL AND ORAL SUMMATION

The Commonwealth of Virginia by its Commonwealth's Attorney for the City of Waynesboro states that a narrative report of the unrecorded and untranscribed portion of the record of the trial of the indictment styled as above in the Circuit Court for the City of Waynesboro is as follows:

1. Preliminary to the trial of the case Counsel for the Defendant moved for funds to be provided by the Commonwealth to enable the Defendant to consult with a private psychiatrist alleged necessary for the preparation of the defense. This motion was denied by the Court because the Defendant subsequent to his arrest on this charge was hospitalized at the University of Virginia and subsequently held for observation in the Davis Ward of the University of Virginia Hospital for psychiatric observation and committed

by this Circuit Court under the statute to Southwestern State Hospital at Marion, Virginia, for observation, all of which resulted in extensive medical reports which were made available to the Defendant. The Defendant by Counsel objected and excepted.

2. In the trial of the case on March 2, 1967, before a jury in the summation to the jury the Commonwealth's Attorney showed the gun to the jury that was in evidence and stated that the accused left the Municipal parking lot in the City of Waynesboro where the car was parked containing the deceased and drove to his shop on East Main Street in this City for the stated purpose of obtaining money for her travel expenses but instead returned with the gun and murdered the deceased. Counsel for the Defendant objected to this statement stating that there was no evidence introduced before the jury to support this statement that the Defendant went to get a gun, whereupon the Court stated that the Commonwealth's Attorney in his summation could draw

page 68 } such an inference from the evidence that had been introduced by way of argument and overruled the Defendant's motion, to which the Defendant objected and excepted.

Dated this 5th day of July, 1967.

CARTER R. ALLEN, Commonwealth's Attorney

Please take notice that I shall tender the foregoing to the Judge of this Court, City Building, Waynesboro, Virginia, at 9:00 A.M. on the 14th day of July, 1967, pursuant to Rule 5:1.

CARTER R. ALLEN, Attorney for the Commonwealth

* * * * *

Date Tendered:

C. G. QUESENBERY, Judge

Date: 7/14/67.

Exception and objection by the Defendants counsel.

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, July 5, 1967.

Teste:

BETSY N. JORDAN, Clerk

* * * * *

page 70-A }

* * * * *

AFFIDAVIT OF POVERTY

* * * * *

This day personally appeared before me, the undersigned, a notary public, in and for the county aforesaid in the State of Virginia, Raymond M. Houghtaling, Jr., who after being first duly sworn, deposes and says that he is financially unable to pay or secure to be paid the cost of printing the record in the Supreme Court of Appeals of Virginia in the cause wherein he is the petitioner and the Commonwealth of Virginia is the defendant.

RAYMOND M. HOUGHTALING, JR.

Subscribed and sworn to before me this 12th day of December, 1967.
My commission expires 9-27-71.

O. W. BAMES, Notary Public

* * * * *

page 70-B }

* * * * *

JUDGE'S CERTIFICATE

* * * * *

I, C. G. Quesenbery, Judge of the Circuit Court of the City of Waynesboro, Virginia, do hereby certify to the Clerk of the Supreme Court of Appeals of Virginia that I approve the foregoing affidavit and upon investigation am of the opinion that Raymond M. Houghtaling, Jr. is financially unable to pay or secure to be paid the cost of printing the record in the case therein mentioned.

C. G. QUESENBERY
Judge of the Circuit Court of the
City of Waynesboro, Virginia

Mrs. Helen Ternoosis Johncox

* * * * *

page 3 } MRS. HELEN TERNOOSIS JOHNCOX, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. Your name is *Helsn* Ternoosis Johncox, is that correct?

A. Yes.

Q. What is your relationship to Carol Taft?

A. She was my daughter.

Q. At the time of her death, how old was Carol Taft?

A. Twenty-eight.

Q. Mrs. Johncox, where was Carol Taft killed?

A. Right out here in the City parking lot.

Q. Where is the City parking lot, is that within or without the City of Waynesboro?

A. Within the City of Waynesboro.

Q. Where do you reside, Mrs. Johncox?

A. 905 Sherwood.

Q. Is that within Waynesboro?

A. Yes, sir.

Q. Where did Carol Taft live?

page 4 } A. At the time she was—, she had an apartment *is* Rochester, New York.

Q. Prior to the time of August 20th, when she lived in Waynesboro, where did she live?

A. 780 Florence.

Q. With whom did she live at this address?

A. Raymond Houghtaling and family.

Q. Was she married to Raymond Houghtaling?

A. No, sir.

Q. Did you know she was not married?

A. Yes, sir.

Q. Where were you residing?

A. 905 Sherwood, and before that I lived above Ray's Auto Mart in the apartment.

Q. How long have you resided in Waynesboro?

A. About two years.

Q. Did you know whether she had any children by Ramond Houghtaling?

A. No, sir.

Q. Were there children living with your daughter and Mr. Houghtaling?

A. His children.

Q. Can you tell me the age and names of those
page 5 } children?

A. There was Gary Houghtaling, I think he is twenty-four; and Peggy Houghtaling, fifteen or sixteen; and Patricia Houghtaling, fifteen; and there is the baby, Sandy, she is seven or eight.

Q. How long did your daughter live with Raymond Houghtaling, either as housekeeper or as man and wife?

A. About three or four years.

Q. How old is Raymond Houghtaling, do you know?

A. I think around forty-four.

Q. On the date of August 20th, where did you first see Raymond Houghtaling?

A. On August 20th, the first time I saw him was, I think it was—, I don't know just when it was—, he called to have me pick him up some money, it was either his house and then I met him downtown.

Q. When he called on the telephone, how did he sound?

A. All right, he sounded alright. He wanted me to collect some money, so that him and Carol could leave the City.

Q. Does Raymond Houghtaling drink?

A. Well, once in a while, he wasn't a heavy
page 6 } drinker, that I know of.

Q. Was he drinking on this day?

A. I don't think so.

Q. Did you see him downtown?

A. Yes.

Q. Where?

A. We made arrangements to meet behind Montgomery Wards with some money.

Q. Did you see him behind Montgomery Wards?

A. No, it did never get that far.

Q. Where did you first see him?

A. Well, I talked to him on the phone and he told me where to go and pick up a check and get some money; and the first time I saw him after I talked to him and made this arrangement was by B & B Buick.

Q. What transpired at B&B Buick?

A. Well, I didn't know that he was going to be there. I had picked up Patty Houghtaling, cause she wanted to go along with me, to ride along. In the car she told me—

Q. No. You can't tell what she told you.

A. Well, anyway, through a conversation with her I never went to the B & B Buick, until I called a couple of
page 7 } police, to get protection for Carol.

Mrs. Helen Ternoosis Johncox

Q. Alright. Then you headed for B & B Buick?
A. Yes, and he was there waiting instead of down behind Montgomery Wards.
Q. Where was your daughter, Carol?
A. In the car with him.
Q. Who was with you, in the car you were driving?
A. Patricia Houghtaling.
Q. When you arrived, were the police there?
A. They pulled in right behind me.
Q. And then what transpired?
A. Ray got out of the car and wanted to know what they wanted; and I said they wanted to talk to Carol, Ray; that is all. At the time I was scared.
Q. Why were you scared?

Mr. Franklin: I object to the expression of opinion.
By The Court: Yes. What did he do.

Mr. Allen:
She was scared, she didn't express an opinion. She said, I was scared.

By The Court:
Oh! Alright go ahead.

page 8 } By Mr. Allen:
Q. I would like to ask you why she was scared?
A. Because he had made so many threats, I didn't know what he might do, before they could get her away from him

Mr. Franklin: I object to that answer; and I ask that that talk about threats and as far as anybody made threats, and who to—
By The Court: You have to elaborate on it, show where the threats were really made to and when.

By Mr. Allen:
Q. Now, these were threats made by whom?
A. They had been made; not right then, but they had been made by Raymond Houghtaling before.
Q. How much before?

By The Court:
Q. To you?
A. Pardon.

Q. Had they been made to you?
A. Yes, sir.

By Mr. Allen:

Q. Had they been threats to you or had he
page 10 } simply told you?

A. Told me. I don't recall him ever *threating* me. Just with the idea, that if I ever got in his way.

Q. Alright, we are not interested in threats to you. Now these threats were told to you and to whom were the threats directed?
A. Carol.
Q. And what were the threats?

By The Court:
Q. Who told you?
A. Raymond Houghtaling.
Q. Oh, go ahead.

By Mr. Allen:
Q. Alright, what was the threats?
A. On a lot of *occassions,* he said; he'd never let her go back to her husband, he'd kill her first; and so he said Helen, I mean it.
Q. He said this to you?
A. He has said it several times.
Q. And where was your daughter when this was said?
A. Sometimes she was there and he had said it when she had left this last time.

Q. Alright, now the police and you and your
page 11 } daughter and Mr. Houghtaling were at B & B Buick?

A. That is right.
Q. What transpired there?
A. Well, they took Carol out of the car, they took her into the Police car and talked to her.
Q. Where was Mr. Houghtaling?
A. He was walking around there, and I was there and Patty.
Q. Did you have any conversation with Mr. Houghtaling?
A. Yes. He asked me what they wanted and then he told me, I wished you hadn't brought Patty, I wish she wasn't here.
Q. Did he indicate why he wished you hadn't brought Patty?
A. No. He just said I wished Patty wasn't here.

Mrs. Helen Ternoosis Johncox

Q. Was he drinking?
A. Not that I know of, I don't think so.
Q. How did he appear to you at that time?
A. Just like he always does, he was just waiting for them to question Carol.
Q. After that what happened?
A. We all went down to the Police—, downstairs
page 12 } to Police Headquarters.
Q. How did you come to the Police Headquarters?
A. I drove the car I was in. I think Patty rode with me, Ray drove down in the car he was in and the Police took Carol in that car.
Q. Then did you come into the Police Station?
A. Yes, I did.
Q. About what time in the afternoon was this?
A. I should say around three.
Q. And was this August 20th, 1966?
A. That's right.
Q. And when you came into the Police Station, what transpired?
A. Well, we had *aready* told the two Police—

Mr. Franklin: I object to that as hearsay.
By The Court: Don't state what you told anybody.

Q. When you came into the Police Station, where did your daughter go?
A. I don't recall just where she went, when we first came in there. I do know they took her in a room alone for awhile
and talked to her.
page 13 } Q. Where was Mr. Houghtaling?
A. Out in the front where all of us were.
Q. All of you were there?
A. Yes.
Q. And what observations did you have of Mr. Houghtaling at that time?
A. Well, we all was just walking around, waiting.
Q. What was he doing?
A. He wasn't doing nothing, he was just walking around there, talking to the different policemen.
Q. How was he talking?
A. Just talking like he always does, I didn't see no difference in his talking.
Q. Do you recall anything different that he said?

Mrs. Helen Ternoosis Johncox

A. Not to them, oh, yes, he did tell me that he'd wished I take Patty—, I wouldn't leave then.

Q. Did you hear any conversation that he had with your daughter?

A. After they got in there I don't think he got a—had any conversation with her in there at all, I recall it, because they took her into another room and they called me in there.

page 14 } Q. What, if anything, was there about Mr. *Hougtaling,* that was different, to you?

A. He didn't want to give Carol up, that was no different, he has always been that way, he just didn't want to give Carol up.

Q. Then the Officers came out, I take it, did they not?

A. They called me in there, I can't remember who went in and out, I know that Lt. Lilley was there and different cops, but, I don't know.

Q. Did you come out of where the room was that your daughter was?

A. Her and I both came out.

Q. And where was Mr. Houghtaling when you came out?

A. He was right there.

Q. What was the conversation at that point?

A. He was trying to tell Ray to let Carol go back where she belonged and he asked her if she had any money.

Q. Who was trying to tell him to let Carol go back where she belonged?

A. All these policemen that *where,*—Lilley and all of them that was there.

page 15 } Q. And what did Mr. Houghtaling say?

A. Well he acted like he agreed with them and said until everything is straightened out, maybe it would be best.

Q. Then what did they do?

A. Well, then we decided that she should go with me.

Q. Was this decision made in the presence of Mr. Houghtaling?

A. Oh, yes.

Q. How was it made?

A. I don't know just which policeman was talking to him, but Mr. Lilley was there, when he agreed to give her her clothes and we were going to get money to send her back; and then he says you have not got no money, have you? And she says, no; and he said I'll give you some for bus fare or something. Then I said, Carol, if you want me to I'll write a check or I'll get it for you.

Mrs. Helen Ternoosis Johncox

Q. Well, what did he say to Carol?

A. Well, he had a check that I had given him, I had got for him from Jarrett,—used cars or something out here in Fishersville, it was a hundred and some dollars. He said I'll go over to Western Auto and I'll get that cashed. He actually went over to Western Auto, but he never page 16 } got it cashed. He come back and said they couldn't cash it, that he'd have to go to the shop.

Q. When he said that he had to go to the shop, what did he say to your daughter?

A. I don't recall him saying anything, just that he would go get her some money.

Q. Where did your daughter stay, did she go with him or did she stay there?

A. She stayed right there, we were told to get into the car and wait right there until he came back.

Q. Who told you?

A. Well, I don't which one it was.

Q. Alright, what did Mr. Houghtaling do—let's stop and go back for just a second. The clothing that was in—You say that he helped her with her clothing, what do you mean by that?

A. Well, he had all her clothes in his car, all the clothes that they were traveling with, of course the rest of her stuff was up to his house. He had taken that out of my apartment house.

Q. What did he do with the clothes in the car?

A. I remember standing there watching him sort'em out in the suitcase and things; and giving her clothes page 17 } to—I took some of them, I don't who all was helping put them in my car.

Q. Right after that was concluded, then was that when the discussion of money came up?

A. Well, it was either before that or after that, because that is when he went to get the money.

Q. And he went in his car?

A. Yes.

Q. How long was he gone, before you saw him again?

A. It wasn't very long about twenty minutes or so.

Q. And when you saw him, what did he have in his hand?

A. A bank bag.

Q. What bank bag?

A. That bank bag.

Q. One like this one?

A. Yes.

Mrs. Helen Ternoosis Johncox

Q. Tell me what *me* what's stamped with a rubber stamp on top of the bag?

A. Ray's Auto Market, 1800 East Main, Waynesboro, Virginia.

Q. Is this the bag he had when he came back?

page 18 } A. Yes, sir.

Q. What did he say was in this bag, when he came back?

A. I don't recall that he said anything, but it was suppose to be the money, cause he dropped it in her lap; and he said are you going to kiss me good-bye or something in that order.

Q. Where was he standing, at the car?

A. Right at the open window, on the outside of the car.

Q. On what side of the car?

A. On the passenger side.

Q. Who was sitting there?

A. Carol Louise.

Q. Who was sitting in the middle?

A. Patricia.

Q. Where were you sitting?

A. Under the steering wheel.

Q. What did he do with the bank bag, again?

A. Dropped it in her lap.

Q. How was she sitting? Can you tell us that?

A. Yes, she had her leg crossed.

Q. And where did the bank bag go?

page 19 } A. It landed on her lap, because I was leaning over like this, and I'd see her start to reach for it, it started to slide off her lap.

Q. It started to what?

A. Slide off her lap. She started to reach for it.

Q. And then what did Ray Houghtaling say?

A. Well, just before she started to reach for it, he reached in and kissed her good-bye.

Q. Did he say anything?

A. Just that are you going to kiss me good-bye.

Q. And did he kiss her good-bye?

A. Yes.

Q. Then, what happened, Mrs. Johncox?

A. Well, that is when he stepped back and started reaching for that bag, and that is when he shot her.

Q. And how do you know he shot her?

A. Because I see'd him do it.

Q. And what did he shoot with?

A. He shot her with a gun.

Mrs. Helen Ternoosis Johncox

Q. And which hand did he have the gun in?
A. His right hand.
Q. And where did he shoot her?
A. Right there.
page 20 } Q. And what did he say when he shot her?
A. I don't recall he said anything, because I was screaming at him.
Q. Then what did he do?
A. Shot himself.
Q. And where did he shoot himself?
A. In the temple, right in the head too.
Q. And where was he when he shot himself?
A. Standing right by the door.
Q. What did he say when he shot himself?
A. I don't recall him saying a word; except he wanted to kiss Carol good-bye and she didn't say a word to him, she just sat there and started to reach for that bag, and he kissed her—reached in and kissed her, stepped back and shot her.
Q. Were you in or out of the car, when he shot himself?
A. I was in the car.
Q. And when he shot himself, what did you do?
A. Well, I started to get out when he shot her, but I hadn't even got out yet before he fell, that is how quick he did it.
Q. And what did you do?
page 21 } A. Started running towards the police station.
Q. Did you come back to the car after that?
A. Yes, I did. I walked back and looked at him.
Q. And how was Raymond Houghtaling lying?
A. He was lying with his one side—, I could see where he shot his self and with his head towards the rear of the car; and while I looking at him, that was before I walked around him to look at Carol, the policeman was there already then; why he come to.
Q. What did he say?
A. He said, Oh God, why don't you let me die, he said, I loved her so.

Mr. Allen: Your witness.

CROSS EXAMINATION

By Mr. Stombock:
Q. Mrs. Johncox, when did you come to Waynesboro?
A. It was in October, the 16th, 1964, something like that; because it was when I bought into Ray's Auto Market.

Mrs. Helen Ternoosis Johncox

Q. Where did you live when you first came to Waynesboro?

A. With them, I stayed with them until I got page 22 } an apartment.

Q. Did you know that they were not married?

A. Yes, sir.

Q. How long did you live with them?

A. I don't recall just how long, it was a good while, then I got an apartment on South Bath.

Q. When did you go into business with Mr. Houghtaling?

A. It was October 16th, I think it's 1964.

Q. You went into business with this man, who lived with your daughter?

A. That's right.

Q. During the time that you were in business with Mr. Houghtaling, did he and your daughter ever visit New York State?

A. Plenty of times.

Q. What was their relationship at this time?

A. What was their relationship?

Q. Yes, were they getting along well?

A. They got along beautifully, as long as she stayed with him and never tried to go home or anything, they got along, he treated her like a queen; until she wanted to go home and back to her family, that's when she was in page 23 } danger.

Q. And did she go back to her family?

A. She had went back to her family several times since she first left them, several times.

Q. More recently, just before this incident in the parking lot, has she been back to her family?

A. For six weeks.

Q. And when she came back to Waynesboro on that *occassion,* did you see them?

A. Yes, I did. I insisted that he bring her down to talk to me, to make sure that she was alright.

Q. Was she alright?

A. She was alright, scared to death, but she was walking around. She didn't get a chance to say one word to me, though. I didn't know that he had brought her down by force, but I know that she was scared.

Mr. Stombock: I object to that,—Your Honor.

By The Court: Disregard the reference as to how she was brought here.

Mrs. Helen Ternoosis Johncox

Mr. Stombock:

Q. Mrs. Johncox, during this week prior to the incident in the parking lot, do you know where they were at all times?

page 24 } A. Not all the time; most of the time I tried to keep track of them.

Q. Do you know whether they went to see a lawyer, during this time about a possible divorce?

A. I don't know, only what Carol has told me.

Mr. Allen: I object to the answer to this question.

Mr. Franklin: We object too.

Q. On any other *occassion,* prior to this time, had you ever gone with them to see a lawyer?

A. One time.

Q. Now on the Friday before the shooting, what were you doing to help them get out of the City?

A. Trying to get him money, he told me that if he got him some money to leave the State, that everything would be alright; naturally I'm going to do anything to help Carol, you know, so she wouldn't get hurt. I was trying to get him some money to get out of the State.

Q. Carol was going with him?

A. Carol was going with him. She had to go with him, I couldn't see her two minutes alone.

Q. What did you do then, in regard to helping them get ready, besides trying to get money for them?

page 25 } A. That's all.

Q. These bags that we speak of, in which the clothing was, in the car. Were they your bags or his bags?

A. They weren't mine.

Q. Did they come from your house, your apartment?

A. No, they were his suitcase and her suitcase.

Q. Were there any of your possessions or any of your clothing in them?

A. No, none of my clothing was in them.

Q. You say you were trying to get them money?

A. That's right, I was.

Q. Where did you go to get the money?

A. He asked me on the phone to go to Jarrett Car Dealer, that Jarrett owed him money. And then I saw him, cause he give me a check, forty dollars to take up to B & B Buick, that's the money I was supposed to be collecting for him, when he met me there.

Q. On the morning of Saturday the twenty of August, were you still attempting to get money for him?

A. That's right.

Q. And did you deliver him any money?

A. That check that he tried to cash over here.

Q. Where did you give him the check?

page 26 } A. I don't recall just where I was, whether I was here or—

Q. Was it at Montgomery Wards?

A. No, I never met him down—, We were supposed to meet down there, we never got that far.

Q. Mrs. Johncox, on the evening that your daughter and Mr. Houghtaling returned from New York, did they come to your residence at all?

A. It was either that evening or the next evening, because I didn't know for sure that she was back with him, because I got a call from my son-in-law in New York—

Q. I asked, did they come to your residence at all?

A. Yes, they did.

Q. Alright, was there anyone else with them?

A. Yes, there was.

Q. Who was that?

A. Mr. & Mrs. LaBlanc from Long Island.

Q. Who are they?

A. They are friends of ours: Friends of mine that I used to know from years ago.

Q. What conversation took place that evening? In regard of your daughter and Raymond Houghtaling?

page 27 } A. Where was this.

Q. At your residence?

A. He was telling them how him and Carol was going to get Carol a divorce, he was going to marry her and get everything all straighten up.

Q. Did your friends make any suggestion as to what they should do in the meantime until this was accomplished?

A. Well, they was wanting Carol to stay where she belonged, to stay away from him.

Q. Did they have any suggestion about, perhaps both of them leaving Waynesboro?

A. Not that I recall.

Q. Did either Mr. & Mrs. LaBlanc give Carol or Ray any money?

A. Ray borrowed money off of him, yes he did, but gave it back to me and I gave it back to Al.

Q. How long were you in business with Ray?

Mrs. Helen Ternoosis Johncox

A. A couple of years, I think. I just got out of it.

Q. Did you live in an apartment in place of living in his house?

A. Sometimes.

page 28 } Q. Were you active in the business?

A. Well, I worked just about every day, except when Carol was there and helped out, when I didn't feel good.

Q. Back to this evening when your daughter and Ray arrived back in Waynesboro, you say that LaBlanc said they should go away until things blew over?

A. Not together. I don't recall Al LaBlanc ever saying a thing like that.

Mr. Allen: She didn't testify that he said that.

By The Court: No, she didn't.

A. I didn't know Carol was gone from New York, until I got a call from my son-in-law.

Mr. Allen: That is objected to.

By The Court: Just answer his questions.

Mr. Allen: Well, the question was she already testified to something that she hadn't testified to.

By The Court: Well, I say that Mr. Stombock is mistaken about that.

By Mr. Stombock:

Q. Alright, during this week prior to this in-

page 29 } cident in the parking lot; were there continued efforts on your part to raise the money for them?

A. No, not at first, it was just when—after he told me to go pick up the check, I was doing that on the day—, on the Saturday morning.

Q. You were helping them so that—?

A. That she'd be safe.

Q. That she would be safe?

A. That's right. I'd a done anything for Carol.

Q. Mrs. Johncox, during this week, did you meet Carol and Ray out of town anywhere?

A. Several times, you see they didn't stay in town, they stayed up to their house and kept her up there for, I don't know just how long. They stayed in a motel. I met one night up on top of Blue Ridge Parkway. *Alway* sneaked around to meet them.

Q. And you took money to them?

A. I give him that one check, well he borrowed money before I give him the check.

Q. Did you and the LaBlanc's meet them at any time?

A. I think we went out one time and we met them, maybe that is when Al gave him that money, I can't just page 30 } recall. We would *to* to a restaurant and eat, of course I would meet them anytime to see my daughter, that's the only time I got to see her.

Q. Alright, then on the day that these bags were in the car, you state that they were Ray and Carol's bags, no property of yours was in the car at all?

A. I don't recall of any of my property in the car, it might of been.

Q. Did you help them pack that morning?

A. I was up there in their bedroom, I didn't help her pack, or I don't think I helped her pack.

Q. But you knew they were going?

A. Oh, yes, that is what I was trying to get the money for, anything to keep her safe, I'd a done.

Q. After you had been to the police station and on through the conversation with the officers down there, and you and Carol went back out in the car, waiting for Ray. When Ray got back, did you have any conversation with him at all?

A. I don't think I got a chance to even speak to him, he walked around by Carol's, don't recall him saying a word to me.

Q. And he was standing on the passenger's side?

page 31 } A. Right.

Q. And you say he dropped this bag in her lap?

A. In her lap.

Q. And what did he say?

A. He said you'd better kiss me good-bye.

Q. And did she?

A. She didn't move, she sat right there, cause I was sitting there watching her.

Q. Did he kiss her?

A. Yes, he reached in there and I think he kissed her.

Q. Where did he kiss her?

A. Either on the cheek or reached around and kissed her on the lips, I don't know. I know I saw him reach in there.

Q. Then you say you saw the gun in his hand?

A. I sure did.

Q. And he said nothing.

A. Not after that.

Q. And after he had fired the shot into his own head and was laying on the ground, what did you do then?

A. I started to run, after I got out of the car I runned to the police station or started to and met the police

page 32 } *comming* out; so I went back to the car and I run around to see Carol, by that time there was some policemen there or somebody was—, got in there to her so I went back and stood right beside where Ray Houghtaling lay on the ground and he come to while I was standing there watching.

Q. And what did he say?

A. He says, God, why didn't you let me die, he said I loved her so. And I said to him, I wished he would.

Mr. Stombock: That's all.

By The Court: Is that all, Mr. Allen?

Mr. Allen: That's all.

The witness stands aside.

D. L. BELCH, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. Mr. Belch, give us your initials, please?

page 33 } A. D. L.

Q. And how long have you been a member of the Waynesboro Police Force?

A. Eighteen months.

Q. And on August the twentieth, sixty-six, you were a member of the force?

A. Yes, sir.

Q. You married?

A. Yes, sir.

Q. I believe you have some children?

A. Yes, sir. Two.

Q. Two?

A. Yes, sir.

Q. How old is that *youngester,* I saw yesterday?

A. Three years old.

Q. Alright, now on August 20th, 1966, did you see Mr. Raymond Houghtaling?

A. Yes, sir I did.

Q. Where was it that you saw him?

A. My first encounter with Mr. Houghtaling was at the B & B Buick.

Q. Did you have any discussion with him there?

A. No, sir.

page 34 } Q. Did you know of Mrs. Carol Taft?

A. I didn't know her personally, but I know of who you are talking about, yes sir. She was with him at this time at B & B Buick.

Q. Where was she while you were at the B & B Buick?

A. My first encounter with Mrs. Taft, she was with Mr. Houghtaling.

Q. Then what transpired?

A. Mrs. Taft, then got out of Mr. Houghtaling's car and got in the cruiser.

Q. What did Houghtaling do?

A. Mr. Houghtaling, at this time was, I would say, was in an aggressive mood; in that he was wanting to know what the trouble was, what was going on. He said to Sgt. Campbell, What's going on, John.

Q. John, he knew Sgt. Campbell?

A. Yes, sir, evidently, he called him—

Q. Did you know him?

A. No, sir, I had never seen Mr. Houghtaling before.

Q. Then what did Mr. Houghtaling do?

page 35 } A. After Sgt. Campbell and Mrs. Taft got into the cruiser, Mr. Houghtaling just stood around with Mrs. Johncox and his daughter.

Q. Did he have any conversation, that you heard?

A. No, sir, I heard no conversation whatsoever.

Q. Anything unusual about Mr. Houghtaling?

A. No, sir, nothing; nothing unusual.

Q. About what time was this, do you know?

A. Approximately, sir, I say between two and two thirty.

Q. Then after that where did you go?

A. From there I then got into the cruiser with Sgt. Campbell and Mrs. Taft and we came to the Police Department.

Q. And Houghtaling, did he ride with you?

A. No, sir, he did not.

Q. Did he come to the Police Station?

A. Yes, sir, he did.

Q. And when he came to the Police Station, where did Houghtaling go?

A. Mr. Houghtaling went into what I would consider the lounge or waiting room in the department.

page 36 } Q. What was there about him then, that you noticed that was unusual?

A. Nothing unusual, just as I stated before, that he wanted to know what was going on, but nothing other than that.

Q. Was there any other conversation that you heard, from Mr. Houghtaling?

A. No, sir, no other conversation.

Q. How long was he there before Mrs. Taft returned from her conference with the Police Officers?

A. I would say ten minutes, sir.

Q. And when she returned what was his reaction and attitude?

A. He wanted to know what the trouble was, as I said before, he had the same attitude, he was aggressive in this manner, that he wanted to know what was going on.

Q. Did you overhear any conversation that he had with Mrs. Taft?

A. This is in the—

Q. In the Police Station?

A. No, sir, not in the Police Station, no sir.

Q. Did he say anything other than, what's going on, do you recall?

page 37 } A. Lt. Lilley told Mr. Houghtaling, that Mrs. Taft wanted to go back to New York, and this was the decision that Mrs. Taft had reached. And Mr. Houghtaling didn't seem to put out about this, from my observation.

Q. What did he say?

A. At the time, in the Police Department, he didn't say anything that I heard, sir.

Q. Then, what transpired?

A. Then we all, Mrs. Johncox, Mr. Houghtaling's daughter, Mr. Houghtaling, Mrs. Taft, Lt. Lilley and myself went out to Mr. Houghtaling's car; and Mrs. Johncox's car was also parked out in the lot.

Q. And what did you do at Houghtaling's car?

A. Mr. Houghtaling opened the trunk to his car, helped Mrs. Taft get her clothing out of his car and put it in Mrs. Johncox's car.

Q. What was there at that point that was unusual or anything about Mr. Houghtaling?

A. I noticed nothing unusual, sir.

Q. Can you describe his attitude at that point?

A. His attitude was that of a person who was, he was congenial, he didn't seem unfriendly at all.

D. L. Belch

page 38 } Q. Then what happened?

A. After the clothing or suitcases were loaded into Mrs. Johncox's car; Mr. Houghtaling asked how she was going back, and the word bus was mentioned. I heard Mr. Houghtaling ask Mrs. Taft, do you have money for a bus ticket. I didn't hear the answer Mrs. Taft gave Mr. Houghtaling, but Mr. Houghtaling wanted to know if Mrs. Taft would go with him while he got the money. And Mrs. Johncox, said, no we will wait here for you to bring the money.

Q. Then what happened?

A. After this, Mr. Houghtaling pulled out of the parking lot; Mrs. Johncox, Mr. Houghtaling's daughter and Mrs. Taft, pulled over and parked the car. They got of the car and walked toward the Western Auto Store, in that direction.

Q. Then what happened?

A. That is the last encounter I had with these people until the shooting.

Q. Then where did you go?

A. I went back into the Police Department.

Q. And how much time elapsed before Mrs. Johncox came back for you?

page 39 } A. I would approximately fifteen minutes.

Q. Where were you then?

A. I was standing behind the counter, in the Police Department.

Q. Facing which direction?

A. I was facing east, toward the Kroger Store.

Q. Alright, then what?

A. I was talking to Officer Harlow, the teletype was running, the usual noise in there, the department down there, and I heard this unusual noise, which I didn't associate it with anything at the time, until I looked and I saw Mrs. Johncox.

Q. How much time elapsed from the time that you heard the noise and you looked up?

A. I would say perhaps two to three seconds, sir.

Q. Then what did you see?

A. I seen Mrs. Johncox running across the parking lot, towards the Police Department.

Q. Then what?

A. I then ran out of the Police Department, because I associated it with what I heard. I associated it with being a shot. I met Mrs. Johncox at the door of the Police Department, I continued on out into the parking lot.

page 40 } Q. What did you find?

D. L. Belch

A. When I got to the scene of the shooting, Mr. Houghtaling was laying with his head to the north, his feet to the south; a revolver was laying level, in line with his feet and to his right.

Q. A revolver?

A. Yes, sir.

Q. You identified it?

A. Yes, sir.

Q. Where did you find it?

A. That was—as I explained it was at Mr. Houghtaling's feet, in line with his feet and to his right.

Q. What did you do with it?

A. I picked the revolver up and layed it upon the car.

Q. Why?

A. Because sir, when I got to the scene Mr. Houghtaling was laying there unconscious. I couldn't determine whether he was alive or dead. I then went to the car where the deceased was, I opened the door and it was the driver's side that I opened. The car, of course, was facing south;

page 41 } I opened the driver's side, Mrs. Taft was slumped over in the seat; and by this time a pool of blood had gathered at the bottom of her face in the seat. I felt of her, I could feel no life, so I felt that I couldn't do anything for her, so I closed the door; I went back around to Mr. Houghtaling, at this time Mr. Houghtaling had regained some type of consciousness; this is when I picked the revolver up, placing it on the hood of the car.

Q. Then what did you do?

A. Then Mr. Houghtaling complained of choking, he couldn't get his breath; so I went into Mrs. Johncox's car, taking out some articles, bringing them back and placing them under Mr. Houghtaling's head. After I done this, of course, by this time Sgt. Taylor had arrived on the scene and it wasn't to long after the First Aid.

Q. Is this the gun that you picked up?

A. Yes, sir.

Mr. Allen: This is Commonwealth's Exhibit No. 2.

By The Court: All right.

Mr. Allen: Your witness.

CROSS EXAMINATION

page 42 } By Mr. Stombock:

Q. You say that Houghtaling was aggressive in his manner, when was he aggressive?

Raymond A. Taylor, Jr.

A. Sir, by aggressive, I mean he was concerned to the point that he wanted to know what was going on at all time, I mean; what are you doing, what's the trouble.

Q. In other words, he was concerned?

A. Yes, sir.

Q. And you say he asked Sgt. Campbell, what's going on?

A. Yes, sir.

Q. Did the Sgt. know what was going on?

By The Court: You will have to ask the Sgt.

By Mr. Stombock:

Q. You say at the Police Station, that he was still concerned?

A. Yes, sir.

Q. But otherwise he was cordial?

A. Yes, sir.

That's all

The witness stands aside

page 43 } RAYMOND A. TAYLOR, JR. having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. State your name, please sir?

A. Raymond A. Taylor, Jr.

Q. And your occupation?

A. Police Officer, here in Waynesboro.

Q. Are you known as Sgt. Taylor, is that your rank?

A. Yes, sir.

Q. On August the twentieth, nineteen sixty-six, when and where did you first see Raymond M. Houghtaling?

A. I saw him in the office about 3:00 P.M., when I came to work.

Q. And what was his appearance, that brought to you—?

A. Well, I didn't see any difference, in the other times that I had seen him. He was walking around kinda nervously.

Q. Did you have any conversation?

page 44 } A. No, I did not.

Q. Had you known him before?

A. Yes, I did.

Raymond A. Taylor, Jr.

Q. The next time you saw him, Mr. Taylor?
A. It was about forty minutes later, on the parking lot, in front of the police station.
Q. And what then?
A. He was lying on his back, he was bleeding from the side of his head, he had a pillow underneath his head.
Q. And where was Mrs. Taft?
A. She was in the front seat of the car, pulled into a parking spot there in the parking lot?
Q. What was her condition?
A. She had a hole in her head, there was no noise or anything.
Q. What did you do?
A. I held the crowd back, and we got the First Aid on the way. Just kept the crowd back, there was nothing we could do; at the time.
Q. Can you identify this, please?
A. Yes, sir.
Q. Where was that?
A. It was on the hood of the right front fender
page 45 } of the car that Mrs. Taft was in.
Q. What was the—, you asked me whether or not the revolver was not loaded?
A. It was loaded at the time, it had three fired shells in it and five unfired shells.
Q. Three of them had been fired and five had not been fired, is that correct?
A. Yes, sir.
Q. Three out of five?
A. Yes.

By The Court:
Q. What is that, a twenty-two?
A. A Twenty-two.

Mr. Allen: We offer into evidence, the contents of the gun.
By The Court: We'll make the gun and it's contents, both as Exhibit No. 2.

By Mr. Allen:
Q. Now, Mr. Taylor, I take it the First Aid had arrived, and after that, what did you do with the car?
A. I locked the car up, both vehicles, there was two of them there. I got the car with dealer's tags on it,
page 46 } they were both locked up.

Raymond A. Taylor, Jr.

Q. The vehicle in which Mrs. Taft was, what did you do with that?

A. It was locked up and left in the parking space that it was parked, when I first saw it.

Q. Can you identify this?

A. Yes, sir.

Q. Where did you find it?

A. The car that Mrs. Taft was in, in the front, right down on the passenger's side, on the floor, partly back under the seat.

Q. What was the contents of that?

A. Just paper, kind of an old tablet of writing paper. It had some writing on it and a forty dollar check for Bernard Shore, otherwise just paper.

By A Juror:

Q. I'd like to see this paper.

By The Court: Let him examine it.

By The Court:

Q. There was no money in the bag?

A. No, sir. There wasn't any money.

page 47 } By Mr. Allen:

Q. Wasn't there a check in there?

A. No, sir, it just had the writing of—

Q. What?

A. The writing on that piece of paper said forty dollar check to Bernard Shore. There was no check.

Q. Is this what you are talking about?

A. Yes, sir.

Mr. Allen: Your Honor, this I submit as Commonwealth's Exhibit No. 3. I call your attention to the fact that there is a stamp on the top of the bag. I would like to have it passed around, please.

Q. How long have you known Raymond Houghtaling?

A. Ever since he opened his business in Waynesboro, I guess around three years, maybe two and a half.

By The Court:

Q. Have you had an occasion to talk to him?

A. Many times.

page 48 } Mr. Allen: That's all.

CROSS EXAMINATION

By Mr. Franklin:

Q. On this day, you say he was extremely nervous; and walking around?

A. Yes, sir. He was walking to the door and back, then he would sit down on the bench and back to the water fountain. I'd say he went to the water fountain, the fifteen or twenty minutes I was in there, a couple of times at least.

Q. He wasn't able to sit down at any time, just walking around?

A. He only sat down for a couple of minutes.

Q. Then he was up walking around and going to the water fountain?

A. Yes, sir.

Q. He didn't say anything to you?

A. No, not at that time, he did over in the parking lot.

Q. Was he nervous, the same type of nervousness, when he got on the parking lot?

page 49 } A. I didn't see him when he left. I left before he did.

Mr. Franklin: That's all.

The witness stands aside

JOHN CAMPBELL, JR. having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. Sgt. Campbell will you state your name for record, please sir?

A. John Campbell, Jr.

Q. And you are a Sgt. on the Waynesboro Police Force?

A. Yes, sir. I am.

Q. How long have you been on the Police Force?

A. Ten years.

Q. And a Sgt. for how long?

A. Three years.

Q. How long have you known Raymond Houghtaling?

John Campbell, Jr.

page 50 } A. Oh, four or five years, maybe.

Q. And what if ever, have you observed about him that was unusual or out of the *oridinary?*

A. I found nothing unusual about him.

Q. Have you talked to him?

A. Yes, sir.

Q. On August the 20th, did you talk to him?

A. Yes, sir, I did.

Q. How did you find him on August 20th?

A. The parking lot at B & B Motors, on West Main Street.

Q. And when you found him there, was he with Mrs. Taft?

A. Yes.

Q. What transpired there?

A. She was sitting in an automobile with Ray Houghtaling and I approached the car and asked her to step from the car, that I wanted to talk to her, which she did.

Q. Did Houghtaling—, what did he say at that point?

A. He stepped out and come around to the other side and asked me, Sgt. what's wrong. I said nothing, I wanted to speak to this lady. Would you please stand aside.

page 51 } He did.

Q. Did he say Sgt. what's wrong or call you by your first name?

A. Sergeant.

Q. And then you asked him to stand aside?

A. Yes, sir.

Q. And then when did you—, you talked with Mrs. Taft, where, in the car?

A. In the Police car.

Q. What occurred, how did she act?

A. She was scared.

Q. Then when did you next talk with Mr. Houghtaling?

A. I sat in the Police car and told Ray that I was going to take this lady with me to the Police Department, that it was at her request. He wanted to know if he could come along, if he could ride along; and I told him no. He asked if he might drive down in his car. I said that he could.

Q. Then you went to the Police Station?

A. Yes.

Q. What did you do at the Police Station?

A. I didn't have any further conversation with

page 52 } Ray, there. The Lieutenant and myself talked to Mrs. Taft in another office.

Q. And after that, when you left the other office, where was Mr. Houghtaling?

John Campbell, Jr.

A. He was sitting in the lobby.
Q. What was he doing?
A. Well, I don't think he was doing anything other than just sitting on the bench there. He got up and went back and forth to the water cooler.
Q. What was there about him that was unusual, if anything, at that time?
A. Nothing.
Q. You had no conversation with him?
A. No further conversation.
Q. Did you overhear any conversation?
A. No, sir, I didn't.
Q. I believe you were going off duty?
A. Yes, sir.
Q. Did you come back on duty anytime that afternoon? After this time?
A. No, sir, I didn't.
Q. This was the last time that you saw Ray Houghtaling that day?
page 53 } A. Yes.

Mr. Allen: Your witness.

CROSS EXAMINATION

By Mr. Franklin:
Q. Would you say that Mr. Houghtaling was concerned or aggressive when you went to the car out at the B & B Buick?
A. Yes, I would say that he was concerned, yes.
Q. Did he seem to be very concerned about what was going on?
A. I didn't measure the degree of concern.
Q. Well, when you came down to the Police Station and talked with him, you said he was up and down when you saw him out in the lobby, did he appear to be nervous and concerned, there?
A. He appeared to be somewhat nervous, yes.
Q. He appeared to be nervous. There was something unusual about him that day—

Mr. Allen: That's argumentative.
By The Court: Yes, that's argumentative.
Mr. Franklin: Mr. Allen had asked him was he natural, I just asking if there was something unusual about
page 54 } him.

By The Court: You can ask if he did anything unusual, but you are drawing a conclusion.

By Mr. Franklin:
Q. Was he still concerned?
A. I don't know, he was—
Q. What did you say?
A. I didn't have any further conversation with him at the station, I don't know.
Q. How many times did you see him go to the fountain?
A. Once or twice.
Q. Was Sgt. Taylor there at the same time?
A. I don't know whether Sgt. Taylor was in the office or not.
Q. Had Sgt Taylor not arrived or had he departed?
A. When we first arrived at the office, Sgt Taylor wasn't there. We change shifts between three and three-thirty and Sgt wasn't at the office when we arrived. He did arrive there sometime before I left, I don't know the exact time.
Q. From your knowledge he wasn't out in the
page 55 } lobby when you observed this man going to the water fountain?
A. Not that I remembered.

Mr. Franklin: That's all.

The witness stands aside

R. J. LILLEY, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:
Q. Lieutenant R. J., isn't it?
A. Yes, sir.
Q. Lieutenant R. J. Lilley?
A. Yes, sir.
Q. How long have you been a member of the Waynesboro Police Department?
A. Going on twenty-one years.
Q. And a Lieutenant for how long?
A. Eleven.
Q. Do you know Raymond M. Houghtaling?
A. Yes, sir.

R. J. Lilley

Q. How long have you known him?

A. Ever since he has been in Waynesboro, four
page 56 } or five years.

Q. Have you talked to him?

A. Yes, sir.

Q. What is there that you have noticed about him that was different or

A. None whatsoever

Q. On August 20th, 1966, did you talk to Mrs. Taft?

A. Yes, I did.

Q. And how did she seem to you?

A. At the time that I talked to her.

Q. Yes, sir?

A. Scared.

Mr. Stombock: That is an opinion.

By The Court: It is an opinion, yes. What was her appearance, you can state that.

By Mr. Allen:

Q. I don't want you to state a thing that she said, what was her appearance?

A. At the time I talked to her in a room adjoining the Police Department. Sgt. *Cambell* and I was in there. She was nervous, she wouldn't stand still while she was talking to us and everytime there was a noise, she thought someone was coming through the door.

page 57 } Q. After talking to her, did you talk with Mr. Houghtaling?

A. Yes, sir, I did.

Q. And what was his appearance?

A. I came out the room where I had been talking with Mrs. Taft and Houghtaling was in the hall. Him and I walked around the corner of the hall; and I asked him about Mrs. Taft wanted to go back to New York. He said something about they were going to get a divorce. I told him I didn't know anything about that, but now she wanted to go back and I thought the best thing for her to do was to go back.

Q. And what did Mr. Houghtaling say?

A. He agreed to it.

Q. And what was his appearance?

A. He wanted to know why I thought she should go back; I told him. So he agreed that she could go; so I said that she wanted her clothes out of your car. He said she could get them. We all went to the car and unloaded the trunk.

Q. And what did Houghtaling do?
A. He helped unload it.
Q. And what was his appearance?
page 58 } A. Same as it had been.
Q. Describe his actions from there?
A. Well, he was just sitting there sorting his clothes, getting hers out from his and putting them over in his car.
Q. What was there unusual about him?
A. I didn't see anything.
Q. What was his attitude towards Mrs. Taft?
A. None.
Q. What?
A. None.
Q. Well, he had some attitude, didn't he?
A. Oh, he was just helping getting her clothes out, she was standing by him.

By The Court: You might ask for an opinion, Mr. Allen.

Mr. Allen:
Q. Then what transpired, what was said, can you tell us that?
A. There was some question after we had loaded up the clothes, of how she was going to get to New York; and he said you can go by bus. She didn't have the money, but Houghtaling told her, that he would let her have
page 59 } some. He told her and her mother, both, to come on over to the shop and he would let her have some. Mrs. Johncox said she wasn't going over there, they decided that, we'll wait here, if you will go get the money, we will wait until you come back. He got into the car and pulled off.
Q. Where did Mrs. Johncox go?
A. She pulled her car over to a parking space in the lot, as I recall they got out of it and walked down through the parking lot, I wouldn't say for certain on that, I went on back in the Police Station.
Q. Then next what transpired?
A. Well, I went home shortly after that, I didn't see any of them anymore.
Q. You didn't see them again?
A. That's the last I saw them.

Mr. Allen: Your witness.

* * * * *

page 61 }

* * * * *

EVIDENCE OF THE DEFENDANT

DR. BERNARD H. KASINOFF: having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Stombock:

Q. Will you please state your name, place of residence and profession, please?

A. My name is Bernard H. Kasinoff and I live at 1215 North Augusta, in Staunton, Virginia; and I am a practicing psychiatrist in Staunton.

Q. Where did you receive your training in medicine and psychiatry?

A. I am a graduate of the University of Virginia, and taken my under graduate in Medical School at the University of Virginia.

Q. What degree do you have?

A. B A and M D.

Q. Are presently a *practing* psychiatrist?

A. Yes, *P*resently I am Director of the Valley

page 62 } Mental Health Center, which is a community clinic, located in Staunton, servicing the area of Waynesboro, Staunton and Augusta County. And I am also in private practice at the Staunton Medical Center.

Q. What professional societies do you belong to?

A. I am a member of the American Medical *Assoication,* I am a member of the Virginia State Medical Society, I am a member of the Augusta County Medical Society, I am a member of the American Psychiatric Association, I am a member of the Virginia Psychiatric Society.

Q. Dr. Kasinoff, have you had an opportunity to review the records of Raymond Houghtaling, both at the Southwestern State Hospital and the University of Virginia Hospital, Psychiatry section?

A. Yes, I did, this morning I was handed the records from Southwestern State Hospital and reviewed it briefly, this morning. Yesterday, I reviewed some of the University of Virginia record, on Davis Ward. I am a—, on the Staff of the Psychiatric Out-Patient Department at the University

of Virginia; and I am usually there on Wednesday. And I had an opportunity to review the Record from the University of Virginia, at that time my purpose for doing it,

page 63 } was based on the fact that the day previous I had received a subpoena to appear in Court.

Q. Base on your inspection of these records at the University of Virginia Hospital, what do you find to have been previous medical history of Mr. Houghtaling, as far as mental stability is concerned?

A. According to the summary that I reviewed from the Social Service Department of the Psychiatric Division, the defendant had suffered from a mental disorder on a previous *occassion.* There was mention in the record, that he was diagnosed with a psychiatric disease; and if my memory serves me correctly he was, it may of been '41 or '42, in one of the state hospitals in the State of New York.

Q. Dr. Kasinoff, have you previously been provided with a report in letter form, from Southwestern State Hospital to the Police Force of the City of *Wayesboro?*

A. Yes, about ten days ago, I believe you handed me such a report.

Q. Have you read the report?

A. Yes. These are some of the notes that I scribbled.

page 64 } Mr. Stombock: I'd like to show these to Dr. Kasinoff, to refreshen his memory.

By The Court: Alright, sir.

By Mr. Stombock:

Q. Dr. Kasinoff, I ask you from the information in front of you there, what was the specific diagnoses at the New York Hospital?

A. He was *disgnosed* at that time as a manic, depressive psychosis, they said manic type.

Q. His main concern was what?

A. A manic, depressive psychosis is a severe form of mental illness; that is characterized by either increased or decreased activity in thinking in the individual, expressive predominately by either depression or elation. This is the general way. If the individual who is diagnosed as a manic, depressive psychosis, he is then further, what we call, subdiagnosed, that is if he presents predominately, a picture of depression, he is called a manic, depressive psychosis; depressed type; if in his illness he seems to be elated, they use the term manic depressive psychosis—manic type. The manic

sub-heading the elation that the patient is experiencing at that time. The general main diagnoses is manic
page 65 } depressive psychosis.

Q. Is this the type of thing that the man on the street calls insanity?

Mr. Allen: I object to the question.
By The Court: Well, I think it's quite leading.

By Mr. Stombock:

Q. Reading further in your reports there, before we get to that—In your review of the record from the University of Virginia, what, if anything in this connection, do you find in Mr. Houghtaling's family background?

A. In the abstract that the Social Service Department of the Psychiatric Division; mention was made in the abstract that the defendant's mother suffered from a psychiatric illness; the nature of this illness was not defined, except that she was hospitalized for this illness in, I am not sure whether it was a state hospital, but she was hospitalized for this psychiatric illness and received electric shock treatment. An electric shock treatment is a form treatment that was formally used in depressive illness and is used even today, but to a lesser degree.
page 66 } Q. Do you recall anything else of that nature?

A. There was mention made in the same report, that the defendant's grandmother was subject to violent outbursts. That is all my memory serves me right now.

Mr. Allen: I object.
By The Court: I think that is alright.

A. We do not know the cause; the cause for this type of psychiatric illness. However from statistically evidence, there seems to be a certain incidence, significant incidence, in that there seems to be a familiar type of disposition; in other words, if your parent suffered from this illness; statistically, then you have a much better opportunity, if I may put it that way, of suffering from the same illness, rather than coming from parents who did not have this illness. The incidence is high, so that you have a predisposition, depending on the circumstances that you would develop this illness. So there seems to be some strong evidence, at least on statistically basis, that there is this family tie-in, although we do not say that it is inherited.

Dr. Bernard H. Kasinoff

By The Court:

Q. It is not considered to be hereditary, is it?

page 67 } A. No, it is not inherited, but there seems to be a family tendency, at least on a statistically basis from hospital records.

By Mr. Stombock:

Q. What is your recollection, as to the record of the University of Virginia Hospital, in regard to Mr. Houghtaling, when he was there last August?

A. He was transferred to the Psychiatric Service, he was admitted to the Eye Service, of the University of Virginia Hospital, when he was transferred from the Waynesboro Hospital. And he was subsequently admitted; I have the exact date he was transferred; he was admitted August 20th, to the Eye Service and the next day on August 21st, the eye doctor requested a psychiatric consultation and the reason that the consultation was requested, was because the man was described as being profoundly depressed, he was orientated, he knew where he was, but profoundly depressed and it was the *psychistrist's* opinion, on the twenty-first; his words are exactly, profound depression with probable compensated psychosis and suicidal at that time. He was still on the Eye Service when this consultation was given and they made *an* recommendation that he be placed on certain drugs, primarily an antidepressant drug. He was still on

page 68 } the Eye Service at that time. He was visited by a psychiatrist again on the twenty-third, and the note there, said; still suicidal; on the twenty-fifth, he was seen by Dr. Buxton, who was another psychiatrist, at the University, he was an Associated Professor in Psychiatry, and his note was still suicidal, it was on the twenty-sixth of August, that he was sent to the operating room for removal of his eye. The next note that I can detect was on the twenty-ninth of August, three days after surgery, he was transferred to the Psychiatry Service, *know* as Davis Ward. The reason for his transfer at that time was: that the patient was described as being disorientated, clawing and picking and repeating certain unintelligible phrases; and they were unable to get any historical information from him at that time; and so he was transferred to the Psychiatry Service. Two day after his transfer to the Psychiatry Service, there is a note stating that once again he was orientated, in other words he was clear, he knew where he was and his memory was in tact. On the second of September there is a note saying; confused, disorientated, hallucinating again. He was transferred

Dr. Bernard H. Kasinoff

to Southwestern on September 7th. His diagnoses from the University at the time of his transfer to South-
page 69 } western was questionable psychotic, depressive reaction.

By The Court:

Q. Questionable psychotic, what?

A. Questionable, psychotic, depressive reaction.

Q. Depressive reaction.

A. Yes. If I may just amplify just briefly on that. They thought that there was a psychotic process, which was a severe mental illness.

By Mr. Allen:

Q. Are you interpreting the report?

A. No. I am giving *an* definition.

Q. You're giving a definition of psychotic depressive reaction?

A. My purpose is to *deferentiate* this from manic depressive psychosis, which is the diagnosis—

Q. But you have already defined the manic depressive, I believe; and the manic stage and the depressive stage. He can define the questionable psychotic depressive reaction, but not what they think.

By The Court:

He can make an abstract definition.

By Mr. Stombock:

Q. Your Honor, I asked him to define the dif-
page 70 } ference if any, between the diagnosis at the University of Virginia Hospital and the one made previously in New York?

A. I'll try to answer it this way. In making a diagnosis of a manic depressive psychosis, we usually elicit in the history of the individual or from the family, previous attacks of this illness; if we cannot elicit this historical information, all we can say is depressive reaction, psychotic depressive reacton. If we know that this is the first episode in the individual, we aren't sure whether this is the first episode of what will later be called a manic depressive psychosis; so not knowing we just call it depressive reaction, psychotic depressive reaction.

Q. In other words—

By The Court:

Q. You go half way in other words?

A. You don't have to confuse—

Dr. Bernard H. Kasinoff

By Mr. Stombock:
Q. In other words it's a fair statement to say—

By Mr. Allen:
I think you are leading when you say; in other words it's a fair statement.

By Mr. Stombock:
page 71 } Q. Are you telling us then, that this diagnosis was made because this was the first time that the Doctors at the University of Virginia had seen this man and did not have benefits of previous records?

Mr. Allen: The question is objected to.
The Court: I don't see anything wrong with that.

A. This is my interpretation, that this was the basis for making this diagnosis, without knowledge of a previous history that he had of being diagnosed as a manic depressive.

By The Court:
Q. In other words this was a tentative thing?
A. This was a tentative supposition and this was made on the twenty-first, by the consultants.

By Mr. Stombock:
Q. Alright sir. Let's go back to the commitment in New York State. What disposition was made of his case, according to the report from Southwestern State Hospital?
A. Would you help me please with my memory.
Q. Yes, that letter from Southwestern State Hospital, what disposition was made of Houghtaling at the New York State Hospital?
page 72 } A. He was admitted to Rochester State Hospital in New York State on February 24th, 1942, for mental illness. A diagnosis was made of manic depressive psychosis, manic type. He was released on convalescence care; June 4th; and discharged as recovered July 14th, 1942.
Q. Nineteen forty what?
A. Forty-two.
Q. What is your understanding of the term, recovered, in that sense?

By The Court: I think the letter will have to speak for itself.

Dr. Bernard H. Kasinoff

By Mr. Stombock:
Q. In your opinion, sir, individuals that have been diagnosed thusly with—, do they recover?

Mr. Allen: I question whether—
By The Court: Ask the question over, I couldn't hear you.

By Mr. Stombock:
Q. Dr. Kasinoff, can individuals, who have been thusly diagnosed, recover?
A. I will say—

By The Court:
Q. Can you recover from this diagnosis?

page 73 } Mr. Allen: I object.
By The Court: I think that is alright, he can express an expert opinion as to whether you recover from manic depressive psychosis.

A. In psychiatry, when we talk about severe mental illnesses, which we refer to as psychosis. I think that we all feel that none of these illnesses are ever cured, in that sense. We refer to the term, when the patient is improved, better, or even at the time of his release from the hospital; we talk about his illness being in remission. And if I can compare this with physical illness, you may or may not know for example in the situation of tuberculosis of the lung; people that are released from a sanitarium after treatment for tuberculosis; we talk about their condition being arrested; in other words it means that they are no longer infectious, we certainly do not think in terms of cure of the tuberculosis. There is evidence of the tuberculosis there, but they are well enough to go about their business. In a similar way we talk about these severe psychiatric illnesses, as saying that the illness is in remission, because we can't talk of cure with these severe mental illnesses; so we use the term remission.
This means that they are better, quiescent; and
page 74 } again this is not unusual, because we do this other illnesses. If you have an ulcer of your stomach, it may not be cured, you may not have symptoms, if the doctor has treated it, it may be quiescent, but the ulcer is still there in the stomach, you are not complaining of the symptoms. So you are diagnosed as having a duodenal ulcer, but you are not complaining of the symptoms; and in the same

way we talk about psychiatric illnesses, they had the illness, but they are better, they are what we call a symptomatic, at the time; and we call this psychosis in remission.

Q. Under what circumstances are conditions, is it probable or possible that this psychiatric illness can renew itself?

A. Any stressful situation, depending on the personality of the individual, this is in a general way, I can't spell out specifically any things that would cause a recurrence, but only in a general way. Some stressful situation, and stress we can all tolerate to different degrees, depending on our resistance and our personality, but certainly a person who has previously suffered from some illness, is in my opinion, more prone with less stress to suffer a relapse, than page 75 } perhaps someone who has never had this illness before.

Mr. Stombock: No more questions at the moment.

By The Court: Mr. Allen.

Mr. Allen: I have no questions.

* * * * *

page 82 }

* * * * *

DR. JOSEPH R. BLALOCK, having been first duly sworn, testifies as follows:

page 83 } Q. You are Dr. Joseph R. Blalock?
A. Yes, sir.

Q. Dr. Blalock, what position do you occupy?

A. Superintendent of the Southwestern State Hospital; in Marion, Virginia.

Q. How long have you been so occupied, sir?

A. Since February of 1938.

Q. Twenty-nine years?

A. Yes, sir.

Q. And you are a medical doctor?

A. I am.

Q. May I ask where you got your medical training?

A. John Hopkins Medical School.

Q. And your Specialty?

A. Specialty of psychiatry.

Q. And what is your background and training in psychiatry?

Dr. Joseph R. Blalock

A. I was on the staff and training of Psychiatric Institute of Hospitals, New York City, from 1929 to 1938; which part of *th* time I was on the teaching staff, which is called a physicians service.

Q. Are you a member of any society, profes-
page 84 ⟩ sional *socity?*

A. I'm a member of the American Psychiatric Association, I'm a member of the State and National Society.

Mr. Allen: Do you question Dr. Blalock, as an expert.
Mr. Franklin: No, sir. We don't question it.

By Mr. Allen:

Q. Dr. Blalock, Raymond M. Houghtaling, who stands before this Court on indictment for murder, are you familiar with Mr. Houghtaling?

A. Yes, I am.

Q. Will you tell this Court and Jury whether or not Mr. Houghtaling has been a patient at your hospital?

A. He was.

Q. And under what circumstances was he there?

A. He was admitted by the Court for observation and a report on his mental condition.

Q. What was the day of his admission?

A. I've got some of those dates down, but I don't see that one.

Q. Maybe I can refresh your memory, by the
page 85 ⟩ use of a copy of your letter?

A. He was admitted on September 7th, 1966.

Q. And the date of that letter, sir, is what date?

A. The date of this letter is November 18th, 1966.

Q. At the time of the letter, was he still a patient at your hospital in Marion?

A. He was.

Q. During the course of his admission there, I believe at some point; can you tell us what examinations and tests and observations that he was subjected to?

A. He was given an admission examination, including a physical by the doctor, who was on duty, who was not the doctor that examined him on the regular staff. He was admitted to the maximum security building and given a mental examination by Dr. Wegielski, who is Director and in charge of that department.

Q. And the results of the medical examinations?

A. The results of the mental examination, we don't or-

dinarily come to any conclusion, because we see them as soon as we can after they get in, certainly the first two or three days. The doctor saw him, I don't know if he saw him the day he came in, but he saw him the next day. His conclusion—

page 86 } By Mr. Stombock:
Q. Is the Doctor here?
A. He's here.

Mr. Franklin: We would rather have him state his conclusion, since he is here.
The Court: Alright, sir.

By Mr. Allen
Q. Don't state his conclusions?
A. He went into a *proceedure,* which constitutes our total examination. He was seen by a psychologist and a psychological examination; and a social worker took from him and wrote to various sources for information to get further history to build up his background.
Q. And these various sources, do you know what sources were contacted?
A. Memorial Hospital, Rochester State Hospital, Veterans Administration, the University of Virginial Hospital, Commonwealth Attorney's office and I think the—
Q. Alright sir. In the course of his stay there at Southwestern State Hospital, can you advise the Jury what his activities were, how he got along with people and things of this nature?
page 87 } A. Yes, sir, if I might put this in; an important part of this observation is being present on the ward, twenty-four hours a day with an attendant and a nurse supervisor. That gives us a good lead to the general behavior and reactions to other patients. He was also given x-ray of the skull, electroencephlogram of the brain wave tracings, laboratory work and he was examined by a local eye specialist.
Q. The purpose of the electroencephlogram is what?
A. The purpose of the electroencephlogram is to determine if there is any disturbance in the brain waves that are normally present within the brain tissue, the brain substance. We do that routinely on all Court Order cases, particularly where there might have been an injury.
Q. What was the result of the case of Mr. Houghtaling?
A. His brain wave was normal.
Q. How did he get along with the other patients and with the doctors?

A. He got along very well and his physical condition improved and his vision in his remaining eye improved.

page 88 } Mr. Franklin: Your Honor, I would like to know how the Doctor knows, if he wasn't in the—

By The Court: Well, you can ask him.

Mr. Franklin: I object to the testimony.

By Mr. Allen:

Q. Doctor, from your personal observation, how did he get along with other patients and the other members of your staff?

A. He got along well with the other members of the staff, he *should* his appreciation for his physical care that he had. He got along well with the patients, according to the behavior notes from the ward.

Mr. Franklin: Your Honor, I object to that.

By The Court: Disregard the reference to the—

A. I do not make routine rounds on the ward, I don't have a personal recollection, any personal observation—of Mr. Houghtaling.

By The Court: Well then disregard any comments he might have made about his behavior with other patients.

page 89 } By Mr. Allen:

Q. Doctor, it was recorded in the University of Virginia report, I believe, that there was some hallucinating by Mr. Houghtaling and brought into evidence by the defendant. What in your best medical judgement, would be an explanation for hallucinating to Mr. Houghtaling, who suffered a gunshot wound and I believe also suffered the removal of one eye and a reduced vision in the other eye?

A. I think he entered into a space where he was variable confused and part of that confusing—and from the record from their story, he hallucinated some. I think that was secondary to the injury to his eye and skull, and due to the shock, with the medication which was necessary; that played some part in it, sedition for pain, which I understand was necessary. I think it was a organic, delirious, blank condition; which he was very confused and they used the words: exceptional disturbances and certain—and rules, such as kicking and pulling bed covers and things like that.

Dr. Joseph R. Blalock

Q. Alright, Doctor, during the time of his stay in your hospital, tell the Court and Jury, whether or not Mr. Houghtaling was psychotic?

A. While he was under our observation, we did
page 90 } not find him to be psychotic. Those symptoms
which were present at the University were no longer present when he got there.

Q. What was the diagnosis, Doctor, as the result of his stay at your hospital?

A. We made the official diagnosis of the personality; had a *diturbance,* psycho kind of personality.

Q. And what does this mean, Doctor?

A. This personality pattern disturbance is a—, comes about as a result of World War II. Various men in service showed certain behavior disorders or abnormalities. They did not constitute a psycho existence; and in his case, it was thought that he did. He had shown, about the time he left service, a manic depressive psychosis of which he was hospitalized. And according to the records, later recovered.

Q. Does it state when he recovered?

A. He went into Rochester State Hospital on June 4th, 1942 and was discharged—no that's wrong. He went in on February 24th, 1942, voluntarily. Diagnosed as manic depressive, psychosis-manic type; he was released on convalescent care, June 4th, and discharged as recovered, July 14th,
1942. He was carried on a hundred percent dis-
page 91 } ability, I believe, for some time by the Veterans
Administration; and that was either reduced to thirty percent or dropped entirely in 1947, I believe.

Q. Alright Doctor, now based on your best medical judgement and your expert opinion; tell the Jury whether or not on August the 20th, 1966, if Mr. Houghtaling was able to understand the nature and consequence of his act and knew that the act was wrong?

A. In my opinion—

Mr. Franklin: We object to that question. He didn't see him on that day.

By The Court: He didn't have to see him, Mr. Franklin. He is basing it on subsequent examination and he can express his opinion as to whether or not—

Mr. Franklin: Will you note my exception.

By The Court: Yes, sir.

Dr. Joseph R. Blalock

A. I would like to say that I did not see him until following his admission to our hospital and there was some lapse of time, but the opinion I express can be based on history, which I seen from *abailable* sources.

Q. Alright, sir. What is your opinion as to his
page 92 } ability to understand the nature of the consequences of his act and whether or not he knew his act was wrong?

A. I feel that he—, that although he was under pressure and under stress from his standpoint, that he was able to distinguish right from wrong and be aware of what he was doing.

Q. Now, Doctor, based upon your medical knowledge and your expert opinion, was Mr. Houghtaling's mind so impaired by disease as to deprive him of the mental power, as to control or restrain his act, on August 20th, 1966?

A. I don't feel that it was. I feel that he—, a person with this type of personality, who does not react to well under pressure, they have more difficulty in making decisions and using judgment, but I feel that he was competent.

Q. You feel that he was competent?

A. Yes, sir.

Q. Doctor, in Mr. Franklin's opening statement, he suggested the presence of temporary insanity. Based upon your expert opinion and medical knowledge, what would be your view of the claim of temporary insanity of Mr. Houghtaling, on August 20, 1966?

page 93 } A. Well, in following along with the sequence of events that I understand transpired, he did not appear to me to be in a state of temporary insanity. I don't feel that he was.

Q. You don't feel that he was?

A. Yes, sir.

Mr. Allen: Your witness.

CROSS EXAMINATION

By Mr. Franklin:

Q. Doctor Blalock, the diagnoses that you made on Mr. Houghtaling, isn't the further refinement of that diagnosis shown, that it is psychotic, in your professional book?

A. Not evading your question; a psychosomatic personality: if I might read what the classification states, concerning that particular personality. It *seem* to *represents* a picture,

which he was showing for a number of years, as far as I can tell. Such individual is characterized by extra tension and outgoing, adjust to light situations, and an apparent personal warmth and friendliness, superficial generosity,
page 94 } emotional reaching out of the environment, ready enthusiasm and competition; characteristic of people in all moods of delation and sadness, stimulated apparently by internal factors rather than external factors. The individual may be occasionally capable of resisting points, that means a sense of well being or depressed without qualification or distortion of reality. The diagnosis in such cases should if possible, specify whether hypomanic or depressed. It appears to me that he was on the hypomanic side; in other words he was a type of individual who acted—

Q. Is it possible, Dr. Blalock, for certain individuals, under stress and strain, to become psychotic?

A. Yes, it is.

Q. Dr. Blalock, in this brain test, you said that the waves were normal; did that show that the injury to his eye had not affected the waves to his brain?

A. Yes, I believe that indicates that the brain structure was not involved to the extent of interfering with the waves.

Q. You said they were normal?

A. Yes, they were.

Mr. Franklin: That is all, I have.

Mr. Allen: Thank you, Doctor, I would like for
page 95 } Dr. Blalock to remain.

By The Court: Alright, sir.

The witness stands aside

By The Court: I was a member of the State Hospital Board for about ten or twelve years, some years ago. It was a very interesting service. This *fella* was superintendent. It's a tough job running one of those institutions.

DR. ARTHUR CENTOR, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. What is your name?

A. Arthur Centor.

By The Court:
Q. How do you spell it?
A. C e n t o r.

By Mr. Allen:
page 96 } Q. And your degree is in what, sir?
A. Psychology. PHD in Psychology.
Q. And your educational background in Psychology?
A. I received my bachelor's in Psychology in 1950, Master's in Psychology in 1951, and my PHD in Psychology in 1965.
Q. Where?
A. New York University.
Q. And what is your position with the State of Virginia?
A. I'm Director of psychological services for the Department of Mental Hygiene.
Q. You are located where?
A. In Richmond.
Q. And your office is specifically under the Commissioner?
A. I work in the Commissioner's Office.
Q. What professional societies are you in association with, Doctor?
A. I'm a member of the American Psychological Association, the Virginia Psychological Association, the Richmond Psychological Association, the Southeastern Psychological Association.

page 97 } By The Court: He is well qualified as a psychologist.

By Mr. Allen:
Q. Dr. Centor, in your position with the State, did you have an occasion to see, one, Raymond Mr. Houghtaling?
A. Yes, sir.
Q. And where did you see him?
A. I saw him at Southwestern State Hospital.
Q. During that period of time, what was your reaction to Mr. Houghtaling, insofar as his orientation and cooperation, etc.?
A. Well, might I say, my duties are to be the Director of Psychological Services for the State. I was elected to be Chief Psychologist at Southwestern for a dozen years. So I return from time to time, about once every two months, to help out with some of their more difficult psychological cases. And while I was there on this visit, I saw Mr. Houghtaling.

Dr. Arthur Centor

Q. Alright, go ahead?

A. I did see him on October 17th, 1966. My records show from two-twenty to four-forty: two hours and twenty minutes; and on the next day October 18th, from ten-five to ten-twenty: fifteen minutes; to complete the inter-
page 98 } view. I saw him after that for another thirty-five minutes, to administer a test.

Q. What's the nature of the test?

A. This is, in fact, a test that I had devised myself, because Mr. Houghtaling has no vision in one eye and very limited, extremely limited, vision in the right eye, none in the left eye. Our psychological test *require* vision, for the most part. However, to test for brain damage, I had to devise a variation to one of our existing tests; made one up specifically on the spot, had it administered to him sometime that he was able to complete it satisfactorily.

Q. Alright, Doctor, now based on your knowledge and the best knowledge of psychology and your expert opinion, on August 20th, 1966—

Mr. Franklin: Your Honor, I object to psychology, specifying upon the matter, as to whether a man is sane or insane on August 20th. He is no psychologist and he is not a psychiatrist and psychologist certainly can't tell whether you are sane or insane.

By The Court: I haven't heard all of his question.

page 99 } By Mr. Allen:

Q. You have the case with you, don't you, sir?

A. Yes, it's outside, sir, in my—

By The Court: Go ahead and ask your question, let me see if it's proper.

By Mr. Allen:

Q. The question is: that based upon your knowledge and your opinion, expert opinion of a psychologist, did Mr. Houghtaling, on August 20th, 1966, understand the nature and consequences of his act and know that the act he committed was wrong?

By The Court: I think that question is proper.

Mr. Franklin: Will you—

By The Court: Yes. Go ahead and answer.

Dr. Arthur Centor

A. In my opinion he was aware of his acts and major consequences of his acts.

Q. And did he know that the act he committed was wrong?

A. In my opinion the alleged act was such, that he knew that it was wrong.

Q. Alright, Doctor, in your opinion as a psychologist, your expert opinion as a psychologist, on August 20th,
page 100 } 1966, had Mr. Houghtaling's mind become so impaired by disease, that he was totally deprived of the control or restraining his act?

A. In my opinion his mind was not in any way affected by any mental disorder or disease at that time.

Q. And did he, in your opinion, have the necessary will to restrain or control the act?

A. In my opinion at that time, he did have necessary will and control to control his act.

Mr. Allen: No more questions.

CROSS EXAMINATION

By Mr. Stombock:

Q. Dr. Centor, your opinion as to Mr. Houghtaling's condition on August 20th, is that based on his tests that you gave him at Southwestern State Hospital?

A. In part.

Q. In your medical opinion, is tests which are devised on the spot and given one time, is that a valid test for making an opinion of a person's condition on a given date?

A. First let me say that I don't have a medical guide with me, and I do point out that this is not a
page 101 } standardized test, that it is one that is quite different, and under the circumstances it is the only test that could be administered because of almost complete blindness of the patient, however, taking all of this into consideration and pointing it out; I make clear in my report, I am of the opinion that this test leads to a valid opinion, with good medical confidence. At the time he was taking the test he was not suffering from any brain damage, except for emotional.

Q. Brain damage is organic, that's physical, isn't it?

A. Yes, sir.

Q. Based on your opinion, an individual who has been diagnosed, as Mr. Houghtaling has been, is it possible for them to become psychotic under certain conditions of stress and strain?

A. Yes, sir.

Mr. Stombock: That's all.

The witness stands aside

DR. ZYGMUNT WEGIELSKI, having first been duly sworn, testifies as follows:

page 102 } CROSS EXAMINATION

By Mr. Allen:
Q. Will you state your name, please sir?
A. My name is Zygmunt Wegielski.

By The Court:
Q. Would you spell it for us, please, Doctor?
A. Yes. The first name Z Y G M U N T, the last name W E G I E L S K I.

By Mr. Allen:
Q. And your employment or occupation, Doctor?
A. I have a degree, specializing in psychiatry. I am Clinical Director of Maximum Security Division at Southwestern State Hospital.
Q. How long have you been at Southwestern State Hospital?
A. Since January 1st, 1963.
Q. And your educational background in psychiatry?

Mr. Stombock: We concede that he is an expert.
Mr. Allen: Alright, but let me ask him.

Q. Your educational background?
A. Graduated from Warsaw University, li-
page 103 } censed in State of Virginia, sixteen years of psychiatry experience, including three years of approved residence in psychiatry.
Q. In this capacity as psychiatrist with the Southwestern State Hospital, did you have an occasion to see and talk with Mr. Raymond Houghtaling?
A. I did.
Q. Dr. as a result of your consultation with Mr. Houghtaling or interview with him, rather: tell The Court and Jury, whether or not at the time of his stay at Southwestern State Hospial, if Mr. Houghtaling was psychotic or insane?

Dr. Zygmunt Wegielski

A. In my contact with Mr. Houghtaling and I will interview him for mental examination; I would like to state that during his hospital examination, he didn't display any psychotic ***, leading to statement that he was psychotic.

Q. I understood you to say that he did not display any psychotic symptoms?

A. Psychotic ***, yes.

Q. During his stay at the hospital?

A. Yes, during his stay at the hospital.

Q. The diagnoses that resulted from his commitment to Southwestern State Hospital, is what?

page 104 } A. The official diagnosis, as was established by the diagnostic staff was: personality pattern disturbance, psychopathic personality.

Q. And this was established by the staff, you say?

A. By the staff, sir.

Q. Doctor, based upon your expert opinion as a psychiatrist; on August 20th, 1966, was Mr. Houghtaling able to understand the nature and consequence of his act and knew that it was wrong?

A. In regards to this question, sir; it's the matter of opinion, based on the medical material, which we have and also conversation, which I had with Mr. Houghtaling at this time. My personal impression was that he didn't appear to be psychotic at the time, which you mentioned, August 20, 1966.

Q. Did he know at that time, August 20th, 1966, the difference between right and wrong?

A. He had this ability in spite of his living under a strong emotional state.

Q. At that time on August 20, 1966, in your opinion, did he know the nature and consequence of his act?

A. He had this ability.

Q. As on August 20th, 1966, was his mind im-

page 105 } paired by disease that deprived him of his power to control or restrain the act?

A. You refer to August 20, 1966.

Q. August 20, 1966.

A. I still would like to mention about that, in regards to my personal impression, which I had in discussion with Mr. Houghtaling. There was no indication that Mr. Houghtaling was psychotic at the time, on August 20th, 1966.

Q. Was he or was he not suffering from the so called irresistible impulse?

A. There is no indication that he had been suffering from a irresistible impulse at this time.

Dr. Zygmunt Wegielski

Q. From your observation and interviews with Mr. Houghtaling, as well as the information that was available to you, in your expert opinion was he suffering from temporary insanity on August 20th, 1966?

A. It does not appear to me that he was suffering from temporary insanity.

Mr. Allen: Your witness.

CROSS EXAMINATION

By Mr. Stombock:

page 106 } Q. Doctor, do your records indicate how much time was actually spent interviewing Mr. Houghtaling?

A. Sir, I don't have an exact recollection, but I saw Mr. Houghtaling on two occasions. The first time was on—, to be correct, because I mentioned the date when I saw him here; Shortly after his arrival to the hospital, that was on September 8th, 1966, but I didn't conduct a interview to long, because his physical condition, it would be undesirable to carry on such a conversation; the second time, he was seen on September 20, 1966, from my personal recollection and it would be not exact, he was feeling, by me, morbid—The examinations, which I conducted, he seemed morbid—

Q. Dr. Wegielski, based on your best medical opinion, is it possible for an individual who has been diagnosed, as your records indicate there, both in New York State and in your hospital; is it possible for those individuals, under certain conditions of stress and strain to become psychotic?

A. Yes, it's possible.

Mr. Allen: That's argumentative.

Mr. Stombock: That's all.

The witness stands aside

page 107 } Mr. Allen: That's the Commonwealth's case.

The Court: Do you wish to put in anything else.

Mr. Franklin: No, sir.

* * * * *

INSTRUCTIONS, AND OBJECTIONS AND EXCEPTIONS THERETO.

By The Court:

After review of the instructions submitted by both the Commonwealth and Defendant, the Court has decided to give instructions—for the Commonwealth: No. 1 is offered, No. 2 is offered, No. 3 is offered, No. 4 is offered, No. 5 is offered, No. 6 is offered, No. 7 is offered, No. 8 is offered, No. 9 is offered and No. 10 is offered.

For the defense: A-1 as amended by the Court, A as amended by the Court, B as amended by the
page 108 } Court, C is offered, D is offered, E as amended by the Court, F is offered, G as amended by the Court and H is offered.

By The Court:

In the course of argument in this case, the Commonwealth's Attorney, commenting on the evidence, suggested that the Defendant left the Police Station and the car, in which the deceased was sitting with her mother, and that when he returned, he returned with the money and the pistol. To which the Defendant excepted, on the ground that the evidence did not show where he got the pistol from, whether he had it before he left or not. The exception is hereby noted in the record; on behalf of the Defendant.

Mr. Franklin: The accused, objects to amending of Instruction B, by striking out the word certainty; and amended to read reasonable doubt of his guilt, rather than as written: produced on the minds of the Jury, a certainty of his guilt, beyond a reasonable doubt. We submit that this is the law and that it changed the Instruction, that this did
page 109 } not convey a true meaning of instructions, as intended by the accused.

The accused, objects to the amending of Instruction "E", in striking out the words cool, deliberate judgment: for the following reasons, that this correctly states the law in regard to a premeditated killing, in regard to first degree murder.

We object to the amending of Instruction "G", we except to the Court's ruling of striking out the words "clearly" and "distinctly", as this is clearly the law, that first degree murder must be proven clearly and distinctly beyond a reasonable doubt, as stated in this instruction.

The accused objects to Instruction No. 9 the last paragraph, in which it says "frenzy, arising solely from passion of anger and jealousy, regardless of how frivolous," is not

insanity. There was not any evidence in this case of any anger, jealousy and the instruction is wrong, regardless of how frivolous. And the word frenzy does not de-
page 110 } scribe what the defendant could do in regard to rise of compassion. Frenzy could easily be irresistible impulse; and for this reason, this instruction negated the instruction given in regard to irresistible impulse.

We the accused, *objects* to giving any instruction to first degree murder, as there was no evidence, proven of premeditation, with malice of forethought.

The accused, objects to Instruction No. 4 in which it said, in regard to malice, whether it came in existence at the time of the killing or at a previous time. In order to be malice, it must come into a previous time, even though it might be a very short previous time. It can't exist just at the instant of the killing. Therefore we object to this instruction and except to the ruling of the Court.

The accused, objects to Instruction No. 1 as this Instruction says, in regard to the intentions, that this intention could be at the time of the killing, at the instant of the killing. In order to be premeditated, it have to, by necessity,
page 111 } it would have to be at a previous time, even though a short time. And this, at the time of the killing, indicated that a premeditated killing could be done, the premeditating could be done at the very instant of the killing.

We except to the Judge's ruling on each of the Instructions, as previously stated for the reasons stated therein.

By The Jury:
Q. We are wondering about parole, is that relative?

By The Court:
No, that's not relative. That takes care of itself.

By The Clerk: We the Jury find the Defendant guilty of murder in first degree, and fix his punishment at life imprisonment. D. F. McKechnie. Foreman.—3-2-67

* * * * *

page 116 } The Court committed error in giving certain instructions by the Commonwealth and refusing certain instruction by the defendant as set in the record. Instruction "B" was *ammended* by striking out "certainty" and "beyond a reasonable doubt" and adding "reasonable

doubt." Now this Instruction, while not in a matter of record in any Court decision, has been given numerous times in Courts in this Circuit, by Mr. Franklin, by Mr. Whitehead, it has been used for a number of years and has never been questioned. We submit that this Instruction should have been granted in its entirety.

By The Court:

You mean as originally offered?

By Mr. Stombock:

As originally offered, yes.

By The Court:

Which Instruction is that?

By Mr. Stombock:

Instruction "B".

page 117 } We also believe in error is Instruction is Instruction "E", that the language "cool, deliberate judgment", should have been struck out. That Instruction was approved and commented on in *State* vs. *Mann;* 48, West Virginia, 48; 37 Southeast, 613.

By Mr. Allen:

What number in Southeast?

By Mr. Stombock:

Thirty-seven, Southeast, 613.

By The Court:

I can't see what was struck out, there.

By Mr. Stombock:

"Cool, deliberate judgment.

By Mr. Allen:

What paragraph is that in? Instruction "E" or "D".

By The Court:

"E". It's a short five line Instruction. Alright, go ahead, sir.

By Mr. Stombock:

page 118 } We also believe there is an error in Instruction "G", in the language "clearly and distinctly", it was struck out. This Instruction is found in 81, Virginia, 283; and was approved in that case. We also believe that to be error, in that all incidents of the trial were not transcribed.

By The Court:

What for instance?

By Mr. Stombock:

The opening *remards* and the closing statements were both, of the Commonwealth's Attorney and counsel for defense.

By The Court:

They are usually not a part of the record, unless you want to make them a part for some reason.

By Mr. Stombock:

Our position is that 17-30.1 requires they be transcribed. It says that all the evidence and incidents of the trial. It is our position that—

By Mr. Allen:

What section; seventeen or nineteen?

By Mr. Stombock:

page 119 } Seventeen. 17-30.1 It is our position that any portion of the proceedings, which were subject to objection, are certainly incidents of the trial and should be transcribed.

By The Court:

Well, is there any objection to the opening statements or the argument of counsel?

By Mr. Stombock:

There was, yes sir. That is out next—

By Mr. Allen:

I don't recall any objection to the argument of counsel in the closing remarks.

By Mr. Stombock:

There was.

By Mr. Allen:

Can you refresh my memory.

By Mr. Franklin:

page 120 } If I recall that particular—, the Judge dictated in the record that my objection, however it was not stated for the record. The Judge's memory and my memory were not the same. The statement was made by Mr. Allen and was objected to; a much stronger statement than was in the record.

By Mr. Allen:

I recall no objection, myself. I don't even know what the statement was.

By Mr. Franklin:

That just goes to show why it is in error. You said, if any memory serves me right, and it was put on my mind, because there was newspaper articles. And in the newspaper articles, it says, that Mr. Houghtaling went to his place and got a gun. You stated positively to the Jury, that Mr. Houghtaling left his place, went to his station and got a gun. And I objected to it and the Judge said, well he can argue from inference.

By Mr. Allen:

That's right.

By Mr. Franklin:

And that is the incident. I don't want to take Mr. Stombock's place, but I was involved in that particular instance.

And after the case the Judge dictated my ob-
page 121 } jection, but in this dictation, it says that Mr.
Allen, suggested. He didn't suggest, he made a proper statement.

By The Court:

We only differ on the question of suggestion and positive. Is that the difference?

By Mr. Franklin:

That's the difference. You said suggested in your dictation.

By The Court:

I see. Alright go ahead, sir.

By Mr. Stombock:

I would like to add one point, if I may. Since the closing arguments were not transcribed, any narrative of those arguments should have been agreed to by all parties and that was not done in this case. And I am objecting.

* * * * *

page 138 }

* * * * *

By The Court:

Well, I'm not to disturbed about any of the questions raised, except that I am always disturbed about the Instructions, because they are the things that get us into the most trouble. Now, of course, the question of proof to a moral certainty is contained in Instruction "C", Instruction "D" and in Instruction "B". Where it was struck out, it was simply because of the fact that it was covered by the Instructions, for one reason. The second reason was, that I thought it was put in, in the wrong place there; and that the rule of a reasonable doubt of his guilt, certainly gave the Jury the law, as we have known it in this State for many years.

Now the only question that bothers me in the least is the language in that last paragraph, which doesn't make to good
a sense, because it was the omission of one or
page 139 } two words in it, probably. But the other Instruc-
tions given by the defendant, and I think, if anything, the Court over instructed on behalf of the defendant. I think this could be a harmless sort of a thing, and don't think it is confusing to the Jury, even though the language is not the best, I agree with that.

On the whole I can't see that there is any material error in the thing, that should cause this Court to set aside the verdict. I think that this man has had a very fair trial and

I think that the comments of the Commonwealth's Attorney, as his *interpertation* of the facts, and I think the facts were such, that he had a right to interpret them as he did. As a matter of fact in the course of the trial, that's exactly what I thought the man did, based on the evidence. He wouldn't have been around the Police Station at that time of year with a coat on, or anything to hide a gun, he certainly wouldn't have been carrying it with him, when he came to the Police Station.

page 140 } He went away for the purpose of getting some money, presumably, to pay this woman's way back to New York. And he came back obviously with a gun for the purpose of killing the woman, or at least shooting her. It required some premeditation; his action of coming there and throwing the bag into the car and kissing the woman good-bye and immediately shooting her. That wasn't a spontaneous thing, it was one that he had thought out; and he knew exactly what he was going to do and that is what he did; and that is what the Jury believed. So I can only hold that the grounds for the motions are not law founded and overrule them.

Now, Mr. Houghtaling, do you have anything to say before sentence is imposed upon you, sir?

By Mr. Houghtaling:

I don't know of anything to say that might injury me, Your Honor. I know that the last statement you

page 141 } made; I know in my mind that I did not bring a gun to kill that woman. I had hoped to do away with myself, because everything that I had planned for a period of years, had fallen around my ears and I just wanted to get out of this world. I do know that was in my mind. I've had a long time to think about it, I was under medication for a long time; and I know that I didn't do that, I just know it. As God is my witness, I didn't, but I just had to kinda ease my mind by destroying myself. I had all I could stand, I had taken on *to* much. Upon sentence of this Court, I'm in very bad shape. I know I am in mind, and this kind of sentence means *to* much to my children. I have been a mother and father since 1960, and I've done the best I could.

I don't know whether I have injured myself by speaking here, but I just had to get that off my mind.

By The Court:

Alright, sir. That's what you're given the op-

page 142 } portunity for, sir; to say whatever is on your mind. It is the judgment of the Court, that you

be sentenced to confinement in the State Penitentiary for the rest of your natural life.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Certificate of the Administrator of the Veterans' Administration	2
Letter to Mr. Carter Allen, Attorney, from J. Powell Anderson, M.D.—September 6, 1966	3
Order—January 9, 1967	3
Order—March 2, 1967	4
Instructions	6
Motion for New Trial	10
Judgment—June 5, 1967	11
Narrative of Incidents of Trial	12
Notice of Appeal and Assignments of Error	14
Narrative of Incidents of Trial and Oral Summation	15
Affidavit of Poverty	17
Judge's Certificate	17
Witnesses:	
Mrs. Helen Ternoosis Johncox	18
D. L. Belch	32
Raymond A. Taylor, Jr.	37
John Campbell, Jr.	40
R. J. Lilley	43
Dr. Bernard H. Kasinoff	46
Dr. Joseph R. Blalock	53
Dr. Arthur Centor	59
Dr. Zygmunt Wegielski	63
Instructions, and Objections and Exceptions Thereto	66
Proceedings	70