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Record No. 6869

In the Supreme Court of Appeals of Virginia at Richmond

LOREN NEAL DUFFIELD

v.

C. C. PEYTON, SUPT., ETC.

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6869

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 11th day of January, 1968.

LOREN NEAL DUFFIELD, Plaintiff in error,

against

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

From the Corporation Court of the City of Norfolk

Upon the petition of Loren Neal Duffield a writ of error is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk on the 29th day of September, 1966, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

RECORD

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UNITED STATES COURT OF APPEALS

For The Fourth Circuit

No. 9786.

Loren Neal Duffield,
Appellant,

versus

C. C. Peyton, Superintendent
of the Virginia State Penitentiary,
Appellee.

Appeal from the United States District Court for
the Eastern District of Virginia, at Richmond.
John D. Butzner, Jr., District Judge.

(Argued June 1, 1965. Decided November 2, 1965.)

Before HAYNSWORTH, Chief Judge, BELL, Circuit Judge, and HUTCHESON, District Judge.

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Richard H. C. Taylor (Court-assigned counsel) [Simpkins, McCaul and Pearsall on brief] for Appellant, and Reno

S. Harp, III, Assistant Attorney General of Virginia, (Robert Y. Button, Attorney General of Virginia, on brief) for Appellee.

PER CURIAM:

This is an appeal from a denial by the district court of a writ of habeas corpus to the petitioner who has been convicted of murder in the first degree and sentenced to death. The petition raises non-frivolous questions of constitutional dimensions involving unreasonable search and seizure; the admission of a confession alleged to be involuntarily obtained; and the absence of effective counsel at critical stages in the petitioner's trial. The record shows that the petitioner neither appealed from his conviction, nor has he sought any post-conviction relief from the Virginia courts. We think it appropriate that these questions should be reviewed by the state courts prior to their consideration here, and for this reason the order of the district court is reversed and the case is remanded to the district court with instructions to hold the petition in abeyance until the prisoner has had a reasonable opportunity to exhaust his state remedies.

* * * * *

page 5 } ORDER

H. Lawrence Bullock, presiding Judge of the Corporation Court of the City of Norfolk, Virginia, having received through the mail on January 24, 1966, a letter from Loren N. Duffield, stating that he is financially unable to employ counsel to represent him and requested that the letter be considered a motion to appoint counsel to file a petition for a writ of *habeas corpus* and the Court also received a copy of an order from the United States Court of Appeals For the Fourth Circuit, stating that the petitioner, Loren N. Duffield, had not exhausted his state remedies and the Court stated that the petition was not *frivilous*.

It appearing to the Court that Loren N. Duffield, the petitioner, is a pauper and without funds to employ counsel to file and prosecute said writ, the Court does appoint Mr. O. Eugene Pinion, a discreet and competent attorney at law to represent Loren N. Duffield in filing and prosecuting a petition for a writ of *habeas corpus ad subjiciendum*. It is ordered that the said attorney has leave to file said petition.

page 6 } The said attorney is authorized to hire a court reporter to take down in writing the proceedings at the hearing on said petition.

It is further Ordered that a copy of this Order be mailed to:

Mr. O. Eugene Pinion, Plaza One, Norfolk, Virginia

Mr. Reno S. Harp, III, Assistant Attorney General, Richmond, Virginia

Mr. Alfred W. Whitehurst, Commonwealth Attorney, Norfolk, Virginia

Mr. Loren N. Duffield, c/o Virginia State Penitentiary, Richmond, Virginia

Enter
January 31, 1966

H. LAWRENCE BULLOCK

page 7 } WRIT OF *HABEAS CORPUS AD SUBJICIENDUM*

To: The Honorable H. Lawrence Bullock, Judge of the aforesaid Court

Your Petitioner, Loren N. Duffield, files this his petition against C. C. Peyton, Superintendent of the Virginia State Penitentiary, and respectfully represents as follows:

1. The Judge of the Corporation Court of the City of Norfolk, Virginia, entered an Order on January 21, 1966, appointing O. Eugene Pinion as Court-appointed attorney to represent Loren N. Duffield, the petitioner, and allowing the petitioner to proceed *in forma pauperis* and the Court also ordered that the attorney had leave to file a petition for a writ of *habeas corpus ad subjiciendum.*

2. The petitioner, Loren N. Duffield, did in April 1964, file a petition in the United States District Court For the Eastern District of Virginia, Richmond Division, and on April 16, 1964, the United States District Court entered an order staying the Judgment of the Corporation Court of the City of Norfolk, Virginia. On October 28, 1964, this writ was dismissed by the United States District Court for the Eastern District of Virginia, Richmond Division and an appeal was allowed from this Order to the United States Court
page 8 } of Appeals for the Fourth Circuit and on December 2, 1965, the United States Court of Appeals for the Fourth Circuit entered an Order to the effect that the petition should be returned to the United States District Court and

that as the petition raises non-frivolous questions of constitutional law, that the petitioner should be allowed to exhaust his state remedies and on December 7, 1965, the United States District Court entered an Order giving Loren N. Duffield a reasonable opportunity to exhaust his state remedies.

3. That the Petitioner, who is a citizen of the United States files this application for a writ of *habeas corpus in forma pauperis*.

4. That the Petitioner is being held in custody by C. C. Peyton, Superintendent of the Virginia State Penitentiary pursuant to order of the Corporation Court of the City of Norfolk, Virginia, entered on January 7, 1964.

5. That the Petitioner is being held in custody in violation of Amendments IV, V, VI and XIV of the Constitution of the United States for the reasons hereinafter more particularly set forth as follows:

A. That prior to the arrest of the Petitioner, and without a search warrant, the house of the petitioner was searched and there was removed therefrom and presented in evidence at the trial of the Petitioner a pair of blue pants and a white "tee" shirt.

B. That the Petitioner was placed in a "line-up" and not identified and thereafter was required to put on the blue pants and white "tee" shirt and returned to the same

page 9 } "line-up" and identified by the brother of the deceased after that brother had been shown the pants and shirt between the first and second "line-up," which identification was used in evidence in the trial of the Petitioner.

C. That after the identification and after being interrogated by several police officers completely surrounding the Petitioner who was placed in a chair in the center of the room, during which interrogation the officers spoke in harsh tones and one actually shook his fist in the face of the Petitioner, the Petitioner was removed to another room and there confessed to the murder of the deceased, which confession was presented in evidence at the trial.

D. That the Petitioner while in his cell was served with warrants charging him with murder, rape and car theft and then taken before Judge E. A. Henry of the Juvenile Court of the City of Norfolk, Virginia where the Petitioner, without counsel having been appointed to represent him and no counsel present, on the recommendation of a police detective, waived a preliminary hearing on the charges.

E. That the Petitioner, three days after the first preliminary hearing, was served, while in his cell, with a warrant charging him with abduction and again taken before Judge

Henry and with no counsel having been appointed or present the Petitioner waived the preliminary hearing.

F. That, although the petitioner was placed in custody March 5, 1963, and the indictment was issued by the Grand Jury on April 1, 1963, the Petitioner had no Counsel appointed to represent him and advise him until April

page 10 } 3, 1963, when the Court appointed William H. Sands, and at the same time, on motion of the Court and without opportunity for consultation with Counsel, the Court ordered the Petitioner to be sent to Southeastern State Hospital in Marion, Virginia for mental examination.

G. That the Petitioner, prior to, during, and after the trial, failed to have effective assistance of counsel in that the Counsel, William H. Sands, appointed by the Court, provided ineffective representation because he failed to object to and/or appeal from irregularities ocurring as follows:

(1) The facts set forth in 5-A hereof.

(2) The facts set forth in 5-B hereof.

(3) The facts set forth in 5-C hereof.

(4) The facts set forth in 5-D hereof.

(5) The facts set forth in 5-E hereof.

(6) The facts set forth in 5-F hereof.

(7) The introduction into evidence of pictures of the deceased which were inflammatory and prejudicial and had no evidential value.

(8) The statements of the prosecuting attorneys, which statements were inflammatory and prejudicial made during their opening and closing arguments.

(9) The statements by the Court during the process of the trial which were prejudicial.

H. That the Petitioner failed to have effective assistance of counsel because that counsel provided ineffective representation in that:

page 11 } (1) He failed to cross-examine, during the trial, the police officers who testified concerning the "line-up," confession and discovery of the body.

(2) He required of the Petitioner, prior to agreeing to continue as counsel, that the Petitioner sign a statement agreeing not to later request a writ of *habeas corpus* or otherwise attack the conviction on grounds that representation by him, the appointed counsel, was improper or incompetent.

6. That the Petitioner, Loren N. Duffield, is being held in custody in violation of the Constitution of the United States because the Petitioner was given the death penalty and this penalty is in violation of the United States Constitution.

WHEREFORE, the Petitioner prays that a writ of *habeas*

corpus forthwith issue and that C. C. Peyton, Superintendent of the Virginia State Penitentiary, be ordered to release the Petitioner from custody.

Dated this 18th day of February, 1966.

Respectfully submitted,
LOREN N. DUFFIELD

By O. EUGENE PINION
O. Eugene Pinion, Court-appointed Counsel

O. EUGENE PINION
Suite 608 Plaza One
Norfolk, Virginia 23510

page 12 } Filed 2/18/66.

Filed 2/18/66.

W. L. PRIEUR, JR., Clerk

By W. A. B. WHITE, D.C.

* * * * *

page 14 }

* * * * *

ANSWER

Now comes the respondent, by counsel, and files his answer to the petition for a writ of *habeas corpus* and says:

1. On March 6, 1963, a warrant was issued charging the petitioner with murder. (See Exhibit I—Certified Copy of Warrant.)

2. On April 1, 1963, the grand jury of this Court returned an indictment against the petitioner charging him with murder. (See Exhibits II and III—Certified Copies of Court Order and Indictment.)

3. On April 3, 1963, petitioner's attorney moved this Court to commit the petitioner to the State hospital at Marion for mental observation. (See Exhibit IV—Certified Copy of Motion and Supporting Letter.)

4. On April 3, 1963, this Court ordered that the petitioner be committed to Southwestern State Hospital for mental care and observation. (See Exhibit V—Certified Copy of Court Order.)

5. On June 4, 1963, the Superintendent of Southwestern State Hospital informed this Court that the petitioner was mentally competent. (See Exhibit VI—Certified Copy of Letter.)

6. On June 5, 1963, this Court ordered that the petitioner be returned for trial. (See Exhibit VII—Certified Copy of Court Order.)

7. On July 1, 1963, the petitioner's trial was continued upon the motion of his attorney. (See Exhibit VIII—

page 15 } Certified Copy of Court Order.)

8. On September 25, 1963, the petitioner, represented by his attorney, entered a plea of not guilty to the indictment and was tried by a jury. (See Exhibit IX—Certified Copy of Court Order.)

9. On September 26, 1963, the jury returned a verdict of guilty of murder of the first degree and fixed the punishment at death. Thereupon the petitioner's attorney moved the court to set aside the verdict of the jury. (See Exhibit X—Certified Copy of Court Order.)

10. On January 7, 1964, this Court overruled the petitioner's motion to set aside the verdict of the jury and the petitioner was sentenced in accord with the verdict of the jury. (See Exhibit XI—Certified Copy of Court Order.)

11. Respondent is currently detaining the petitioner pursuant to the aforesaid judgment of this Court.

12. Respondent denies each allegation set forth in the petition for a writ of *habeas corpus* which is not expressly admitted and says that petitioner was not denied any constitutional rights in connection with the aforesaid trial in this Court.

Wherefore, respondent prays that petitioner be granted a plenary hearing, and that the petition for a writ of *habeas corpus* then be denied and dismissed.

C. C. PEYTON, Superintendent of
the Virginia State Penitentiary

By: JAMES PARKER JONES
Counsel

page 16 } CERTIFICATE OF SERVICE

I certify that on the 11th day of April, 1966, I mailed a copy

of the foregoing Answer to Mr. O. E. Pinion, Attorney at Law, Room 608 Plaza One Building, Norfolk, Virginia, counsel for petitioner.

JAMES PARKER JONES
Assistant Attorney General

* * * * *

page 34 }

* * * * *

On motion of the Petitioner, Loren Neal Duffield, by Counsel, it is hereby ordered that C. C. Peyton, Superintendent of the Virginia State Penitentiary, deliver the said Petitioner, Loren Neal Duffield, to Charles H. Leavitt, City Sergeant of the City of Norfolk, Virginia, or his agent on June 3, 1966; said Petitioner to be held in custody of the City Jail of Norfolk, Virginia, pending determination of this matter in a hearing to be held in this Court on June 7, 1966.

It is further Ordered that a copy of this Order be mailed to:

Mr. Reno S. Harp, III
Assistant Attorney General
Richmond, Virginia

Mr. Charles H. Leavitt
City Sergeant
811 East City Hall Avenue
Norfolk, Virginia

Mr. C. C. Peyton
Superintendent
Virginia State Penitentiary
Richmond, Virginia

Enter
June 1, 1966

H. LAWRENCE BULLOCK

* * * * *

page 35 }

* * * * *

RESPONDENT ORDER

It is ORDERED that Loren Neal Duffield be returned to the custody of C. C. Peyton, Superintendent of the Virginia State Penitentiary.

* * * * *

Enter: June 7, 1966

LINWOOD B. TABB

page 36 }

* * * * *

ORDER

This proceeding came on to be heard on June 7, 1966, upon the petition of Loren N. Duffield for a writ of *habeas corpus,* the petitioner appearing in person and by O. E. Pinion, an attorney previously appointed by this Court to represent him, and the respondent appearing by Reno S. Harp, III, Assistant Attorney General.

Whereupon, the Court heard the evidence and argument of counsel, and the case was continued for the Court to consider the evidence.

Whereupon, on September 29, 1966, the petitioner appeared by counsel, and the respondent appeared by Reno S. Harp, III, Assistant Attorney General, and for the reasons, the findings of fact, and the conclusions of law as stated from the bench by the Court, the Court is of the opinion that the writ should not issue as prayed.

It is, therefore, adjudged and ordered that the petition for a writ of *habeas corpus* be and is hereby denied and dismissed, the writ discharged, and the petitioner remanded to the custody of the Superintendent of the Virginia State Penitentiary, to all of which action of the Court, the petitioner, by counsel, objects and excepts. The Court allows O. E. Pinion $150.00 as a fee for his services.

Let the Clerk of this Court certify a copy of this order to the petitioner, the respondent, and the Attorney General of Virginia.

Enter this 29th day of September, 1966.

LINWOOD B. TABB
Judge

page 37 } I ask for this:

RENO S. HARP, III
Counsel for Respondent

Seen and objected to:

O. EUGENE PINION
Counsel for Petitioner

* * * * *

page 38 }

* * * * *

On Motion of the Petitioner, Loren Neal Duffield, by Counsel, it is hereby ordered that C. C. Peyton, Superintendent of the Virginia State Penitentiary, deliver the said Petitioner, Loren Neal Duffield, to Charles H. Leavitt, City Sergeant of the City of Norfolk, Virginia, or his agent on September 28, 1966; said Petitioner to be held in custody of the City Jail of Norfolk, Virginia, pending determination of this matter in a hearing to be held in this Court on September 29, 1966.

It is further Ordered that a copy of this Order be mailed to:

Mr. Reno S. Harp, III
Assistant Attorney General
Richmond, Virginia

Mr. Charles H. Leavitt
City Sergeant
811 East City Hall Avenue
Norfolk, Virginia

Mr. C. C. Peyton
Superintendent
Virginia State Penitentiary
Richmond, Virginia

Refused.
September 16, 1966

LINWOOD B. TABB

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page 39 }

* * * * *

ORDER

It appearing to the Court that from a letter received by the Court on October 11, 1966, that Loren N. Duffield is financially unable to employ counsel to represent him on his appeal or pay for the records therein, the Court doth appoint O. Eugene Pinion, a discreet and competent attorney at law, to represent Loren N. Duffield on his appeal and doth direct the Clerk to furnish all records necessary in said appeal including a transcript of the testimony at the cost of the Commonwealth.

It is further Ordered that a copy of this Order be mailed to:

Mr. Reno S. Harp, III, Assistant Attorney General, Richmond, Virginia

Mr. Alfred W. Whitehurst, Commonwealth Attorney, Norfolk, Virginia

Mr. Loren N. Duffield, c/o Virginia State Penitentiary, 500 Spring Street, Richmond, Virginia

Enter: October 11, 1966

LINWOOD B. TABB

* * * * *

page 40 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

NOW COMES the Petitioner, Loren N. Duffield, and hereby gives notice of his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from an Order entered by the Corporation Court of the City of Norfolk, Virginia, on the 29th day of September, 1966, denying a Writ of *Habeas Corpus*. The Petitioner, Loren N. Duffield, makes the following Assignments of Error.

ASSIGNMENTS OF ERROR

1. That the Court erred in holding that certain evidence introduced into the original trial was admissable and had not been seized by an illegal search and seizure.
2. That the Court erred in holding that the confession of the Petitioner which was introduced into the original trial was a voluntary confession.
3. That the Court erred in holding that Petitioner's constitutional rights had not been violated when the Petitioner did not have counsel at his preliminary hearing.

page 41 } 4. That the Court erred in holding that the Petitioner had not been denied effective assistance of Counsel.

5. The Court erred in holding that Loren N. Duffield's constitutional rights were not violated when the Court failed to appoint Counsel to note an Appeal after Loren N. Duffield, on a plea of not guilty by reason of insanity, received the death penalty.

LOREN N. DUFFIELD

By: O. EUGENE PINION
Counsel

Filed 11/23/66.

W. L. PRIEUR, JR., Clerk

By G. C. THOMAS, D.C.

* * * * *

page 2 } *HABEAS CORPUS* RECORD

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled cause in said Court on June 7, 1966.

APPEARANCES:

O. EUGENE PINION, Esquire
Counsel for the Petitioner

RENO S. HARP, Esquire
Assistant Attorney General
Counsel for the Respondent

Reporter sworn.

* * * * *

page 4 } The Court: The style of this case is *"Loren Neal Duffield, Petitioner* vs. *C. C. Peyton, Superintendent of the Virginia State Penitentiary."*

This matter having been filed with the Corporation Court of the City of Norfolk, I am sitting in place of and instead of, and at the request of the Honorable H. Lawrence Bullock, Judge of the Corporation Court of the City of Norfolk.

The Petitioner is represented by O. Eugene Pinion, competent Attorney at Law, and the Respondent is represented by Reno S. Harp, Assistant Attorney General.

Is the Petitioner ready?

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

The Court: Is the Respondent ready?

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

Mr. Pinion: On behalf of the Petitioner, at this time, I would like all the witnesses recognized, if Your Honor please.

page 5 } The Court: All right, sir.

Mr. Clerk, go ahead and call all the witnesses and swear them in.

(All witnesses were duly sworn—seven, including the Petitioner.)

The Court: Opening Statements, gentlemen?

OPENING STATEMENT

By Mr. Pinion:

May it please the Court, I would like to say one thing at the outset of this hearing before Your Honor, and that is, and there is no objection on the part of this Petitioner, but the fact is that this original matter, of course, was not heard by Your Honor, but in fact it was heard by the Honorable H. Lawrence Bullock, on September 24, 1963 the trial date, and General Sands, who is here today, was the appointed counsel for Loren Neal Duffield, and I believe he was appointed on April 3rd of 1963, I believe that date is correct, but the evidence will bring that out here today, but I do believe that he was appointed after April 1st, which was Grand Jury Day.

page 6 } Now of course at this time, this hearing is being brought on in a *Habeas Corpus* proceeding, and I would like to go into a little bit of detail, in order to bring this Court up to date and so that Your Honor will know what I am trying to present and why I will be endeavoring to put on so much evidence today.

At the time that General Sands was appointed to represent Loren Neal Duffield, on April 3, 1963, a motion was made to have him committed to Marion for mental examination, and then of course there was a letter written by Dr. Blalock, as head of the Institution at Marion, and he stated 'that he', Duffield, 'should be tried', and 'that he knew right from wrong'.

On September 24th or '5th, a plea of 'not guilty by reason of insanity' was entered, and at that time of course, a jury was chosen. I have checked the records, but it does not disclose to me whether any motion was made to waive a jury or not, and of course it's my understanding that the type of plea, 'not guilty by reason of insanity', does not allow a jury to be waived, so a jury was selected and of course then, the matter was tried, but without any evidence being put in that 'he was not guilty of any charges', but that 'he was not guilty by reason of insanity'.

Now of course the jury returned its verdict, after a two-day trial, on September 25th or '6th, of 'guilty', and at that time General Sands of course, made a motion to set

page 7 } aside the verdict, because it was contrary to the law and the evidence, and because of the many objections which he had vigorously made before the Court at that time.

This was argued on January 7th of 1964, and after argu-

ment on that, General Sands of course again was supposed to have made another motion, but I do not have a transcript of that, and I do not believe he made any argument at that time or any motion, either. However, the many objections which he did make during the trial, are in the transcript, which can be introduced in evidence, and General Sands did very vigorously object during the trial at that particular time.

Now this, or at least the evidence will show here today, and this is why we're here today, because Loren Neal Duffield is being detained at the present time under the death penalty, and that's the very reason why we're here under *Habeas Corpus,* stating that he is illegally detained, and also because of certain of his Constitutional rights which have been violated.

On January 7th he was sentenced, and of course the Court set April 17, 1964 as the day that the Defendant was to be electrocuted.

Now the facts will probably be in conflict, but the only evidence that I have and that I intend to present, would be that the only motion that was made or move that

page 8 } was made, was by the Defendant on April 16th, the day before he was to be electrocuted in the Penitentiary, and at that time a letter was written by him, and he did not have anyone help him prepare or write this letter, and that letter of course, was written on April 16th, still within ample time to note an appeal, it was within the 60-day period.

Our position is that no stay of execution was asked for and so of course was not granted, on January 7th, and again no stay of execution was granted, and of course they will not electrocute a person, as I understand the law, until their appeal time has expired, and I believe Your Honor, that I'm correct in that, at least ordinarily I would assume that he would have been allowed enough time to make or note an appeal on the matter, and Loren Neal Duffield's letter was written within the 60-day period of time from when he appeared before the Court as an indigent Defendant, having become indigent in the recent last years, and at the time he was sentenced General Sands represented him, and he of course also represented him at his trial on an earlier date.

This letter, and the Defendant will so testify, was written on April 16th, and lo and behold, a stay of execution was granted by the United States District Court for the Eastern District of Virginia in Richmond, counsel was appointed for Loren Neal Duffield, an attorney in Richmond, to appear in the Eastern District Court, and of course I'm not

page 9 } referring to my notes, but I believe it was on Octo-

ber 17th or about that time, that this matter was decided in the Eastern District Court and Loren Neal Duffield's Writ of *Habeas Corpus* was denied, and it was appealed to the 4th Circuit, and we have a landslide of decisions which of course we will present to the Court at the proper time, and the 4th Circuit Court of course has now returned this matter to this Court, or to the Corporation Court of the City of Norfolk, in that Loren Neal Duffield has not exhausted his State's remedies, and of course he should have a right to do so, prior to the Federal Court going into whether or not his Federal Constitutional rights had been denied.

Now I will not explain or go into detail all the dates and facts, as of course I will bring them all out today, but following all them of course, was the receipt of a Court Order, from the Clerk, appointing me to represent Loren Neal Duffield, in January of 1966, and of course from January of 1965 it was one year, since it was decided in the 4th Circuit, and I began to prepare my case at that particular time, based upon what I could gather, and of course Loren Neal Duffield has added to his original Writ, from which I have gotten a lot of detail, and I have gone into in great detail, and as I say, I'm going to attempt to put in a lot of evidence in this case.

page 10 } The main objection that I have is, and of course that the Petitioner has is, and I hope I have stated it clearly to the Court, is that his right to appeal this, the death sentence on January 7th, was denied him, and of course we also have other cases on this to cite to the Court, on his plea of 'not guilty by reason of insanity', and I also think of course that his appeal depends on the fact that his Constitutional rights have been denied him, and I believe when I have brought out all the dates and all the facts in this case, which of course I intend to do, we will understand each other.

OPENING STATEMENT

By Mr. Harp:

May it please the Court, I think that counsel for the Petitioner has stated very well, what he intends to present to the Court about the facts in this case, which were originally presented to the Corporation Court of the City of Norfolk.

However, we will show that General Sands was actually appointed by Judge Bullock prior to the date of entry of the official Order appointing him, and that he took certain actions prior to the time of actual appointment, in preparation of representing his client.

page 11 } As to the fact set forth by counsel for the Petitioner in his Opening Statement, that the Petitioner wrote a letter to the District Judge for a *Habeas Corpus* plea, which was denied by the 4th District Court in Richmond, we will show that subsequent to that time counsel was appointed to represent him and a Petition was drawn, and we do not raise issue with this Court about the question that he did not exhaust his State remedies, that question was never raised at that hearing, and Judge Butzner denied his Writ as he had not exhausted his State remedies and refused to review the case. Some months after argument, the 4th Circuit said 'he should be allowed to exhaust his State Court remedies', and that's why we're here today.

Insofar as the legal allegations are concerned, they I think, are very concisely set forth to the Court, and I think the major portion of the evidence insofar as is necessary for a decision by the Court, will come forth from the transcript of the original trial.

Insofar as the appeal question is concerned, counsel has suggested that it's mandatory, but we think the evidence will show that his rights were explained to him, and that at the time they were explained to him, he indicated that he 'did not want to appeal', and so after Your Honor has heard all the evidence, we will ask the Court to dismiss this Petitioner's Petition.

page 12 } The Court: All right, gentlemen. Call your first witness, Mr. Pinion.

Mr. Pinion: The Petitioner will take the stand, Your Honor.

LOREN NEAL DUFFIELD, Petitioner, appearing on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined by Mr. Pinion:

Q. You are Loren Neal Duffield?

A. That's correct.

Q. At the present time, what is your address?

A. At the present time I'm staying at the Norfolk Jail, but prior to that I was in Death Row at the Virginia State Penitentiary.

Loren Neal Duffield

Q. And you have filed with the Corporation Court of the City of Norfolk, a *Habeas Corpus* Petition with reference to certain rights which you feel were violated, is that correct sir?

A. That's correct, yes sir.

page 13 } Q. You were indicted on May 5th for the Murder of a 14-year old girl, for the Murder and Rape of Gwendolyn Constance Padgett, is that correct?

A. I was not indicted on that date, sir.

Q. What was the date you were arrested, and charged?

A. I was arrested and charged, in March.

Q. And was that March 5th, or 6th?

A. March 5th.

Q. That was March 5th?

A. Yes, sir.

Q. On March 4th, when did you first see any police officers with reference to this case?

A. When I made a Robbery report that evening, trying to explain scratches on my face.

Q. All right. When did you next see police officers, with reference to this case?

A. That was the evening of March 5th, when I returned from work.

As I drove into my home, there was two men standing in my yard and later they were identified to me as Detectives. One of them had in his hand—

page 14 } Mr. Pinion: If Your Honor will excuse me at the present time, I have forgotten something that I wanted to ask the *Defendand,* or the Petitioner rather, and you have not separated the witnesses at the present time, and this is an error on my part, Your Honor.

The Court: You want the witnesses separated?

Mr. Pinion: Yes Your Honor, I do.

The Court: All persons here today to testify in this matter as witnesses, are instructed not to discuss your testimony either before giving it or after giving it, with anyone other than the attorneys in this case.

You will please retire to the witness rooms, and await your call.

Mr. Pinion: I apologize to the Court for my error, and I would like to say before all the witnesses retire, that if General Sands wishes to remain in the Courtroom, that's perfectly all right.

The Court: What is your position, Mr. Harp?

Mr. Harp: I think we have no objection, if Your Honor please.

The Court: All right, gentlemen. General Sands does not have to depart.

page 15 } By Mr. Pinion:

Q. All right, sir. Now you were on March 5th of 1963, and would you continue with your narrative please?

A. Yes, sir.

Mr. Harp: Just a second. If Your Honor please, counsel can ask him a direct question, but I don't think he ought to get into a story-telling situation sir.

I think there might be some question of some evidence being proper, or there may be some evidence that may not be proper.

The Court: Do try to relate your questions to the issues, Mr. Pinion.

Mr. Pinion: Yes, Your Honor.

Of course Your Honor, our big objection is going to be that he was denied his Constitutional right to appeal his case, and I've got to go into much more detail in order to show that it should have been appealed, and I want him to relate to the Court what transpired, because at that time some of his Constitutional rights were denied him.

page 16 } The Court: You gentlemen know what the issues are and what the evidence is that you are seeking to produce, and I ask you to just keep within the issues.

By Mr. Pinion:

Q. You were explaining what took place at the time, the second time you saw police officers at your home—what time did you arrive home?

A. I arrived home approximately at 4:30 from work at the Base, and there were two men later identified as Detectives, standing in my yard, and one of them had in his hand a pair of blue pants and a white T-shirt.

I got out of the car, and I asked them "if they were my clothes?', and I was told "yes, they were", and they asked me "if it was permissible to take them to Police Headquarters?", and I said "yes".

We went at that time to their car, and we sat in it for a short while.

Q. What happened, then?

Loren Neal Duffield

A. I told them that 'I would like to drive my car to Headquarters', and Detective Asaro said 'that he would ride with me, to Headquarters'.

Q. Where were you, at that time?

A. At that time I was sitting in their car, when I asked 'if I could drive to Headquarters'.

Then I asked the Detective 'what he had told my wife?', and I was told in answer to that question that 'he
page 17 } told my wife 'it was in relation to a Robbery report'.

Q. All right. Did he have these two articles which you described as a T-shirt and blue pants in his possession outside your home, when you arrived?

A. Yes, sir. One of them had them in his hand outside of the house, at the time that I drove in.

Q. And those articles were in one of the Detectives hands, at that time?

A. He was identified to me as a Detective, yes sir.

Q. These two articles of clothing, the T-shirt and pants, had they been given permission by anybody—did your wife give them permission to have them, in other words?

A. No sir, she had not.

Q. Had they shown you a search warrant, at that time?

A. No sir, they did not.

Q. Did they ask you to give them permission to take the two articles of clothing, then?

A. Only after he already had them—they were in his hand when I came home, and then he asked me 'would I grant him permission?' but then of course, he already had them in his hand.

Q. Did they explain to you, that they were police officers?

page 18 } A. Yes, sir.

Q. But the articles had already been removed from the house at that time, and you didn't object, and they didn't discuss the matter with you?

A. No, sir.

Q. Did you go back into the house, after you arrived?

A. No, sir.

Q. All right. Were you taken into custody, at that time?

A. No, sir. I was not actually charged with anything, and then we went on and I drove to the Jail, where I was taken to the Detective Bureau and I was questioned.

Then I was put into a cell, and later I was taken out to a

line-up and there were 4 or 5 other people in the line-up and someone was brought in.

After the line-up was conducted and was over, I was taken back to the Detective Bureau, back to the conference room. At that time, one of the Detectives came in carrying the blue pants and white T-shirt and requested 'that I put them on', so I put them on because a man of authority asked me to, and when a man of authority speaks to me, I'm used to answering.

Q. You put them on because you were requested to, and because you were requested to by a police officer,
page 19 } isn't that correct?

Mr. Harp: Objection, Your Honor. That's not a direct question.

The Court: Rephrase it.

By Mr. Pinion:

Q. You say—

A. I put the clothes on and I was made to stand upon a type of stage at the end of the conference room, it was another type of line-up—I was by myself in this one, and her brother was led in, and he identified me at that time 'as being the one that had taken his sister'.

Q. That was after you had been given the T-shirt and pants and put them on, is that correct?

A. Yes, sir.

Q. All right. Were you charged, at that time?

A. No sir, I was not charged at that time.

Q. You had been identified by the brother, in the second line-up.

A. That is correct, sir.

Q. You had not been identified until later, that is you were not identified in the first line-up, only in the second one?

A. Where I was by myself, yes sir.

Q. Was the brother brought in the first time you were put in a line-up, for identification?
page 20 } A. I'm fairly certain of that, yes sir.

Q. What happened after the boy identified you—and what date are we talking about now, March 6th, or was this still March 5th?

A. The evening of March 5th, sir.

Q. What took place at that time, after the boy identified you?

A. The boy was led from the room, and I was placed in a

chair in the center of the room and I was questioned by detectives.

Q. How many detectives questioned you, do you recall?

A. I don't know how many they had there, sir.

Q. Were there a large number of detectives?

Mr. Harp: Objection, Your Honor. He's already said 'he didn't know'.

The Court: Sustained.

By Mr. Pinion:

Q. Continue.

A. There were detectives surrounding me, and they questioned me. They used quite harsh tones, and I was excited of course. They were firing questions so fast, a person could not answer them, and I was getting scared.

And then one of the detectives shook his fist in my face, and I was led from the conference room into a
page 21 } private room, and Sergeant Sanders, one of the detective at that time, came into the room, and he treated me very kindly.

Q. Who all was present, at that time?

A. Just the two of us, Detective Sanders and myself.

Q. All right. Go ahead.

A. He treated me in a very kind way, just like a father, and he talked to me in a nice tone, and I admitted the crime to him.

Q. At that time, were you placed under arrest?

A. No sir, I was still not arrested.

Q. Were any charges placed against you, were you taken before a Judge or Magistrate, or anyone?

A. No, sir.

The Court: In order to get this straight in my mind, you said "you admitted the crime to him", what crime were you referring to?

A. I admitted the crime of Murder and Rape.

Q. The matters on which you were later tried, in the Corporation Court?

A. Correct, Your Honor.

The Court: I follow you.

By Mr. Pinion:

page 22 } Q. But on only one of those crimes you've been tried so far, is that correct?

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A. That is correct, sir.

Q. All right. Now approximately what time is this, that Detective Sanders ended his discussion with you—was that still March 5th?

A. Yes, it was.

Q. And you say you were not taken before anyone, and no charges were placed against you at that time?

A. No, sir.

Q. Were you advised by anyone, of your right to counsel?

A. No sir, I was not.

Q. Were you advised by anyone of your right, prior to confessing?

A. No, sir.

Q. Now after you had made that statement—was that taken down in writing, at that time?

A. No sir, it was not.

Q. Were you taken out of the Detective Bureau by the detectives, at that time?

A. Yes sir, I was.

Q. I see.

A. They requested 'that I show them the route that I had taken, everything that had happened, and where I

page 23 } had left the body', and I did this.

Q. All right. Now this—can you tell me approximately how much time this took?

A. No sir, I cannot. I imagine it took several hours, at least two.

Q. Was it not closing in to around 11:00 o'clock or midnight, at that time.

A. Correct, sir.

Mr. Harp: Objection, Your Honor. That's leading.

The Court: Sustained.

By Mr. Pinion:

Q. What time did you return to the Police Station, do you recall?

A. I don't recall the exact time, but I know it was late.

I was taken upstairs of course, after I had already shown where the body was. I was taken into the detective's conference room, where Sergeant Sanders, Captain Grant and I think Detective Asaro and a secretary were at that time, and I gave my confession. It was taken down, and I later signed it.

Loren Neal Duffield

Q. That was a very lengthy confession, I believe, isn't that correct?

A. Yes sir, it was.

page 24 } Q. All right. Were you charged or were any papers served upon you, prior to giving the written confession?

A. No sir, there were not.

Q. No charges were made against you, prior to that?

A. No, sir.

Q. When did, or when were any charges placed against you?

A. It was either the next day, which would be March 6th, or 7th. I don't remember the exact date, but I was served with three warrants.

Q. Had anyone advised you of any of your rights, prior to serving you with the warrants?

Mr. Harp: Objection, Your Honor. I think that's rather a broad question.

The Court: Rephrase it.

By Mr. Pinion:

Q. Now those charges, insofar as I have to be more definite, of course they were made in the Detective Bureau—after you had admitted the crime in the Detective Bureau, it took some time to go out and then return to the Detective Bureau again, at which time I believe you said there were about five officers present?

A. Yes, sir.

page 25 } Q. Now, were you advised by any of those five officers, or by anyone, of your right to counsel?

A. No sir, I was not.

Q. Were you served with other warrants, subsequent to the first three?

A. Yes, sir. I was served with the first three warrants, and then I was taken to preliminary hearing in the Juvenile Court, before Judge Henry.

Q. Who accompanied you down to that Court, at that time?

A. At that time, my only accompaniment was the detectives.

Q. Who all were present?

The Court: Excuse me, one minute. How old were you, at the time you were taken to the Juvenile and Domestic Relations Court?

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A. I was 23 years old, Your Honor.
Q. The alleged victim, how old was she?
A. I believe she was 14, Your Honor.

The Court: All right. Go ahead.

By Mr. Pinion:
Q. Who accompanied you, who was present at the Juvenile Court hearing?
A. When I was taken to the preliminary hear-
page 26 } ing, I can remember Sergeant Sanders was there, and Captain Grant.
Q. All right. Did you have an attorney, at that time?
A. No sir, I did not have an attorney, and I waived my preliminary hearing upon the recommendation of Captain Grant.
Q. Upon the recommendation of Captain Grant?
A. That is correct, sir. At the time he asked me to waive it, he told me 'that it would make things easier', he did not say who it would make it easier for, but he said 'it would make things easier and simpler', and so I went ahead and waived my preliminary hearing.
Q. And that was upon the advice of Captain Grant, who is now Inspector Grant, is that correct?
A. Yes, sir.
Q. Did anybody, at that time, give you any advice that you had a right of counsel?
A. No, sir.
Q. Had you made any request for counsel at that time, that you recall?
A. Not that I recall, no sir.
Q. All right. What happened to you, after you waived your preliminary hearing?
A. I was taken back to my cell, in the Jail, and it was two days later, or thereabouts, that I was served
page 27 } with four more warrants.
I was carried back to Juvenile Court for another preliminary hearing, and once again I waived preliminary hearing on the recommendation of Captain Grant.

The Court: You waived that hearing, also?

A. Yes, Your Honor.
Q. And you say 'you waived that, on the recommendation of Captain Grant'?

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A. That is correct, sir.

By Mr. Pinion:

Q. Now you still did not have counsel, isn't that correct?

A. No sir, I did not.

Q. All right. When did you first have an attorney?

A. Well, I—

Q. Excuse me, I don't mean to be leading, and if there's no objection—General Sands was your attorney, and when did you first see General Sands?

A. I did not see General Sands until the morning of April 3rd of 1963, at which time I was taken to Court and Judge Bullock at that time, said that 'he was appointing William H. Sands, as my attorney'.

Q. That was on April 3, 1963?

A. That's correct, sir.

page 28 } Q. Then, what happened?

A. At that time, General Sands made a motion to continue my case, and that I be sent to Marion for psychiatric examination. This was granted, and after that, General Sands came—

Q. One other thing, was this discussed with you by your attorney, did you all discuss the motion prior to it being made?

A. No, sir. I had not seen him or talked to him until that day in Court, and after the motion was made, he came over and sat in the Court, on the side of the Courtroom where I was.

Q. Was there any evidence, did you take the stand at that time or did the Judge ask you to take the stand?

A. No sir, I didn't.

Q. What happened then, after General Sands came over to you?

A. He told me that 'he was my attorney', and that was the first time I spoke with him, and he told me 'I was being sent to Marion for examination, and to go up there and talk to the doctor, and tell them everything about it'.

Q. Now of course April 3rd was the first time you had seen counsel, is that correct?

A. That is correct, yes sir.

Q. And you had been in custody since March

page 29 } 5th, I believe I'm correct in that date, of 1963?

A. I had been in custody since that date, yes sir.

Q. All right. Now what took place then, was that when you were sent to Marion?

A. That's correct.

Q. And that would have been approximately on April 9th, is that correct?

A. I went up there on April 9th, yes sir.

Q. Now briefly, what took place—don't bring out the details of your examination, but briefly, what took place when you went to Marion?

Mr. Harp: Just a minute—

Mr. Pinion: Excuse me, sir.

By Mr. Pinion:

Q. Were you examined at Marion, by any psychiatrists?

A. Yes sir, I was.

Q. I know this is leading, but you did remain in Marion for some length of time?

A. I remained in Marion there, approximately 65 days.

Q. When did you return to Norfolk?

A. Sometime during June, of 1963.

Q. And, you were placed in the custody of our
page 30 } 'hotel' here?

A. Yes, sir.

Q. Did your attorney, General Sands, confer with you frequently, concerning this matter—between the time that you returned from Marion until the day of your trial, he did confer with you several times, he conferred with you a great deal or a number of times, didn't he?

A. Yes sir, he did.

Q. Now on the day that you were tried—do you recall the date of your trial?

A. It was September 24, 1964—'63, I'm wrong.

Q. All right. At that time you entered a plea, isn't that correct?

A. That is correct.

Q. What was your plea, at that time?

A. "Not guilty, by reason of insanity".

Q. During the trial, did your attorney cross examine most of the witnesses?

Mr. Harp: If Your Honor please, that's a matter of record, and the record is before the Court.

Mr. Pinion: It's my intention to introduce the entire record sometime later on in this, Your Honor.

The Court: All right. Go ahead.

Loren Neal Duffield

page 31 } By Mr. Pinion:

Q. Did you testify, in the trial of your case?

A. No sir, I did not.

Q. The case was concluded then and sent on to the jury—when your trial was completed and the jury returned its verdict, at that time did your attorney make a motion to set aside the verdict as being contrary to the law and the evidence, and did he also make objections during the trial of your case?

A. Yes, he made objections, but mostly they were to do with the pictures.

Q. With the pictures?

A. Yes, sir.

Q. Did *me* make any objection into the record, when your statement was introduced?

A. No, he did not object to the statement being introduced.

Q. Did he object to the testimony of the officers, that conducted the line-up?

A. No, sir.

Q. Did he object to the introduction of the pants and T-shirt, into evidence?

A. There were several things like that, that he did not object to.

Q. The verdict returned by the jury was in fact,
page 32 } that 'you were guilty of Murder, and were sentenced to die in the electric chair'. Did you discuss this matter with your attorney, immediately after the case that date?

A. No sir, I did not. I was returned immediately to Jail, sir.

Q. Do you recall when you saw your attorney, next?

A. I run across him by chance, one day in Jail. I was going out to see the doctor, and he was up there to see one of his other clients, and he told me at that time, that 'he had not yet received the transcript of the trial, and therefore he did not have any idea what was going on yet'.

Q. Then is that the only discussion you had, between September 26th and January 7th, when you were again brought before the Court?

A. To my best recollection, that's correct sir.

Q. On January 7th, the day you returned to Judge Bullock's Court, your attorney very vigorously argued your conviction, isn't that correct?

A. He argued to the effect that 'he could not find any errors in the trial', and then he made exception, and argued

once again on the introduction of the photographs into evidence.

Q. He did say 'there were no errors, in the trial'?

page 33 } A. He did, he said 'he could not find any errors, in the trial'.

Q. Now previously—what did you say he did, about the pictures?

A. He objected once again to the pictures being introduced, during the trial.

Q. That would be a proper objection, so he did say there were errors in the transcript, isn't that correct, that's before the Court?

A. No sir, he stated 'there were no errors, except when they put in the pictures'.

Q. So in other words, let me clarify—I believe you said that he said 'there were no errors, except when they put in the pictures'?

A. As I remember it, yes sir.

Q. All right. Was the decision by the Court, at that time 'not to set aside for a new trial'?

A. Correct, sir. Judge Bullock said that 'he would'—he denied the plea, or whatever that was, when the motion was argued, and at that time Judge Bullock told General Sands, he 'thanked him for the way he had represented me, and that he was then dismissed from the case', and I was not at that time, told of my right that I had, for appeal.

Q. After the jury was dismissed, did the Court in any way, indicate to you that you had a right to appeal?

page 34 } A. No sir, the Court never did or General Sands never did indicate to me, that I had a right to appeal or what I'd have to go about trying to get an appeal.

Q. Did you, at that time, make any request for appeal to the Court?

A. No sir, I did not.

Q. You were not advised, that you had that right?

A. No, sir.

Q. Now that was January 7th of 1964—did you see General Sands, any time after that?

A. Only one other time and that was by accident, when I went out to see the doctor and he was in the Jail to see another client, and we just more or less ran into each other, and he said 'he was rather busy'.

Q. As a matter of fact, you did not have any conversation with him, at that time?

A. No, sir. We just spoke, and that was about it.

Loren Neal Duffield

Q. No one ever advised you, of your right of appeal?
A. No, sir.
Q. No attorney was appointed to assist you in your appeal, is that correct?
A. No, sir. Not until I requested it from the Federal Court, in Richmond.
Q. When did you make that request?
page 35 } A. I first wrote a personal letter, to the Governor of the State of Virginia, approximately one week before the execution date, and in that letter—
Q. Excuse me, the execution date, was that April 17, 1964?
A. That's correct, sir.
Q. All right. And approximately one week before that, would have been April 10th?
A. Approximately, somewhere around that date.

Mr. Harp: If Your Honor please, I don't see where that's material to this matter.
He said he wrote to the Federal Court, and as a result of that, is why we're having this proceeding, but now he says he wrote to the Governor.
The Court: Well, he said 'he was denied his appeal', I believe that's the testimony, and I'm going to allow him at this time, to put the rest in, just to show that no appeal effort had been made
Mr. Pinion: That was my sole purpose, of going into detail.
Mr. Harp: Note my objection, Your Honor.

By Mr. Pinion:
Q. Go on, sir. You say you wrote the Governor?
page 36 } A. That's correct, sir.
Q. Did you receive any response, from your letter?
A. The only response I received, was from someone representing the Governor, and he said—
Q. You can't go into what was said or anything, but you received a response from someone representing the Governor, and then what did you do as a result of having received that letter?

The Court: Let me find out something, at this point.
Your letter to the Governor, if I understand correctly, was not requesting him for help or to appoint a lawyer for appeal,

you were merely asking him to reduce your sentence to life, is that right?

A. Yes, Your Honor.

By Mr. Pinion:

Q. And incidentally, your request was denied in that letter, and you have carried it around with you—and if there's no objection, just briefly, that letter advised you of your right of appeal, isn't that correct?

Mr. Harp: I think that's rather a leading question, Your Honor.

page 37 } The Court: Sustained.

By Mr. Pinion:

Q. Had anyone ever advised you, of your right of appeal?

A. Only the inmates, in Death Row.

Q. That's all?

A. That's right, sir.

Q. And you proceeded on the advice that you received, in that letter?

A. That's correct, sir.

Q. This brings us up to date to the present time, after the Federal Court proceeding to this hearing today?

A. Correct, sir.

Q. All right. Would you please answer Mr. Harp, or the Court?

A. Yes, sir.

CROSS EXAMINATION

Examined By Mr. Harp:

Q. Mr. Duffield, who were the police officers at your house on the evening of March 5th, when you returned to your home?

A. Detective Asaro was one of them, and Mr. Cherry was the other one.

Q. And you voluntarily drove your own vehicle

page 38 } down to Police Headquarters with Detective Asaro, is that not correct?

A. Correct, sir.

Q. Did they tell you why they wanted you to come down to Police Headquarters, Mr. Duffield?

A. No sir, they did not.

Loren Neal Duffield

Q. Did they tell you why they wanted the T-shirt and pants?

A. No sir, they did not.

Q. After you were placed in the second line-up, do you recall how many others were in the second line-up with you?

A. There was no one else in the second line-up, with me.

Q. There was no one else in the second line-up?

A. No, sir.

Q. You stated that 'after the victim's brother identified you, you were then taken back into the Conference Room of the Detective Bureau', correct?

A. No sir, the second line-up was held in the Conference Room.

Q. I see. The second line-up was in the Conference Room, that's where it was taken?

A. I remained in the Conference Room, sir.

Q. All right. Now you say 'that certain police
page 39 } officers put you down in a chair there, and started
questioning you', correct?

A. They did not 'put me in the chair'.

Q. They 'ordered' you to sit in the chair?

A. Correct, sir.

Q. And who were those police officers, do you know their names?

A. I do not know their names, sir.

Q. Can you identify them?

A. No sir, I cannot.

Q. Did you not see them present in the Courtroom, earlier today?

A. I did not look, sir.

Q. You answered that 'one of them shook his fist, in your *fact*'?

A. That is correct, sir.

Q. Do you know who that was?

A. I do not know, sir.

Q. What did he say to you, do you recall?

A. I do not recall, sir. The questions were coming too fast, to answer.

Q. So then, you didn't answer any questions?

A. No more than my name and serial number, that's all I could get out, before another question was coming.

Q. And Sergeant Sanders took you into an adja-
page 40 } cent room, correct?

A. No, sir. I was taken into an adjacent room, and then Detective Sanders came in.

Loren Neal Duffield

Q. Oh, I see. Then he sat down and talked to you, and then you stated at that time, 'you made an oral confession', correct?

A. Correct, sir.

Q. That was at approximately 5:10 P.M., on March 5, 1963, correct?

A. I guess it would have been about that time, yes sir.

Q. All right. Then you accompanied the police officers to the scene where the body was found, and when you returned to Police Headquarters, it was approximately 5:50 P.M., correct?

A. Not 5:50 P.M., no sir. I don't know what time we returned to Police Headquarters, but it was much later than that.

Q. All right.

The Court: Let me ask a question, at this point.

You stated that you went to the scene—was the body actually there, then?

A. Yes Your Honor, it was. The police didn't

page 41 } know where the body was, until I went there with them in the police car.

Q. You showed them where the body was?

A. Yes, sir.

By Mr. Harp:

Q. Then you gave a statement about 10:10 P.M. in the evening of March 5, 1963, correct?

A. I don't know what time it was when I gave the statement, or what time it was that I signed the statement.

Q. At the bottom of the statement, it's noted that you gave it at 12:30 A.M. on March 6th—or that's the time it was typed up, and then I believe you signed it, and it says that Inspector Grant, Detective Sanders and Detective Asaro took the confession, there were three of them, correct?

A. To the best of my ability to remember, that is correct sir.

Q. Now at any time during the course of this investigation, did any police officer tell you what they were investigating?

A. No sir, they did not.

Q. Didn't Detective Sanders tell you, when he questioned you about the case, didn't he tell you why he was talking to you?

A. He just said 'that it was having to do with that'.

Loren Neal Duffield

Q. With what?

page 42 } A. The disappearance of the Padgett girl.

Q. He was questioning you then, relative to the disappearance of the Padget girl, correct?

A. Correct.

Q. And you thought he would make it easier on you, if you told him what you knew about it?

A. No, sir.

Q. Not until you made the statement to Detective Sanders, when you said 'he treated you very kindly', then you took the police to where the body was, then you made a confession —not until then, were any warrants served upon you, correct?

A. Correct.

Q. Now when you had your preliminary hearing, you say then Captain Grant, who is now Inspector Grant, told you 'that it would make things easier, if you would waive preliminary hearing'?

A. Correct, sir.

Q. Did he make any promises to you, at all?

A. No sir, he made no promises, and he didn't say 'who it would make it easier for'.

Q. I see.

A. I didn't know whether he meant for himself, for the Court or for me. I took it one way, but he was meaning it another way.

page 43 } Q. Now you stated, I believe, that you did not see General William H. Sands', and I'll refer to him as General Sands, 'your Court-appointed attorney, until April 3rd of 1963', correct?

A. Correct, sir.

Q. He did not come to see you, and you did not confer together on March 16, 1963 between the hours of 9:05 A.M. and 10:30 A.M. in the Jail of the City of Norfolk?

A. Not to my knowledge, he did not, no sir.

Q. You do not know whether or not he conferred with your parents, or your wife, or with your brother, prior to April 3, 1963?

A. To my knowledge, he did not.

Q. Were you not interviewed on March 28th and 29th, 1963 by Dr. Thrasher?

A. No, sir. I was examined, but I'm sure it was after I returned from Marion.

Q. But you don't recall being interviewed by Dr. Thrasher, on March 28th and 29th, 1963?

Loren Neal Duffield

A. No sir, I do not recall it.

Q. You do not recall being interviewed, by him?

A. I recall being interviewed by him, but not on those dates.

Q. Now it's my understanding that prior to the 3rd day of April, 1963, you had not seen General Sands?

page 44 } A. Not to my knowledge, that's correct sir.

Q. And, he had not discussed with you anything about the case?

A. Not to my knowledge.

Q. Now on April 3, 1963, did you discuss anything about the case?

A. The only thing he told me, was after the motion was made, he came over and told me 'to go to Marion, and tell the doctors all about it'.

Q. But you had not discussed anything with him, prior to him making that motion?

A. Not to my knowledge, no sir.

Q. And you state that no one discussed the question of appeal with you in the City of Norfolk, and when I say 'no one', I mean neither the Court, the police officers or detectives, nor General Sands, discussed the question of appeal?

A. Not to my knowledge, no sir.

Q. And you first learned of your right of appeal from—when you were transferred to the Penitentiary and confined on Death Row, that's where you learned how to go about getting an appeal?

A. Yes, sir.

Q. And that was from one of the inmates that was also confined on Death Row, correct?

page 45 } A. Correct, sir.

Q. And, approximately when did you acquire this information?

A. That was soon after I arrived there, sir.

Q. Which was soon after March 10, 1964?

A. Correct, sir.

Q. And you took no action, at that time?

A. No sir, I did not.

Mr. Harp: That's all.

The Court: Step down.

Mr. Pinion: At the present time, due to the fact that I'd like to have a conference, may we have a few minutes recess?

The Court: Yes sir, of course. Let me know, when you are ready.

Mr. Pinion: Yes, Your Honor.

(Recess from 11:20 A.M. until 11:35 A.M.)

Mr. Pinion: At the present time, Your Honor, I have no further witnesses to call, except after the testimony has been put on by the other side, I may have a little rebuttal testimony.

Again I say of course, that our main objection in this case, is still the fact that he was denied his Con-
page 46 } stitutional right, because of the lack of appeal on his behalf, and Your Honor, I feel that the transcript and the entire record of the exhibits of the original case should be made a part of the record in this case now, and I also believe that Mr. Harp will stipulate that.

Mr. Harp: It's so stipulated, Your Honor.

The Court: All right, gentlemen.

Mr. Pinion: And now Your Honor, I would of course, like all the matters of the previous trial received and marked as Petitioner's exhibits.

The Court: I understand now, that you also wish all of the original exhibits to be received, which were offered in evidence at the trial, and that you have no objection, Mr. Harp?

Mr. Harp: No objection, Your Honor.

The Court: Then the transcript of the original trial will be received in evidence as Petitioner's Exhibit P-1, and the exhibits, as they appear as exhibits and as they
page 47 } are referred to in the original transcript herein introduced, will also be received in this record as exhibits, the same as designated and numbered as exhibits, as are set forth in the original transcript which has been received in evidence as Petitioner's Exhibit P-1.

Mr. Pinion: Yes, Your Honor.

Mr. Harp: Yes, Your Honor.

The Court: Also, that will include the Indictment as well as the appointment of counsel, showing the date of appointment, and of course all this will be entered in the Court's record, showing the exhibits that were introduced and received as Petitioner's exhibits.

Mr. Pinion: At this moment, Your Honor, I would like to take a little time to think and confer with my client, to be sure I have not forgotten anything that should be put in the record now.

(Mr. Pinion held a conference with the Petitioner.)

Mr. Pinion: The Petitioner rests, Your Honor, except of course with reference to rebuttal testimony that I
page 48 } may want to put on later, for which I reserve my right.

The Court: All right, sir.

Mr. Harp: The Respondent calls Detective Asaro, Your Honor.

DETECTIVE MARIO ASARO, witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Harp:

Q. Would you please state your name and occupation, for the record?

A. Sergeant Mario Asaro, Detective with the Norfolk Police Division.

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

A. For the past 10 years.

Q. Were you so employed on March 5, 1963?

A. Yes sir, I was.

Q. On March 5, 1963 did you have occasion to see the Petitioner, Mr. Duffield?

A. Yes sir, I did.

page 49 } Mr. Harp: Excuse me, Mr. Asaro, but I would like to get a copy of the Corporation Court transcript before me, so I can refer to the testimony.

Mr. Pinion: I have a copy, sir.

(The Court hands copy of transcript to Mr. Harp.)

Mr. Harp: Thank you, Your Honor.

By Mr. Harp:

Q. I believe Sergeant, that you said you did see the Petitioner on March 5, 1963, is that correct?

A. Yes sir, I did.

Q. Where did you see him, sir?

A. At his home.

Q. At approximately what time?

A. At approximately 4:30 P.M., in the afternoon.

Q. When had you arrived at his home, Sergeant?

Detective Mario Asaro

A. We had arrived at his home, at approximately 10 minutes to 4:00.

Q. And, what had you done upon your arrival?

A. Upon arrival at the home of the Petitioner, we went to the door and knocked on it, and by 'we', I mean Officer Cherry and myself, that's Officer W. W. Cherry.

Q. Was anybody at home, Sergeant?

A. Yes sir, and we identified ourselves — the

page 50 } door was opened and Detective Cherry and I showed our badges, and we identified ourselves as Police Officers to the wife of the Petitioner, Mrs. Duffield.

Q. What transpired, then?

A. We asked 'if her husband was home?', and we received a negative answer from her. Then we asked 'if we might wait for him?', and she said "come on in", and Detective Cherry and myself waited for approximately 10 or 15 minutes, and we had a conversation with his wife.

We asked her 'if she knew the articles of clothing that the Petitioner had worn the previous day—

Mr. Pinion: I object to that as being hearsay, not in the presence of the Defendant.

The Court: Sustained.

Mr. Harp: This witness has already testified to what Mrs. Duffield said.

Mr. Pinion: But what she said, that would be depending on hearsay.

The Court: I've sustained that.

Q. When you asked her 'if she knew the articles of clothing that the Petitioner has worn the previous day', did you receive an answer?

A. Yes, sir.

page 51 } By Mr. Harp:

Q. Then, what transpired?

A. At approximately 4:30 the Petitioner, Loren Neal Duffield, returned home.

Q. Well, were you shown a pair of blue trousers and a white T-shirt, were they given to you?

A. Yes, sir.

Q. Did you make any effort, to secure them?

A. None, at all.

Q. Did she leave, and you remained in the living room?

A. Yes, sir.

Detective Mario Asaro

Q. Were they brought to you?
A. Yes, sir.
Q. Then, what transpired?
A. At approximately 4:30 the Petitioner drove up in his driveway, to his home, and we walked out to the driveway and met him.
Q. What time would that have been?
A. About 4:30 in the afternoon, and we walked out the driveway and met him half-way, about that, between the driveway—as he was coming to the front door.
Detective Cherry and I identified ourselves as Police Officers, and—

Q. Did you show your badges, your Detective
page 52 } badges?

A. Yes sir, we showed our badges. Detective Cherry showed his badge, and I showed *mind,* and we told him we were Police Officers.
Then, we told this Petitioner 'that we wanted to talk with him, with regard to what happened last night', then we went back in the house, and he was asked 'if he would go downtown with us?', and he said "yes".
We asked him 'if he wanted to drive his car, so he would have a way back?', and he said 'he would', and he went back into the house and told his wife 'he was going downtown'.
We asked him 'if the blue pants and the T-shirt, sitting on the couch, were his?', and he said 'yes, they were', and then we asked him 'if we could take downtown with us, those articles of clothing?', and he said 'yes', and then he told his wife 'that we were taking him downtown', and he and I got into his car, he got in and drove it down to the Detective Bureau, and Detective Cherry followed us in his car.
We left his house shortly after 4:30, and I believe we arrived at Police Headquarters at approximately 5:10 that same afternoon.
Q. Subsequent to that time, were you present when any identification was made of Duffield, by any person, in connection with the crime you were investigating?
page 53 } A. Yes, sir.
Q. Do you know approximately what time the identification was made?
A. I would say approximately 5:20 to 5:30, sir.
Q. All right. Then, what next transpired?
A. After this identification, Lt. Sanders took the Petitioner into the Robbery Squad Office, where Lt. Sanders interviewed him by himself, and within a few minutes he came out and related certain facts to us.

Detective Mario Asaro

The Court: What did those certain facts concern?

A. He was referring to the results of his conversation Your Honor, after he had talked to the Petitioner in the Robbery Squad Office.

It was just a matter of 10 or 15 minutes, and he related certain facts to us, and after relaying that information, we took the Petitioner, along with Captain Grant, Lt. Morse, Lt. Sanders and myself—we left the Norfolk Police Headquarters at approximately 5:50 P.M. that same date, that same evening, and we went on a route where he related certain events that had taken place the night before.

page 54 } Q. You're referring to the Petitioner, when you say 'he related certain events that had taken place the night before'?

A. Yes, Your Honor. The Petitioner was with us, and all five of us were in a police car.

By Mr. Harp:

Q. And in connection with those actions, were you able to find the body of the victim?

A. Yes, sir.

Q. What time did you return to Norfolk Police Headquarters?

A. I would say approximately 9:30 P.M.

Q. All right. And, was a written statement then taken from the Defendant?

A. At approximately 10:00 o'clock, that's when the written statement was taken.

Q. What time was the statement completed?

A. Somewhere around midnight, sir.

Q. In other words, the statement was reduced to writing?

A. It was typed up, yes sir.

Q. And that accounts for the time involved?

A. Yes, sir. It was taken, reduced to writing or typed up, and that required some length of time.

page 55 } Q. I see.

Mr. Harp: Your witness, Mr. Pinion.

(Mr. Pinion held a conference with the Petitioner.)

CROSS EXAMINATION

Examined By Mr. Pinion:

Q. Did you testify, at the original trial of this case?

A. (pause) I don't recall, sir.

Q. The record does not disclose that you testified, previously.

A. I may not have sir, I don't recall. If the record says I didn't, I didn't.

Q. You don't have any independent recollection, of having testified?

A. No sir, I really don't.

Q. Do you remember if Officer Cherry testified?

A. Detective Cherry may have, but I don't remember.

Q. But, you don't actually recall testifying at the previous trial?

A. No sir, I don't.

Q. Then to the best of your knowledge, this is the first time you actually testified in Court about this case,

page 56 } that is today?

A. To my knowledge it is, yes sir.

Q. How about the preliminary hearing?

A. I don't recall testifying at the preliminary hearing, either.

Q. What was the date, when you first saw this Petitioner?

A. March 5th, I believe it was a Saturday, in 1963, at approximately 4:30 P.M., at his home.

Q. Where did he live?

A. (pause) I don't—7940, I think, Westcliff Drive. To get to the house, you go out Little Creek Road to Atlantic Mills, right across from Miller's, but a little bit further down on Little Creek Road headed, it would be east, and when you get to somewhere about, across from the old Norfolk—

Q. You do not know the exact address of the house, do you?

A. I know how to get to it, sir.

Q. But you don't know the address of the home, do you?

A. No, sir.

Q. Do you remember what time you arrived there?

A. Yes sir, it was approximately 4:30.

Q. You were with Sergeant Cherry?

page 57 } A. Yes, sir.

Q. Just the two of you?

A. Yes, sir.

Q. Did you go to the door of the home, at that time?

A. Yes, sir.

Q. And, you identified yourselves?

A. We identified ourselves to his wife, yes sir.

Q. Did you make any further explanation, to his wife?

Detective Mario Asaro

A. I also said at that time, 'that we wanted to talk to her husband'.

Q. Did you have a warrant at that time, in your possession?

A. No sir, I did not.

Q. To your knowledge, did Sergeant Cherry have any warrant in his possession?

A. I don't think—

Q. —that is, to your knowledge?

A. I don't believe he did, sir.

Q. You identified yourselves as Police Officers and were permitted at that time, and at that moment, to come into the house, and I believe you stated that his wife told you 'come in'?

page 58 } A. Yes, sir. We asked her 'if her husband was home?', and she said 'no, but he get's home between 4:00 and 4:30, he's working', and then we asked 'if we could come in, and wait for him?', and she said 'yes', and she let us in, and she had a very small child with her.

Q. Then you were admitted to the home, at that time?

A. Yes, sir.

Q. Now was this when—did you stay inside the house, until the Defendant walked in?

A. Well, no sir.

Q. What took place when you went into the house, if you didn't stay there all the time?

A. I stayed there, but Detective Cherry left and he moved the police car—I think it was in front of the house, and he moved it down the street. That was the only time he left the house, other than the time when the Petitioner pulled up in the driveway.

Q. Did you both leave, then?

A. Yes, sir. We went half way, and met him in the driveway.

Q. Both you and Detective Cherry left the house, at that time?

A. Yes, sir.

Q. Now you had these articles of clothing with you at that time, did you not?

page 59 } A. No, sir.

Q. Neither one of you, had them in your possession?

A. No sir, they were sitting in the house on the couch. We had—they had been shown to us, and we left them sitting on the couch in the living room.

Detective Mario Asaro

Q. Hadn't you handled them, didn't you touch the articles of clothing?

A. Yes sir, we did.

Q. And all you had to do, was ask his wife just one question, in order to obtain those clothes?

A. We asked her 'if she knew the clothes her husband had worn on the evening before?', and she said 'yes', and then she went into the bedroom—that house sir, you walk into the living room as soon as you come into the house, and the bedroom is just right off the living room to the left, as you walk in, it's a small house, and she left us sitting in the living room while she went into the bedroom there, and when she returned she had the pair of blue trousers and a shirt, a white T-shirt with her, and we asked her 'were they the clothes he wore last night?'.

Q. But no explanation was made at that time, as to why you wanted to see the clothes, or anything?

A. No, sir.

Q. His wife didn't inquire, as to why you wanted

page 60 } to see them?

A. No, sir.

Q. Didn't she appear rather fearful, about them?

A. No, sir.

Q. She didn't ask any questions, she just went and got the clothing without any explanation from you?

A. We didn't explain, and she didn't appear to be fearful. When we went in, she had the baby with her, she was very friendly, and we began to play and joke with the baby.

Q. Now when the two articles of clothing were brought in to you, did either of you two inspect the clothing at that time?

A. We examined the clothes, yes sir.

Q. You examined the clothing, then?

A. Yes sir, we put our hands on it.

Q. And the car was moved, so the Defendant wouldn't know you were in his house, isn't that correct?

A. Yes, sir.

Q. That was the purpose in moving the car?

A. Yes, sir. After we had inspected the clothing, the car was moved.

Q. All right. You did not wish the Defendant, or the Petitioner in this case, to see the police car, because you wished to apprehend him at that time, correct?

A. We didn't want him to see the police car, sir.

Detective Mario Asaro

page 61 } Q. But you had some reason for not wanting him to see the police car, correct?

A. Yes, sir.

Q. Well, was the reason because you didn't want him to escape?

A. We didn't want him to know we were there, and we didn't know whether he'd try to escape or not sir.

Q. Under all the circumstances, you wished to prevent this Petitioner from knowing of your presence in his house, correct?

A. Right, until he got there. We wanted to be sure that nothing was noticed, until then.

Q. These clothes now, you say you did not discuss them with the Petitioner's wife, as to why you wanted to see them?

A. No sir, we did not.

Q. She didn't ask anything, as to why you wanted to see them?

A. She didn't ask us anything, and we didn't tell her anything.

Q. So you just went in, you didn't appear to scare his wife, you inquired about her husband's clothes and she made no inquiry of you as to why you wanted to see her husband's clothes?

A. Correct, sir.

page 62 } Q. There was not one question, as to why you wanted to see the clothing?

A. No, sir.

Q. When the Defendant drove up front, he's the Petitioner in this case but he was the Defendant in the previous case, which of you two officers first went out?

A. I rightly don't remember, we both went out to meet him as he was coming out of his car, and he got approximately halfway between his car and the house, and we went up to him, Mr. Duffield, showed him our badges and told him 'we were police officers', and we told him 'we wanted to take him downtown, and we wanted to talk about what happened last night'.

We went back in the house—he said 'he wanted to tell his wife where he was going', so we went back in the house and showed him the articles of clothing that were still lying on the couch, and we asked him 'if they belonged to him?' and he said 'yes, they were his', and we asked him 'if he wore them yesterday?', and he said 'yes, he did', and we asked him 'if we could take them with us, downtown?', and he said 'yes, you can', and we left.

Detective Mario Asaro

Q. Now Officer Asaro, isn't it a fact that you actually had the clothing, it was taken out of the house and you had them in your hands when he came up in his car?

A. No sir, it is not.

page 63 } Q. Your testimony is then, that you walked out and left the clothing on the couch, and you didn't get it until after you talked to the Defendant, and you didn't take it out of the house?

A. Correct.

Q. But then you did remove the clothes—you took them downtown with you, didn't you?

A. Yes, sir.

Q. Then are you stating to the Court today, that you didn't leave one of the officers in the house to watch the clothing?

A. No, sir. There weren't any other officers, other than Officer Cherry and myself.

Q. Now, this is the first time you testified in this case?

A. That I recall, yes sir. They couldn't find testimony in the previous record, and this is the first time that I recall.

Q. Were you present, during the entire interrogation of the Defendant?

A. No sir, that is not all of it.

Q. Not all of it?

A. No, sir.

Q. Let me ask you this, were you present when the statement was given?

page 64 } Mr. Harp: If Your Honor please, I think Mr. Pinion is making this officer his own witness. This is not cross examination, on this officer's direct testimony.

Mr. Pinion: Excuse me sir, you of course asked him concerning the statement, and this definitely can be included on cross examination.

I'm not going into the legality of it, but I definitely can cross examine on it, Your Honor.

The Court: Mr. Harp asked him 'if a statement was given?', and he said 'he did, after he came out of the conference room'.

I do not find this officer to have testified as to the conference in that room, he just said 'he made a statement', but he could not hear what was going on in the conference room, that is he could not actually hear the conference to know what was going on.

I don't believe he's his witness, up to this point.

Go ahead, Mr. Pinion.

page 65 } Mr. Harp: Note my exception, if Your Honor please.

By Mr. Pinion:

Q. Were you present during most of the interrogation, after the traveling of the route where the crime was supposed to have been committed?

A. I was present during all of the time along the route, and I was present when he gave a written statement.

Q. When you first went into his house then, this man was a suspect for what crime?

A. When we went to the house, it was my understanding, based on higher authority, that we were to bring the man down to talk to him about what happened last night, regarding the Robbery report that he made.

Mr. Pinion: I believe my point has been made, Your Honor.

The Court: Had he made a Robbery report, the night before?

A. Yes, Your Honor. He made a Robbery report, to the Police Department.

Q. What was the general nature, of that report?

A. He just reported to the Police Department,
page 66 } that he had been robbed, Your Honor.

The Court: All right, sir.

Mr. Pinion: Now Your Honor, I'll question him about going into the Defendant's premises.

By Mr. Pinion:

Q. When you went to Mr. Duffield's home, you didn't say 'you were investigating that missing young lady and her murder', did you?

A. No, sir.

Q. When you went there, your pretension was that you were investigating a Robbery, was it not?

A. I told him that 'we wanted to take him downtown, about what happened last night'.

Q. And you were referring to the Robbery report that he made, and not the crime with which he was actually charged?

A. No, sir.

Q. You had no search warrant, when you went into his house?

A. No, sir.

Detective Mario Asaro

Q. Now again, you're denying that the clothes were removed from the Defendant's house, and were not in your hands when the Defendant drove up in his driveway?

page 67 } A. The clothes remained within the residence, removed when the Defendant returned to his home, at which time he was asked 'if that was his clothing?', he said 'yes', and then he was asked 'if that was the clothing he wore last night?', and he said 'yes', and we asked him 'if we could take them downtown with us?', and he said 'go ahead', and that's how we acquired possession and that's how they were removed.

Q. So these articles of clothing were removed, and of course you deny telling his wife as well as the Defendant, that 'you were investigating the Robbery that had been reported by him just the night before'?

A. No, sir.

Q. Maybe not those words, you were more careful in selecting your words, correct?

A. They were removed when we told him 'we wanted to talk with him, about what happened last night', and they were the exact words I used.

Q. Now that you're trying to be careful about what words you're using today, correct?

A. No sir, those were the exact words I used that day.

Q. Do you have any notes, on that?

A. Do I have any notes, sir?

Q. Do you have any notes on that, that are obtainable?

page 68 } A. (Witness looks at papers.) Do I have any notes, on that?—there may be notes in the arrest record, that may show what was done, but I cannot tell from my notes here I'm *testying* from my memory on that, sir.

Q. So then you're testifying today from memory, and you have no notes of the fact that they were the exact words you used, correct?

A. I'm testifying from memory on that, yes sir, but I could probably get the arrest report.

Q. There's one other question, sir—you do not know the address of the Defendant's home, correct?

A. No, sir.

Q. Your memory slips on that point, does it not?

A. (pause) 7940 Woodcliff—Avenue or Street, that just slips me.

Q. The name of the street slips you, but you remember your exact words?

A. Those were my exact words, sir.

Q. Do you remember what the Defendant had on, on that particular day, or do you remember what if anything, he was carrying at that time?

A. No sir, I do not.

Q. You have no notes of those facts, and you do not remember, correct?

page 69 } A. No sir, I don't remember that. I wasn't taking notice of those things, I wasn't paying that much attention to that.

Q. Then you only noticed or payed attention to your actual wording, correct?

Mr. Harp: If Your Honor please, he's arguing with the witness now.

Mr. Pinion: He does not know, Your Honor.

The Court: You've been over it, in some length. It's a little repetitious of the same fact, I think you'll both agree on that. Let's move along, shall we?

Mr. Harp: Thank you, Your Honor.

By Mr. Pinion:

Q. Do you recall what car he was driving, sir?

A. His car.

Q. All right. What model was his car, Officer?

A. I don't remember, sir.

Q. What make was his car?

A. I don't remember.

Q. What coloring was his car?

A. I don't remember.

Q. Do you remember what the baby was wearing, that day?

A. No, sir.

page 70 } Q. Do you remember what his wife was wearing, that day?

A. No, sir.

Q. You don't remember that, sir?

A. I said "no, sir".

Q. You don't remember whether she was wearing slacks, or a dress?

A. No, sir.

Q. Then in order to make this rather short, there are several things you do not remember, that took place on that particular day, are there not sir?

A. The only things I remember, sir—I remember what I did and what I said.

Detective Mario Asaro

Q. Nothing else?
A. No, sir.
Q. Do you recall whether you had your uniform on, that particular day, or not?
A. I don't remember that, sir.
Q. You do recall what time you arrived downtown, correct?
A. Yes, sir.
Q. You do remember that?
A. Yes sir, I do.
Q. Do you recall that, because you referred to your memory?
A. I have looked at notes, that I prepared.
page 71 } Q. Then you are not testifying from your memory today, you're testifying from notes, correct?
A. I used notes to refresh my memory, yes sir.
Q. That's perfectly proper, and I'm not making any allegation that it's not proper. Now sir, when did you look at these notes?
A. I looked at them, since I was informed there was going to be a Petition for *Habeas Corpus* coming up.
Q. When did you last look at them, sir?
A. (pause) This morning, sir.
Q. You looked at your notes this morning—then, you're testifying to these facts, not from memory, but because you looked at your notes this morning, and what time did you look at your notes this morning?
A. At 8:00 o'clock, this morning.
Q. You looked at your notes at 8:00 o'clock, this morning?
A. Yes, sir.
Q. But those notes are not obtainable now, showing your exact wording, where you wrote it down in those notes you say you used to refresh your memory?
A. I only refreshed my memory, as to times and dates.
Q. Nothing else?
A. No, sir.
page 72 } Q. Did you also refresh your memory, by discussing this case with anyone—and I'm not saying that's not proper, but did you discuss it with anyone?
A. Mr. Pinion, I discussed it with Mr. Harp.
Q. And he of course, is the Assistant Attorney General. Did you discuss it with anyone else, sir?
A. I discussed it with his investigators.
Q. All right, sir. So all of your testimony here today, is not from your exclusive memory of the facts—you have refreshed your memory by discussing this case, correct?

Detective William W. Cherry

A. As I said before, Mr. Pinion, I have refreshed my memory only as to dates and times.

Q. Limited to that, all together?

A. Yes, sir. I didn't have to refresh my memory to some other things—some things just stick in my mind.

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

The Court: Officer, did you make any search of the premises in question?

A. No Your Honor, we never searched the premises in any way whatsoever, that day.

The Court: That's all I have. You may stand down.

Mr. Harp: The Respondent calls Officer *Cherr,*
page 73 } Your Honor.

DETECTIVE WILLIAM W. CHERRY, witness, called on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Harp:

Q. Officer Cherry, would you state your full name and your occupation?

A. William W. Cherry, Detective with the Norfolk Police Division.

Q. What is your residence, sir?

A. 1544 Fleetwood Avenue, City of Norfolk.

Q. How long have you been employed, by the Norfolk Police Division?

A. Sixteen years, sir.

Q. On March 5, 1963 did you have occasion to see Loren Neal Duffield?

A. Yes, sir.

Q. Where?

A. At his home.

Q. What time did you see Mr. Duffield at his home, sir?

page 74 } A. At 10 minutes to 4:00, in the afternoon.

Q. Who was with you, if anyone?

A. Sergeant Mario Asaro.

Q. When Sergeant Asaro was with you, what did you do?

A. When we arrived at the home, we went to the door and

knocked on the door, a lady answered and we identified ourselves as Detectives with the Norfolk Police Department.

Q. What if anything was said, do you remember?

A. I remember we asked 'if Mr. Duffield was at home?', and she said 'he was not home from work, and he usually returned sometime between 4:00 and 4:30'.

Q. Don't say what she told you, please sir.

A. All right, sir.

We were invited in and we waited, and of course at that time we asked Mrs. Duffield 'if she remembered what Mr. Duffield wore the night before?'

Q. I see. And did she tell you what, or relay any information as to what Mr. Duffield had worn the night before?

A. Yes, sir. She had not laundered his clothes, and they were given to us—she got them from another room.

Q. I see. Did you participate, in getting those clothes from the other room?

page 75 } A. No, sir.

Q. And the clothes that were turned over to you, sir—what were they, do you recall?

A. A blue pair of pants and a white undershirt, which was a T-shirt type.

Q. Then what occurred?

A. I left the house.

Q. You left the house?

A. I left the house, yes sir.

Q. What did you do, when you left the house?

A. I moved the car, the police car.

Q. *What* it an unmarked police car?

A. Yes sir, and it was blocking the driveway.

Q. What did you do, then?

A. I returned to the house.

Q. At approximately what time, did Mr. Duffield arrive?

A. Approximately at 4:25.

Q. You say 'approximately, at 4:25'?

A. Approximately, yes sir.

Q. How do you know it was approximately 4:25 sir, have you reviewed your report?

A. Yes, sir.

Q. I see. Then, what happened?

A. We met Mr. Duffield, in the driveway.

page 76 } Q. Who is 'we'?

A. Sergeant Asaro and myself, sir.

Q. All right.

A. We identified ourselves, and told him 'we would like to talk to him downtown, about what happened last night'.
Q. Where were the clothes in question, at that time?
A. On the settee—they were in the house, sir.
Q. Where exactly did you say they were, in the house?
A. On the settee.
Q. Then, what did you do?
A. He said 'he wanted to go in, to tell his wife where he was going', and the three of us went in, together.
Q. Then, what occurred?
A. We asked him about the clothes there, and 'if he minded, if we took them down to Headquarters?', and he said 'no'.
Q. Then, what did you do?
A. We came outside then, and asked him 'if he wanted to drive his car, so he could have a way back?', and Detective Asaro got in his car, I got in the police car and I followed, in the police car.

Mr. Harp: Your witness.

page 77 } CROSS EXAMINATION

Examined By Mr. Pinion:
Q. Officer Cherry, have you previously testified in this case, in any hearing at all?
A. (pause) I don't believe I testified at the other case, no sir.
Q. Now of course when you speak of 'the other case', you mean the other hearing in February—or rather, on September 25th and 26th, of 1963, correct?
A. Yes, sir.
Q. And, you don't believe you testified?
A. No, sir.
Q. Now you say that you arrived at the Duffield's home at 10 minutes to 4:00, correct?
A. Approximately that time, yes sir.
Q. You drove a police car to the house, at that time?
A. Yes, sir.
Q. Did you park the car out front, at that time?
A. Yes, sir.
Q. And then, you went on up to the house at that time?
A. Yes, sir.
Q. Exactly where had you parked the car, sir?
A. In the driveway.
page 78 } Q. You did have it in the driveway, sir?

A. (pause) Yes, sir.
Q. Then, it was not parked out front?
A. No sir, I believe it was in the driveway.

The Court: Just a minute ago, I believe you said 'the car was out front'?

A. It was actually to the south side of the house, Your Honor.
It was raining, and we parked the car as close as we possibly could.

The Court: I see.

By Mr. Pinion:
Q. Did you tell Mrs. Duffield 'you wanted to examine these clothes, or this clothing'?
A. I only think we told her that 'we wanted to talk to her husband, about what happened last night'.
Q. All right, sir. Did you make any further explanation, about the terminology of 'what happened last night'?
A. She didn't make any inquiry at all, only about the Robbery report that he gave her when he came home—that's what he told her, when he came home.
Q. Didn't she make any inquiry, didn't she want to know why you wanted his clothes?
A. It's my recollection that she did not ask about
page 79 } the clothing, no sir.
Q. Didn't she want to know, why you were there?
A. Yes, sir.
Q. What did you tell her, about why you were there?
A. We told her that 'we wanted to ask her husband a few questions, about what happened last night'.
Q. Well, was that the only language used, 'what happened last night'?—were they the exact words used?
A. Yes, sir.
Q. You're sure, they were the exact words?
A. Yes, sir.
Q. Do you have any notes, on that?
A. No sir, I don't have any notes.
Q. Are you testifying from your memory, of what took place and what was said?
A. I'm testifying from that, and what I have read in the report, that was made.

Detective William W. Cherry

Q. In the report, which was made?
A. Yes, sir.
Q. Was that report made by you, sir?
A. It was made in the Detective Bureau, and it was given partially by me, when we came back to Headquarters.
Q. Does that report have the exact terminology used, that 'you wanted to see the clothes, with regard to what
page 80 } happened last night'?—is that in the report?
A. No, sir.

Mr. Harp: There's been no testimony in support of that question which was just asked by counsel, there's been no testimony by this witness that was the language that was used.
Mr. Pinion: Now Your Honor, I'm not the one testifying, and—
The Court: Read the last question back.

(The stenographer read the last question.)

Mr. Harp: I object, Your Honor, on the ground that there's no such testimony by this witness, and he cannot put it in.
The Court: I'm sustaining the objection, Mr. Pinion, as to the form of the question.
I'm not telling you at this time, that you cannot put it in, all I'm going to do now is sustain the objection as to the form of the question.

By Mr. Pinion:
Q. Did his wife inquire about what you meant, by 'what happened last night'?
A. She told us, that 'he told her what happened to him'.
page 81 } Q. Is that what he was charged with?
A. No, sir.
Q. It was another crime altogether, correct, that he was charged with later on?
A. Yes, sir.
Q. How many times prior to this time, were you there?
A. I was there, once.
Q. Only one time?
A. I don't believe it was more than one time—I don't recall, but I believe just one time, Mr. Pinion.
Q. Have you checked your notes, today?

A. No, sir.

Q. When was the last time you checked your notes, or referred to your notes?

A. I don't have any notes, Mr. Pinion.

Q. Not on anything, at all? Wasn't there anything written down, to go on?

A. No, sir.

Q. And of course again, you repeat that you have not testified, to your knowledge, in this case before?

A. I don't believe I did, sir.

Q. Could you have been to the Defendant's house, three times?

A. No, sir.

page 82 } Q. That clothing—did you go with his wife, when she obtained it from where it was closeted?

A. No, sir.

Q. She brought it, into you?

A. Yes, sir.

Q. And Sergeant Asaro, he remained in the house at all times?

A. Yes, sir.

Q. I see.

A. When Mr. Duffield pulled into the driveway, we went out together, and Sergeant Asaro went with Duffield, and left at that time.

We were instructed to go to 7940—(pause) Whitecliff, on Whitecliff Avenue.

Q. Were you told, why you were to go there?

A. We did not ask why, sir.

Q. Were you told why you were to go there, sir?

A. Yes, sir.

Q. Were you told, to obtain any articles of clothing?

A. No, sir.

Q. Did you make inquiry then—didn't anybody make any explanation to you, before you left?

A. No, sir.

Q. That was your idea, on the way out there?

page 83 } A. That was our idea, after we got there.

Q. Who mentioned that, you or the other officer?

A. I did.

Q. Was that, just to make conversation?

A. No, sir.

Q. Were you investigating the crime of Murder, at that time?

Detective William W. Cherry

A. We had been investigating the crime of Murder, all day.

Q. And that was the Murder of Gwendolyn Constance Padgett, correct?

A. Yes, sir.

Q. Then when you went there and you had that man, he was a suspect in your mind, correct?

A. (pause) It was an after-thought, yes sir.

Q. Was he placed under arrest, when you arrived?

A. No, sir.

Q. Do you remember what kind of car he was driving, Officer Cherry?

A. An Oldsmobile.

Q. What was the color?

A. The car was white.

Q. Do you remember what his wife was wearing, on that day?

A. No, sir.

page 84 } Q. Do you remember what time he came up in his car, exactly?

A. Not exactly, sir—somewhere around 4:20 or 4:25, somewhere along there.

Q. Your car—was it where the Defendant could see it, when he drove up?

A. I had moved it.

Q. Where had you moved it?

A. Down the street, behind his driveway, on the south.

Q. It had been in front of his house, though?

A. Next to his house, sir.

Q. And, that was the only time you moved the car?

A. Yes, sir. That is, that I recall.

Q. Which one of you had the clothing, when you went out?

Mr. Harp: Objection. There's been no such evidence, if Your Honor please.

The Court: I believe there's been testimony that the wife handed the clothing to the officers.

By Mr. Pinion:

Q. I asked you 'which one of you had the clothing, when you went out'?

A. Went out where, Mr. Pinion?

page 85 } Q. To the car?

A. To the Defendant's car? Well sir, when he arrived—

Q. Don't you understand my question?

A. No, sir.

Q. I'm sorry, maybe you misunderstood my question.

A. I understood your question to be—you asked me 'which one of us had the clothes, when we went out to the car', and you mean the Defendant's car?

Q. Yes, sir.

A. That was when he arrived—I wanted to make sure I understood, that you didn't mean when we left.

We did not have the clothes, when we went out to meet him in the driveway—we left the clothes in the house at that time, on the settee.

Q. I understood, that you took the clothes with you at that time?

A. We asked 'if we could take them'.

Q. Now you have testified, have you not, that you did not have the clothing with you when you went out, is that correct?

A. Yes, sir.

Q. Sergeant Cherry, I have the record here, which is the record of the previous trial, and it shows that page 86 } you did testify in the previous trial, the earlier trial than the one we are now hearing.

Now may it please Your Honor, the previous trial was on September 25th and 26th, and I believe you have testified, have you not Sergeant Cherry, that you did not testify in the Corporation Court hearing?

A. Yes, I did. I don't recall, and I think I said that.

Q. You don't recall that, sir?

A. No, sir.

Q. You don't recall taking the stand, on that day?

A. No sir, I do not.

Q. Well this is the testimony I have here, and I wish to read from page 72, which I have open.

Mr. Harp: I'm with you.

The Court: I have it.

Mr. Pinion: All right, sirs.

Starting with line 12 on page 72 of the transcript of the original trial in Corporation Court, it shows that you did testify.

Reading now, in answer to the question: "What sort of transporation was he using?", you answered: "He was driving a white Oldsmobile", which is correct.

Now I will read this question: "Where was your page 87 } car parked?", and your answer was: "We moved

it three times; first it was in front of the house, and then we obtained the time he was usually home, and he didn't show, and I went out and moved the car north, on Westcliff Avenue.

I seen a white Oldsmobile coming at the end of the block, a couple times. I moved it again, and Mr. Duffield come home".

I don't believe I have read that too well, but do you remember making that statement Sergeant Cherry?

A. No, sir.

Q. Have I refreshed your memory any, sir?

A. Yes, sir.

Q. Did you leave the house three times, Sergeant Cherry?

A. No, sir.

Q. Did you move the car, three times?

A. It says I moved the car three times, but I only moved it one time, as I recall it.

Q. You cannot, at the present time, explain that testimony, correct?

A. Yes, sir.

Q. You disagree with that, today?

A. Yes, sir.

Q. You don't remember moving the car three times, and you don't remember testifying?

page 88 } A. Now that you have read it I do, yes sir.

Q. All right. Now you said—or, do you remember testifying that 'the clothing was left on the settee in the house', at that time?

A. (pause) I don't remember testifying to that, Mr. Pinion. It's been about three years, and I've testified many times, since then.

Q. But of course you have testified many times, but hasn't your memory been refreshed now, with regard to your recollection of this case?

A. I only have the notes that we made, Mr. Pinion, but I don't have the transcript of what the testimony was.

Q. But don't those notes—they probably show what happened when you came to Court, don't they?

A. I'm sure I was there in Court—yes sir, I remember being there very well.

Q. Well now, you just said you had some notes—just what notes are you testifying from, Sergeant Cherry?

A. I'm not testifying from notes, Mr. Pinion.

Detective C. F. Sanders, Jr.

Witness: Your Honor, actually, I have not refreshed my memory from these.

The Court: Are those your notes, or who were those notes made by?

page 89 } A. These were made by all the detectives—it's a summary, Your Honor, made by all the detectives.

By Mr. Pinion:

Q. Do you have those notes with you, at the present time?

A. Yes, sir.

Q. Do those notes contain the fact that 'the clothes were on the settee'?

A. No, sir.

Q. Then you don't have any recollection, do you?

A. No, sir.

Q. You're not testifying by refreshing your recollection from the report then, are you?

A. No, sir.

Mr. Pinion: No further questions.

The Court: Anything further, of this witness?

Mr. Harp: No, Your Honor.

The Court: Step down, sir.

Mr. Harp: Detective Sergeant C. F. Sanders, Jr.

page 90 } DETECTIVE C. F. SANDERS, JR., witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Harp:

Q. Please state your name, address and occupation please sir?

A. C. F. Sanders, Jr., 4453 Jean Street, Detective with the Norfolk Police Division.

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

A. Sixteen years.

Q. Were you so employed on March 5th, of 1963?

A. I was, sir.

Q. On March 5, 1963 did you have occasion to see Loren Neal Duffield?

Detective C. F. Sanders, Jr.

A. I did, sir.
Q. Where?
A. In the Detective Bureau of the Norfolk Police Headquarters, sir.
Q. At approximately what time, sir?
A. At approximately 5:00 P.M.
Q. Have you reviewed the report concerning this matter, prior to testifying here today?
A. I have, sir.
Q. Where did you see the Defendant, in the Detective Bureau?

page 91 } A. In the Assembly Room.

Q. Did you participate in the line-up, when Mr. Duffield was confronted with the victim's brother?
A. I did, sir.
Q. How many were in that line-up?
A. One, sir.
Q. When you had the first line-up, who was brought in, in an attempt to identify him, do you recall?
A. The Padgett boy, Major Padgett.
Q. Major Padgett failed to identify him, in the first line-up, isn't that correct?
A. That's correct, sir—he wasn't sure.
Q. Then what occurred?
A. He was carried back up to the Conference Room and he was talked to again, and he was shown a pair of blue trousers and a T-shirt. After he viewed them, they were taken back to Duffield, and he was asked 'if he minded putting them on?', to which he said 'no', then he put the T-shirt and pants on him, and Major was then brought back to the Assembly Room.

At the time Major walked in the door and observed Duffield, he identified him then, at that time, 'as being the man that took'—his statement was, 'took my sister off'.

page 92 } Q. And at that time, there were other police officers in the Assembly Room, were there not?

A. There were, yes sir.

Q. And after the identification had been made, do you recall whether or not Duffield was then seated in the Assembly Room in a chair, and interrogated by several police officers?
A. He was not seated in the Assembly Room, until the boy had been taken out, another officer had taken him out, and at that time I went in and got Duffield and took him to the Robbery Squad Office.

Detective C. F. Sanders, Jr.

Q. So he was not questioned, as I understand from your testimony, by any police officers, until subsequent to the second identification?

A. I talked to him for a minute or two, at the most, when I took him into the Robbery Squad Office.

Q. I see. Now what did you tell him, when you took him into the Robbery Squad Office at that time?

A. He was advised that 'he did not have to say anything at all to me, but that he had been identified by Major Padgett, as the person who took his sister off'.

He was advised that 'he had a right to have an attorney present, and that he didn't have to tell me anything if he didn't wish to, but he was the only one at that time who could tell us where the girl was, and Major Padgett had already identified him as the person who took his sister
page 93 } off' and then he was asked at that time, 'where he had taken the girl?', and he thought for approximately three or four minutes at the most, and at that time he hung his head down, and said "all right, I'll take you to where she is".

Q. Were you present then, at the time subsequent in that evening, when a written confession was obtained from Duffield?

A. I was, sir.

Q. What time approximately, was the confession taken?

A. Shortly after 10:00 o'clock, about 10:10 P.M.

Q. Who all was present, when the confession was taken?

A. Myself, Sergeant Asaro, Grant—that is Inspector Grant, he was Captain Grant at that time, Lt. Morse and Duffield.

Q. Before you took the statement from him, did anyone give him any advice as to whether or not he had to make a statement, or did anyone advise him of anything?

A. We advised him at that time, when all of us were in the room, of the same previous advice that I had given him after Major Padgett had identified him, 'that he didn't have to say anything, and also that any statement he did make could be used in Court either for or against him, and also that he had a right to have an attorney present if he so de-
page 94 } sired'.

Q. And did he indicate any desire, to confer with an attorney?

A. None whatsoever, sir.

Q. On either occasion, did you tell him 'that he had a right to make a 'phone call, if he wanted to'?

Detective C. F. Sanders, Jr.

A. He was told, as is the policy with any person—at any time sir, in talking with any person, they are told immediately that 'they can make 'phone calls at any time, and if they want to go to the restroom or to get a drink of water or smoke, all they've got to do is ask, and it will be permitted'.

Q. Did you so advise Duffield, on the first occasion, when you entered the Robbery Squad Room?

A. I did, sir.

Q. On the second occasion on that evening, at around 10:00 o'clock, when the statement from Duffield was reduced to writing, and as you say, 'he was advised as to his rights with regard to the statement'—how long did it take, to reduce the statement to writing and get it signed, if you recall?

A. I don't know sir, and I have no way of knowing.

The Court: Can you state whether or not, from the time he was first questioned by you or any other de-
page 95 } tective, if the Defendant was within your sight the entire time?

A. From the time he was brought into the Detective Bureau, he was in my sight Your Honor, from the time of the first line-up, and I think he may have been out of my sight just long enough, when he was taken to the Padgett boy in the Conference Room and came back the second time, and then from there on, he was.

Q. From the time of the identification, do I understand he was within your sight from then on?

A. He was, Your Honor.

Q. Can you state whether or not, in your presence at any time, if anyone shook his fist at him, in the Assembly Room?

A. No sir, no one shook his fist at him.

Q. Can you state whether or not any officers, out of the Assembly Room, interrogated him, without telling you?

A. There was no interrogation at any time, prior to my interrogation, Your Honor.

Mr. Harp: Your witness, Mr. Pinion.

page 96 } CROSS EXAMINATION

Examined By Mr. Pinion:

Q. What time did you first start your investigation, of this matter?

Detective C. F. Sanders, Jr.

A. Shortly after roll call at 8:00 A.M., on the morning of the 5th.

Q. After roll call at 8:00 A.M., on the morning of the 5th —had you seen the Defendant, the night before?

A. I had not, no sir.

Q. Was he in custody on the morning of the 5th, at 8:00 A.M.?

A. He was not, no sir.

Q. That morning, you were investigating—or rather, you were at that time, placed upon the investigation of the crime of Murder, and you were trying to locate the murderer, correct?

A. That is not correct, no sir.

Q. You were placed on what case, then?

A. Not that case—I was assisting in a Youth Bureau Missing Person's Report, sir.

Q. That was turned in, the night before?

A. It had been turned in, the night before.

Q. Do you not mean, the night of the 4th?

A. Correct, sir.

Q. And, you were assisting the Missing Persons

page 97 } Bureau?

A. Correct, sir.

Q. When did you first see the Defendant, the Petitioner in this case, Loren Neal Duffield?

A. Shortly after 5:00 P.M. on the 5th of March, when he was brought to the Detective Bureau.

Q. By whom?

A. By Detectives Asaro and Cherry.

Q. Did they immediately bring him to you, sir?

A. He was brought to the Detective Bureau, yes sir.

Q. Then they did not bring him to you, correct?

A. He was brought in, and at that time he was taken to the Captain's Office, and the Captain, Captain Grant, was in there and myself, and then he was taken back to the Assembly Room and placed in a line-up.

Q. And Captain Grant of course is now Inspector Grant, at the present time?

A. Correct, sir.

Q. And he was brought to his office first, when he was brought to the Detective Bureau?

A. I feel—I'm not positive of that, Mr. Pinion, but I think that's what happened.

Q. I'm not interested, in your opinion—do you know approximately, what time that was?

Detective C. F. Sanders, Jr.

page 98 } A. Shortly after 5:00 o'clock.

The Court: P.M.?

A. Yes, Your Honor.

By Mr. Pinion:
Q. When he was taken to the Assembly Room, what was he told at that time?
A. He was then placed in a line-up, at that time. We advised him, at that time, 'the reason he was being put in the line-up, was so someone could look at him, as we were looking for a missing person', and then at that time, he was placed in the line-up.
Q. You don't mean to tell me—you didn't tell him 'you were placing him in a line-up, just because of some missing person', did you?
A. Yes, sir.

The Court: Let me ask this. At the time he was there, when the line-up was being held, were you aware of the fact that there had been a Murder?

A. No, Your Honor.
Q. Or, a Rape?
A. No, Your Honor.
Q. Or, an Abduction?
A. No, Your Honor.
Q. When the line-up was being held, you were
page 99 } only aware of the fact that there had been a Missing Person's Report?
A. Correct, sir.
Q. When were you aware of the fact, that the articles of clothing had been brought in?
A. I was aware that the clothing was brought in, from his home.
Q. From the Defendant's home?
A. Yes, sir.

By Mr. Pinion:
Q. From what home?
A. The Defendant's home—they were brought to Captain Grant's Office with him, when he was brought in by Detectives Asaro and Cherry.
Q. Were they left in the Captain's Office?

A. I can't say, sir.

Q. Did either you or the Captain, advise him of his rights at that time?

A. At that stage, no sir.

Q. And, he just got in the line-up?

A. There was no insisting, sir.

Q. There was no insisting, you merely asked him 'if he would get in the line-up'?

A. Yes sir, and he got in the line-up.

page 100 } Q. That's it—so then no advice was given to him, at that particular time?

A. No, sir.

Q. No one advised him, as to his rights?

A. Only the fact that we asked him, 'if we could question him, after he got out of the line-up?', to which he stated 'he would let us'.

Q. This of course is approximately 5:30 in the afternoon now, since Detective Asaro and Cherry brought him to the Detective Bureau, correct?

A. I didn't see him until after 5:00 P.M., let's put it that way.

Q. He was taken out of the Captain's Office then by you and the Captain, and then you took him back into the Assembly Room?

A. Yes, sir.

Q. Did you go back, and remain with him at all times?

A. I stayed with him in the Assembly Room during the time the line-up was held, yes sir.

Q. And the second identification by the brother, then—that was for the purpose of the fact, or rather subsequent to the identification, that's when he was charged with Murder, after the brother was asked 'to identify who picked up his sister'?

page 101 } A. Correct.

Q. Then at that stage of your investigation, you suspected the man of some crime, correct?

A. Correct, sir.

Q. And at that time, he was a prime suspect, and you were aware of more than just a Missing Person's Report?

A. Yes, sir.

Q. At that time then, did you advise him of his rights?

A. Shortly thereafter—within a matter of two minutes, sir.

Q. Now you say he was out of your sight, only when he was taken out of the Assembly Room into the Conference

Room—in other words, you don't know what any other officer might have said or done, when you weren't present, do you?
A. No, sir.
Q. Did you testify at any prior hearing, in this matter?
A. I did, sir.

The Court: What hearing are you referring to, what trial?
Mr. Pinion: For the record, I'm referring to the trial in Corporation Court on this matter, on September 25th and 26th of 1963.

page 102 } By Mr. Pinion:
Q. Did you testify, at that previous hearing?
A. I did, sir.
Q. Those dates that you say you testified, and I'm now referring to the record of those exact dates—do you recall the terminology of your testimony, within two minutes after the line-up, when the Defendant was viewed in the line-up by the victim's brother, do you recall that you testified that 'the Padget boy became upset, someone took him out of the room, and then Duffield was immediately taken from there into the Robbery Squad Office, which is the very next room to the Assembly Room'—isn't that where he was taken, at that time?
A. No, sir.
Q. And then sir, didn't he sit down in the Robbery Squad Office alone with you, didn't all the other officers walk out, leaving you two alone to have a conference?
A. No, sir.
Q. Where was Duffield taken, sir?
A. He was moved, into the Robbery Squad Office.
Q. Wasn't he in your presence there, alone?
A. I took him in there, yes sir.
Q. And with nobody else present, didn't you ask him some questions?
A. No, sir.
page 103 } Q. There was no questioning or interrogation of any sort, at that time?
A. No, sir.
Q. Isn't it a fact that you talked to him, and it was just a matter of a few moments before you brought him out, and he said 'he would confess'?
A. No, sir.
Q. All right. After the Padgett boy calmed down and was taken out of the room, wasn't Duffield alone in your presence, and didn't you question him at that time?

A. No, sir.

Q. Didn't you just say 'you took him into another room, at that time'?

A. Yes sir, he was taken into the Robbery Squad Office.

Q. All right. Now then, didn't you view the scene with the Defendant, after he said 'he would make a confession'?

A. Yes, sir.

Q. And then you testified before of course, at the trial in Corporation Court, what took place then—but what was the first thing you told him, you told him he was a suspect of what crime?

A. I only told him then, that 'the Padgett boy had identified him, as taking his sister off'.

page 104 } Q. And, what advice did you give the Defendant at that time?

A. I told him that 'he didn't have to tell me anything, if he didn't wish to, that he had a right to use the telephone, and to have an attorney present'.

Q. What did you do, immediately now, before you proceeded to ask any questions?

A. He was advised of his rights, sir.

Q. Sergeant Sanders, are you testifying at the present time from your memory, as to what took place?

A. Yes, sir.

Q. Have you refreshed your memory, in any way whatsoever?

A. Only as to dates, and times.

Q. Have you refreshed your memory, as to advising Mr. Duffield of his rights at that time?

A. No, sir.

Q. You just know that, sir?

A. I know that to be exactly correct, sir.

Q. Do you have any notes, made at that time, to show that you did this, that you advised the Defendant of these things?

A. As to what, sir?

Q. As to advising the Defendant about his rights, sir. If I have understood your testimony correctly, you

page 105 } say that 'you advised him of his rights, prior to going into any interrogation', correct?

A. I only know—I have no notes sir, I only know from my own experience, as to what I have accustomed myself to do over the years, and it's always been my practice to do so, that is to advise any person of their rights, and that has been my practice every time I talk to someone.

Detective C. F. Sanders, Jr.

Q. Then you're testifying as to what has been your practice over the years, that is what you have always done—but, how do you know it was done in this particular case?

A. Because as a policy, it's been my practice to do so over the years, and that is what I have always done.

Q. But yet you are not testifying from any notes, and as a matter of fact, you made no notes, correct?

A. I did not, no sir.

Q. Well then, how do you know you did it in this particular case, how do you know that you advised Duffield of his rights?

A. Because it was proper to do so, sir.

Q. Then you're not testifying from any notes, and you're just saying you advised Duffield of his rights, 'as a matter of policy', correct?

A. Yes, sir. I just know sir, that I did do it.

Q. So now you're saying you did it, because
page 106 } you have a reputation as being a very good officer, and that should suffice—all right, sir.

Mr. Harp: Your Honor, counsel is now arguing with the witness.

The Court: Let's move on, shall we?

By Mr. Pinion:

Q. When did you last refresh your memory, with regard to this matter?

A. I went over the situation briefly, before coming over here.

Q. You went over notes on this situation, before coming here to testify this morning?

A. Correct, sir.

Q. And did those notes contain the fact of what you advised Duffield within two minutes after he was identified, and he said 'that he did it'?

A. No, sir.

Q. But you say at that time, you did of course advise him, that 'before we go any further now, you have a right to make a 'phone call', prior to any interrogation?

A. Mr. Pinion, I have never talked ill to any person and I have never mistreated any person over the years, and I always let a person know as soon as possible, just what he's in for—of that, I'm very sure.

Q. But you're saying now, that 'he was treated
page 107 } properly, and considerately'—but, that's the way he was dealt with when you first met the man, to

put him at ease and all, but such was not the case afterward, was it?—you still say you did not interrogate him with force, correct?

A. Mr. Pinion, I try to question calmly—it's always been that way, with me.

Q. All right, sir. So anyway, you say that you advised him that he could make a 'phone call?

A. Yes sir, but he didn't want to make a 'phone call, in fact he didn't want to talk to anybody.

Q. Well he talked to you, didn't he?

A. Correct, sir.

Q. But you say, he didn't want to talk to anybody?

A. He talked to me sir, but he didn't want to talk to anybody else at that time, not prior to the confession.

Q. Now sir, did you place any charges against Mr. Duffield, when he made these oral confessions to you in that room, alone?

A. I did not, no sir.

Q. Was anybody else present, when the oral confessions were made to you?

A. Shortly after he made the oral confessions to me, I called Captain Grant and he came in there, and page 108 } he also repeated the confessions to Captain Grant.

The Court: When you keep referring to 'he', who are you referring to?

A. To Duffield, Your Honor.

Q. So when you say 'he repeated it', you mean the Defendant, Loren Neal Duffield?

A. Yes, Your Honor.

By Mr. Pinion:

Q. Did you explain anything to Captain Grant, prior to Duffield making an oral confession to him—did you make any explanation at all, to Captain Grant?

A. Well, I had called Captain Grant in there, as I felt certain he would probably break, but as I went to call him, he was already coming in to get him.

Q. How do you know that, sir?

A. I don't recall now, just why he was coming in to get him.

Q. Now at that point, did any other police officers come in?

Detective C. F. Sanders, Jr.

A. Yes, sir. I think Sergeant Asaro, and probably Lt. Morse came in, at that time.

Then we all left together, the four of us, in the company of Duffield—we left, and were directed at his bidding on the—

page 109 } Q. What was Mr. Duffield being held on—what charge if any, what crime was he being held on at that time?

A. There were no charges, at that time.

Q. None, at all?

A. No, sir.

Q. Then of course, as I understand it, he was taken on the route which has been testified to previously at the time of the trial of this case, by you and the two other officers, correct?

A. Sir, he took us on the route.

Q. He took you, on the route?

A. Yes, sir.

The Court: Let me ask a few questions.

Of all these events that you testified to, when was the first time that you became suspicious of the fact that there probably had been a Murder?

A. At the time, right shortly after his oral statements, Your Honor. I think he said 'he would show me the body', or that 'he would show me where she was', something like that, and then we went on the route he carried us on, to where the body was.

Q. And am I correct, that until Duffield showed you where the body was, that the police had not discovered

page 110 } the body?

A. That's correct, Your Honor.

Q. And that body, was that the same body of the person who was in the Missing Person's Report, who you were assisting to locate?

A. Yes, Your Honor.

The Court: I follow you.

By Mr. Pinion:

Q. You knew of course, that a Murder had been committed, prior to going on this route, didn't you?

A. I knew, from what he told me.

Q. By the fact, that he told you?

Detective C. F. Sanders, Jr.

A. Yes sir, but I didn't actually know until I saw the body.
Q. Then when you returned to the station—what time was that, approximately?
A. Shortly after 10:00 P.M.
Q. Did you take a statement, from the Defendant?
A. It was taken by Captain Grant, Lt. Morse, Sergeant Asaro, myself and a secretary.
Q. Then at that time, there were five officers present?
A. Four officers, and the stenographer.
Q. Was the statement made, in his own words?
page 111 } A. Yes, sir. He was questioned, and he gave the answers in the statement.
Q. Uh-huh. Who did the interrogation, sir?
A. I would say that Inspector Grant, who was Captain Grant at that time, led the questioning, and probably the others of us would have inflicted questions into it during the taking of the statement.

The Court: Was the statement taken, in shorthand?

A. It was, Your Honor.
Q. Then later, it was reduced to writing?
A. Yes, Your Honor.

By Mr. Pinion:
Q. Then when the written statement was taken, more than one officer was present, was there not?
A. There were four officers present, that's correct?
Q. Would you state their names into the record, for me?
A. Captain Grant, Lt. Morse, Sergeant Asaro and myself.
Q. And you all of course, alternated in asking the questions then, correct?
A. I feel that Captain Grant led the question-
page 112 } ing sir, and we would more or less get into it, by asking a question now and then. I may have asked a question, and Lt. Morse or Sergeant Asaro would ask a question too, while it was being taken in shorthand.
Q. Then the procedure would have been, that with all four of you officers present, the Defendant answered questions that came to any of your minds, correct?
A. Well, yes sir.
Q. As the notes were made by the stenographer, and as the answers were brought forth to the questions, was Mr. Duffield relaxed sitting there, while you all were taking the statement?
A. Yes sir, everyone in the room was relaxed.

Detective C. F. Sanders, Jr.

Q. Everyone in the room, sir—even the Defendant?
A. Yes, sir. He was very much relaxed, at the time the statement was taken.
Q. You can remember that?
A. Yes, sir.
Q. At that time, you wanted to be pleasant to him?
A. Yes sir, we were pleasant to him—certainly.
Q. You tried to make him at ease, and you were as considerate as possible?
A. Yes, sir.
page 113 } Q. Now you said, did you not, that you testified on September 25th and 26th, the dates of the trial in the Corporation Court, correct?
A. Yes sir, I did.
Q. Did the Defendant also testify, sir?
A. No, sir.
Q. Did you introduce the statement?
A. Did I introduce it, sir?
Q. Did you read the statement, at that time?
A. I do not recall, sir.
Q. Didn't you read the statement, into the record?
A. I don't recall whether the statement was read into the record, in detail.
Q. Isn't it a fact that you did read the statement into the record, previously?
A. I thought you asked me 'if I read the statement'?
Q. Yes sir, I did. I believe your answer was that 'you didn't recall.'
A. That's correct sir, I don't recall.
Q. Don't you recall reading the statement then, at the previous trial?
A. No, sir.
Q. Do you recall making the statement, that
page 114 } 'you were the only one who questioned the Defendant, when the written statement was taken?—did you make that statement?
A. I did not make that statement, sir.

Mr. Pinion: No further questions.
Mr. Harp: No questions, Your Honor.
The Court: Step down, sir.
Mr. Harp: The Respondent calls Inspector Grant.

Inspector Charles D. Grant

INSPECTOR CHARLES D. GRANT, witness, appearing on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Harp:

Q. Please state your name, address and occupation?

A. Charles D. Grant, 321 Westmont Avenue, Inspector, Norfolk Police Division.

Q. How long have you been employed, by the Norfolk Police Division?

A. Twenty years, this July.

Q. Inspector Grant, were you present at the preliminary hearing on the Murder charge, held in the Juvenile and Domestic Relations Court of the City of Norfolk on March 6, 1963, in connection with Loren Neal Duffield?

page 115

A. I believe I was, sir.

Q. Can you state whether or not you told Mr. Duffield, at that time—

Mr. Pinion: Your Honor, even though Mr. Harp has not completed his question, he's leading this witness.

The Court: I can't tell whether or not the question is leading, as he just started the question—complete the question.

By Mr. Harp:

Q. Can you state whether or not you told Mr. Duffield at that time, that 'if he waived preliminary hearing, it would make it easier'?

A. I did not.

Mr. Pinion: Objection Your Honor, even though the answer got out prior to my objection.

The Court: All right, sir. What's your objection, to that particular question?

Mr. Pinion: I object Your Honor, because the particular words 'do you recall whether you told,' or 'can you state whether or not' to this officer, and he was one of the investigating officers, but a question of that nature can be nothing but leading to this officer.

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Further Your Honor, this officer has been a member of the Norfolk Police Force for 20 years in July, I believe that's what he said, and when a question of that nature is asked this officer here, it is a leading question.

Inspector Charles D. Grant

The direct question that could have been asked him, which I feel would have been proper, would be 'did you make a statement to the Defendant, Loren Neal Duffield, at the preliminary hearing?', and by that, he would have been able to find out whether or not he did.

I think, and I feel the form of the question as placed to this police officer, with his experience and his rank, would be leading, and Captain Grant's experience and rank would necessarily add to the credibility of his answer.

page 117 } The Court: I'm acquainted with the fact it would certainly not take away from it, but I overrule your objection.

Mr. Pinion: Note my exception, Your Honor.

The Court: Yes, sir.

There's no question about Captain Grant's credibility, but I don't think his rank and experience puts him in a position where he would not be required to tell the truth.

Answer the question, please sir.

By Mr. Harp:

A. I did not.

Q. Did you give him any advice, relative to whether or not he should waive a preliminary hearing?

A. I did not.

Mr. Harp: Your witness.

CROSS EXAMINATION

Examined By Mr. Pinion:

Q. Who else was present to accompany him, on March 6th, to the preliminary hearing?

A. I can't say everyone, as I don't remember—I know I was present.

page 118 } Q. Did you talk to him at any time, Inspector Grant?

A. Yes sir, I probably talked with him, just riding down to the Court with him.

Q. Did you make any statement to the effect that 'he might want to, or should waive preliminary hearing,' or did you make any statement about preliminary hearing, at all?

A. I did not, myself—no, sir.

Q. Did anyone else in your presence, on the way down to preliminary hearing, make any reference to waiving preliminary hearing, either direct or indirect?

Mr. Harp: Your Honor, counsel is making this man his own witness.

The Court: I think he's gone beyond the scope of the law, but go ahead and answer the question.

By Mr. Pinion:

Q. My question was sir, did anyone in your presence, make any remarks about waiving preliminary hearing?

A. They did not, sir.

Q. Was any form signed, waiving preliminary hearing, that you recall?

A. If one was, it was not in my presence.

Q. Where were you, then—wasn't anybody with him at that time?

A. I don't know whether anybody was with him or not, I just heard that one was signed.

page 119 } Mr. Harp: Objection, Your Honor, that would be hearsay.

By Mr. Pinion:

Q. Were you present in the Courtroom, during the preliminary hearing?

A. Yes, sir.

Q. Was a waiver signed, at that time?

A. (pause) I can't say for sure what it was, but I don't feel that it was.

Q. You don't know anything—your testimony is, that you know nothing concerning a waiver of preliminary hearing?

A. I know nothing like that, there wasn't any waiver signed in my presence.

Q. You're certain you were in Juvenile and Domestic Relations Court at the time of Loren Neal Duffield's preliminary hearing?

A. Yes, sir.

Q. Did you testify, at his preliminary hearing?

A. I believe so, sir.

Q. Do you know if anybody else did, sir?

A. I don't know.

Q. Then you don't know for sure, whether anyone else did or did not testify—your testimony is, that you made no remarks to this Defendant concerning waiver of

page 120 } preliminary hearing?

A. I'll say it over again, I personally did not.

Q. And further, you don't know whether anybody else made such a remark, do you?

A. When, sir?
Q. At preliminary hearing?

The Court: Was the Defendant handed anything by the Judge, from the Bench?

A. I believe he was, Your Honor.
Q. Did the Judge talk to the Defendant, about waiving a preliminary hearing?
A. I believe the Judge talked to him, yes sir.

By Mr. Pinion:
Q. What other officers were in the Juvenile and Domestic Relations Court, that day?
A. Several officers were there, but I can't remember all of them that were present. Sergeant Sanders was there, but I don't know the others.
Q. Did the Defendant go down to Juvenile and Domestic Court with you, in your police car?
A. I'm pretty sure that he did—I don't know for sure, but I think he did go in the car with us.
Q. Now Inspector Grant, did you testify at the trial in this case, on September 25th and 26th of 1963?
page 121 } A. I believe I did, sir.
Q. Can you remember?
A. Not for sure, but I believe I did.
Q. When you were specifically asked about preliminary hearing, were you testifying from your memory?
A. I was testifying from refreshing myself from notes that were made, and from what I can remember.
Q. What do you mean, 'from notes that were made,' were they your notes?
A. Notes that were kept by various police officers, but they were not my personal notes.
Q. Do those notes contain the fact that anyone discussed preliminary hearing with the Defendant, at any time?
A. I can't say what the notes all were, but I know that I did not discuss it with him.
Q. Then you're testifying from your memory, here today?
A. From what I remember, yes sir.
Q. And of course that is, that you made no mention of waiver of preliminary hearing to this Defendant?
A. I made no mention of waiving his preliminary hearing, no sir.

Mr. Pinion: All right, sir.

The Court: Step down.

page 122 } Mr. Pinion: One second, please sir.

(Mr. Pinion held a conference with the Petitioner.)

By Mr. Pinion:

Q. One further question, Inspector Grant—did you have the Defendant in your office, just prior to going to Juvenile and Domestic Relations Court that day?

A. Not to my knowledge, no sir.

Q. You will not deny, that he might have been there?

A. No, sir.

Q. To the best of your recollection, you didn't have him in your office, and you don't recall him signing any waiver?

A. No, sir.

Q. Did you refresh your memory with reference to that, today?

A. No sir, and I had nothing to do with him signing a waiver of preliminary hearing.

Q. You don't remember him being in your office then, and you don't remember any notes pertaining to him signing a waiver, correct?

A. I don't remember him being in my office, and I don't remember any notes pertaining to him signing a waiver.

Q. You just don't remember anything, except he

page 123 } didn't sign a waiver in your presence—

A. —and I didn't have anything to do with him signing any waiver.

Q. And, you don't recall having him in your office just prior to going down to Juvenile and Domestic Relations Court on March 6th, and you don't recall if you had him in your office during or prior to that time, with any other officers?

A. I just don't remember him, in my office.

Mr. Pinion: I have no further questions, at this time.

The Court: Step down, sir.

Mr. Harp: I would like to inquire, concerning luncheon recess today.

The Court: How many more witnesses do you propose to put on, Mr. Harp?

Mr. Harp: We have one left, Your Honor.

The Court: All right, let's go ahead.

William H. Sands

Mr. Harp: It will probably take an hour or so, Your Honor.

Mr. Pinion: I would like to inform the Court, that at the moment, I prefer to have lunch.

The Court: That may well be, but we'll have Mr. Harp's last witness, first.

page 124 } Mr. Harp: I call General Sands to the stand, Your Honor.

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

Mr. Harp: Your Honor, before we proceed, I'm assuming that the Defendant, Loren Neal Duffield, is waiving the privilege of confidence, by his attack on General Sands in his Petition in this case, and for which under the circumstances, his attorney may testify concerning any information he received while the Petitioner was his client, and I think under those circumstances, I can ask General Sands any question that may have to do with this case—am I correct in that?

The Court: You are correct, in assuming that General Sands may fully testify, and that the relationship between attorney and client is waived, and I think that was

page 125 } waived by this Petitioner when he charged his attorney with ineffectiveness.

Mr. Pinion: If I may have just a moment, Your Honor—since the Court has ruled, I'd like to take a moment to say this, in regard to this particular matter; that I myself, in representing this Petitioner in this Habeas Corpus proceeding, do not waive the right or privilege, association or relationship, and I do not feel that General Sands's relationship with this Defendant should be waived because of the various issues raised in this Habeas Corpus Petition.

The Court: I don't follow you.

Mr. Pinion: Well in this particular matter, the Court has stated that the Defendant is attacking the lawyer in this particular case.

The Court: Yes, sir.

Mr. Pinion: But he's not attacking the manner in which he handled his case, Your Honor, and he's not attacking anything concerning the ability that he has.

The Court: I understood that the allegations, as

page 126 } far as the issues are concerned, were to the ineffectiveness of counsel, and as far as the Court

is concerned, the allegation of ineffectiveness of counsel is in itself, a waiver.

Mr. Pinion: If Your Honor please, we're not doing that. The ineffectiveness of counsel does not mean that counsel was ineffective, because that's not our contention, and I of course want to put in the record, that I do not waive, and Loren Neal Duffield does not waive, the right or the privilege of our confidence.

Mr. Harp: I think I understand.

The Court: I think there is sufficient evidence here, that has been raised, concerning the counsel in this case, whereby a waiver of the responsibility of this counsel to this Defendant concerning these matters, would be properly waived under the circumstances, and he may fully testify.

Mr. Pinion: All right, sir.

DIRECT EXAMINATION

Examined By Mr. Harp:

page 127 } Q. Please state your name, address and occupation?

A. William H. Sands, Virginia National Bank Building, Norfolk, Virginia, Attorney at Law.

Q. When did you start practicing law, in Virginia?

A. In 1916.

Q. And have you practiced law in the City of Norfolk, since that time?

A. With the exception of two periods of War Service, yes sir.

Q. And during that period of time, have you had occasion to represent many people charged with felony crimes?

A. Many times, sir.

Q. When did you—when were you first contacted, relative to representing Loren Neal Duffield, and by whom?

A. (witness looks at papers) On March 16th, of 1963 Judge Bullock requested me to come to his office, which I did, and he asked me 'if I would represent, if he appointed me'—in other words, he asked me if I would represent Duffield.

I went over there and talked with him, and told him that I'd like to have an opportunity to check into the case and find out something about it, before I gave him my answer.

page 128 } There had been much publicity, prior to that date, and I—

William H. Sands

Q. Let me ask you this, sir. Did you confer with Duffield, at any time?

A. On that date, sir.

Q. On that same date?

A. That same date, I went to the Jail, and I was there from 9:05 to 10:30, according to my notes, and I was also there the same time, according to the information obtained from the City Sergeant's Office.

Q. Did you talk with Duffield, at that time?

A. I did.

Q. What is the purport of your conversation?

A. Well, I wanted to find out what it was all about, before I went back and saw Judge Bullock to tell him I would accept the legal representation.

Q. What was your intention?

A. My intention was, to find out whether or not there was any question of insanity, one way or the other.

There had been right much publicity, and I had to consider the question of a psychiatrist, and so forth.

Q. What was discussed, with Duffield?

A. We discussed the facts and circumstances surrounding the crimes for which he had been indicted.

Q. Now did you, subsequent to that conference
page 129 } with Duffield, did you have any conference with
any members of his family?

A. Yes, I did.

Mr. Pinion: Objection, that would be hearsay.

The Court: Save it, I overrule your objection.

Answer the question.

Mr. Harp: Was that as to form, Your Honor?

The Court: He didn't go into that.

Answer the question. Read the question back.

(The Stenographer read the last question.)

A. Yes, I did. I had a conference with his mother—that was on the 19th of March, 1963—I had a conference with his mother, with his father, with his wife and with his brother.

Q What was the purpose of that conference, with those members of his family?

A. I wanted to—I've got it all in here, in my notes—I think some came from as far away as Kansas, in Topeka, or out

west somewhere, and also some from Florida, where the brother was in the Naval Reserve.

I tried to find out what remedy we could come
page 130 } up with, and as a result of that conference, there was a telephone call, placed on that same date, to Dr. Thrasher, Dr. Robert H. Thrasher, one of the Psychiatrists located here in the City of Norfolk, Virginia, and a very able one—and the purpose of this particular telephone call to Dr. Thrasher was for him to interview Duffield and give me a report, so I would know what to do, as far as the Court was concerned.

Q. Do you know whether or not—did Dr. Thrasher make such an interview of Duffield?

A. Oh, yes.

Q. Do you know what the doctor did?

A. Well, I know he sent me a letter, but I do not recall whether or not the doctor was paid by the parents or by the family, or whether he was paid by the State.

I remember I had some discussion with Judge Bullock on that subject, but the doctor did examine Duffield on March 28th and 29th of 1963, and submitted a written report to me, dated April 1, 1963, which is 3 or 4 pages of written report.

Q. What was the purpose in getting the report, General?

A. So I could make a proper motion before the Court, and so I could make a proper motion concerning whether or not Duffield should be sent, at the State's expense, for examination.

page 131 } Q. As a result of that report, and subsequent thereto, you of course were appointed by Judge Bullock?

A. I was.

Q. On what date?

A. I was appointed by Judge Bullock, but I was already in the case—I don't know actually the date the Order was entered, but I was in the case from immediately after my conference with Duffield, on March 16, 1963 in the Jail, and on the 19th, I had all his family members in there, and I had them visit him, after having had a hard time getting them all here.

Q. Now, did you make a motion to have Duffield committed?

A. I did.

Q. When was that?

A. After considering Dr. Thrasher's diagnosis, that 'the best thing was to request that Duffield be committed to a mental hospital,' in his letter which I received in my office

and of which I have a copy in my file, and which I received on the date of April 3rd, of 1963, it was on the 1st of April that the letter was written and I got it on the 3rd, after I was appointed counsel for Duffield, and I made a motion to have him committed to the State Hospital in Marion for observation, and I advised him at that time, 'to tell the doctors of the alleged acts, for which he had been indicted.'

page 132 } My motion was granted, and it was written, and at that time there was no objection to my motion by the Commonwealth's Attorney.

After we left the Court, and we were in the old Court up there, the Commonwealth's Attorney called my attention to a change to the wording, which would be appropriate in a written motion, which I did change, and the wording in the motion was then changed, and the motion should be in the official papers of the Court.

There was a change made in the wording of the last sentence of the motion, because it was written, and I have a copy of it here, of the motion, which I'm sure is in the records, and the reason that I had no exception to that certain part, if you'd like to hear about that—

Q. I believe General, it is in the record.

A. Well finally, it was changed by the Judge, after the Commonwealth's Attorney went back and raised an objection, because what I was trying to do, was to—well, in the written letter from Dr. Thrasher, he wanted to have all these tests made, that he didn't have an opportunity to make, and to have the results of the psychological tests, and so forth, so that he could later come in with another opinion, and my motion concluded that 'it's the opinion of Dr. Thrasher that the individual should have X-rays made,' skull X-rays and so forth, and then 'also, for the various tests results—

page 133 } The Court: That's all part of the original record, isn't it?

A. Your Honor, it should be in there.

By Mr. Harp:

Q. What action was then taken, General Sands?

A. Well, the Court was requested to require the individual's commitment to the State Hospital, and to provide the results of the tests in the other matters to be received by Dr. Thrasher, as he was somewhat limited, and to make available to the Court in detail, the results of said X-rays and psychological tests, in order that they may be reviewed, and it was

further stated that the results were to be made available to review, as I stated before, by Dr. Thrasher, prior to any trial on said Indictments.

Then that, the latter part, that's what was later changed, when objected to, subsequent to the hearing on my motion.

Q. What action did you take next, in this case, General Sands?

A. Well, I was in Jail to see Duffield on June 18th, 1963, July 2nd, July 22nd, July 24th and July 29th, and then on September 24th of 1963, and I have the hours here too, if you intend to go into that.

Q. What was the purpose of these conferences, General Sands?

page 134 } A. Well, we had all kinds of conferences with some members of his family, and I was back and forth with his family at the Jail.

The June 18th interview was after Duffield came back from Marion; June 21st was when I wrote the parents about the probable courses of action; July 2nd I had another conference with Duffield at the City Jail, and that conference was about the preparation of defense; July 8th of '63, I had a 'phone call from Dr. Thrasher and at that time a letter was sent to the parents with reference to that 'phone call conversation, to tell them what position Dr. Thrasher took in the matter and what position the Commonwealth's Attorney took with reference to any probable plea of 'guilty'; on July 22nd a letter—

Q. Let me interrupt you, for just one second—did you discuss with the Commonwealth's Attorney what recommendation he might make, on a plea of 'guilty'?

A. Certainly, I did.

Q. What did the Commonwealth's Attorney say he would recommend, General?

Mr. Pinion: Objection.

The Court: Sustained.

Mr. Harp: May I be heard?

The Court: Not about that.

page 135 } Mr. Pinion: He can't testify, as to what the Commonwealth's Attorney told him.

Mr. Harp: I think—well, I will not pursue the matter.

Mr. Pinion: I don't think it's material, that—

The Court: All right, let's go.

William H. Sands

By Mr. Harp:

Q. You can't repeat what the Commonwealth's Attorney told you. Now, go ahead.

A. On July 22nd of '63, I had a conference with the sister-in-law and another conference and visit at the City Jail with Duffield, with his wife and sister-in-law present, and then he had a private conference with his wife on that day also; July 24th I had another conference in Jail, with Duffield; July 29th I had a conference in Jail with Duffield, and his sister-in-law was present, and that was after the sister-in-law advised Duffield that his brother had gone to sea, after talking with Dr. Thrasher while he was on a visit here in Norfolk.

Q. What did you do next, General?

A. Well, I then—

Mr. Pinion: Are you going into all the allegations, set forth in the Petition?

page 136 } Mr. Harp: No, I'm not concerned about all the allegations set forth in the Petition.

By Mr. Harp:

Q. What I want to know General, is what you did subsequent to July 29th of 1963?

A. In paragraph six, I think it is—

Q. I don't think you—you can't testify like that, General.

A. All right. Well, I had another conference with Duffield in Jail, with the brother and sister-in-law present.

Q. What was the purpose of that conference?

A. Well, it was primarily to obtain from Duffield information and authority, so I would know how to handle his case.

That was long before the days when these Habeas Corpuses were prevalent, because there was a question which had been raised, as to whether or not Duffield, being a member of the U. S. Navy, should have his case tried first by a U. S. Court, and I wanted to discuss that with him and find out just exactly what he wanted—he was my client, and I was the disappointed counsel, and I was doing my best to do what he desired.

He told me that 'it was his desire, to be tried in the Corporation Court,' and so I made a memorandum

page 137 } of what authorization I thought he should give me, and as I had taken his sister-in-law and brother to the Jail with me, they copied that memorandum from my longhand writing, and the original of that was filed in Judge Butzner's Court up there in Richmond, in the first Habeas Corpus trial on this matter.

Mr. Harp: At the present time, Mr. Pinion, if General Sands has anything to show, in order to save time, would you be willing to stipulate that it was introduced in evidence at the trial?

Mr. Pinion: Without any question.

The Court: Maybe Judge Butzner's Opinion would save a little time, if you gentlemen stipulate that it was properly introduced.

Mr. Harp: Let me add one more thing, before we stipulate.

By Mr. Harp:

Q. General Sands, did you say the authority might not be in the record?

A. That was discussed in detail in the presence of Duffield and his brother and sister-in-law, and the authority was voluntarily copied by them from my own handwriting, which was signed by him, in the presence of his brother and sister-in-law as witnesses.

(Mr. Harp hands papers to the witness.)

page 138 } Q. Is this a copy of that, General Sands, of that handwritten copy, consisting of two pages?

A. (witness looks at papers) That appears to be, but I've never seen that before—actually, that's a photographic copy, and it was on a yellow sheet of legal pad.

Mr. Pinion: Again, I stipulate that's an accurate copy.

The Court: Are you offering this, Mr. Harp?

Mr. Harp: As Respondent's Exhibit R-1, Your Honor.

The Court: Received in evidence, as Respondent's Exhibit R-1.

By Mr. Harp:

Q. All right, sir. After you got the authority, did you reach any conclusions at that time?

A. I reached, at a later date—

Q. What plea was to be entered on the Murder Indictment, sir?

A. (witness looks at notes) Well, I reached that conclusion —on September 16, 1963 Duffield gave me a memorandum, saying that 'he desired to plead not guilty, by reason of insanity and he wished to be tried on that plea before a jury' and then he and I talked about the possibility of him testifying or not testifying, and in addition to those pos-
page 139 } sibilities, we discussed their desirability.

He also gave me a memorandum of the fact that 'he would let me know at the trial, if he desired to be sworn and take the witness stand, or if he decided not to take the witness stand,' and later on in the Courtroom on September 26th, he indicated to me that 'he did not desire to take the witness stand.'

Q. Now General, in connection with your preparation of this case, or rather in connection with the trial of this case, do you recall if—

Mr. Pinion: Objection, Your Honor. He's leading.

The Court: Go ahead this time, and finish your question, and before the witness answers, I'll rule on it.

By Mr. Harp:

Q. —a T-shirt and a blue pair of pants were introduced?

Mr. Pinion: I do not object to that question, Your Honor.

The Court: All right, sir.

By Mr. Harp:

Q. Do you recall that, General?

A. I think the record so discloses that various pieces of clothing were introduced in evidence—the record page 140 } should show it, but I don't recall it having been done.

Q. Did you have occasion—did you discuss with Duffield the manner in which the clothing was taken?

A. Well, I don't have a copy, I didn't get a copy from the Commonwealth's Attorney—

Q. I'm trying to find out sir, what was said?

A. I asked Duffield to write it all out for me, as near as he could remember, and on July 29, 1963 there was a long list of events made out by him to me, and I received some five or six pages of longhand notes, and they told me the whole story about what he had done, and how it was supposed to have started, and to the best of my knowledge what followed was the same as the statement that he gave to the police on the night of March 5th, with the exception of the questions, as he was interrogated by the detectives during the confession—

Mr. Pinion: Your Honor, we may be able to save time, if he may go ahead with it—I do know that it was introduced in evidence, and also the transcript stated that 'these papers

were received by General Sands,' and I have no objection to the introduction, whatsoever.

Mr. Harp: Then Your Honor, for the purpose of the record, may these be received?

page 141 } The Court: They are received, without any objection, into evidence as Respondent's Exhibit R-2.

By Mr. Harp:

Q. All right, General, proceed with what you were stating —did you inquire of your client as to the manner in which the confession had been taken by the police officers of the City of Norfolk?

A. As to the manner in which the confession was taken— I have no independent recollection of that, but this letter consisting of five or six pages which Duffield sent to me, supposedly set forth exactly what he told the police, and he indicated no intimidation on the part of the police—there's nothing in here contrary to that, and I don't recall him having said anything to me about any intimidation.

Q. Did he make any comment to you, about the manner in which the confession was taken, sir?

A. None, whatever. If he had made any comment, I think I would have made a note about it when I reviewed his confession to me in this memorandum or list, but to the best of my memory, he made no comment to me.

Q. Now General, subsequent to his conviction, did you discuss with Duffield the question of whether or not he wanted to appeal his case?

page 142 } A. Well, he told me, at least a half dozen times, that 'he didn't want to appeal, and he didn't care,' but I didn't consider that was the end of it, and so I dealt with his parents—his mother and father arrived from Topeka, Kansas, to be here for a couple days, and also his sister-in-law, who lived down in Florida—well, I had to contact his parents in Kansas before and also his sister-in-law and his brother, who lived in Jacksonville, Florida, and they—

Mr. Pinion: Objection, Your Honor. He cannot say—

The Court: He cannot say what?

Mr. Harp: He has not said what they said, at the present time, and we're not going into that anyway.

The Court: All right. Let's continue gentlemen, please.

William H. Sands

By Mr. Harp:

Q. So, you had notified his mother and father—but what was done as to appeal, as far as you were concerned?

A. As far as I was concerned, I was his appointed counsel, and my services had been concluded by the Court.

Q. Was there any desire on his family's part, to note an appeal?

A. I had advised them 'to take any procedure whatsoever, that they felt necessary, and that they could get another counsel,' and I not only had told him that too, but page 143 } in a conference—

Q. You told him that, too?

A. I meant that I told the parents, I was dealing with his parents then—and in a conference following the trial in Court, they all came up to my office and sat around there for an hour or so, and we explored every possibility as to what could be done, before they left to return home.

I then wrote them, on the date of January 7th of '64, and I sent a copy to Loren Neal Duffield, at 811 East City Hall Avenue, and it's perfectly all right with me, if you want to introduce this letter.

Mr. Pinion: We'll stipulate the letter, or you may introduce it, if you desire.

Mr. Harp: I don't think—it's not necessary.

Mr. Pinion: It's the first time I heard about it—I can tell you that, if you want to know.

Mr. Harp: Let me—

The Court: If I understand, did you discuss that with the Defendant—if I understood your answer, he at no time, told you that 'he wanted to appeal'?

A. No, Your Honor. He indicated that 'he did page 144 } not want to appeal, and he didn't care,' and I also told that to the members of his family, when I wrote to them and sent a copy of that letter to Duffield.

The Court: All right. Proceed, gentlemen.

By Mr. Harp:

Q. Now General, let's back up just a minute—subsequent to the return of the verdict by the jury, did you secure a transcript of the evidence?

A. Subsequent to the verdict of the jury being returned,

I asked for and a copy of the transcript was made available to me, but I don't remember whether I requested it to be typed, or not.

Q. What was your purpose in getting a copy—what was said after the verdict, or what was your motion, do you recall?

A. Well first of all, the pictures, the very many photographs that were admitted over my objections, that was one of several points I raised—but I don't have any notes and no independent recollection of what I said when I argued the motion to set aside, but I called attention to everything I thought that was in any way, or could in any way, bring about a reversible error by my argument.

Q. That was after he was sentenced, was it?

A. Yes, that was after he was sentenced.

page 145 } Q. Did you discuss the question of appeal with him, again?

A. I don't think I discussed it with him again, but I had already talked to the parents ahead of time about it, and I did make a motion to set aside the verdict, on January 7th of 1964, the same date as my letter.

Q. The same date, as your letter?

A. Yes, sir—and as a result of that, I came back and sent a letter to him, to Duffield, and told him 'we had the discussion,' and my understanding was that there was no question of appeal, before the date of January 7th, that Duffield was satisfied with the verdict, and I intimated that our discussion was 'as to what the probability would be.'

And I also had no idea from all the members of the family, and particularly with regard to his brother and his brother's wife, and I never heard any more from the parents after they went back out west.

Witness: Will Your Honor indulge me for just a moment, while I look for something?

The Court: Yes, sir.

(The witness looked through papers.)

By Mr. Harp:

Q. During the course of the Opening Concluding Statement by the Attorney for the Commonwealth, did you have occasion to note whether or not any irregular state-

page 146 } ments were made, of which you could have made an objection?

William H. Sands

A. There may have been, by the Commonwealth's Attorney, some out-of-line statements in the last Closing Argument, but it was a matter of judgment at that time, as to whether to interrupt or object, and I was not inclined to object, so I did not, as in my judgment it was not the best thing to do, and anyway, I didn't hear anything that would have certainly been considered as a reversible error, or anything that would cause me to make any particular objection about.

Q. The defense in this case, General Sands, of 'insanity—not guilty, by reason of insanity,' did any psychiatrists later testify as witnesses, in this case?

A. Yes sir, and I endeavored to, I tried to cross examine, and—

Q. I note from the record though sir, that you didn't go very far along that line.

A. I endeavored to, but they only testified as to what particular type he was, and I was unable to secure the psychiatrist that the family had him talk to.

The Court: Gentlemen, I think at this time, we will recess for lunch.

Sergeant, bring in all the witnesses.

Deputy Sergeant: Yes, Your Honor.

(All witnesses appeared before the Court.)

page 147 } The Court: Gentlemen, if there are any witnesses here, that you don't propose to use, we'll excuse them; otherwise, we'll have them all come back this afternoon.

Mr. Harp: I think it would be best, if they were all recognized, Your Honor.

The Court: Mr. Clerk, recognize all witnesses in this case, to appear here again in this Courtroom at 25 minutes to 3:00 this afternoon.

Deputy Clerk: All witnesses are duly recognized in the penalty of $100.00 each, to appear back here in this Courtroom at 25 minutes to 3:00 o'clock this date.

The Court: You are excused, until 25 minutes to 3:00 o'clock this afternoon, and Court stands adjourned until then.

(At 2:35 P.M. Court reconvened.)

The Court: All witnesses that were here before, will retire to the witness rooms.

Are you gentlemen ready, to proceed?

page 148 } Mr. Harp: The Respondent is ready, Your
Mr. Pinion: We're ready, Your Honor.
The Court: All right, Proceed, then.

(General Sands resumed the witness stand.)

Mr. Harp: Your witness, Mr. Pinion.

CROSS EXAMINATION

Examined By Mr. Pinion:

Q. General Sands, you stated that 'you discussed the case on March 16, 1963 with Judge Bullock,' correct?

A. (witness looks at papers) Judge Bullock called me, on the morning of March 16, 1963 to see if I would accept the appointment as Duffield's counsel.

Q. Yes—and you did accept at that time, correct?

A. Not at that moment, I didn't accept the appointment—I went down to Judge Bullock's office immediately, and it must have been early in the morning, because that same day I went to the Jail to see Duffield, and I got there at 9:05 A.M.

Q. All right. And you had your first talk with Duffield, at that time?

A. Yes, sir.

Q. Did you say 'you would take his case' at that time, General?

page 149 } A. Well, I did—when I got back to my office, I wrote to the parents. After I talked to Duffield, I wrote to his mother and father, I learned from Duffield that they were not in Norfolk, they were in Kansas somewhere, and I wrote them, and then on March 19th, they came to my office.

Q. You're sure, you had decided to be the appointed counsel at that time?

A. Yes, sir.

Q. When was the Court Order entered on that appointment, to your knowledge?

A. I don't know—and I didn't know there was any entered, until later on. My records reflect that—the Court records should show that it was under date of April 1st.

Q. Did you inform anyone, that you would take the case?

A. Yes, I told Judge Bullock that 'I would accept it,' but I hadn't received Dr. Thrasher's report of April 1st, and as a matter of fact, I didn't get it until April 3rd I believe, and the

report was dated April 1st.

Q. That was introduced directly in evidence, was it not?

A. I don't know. Here it is, if you want to see it—I don't have another copy, and I don't want to let this get away.

Q. All right, sir. (Mr. Pinion looks at paper, and hands same back to the witness.) Is that the letter that

page 150 } you received from Dr. Thrasher, of April 1st?

A. Correct.

Q And at that time, you decided Duffield needed further treatment, correct?

A. No, the doctor decided that.

Q. Excuse me, I didn't mean that—Dr. Thrasher decided he needed further treatment, and you of course, at that time, on April 3rd, made a motion to the Court—

A. Let's put it this way, I did what the doctor decided—according to the letter, he 'recommended further treatment,' and he requested that 'he get the results of the tests when they came back,' on which I made the motion. However, he never succeeded in getting the results from Marion, as the Court ruled 'he was not entitled to know.'

Q. So then, the Court would not allow Dr. Thrasher to have a copy of the report from Marion, correct?

A. No, not the complete tests—well, the Order will show you, and it was here this morning somewhere, and it should be in the record too, sir.

Mr. Pinion: It's not here in the Petition, to the Court.

The Court: Where are the papers, that were filed?

Mr. Harp: I'll check, if Your Honor please.

The Court: Make sure they're all there.

page 151 } Witness: Here in my file, I have a copy of it.

Mr. Pinion: I'll briefly run over this, but not in detail.

The Court: Just briefly run over it, if it's in the record.

By Mr. Pinion:

Q. General Sands, you previously testified about having had various conferences with Duffield while he was in custody, did you not?

A. I did.

Q. And as a matter of fact, didn't you also have Duffield's family visit him in custody, on several occasions?

A. I did.

Q. And it was your decision, that it would be wise to enter

a plea, based upon the best facts that you had available, that is 'not guilty, because of insanity,' right?

A. That's all I could do—I felt it was the proper decision, in this case.

Q. Now, when you received the letter from Dr. Thrasher, at that time, did you make your decision based upon the facts before you, that that was probably the best way to handle the case, because of his abnormal mind?

A. Let me answer you this way—when the letter came back back to me from Dr. Thrasher with his recom-
page 152 } mendation, I talked to the family, and after talking to the family about it, it was the consensus of opinion that the best thing to do, was to let him go up to Marion and then get a report from Marion, but—

Q. And you made the decision of course, after consulting with the family?

A. Based on the doctor's decision, I did make a motion, which I submitted in writing to the Court—let's put it that way.

Q. All right. Now, during the trial of this case on September 25th and 26th, you made several objections, did you not, General Sands?

A. I did.

Q. And there were several photographs introduced, over your objections?

A. There were a number of photographs offered, and most of them were ruled on by the Court to be admissible, over my objections.

Q. As a matter of fact, you definitely did argue at least about C-10, C-11 and C-12, right?

A. There were photographs that were taken that morning—I don't remember the numbers of them, but there were certain photographs taken that morning, and as I recollect it, there were certain ones taken, I think, at the scene, which I thought were very objectionable.

page 153 } Q. As a matter of fact, all that's in the record at the present time, is it not?

A. It should be, yes sir.

Q. Did you make any objection to the introduction of the T-shirt and the blue pants, General Sands?

A. None whatever, that I recall. I had it in a statement from the Petitioner, telling me 'exacty what he wanted done.'

The Court: Are you referring now, to the same thing introduced in evidence as R-2, which purports to be a written

statement that the Petitioner mailed you, concerning the confession?

A. It is, Your Honor. It's supposed to be, as near as possible, a copy by him of the statement which he made to the police, Your Honor, and it's what you have there, that is, that's a photograph of the original which I have here.

By Mr. Pinion:

Q. When's the first time you saw the Defendant, General Sands?

A. (witness looks at papers) March 16, 1963 between 9:05 A.M. and 10:30 A.M.

Q. Had he had a preliminary hearing in this
page 154 } matter, prior to that time?

A. I was not present with him at that time myself, and I never saw him until that date, March 16th.

Q. All right. Had he made a confession, prior to your entering the case?

A. I'm confident it was made prior to my entering the case, but on what date—I don't have the date of the confession. (witness looks in papers) Yes, I do—it was prior to my entering the case, and I think the date of the confession was March 5th, but the first time I ever saw Duffield was on March 16th, so I'd say that the confession had been made approximately two weeks prior to the time I first saw him.

Q. Now, did you object to anything else that you recall, during the trial?

A. The transcript should disclose it, if I did—but, I don't have any independent recollection of objections, with the exception of the notes which I have gone over, on account of this hearing here today.

Q. Well actually, the transcript does disclose that you did do that—that there were objections that you made of evidence introduced that you felt should not have been introduced, in your opinion.

So then, you certainly can say, that you definitely objected to a few photographs that were introduced?
page 155 } A. Yes, sir.

Q. But General Sands, you have a maze of papers, when I look of course at the table there, you have almost a four-inch file, and you've also got a maze of correspondence there before you, covering everything else on the subject, correct?

A. Yes, sir.

William H. Sands

Q. Well sir, do you feel there were errors in the transcript now?

A. I wouldn't be in a position to make any such statement now, Mr. Pinion—after all, I was discharged from the case after—

Q. —after January 7th?

A. Correct, after I argued the motion to set aside the verdict, but I don't recall the date of that argument.

Q Now when the verdict came back from the jury that day, which was on September 26, 1963, the jury gave your client the death penalty, correct?

A. According to my best recollection, that is correct sir, and the transcript would certainly show it.

Q. Was anything discussed, with reference to appeal, at that time?

A. I don't recall, I should not think it would have been, not at that time and at that moment, the way

page 156 } Duffield had felt about it, all the time.

However, we went back to my office, his family went back with me to my office and we sat down there and had a conference—they had to go back to Kansas and Florida to their homes, and we talked for quite a while until it was time for them to go.

Q. And no one expressed that they 'wanted you to represent Duffield on an appeal,' at that time?

A. I don't recall any.

Q. Between September 26th and January 7th when you argued the motion, did you discuss an appeal with Duffield?

A. I have no independent recollection of discussing that with him—I think I saw him during that period of time, and indirectly I questioned him, and that questioning would have been related to—let me see here a minute (witness looks at papers).

Q. Of course actually at that time General, the case had not been completely decided, had it?

A. No, it had not come up for a motion to set aside the verdict until January 7th, I believe the date was.

Q. According to the record from the City Sergeant's Office, it does not show any visitation after September 24th of '63, which was on that date, from 10:00 A.M. to 10:50 A.M.

page 157 } A. Of course, that would have been with the family—I was making arrangements off and on, and day by day, for his family to see him, and most of the City Sergeant's people would let his mother and wife come on

in, 'most any time, but I can't swear to the time I was there with him, or they were there with him, but I know he saw the members of his family between then and January 7th, and I don't think he mentioned appeal, he didn't express in any way that he 'wanted to note an appeal,' because if he mentioned it, I would have it noted down here in with these other matters.

Q. But you don't know when you went there, do you General—and then of course summing up briefly, during the period of time from the trial of this case on September 26th and on up to January 7th when the motion to set aside the verdict was argued, the case had not been completely decided, and all during that time, you had no idea that an appeal was desired?

A. I had no idea that an appeal was desired, but I did make certain recommendations to the family in the meantime, as I was not quite sure that I was going to get the reversal on it when I argued the motion.

Q. Then you had formed an opinion prematurely, regardless of any desire for appeal, is that it?

A. It was not an opinion, it was—

Q. Well, what would you call it, sir?

page 158 } A. I had a pretty good idea what the verdict was going to be, and of course I knew my position—

Q. —was to make a motion, to set aside the verdict, right then, right?

A. Well, I had to wait for the transcript, in order to make any argument, and I didn't know when I would get it.

Q. Well, when did you receive the transcript, General Sands?

A. I believe it's marked, on the copy Mr. Harp has there.

Q. (Mr. Pinion looks at Mr. Harp's transcript) As a matter of fact then, you received the transcript on November 11, 1963, right?

A. Could be—yes sir, if that's what it shows there, that's the proper date.

Q. That's when you received the transcript, and so then you had the transcript from that date until January 7th naturally, when you argued the motion to set aside the verdict, correct?

A. Yes, sir.

Q. Hadn't anyone mentioned in any way, subsequent to the trial of September 26th and prior to January 7th—hadn't anyone mentioned 'appeal' at any time, and I believe you

said you 'had not been discharged until that time,' right?

page 159 } A. I don't recall, Mr. Pinion, whether I was discharged from the case at the time of trial, when it was over, or after the motion to set aside later on, and I'm speaking of the motion to set aside the verdict of course.

Q. All right. Then you made the motion to set aside the verdict in this particular matter on January 7, 1964, is that correct?

A. I believe that's the date, but I have no record of it, no transcript.

Q. You have no transcript of it, General?

A. No, sir.

Q. I see. Do you recall any lengthy argument that you made, on that particular date?

A. Any lengthy argument, that I made?

Q. Yes, sir.

A. I do not, no sir.

Q Then would it be a correct statement, to say that when you presented your argument to the Court, you did not have a transcript made, and there is no transcript of it?

A. I don't know how to answer that question, correctly.

Q. Well, did you spend more than two hours, talking to the Court in reference to your assignment of errors?

A. Any answer as to length of time, would be an estimate.

page 160 } Q. I don't want you to make estimates, sir.

A. I don't recall whether it was five minutes, or whether it was an hour.

Q. Then you can't tell me either, whether you argued for one hour or four hours, can you?

A. That is correct, sir.

Q. Then if that's correct, there's one further aspect that we have—on that day that this motion was argued, which of course there definitely is no record, nobody made a record of what transpired on January 7th, and you don't recall whether you were there in Court arguing half a day or part of the day, or for the most part of the day, do you?

A. I do not recall.

Q. Do you have any notes, with reference to any arguments you made as to your assignment of errors, at that time?

A I looked for them last night, to see if I did have them—I'm confident I made some notes, but so far I have not found them. I've also combed through the record many times, but I've not been able to find anything.

William H. Sands

Q. Well, I notice your notes are so very voluminous in this case, that is from what you have over there on the table besides what you have in front of you now—but yet you have no notes, as to what you did on January 7th?

A. I did not find what I was looking for, let's
page 161 } put it that way.

Q. And the Judge made the decision to 'overrule your motion' at that time, did he not?

A. The official record would show it, yes sir.

Q. It does, sir.

A. I hesitate to elicit from my memory, after all, that's going back three years, to try to especially answer what's in the official record.

Q. All right, General, so it's in the official record—but, we don't have any record by way of a transcript, of what went on, on January 7th of 1964 with regard to your argument before the Court, do we?

A. Other than the Court Order on it, the Order of the Court that was entered in the record—but I don't have any transcript, any record of what transpired in Court, there is just the Court's record of the fact that my motion was overruled.

Q. That's the answer I've been trying to get, sir.

A. I don't have any independent recollection on it, except to tell you that I prepared the argument, I made the argument and I did my best to present everything that should have been presented in argument at that time, to the Court—and I can state that, as a matter of habit.

Q. Now General, when this man received the death penalty, didn't you feel that it was your duty, that you
page 162 } should have appealed his case, at that time?

A. I'm not saying that, I—

Q. Well, what did you feel your duty should have been?—this man here, received the death penalty, the worst penalty that can be given to any man, and I'm just asking you now, to tell us what you considered your duty was, General, and I would like you to express today, what you considered your duty was, at that time?

A. Well, I don't know that I can express any opinion as to that, other than to say that I wrote to his parents on January 7th, like I told you about earlier, and I told them 'that if there was any desire on their part,' and I sent a copy of that letter to his parents, to Duffield, and I told them 'that if there was any desire on their part to note an appeal, or to take any other procedure or to employ other counsel,' and then I told them what to do.

William H. Sands

Q. You told them what to do?
A. Yes, sir.
Q. May I see a copy of that letter, sir?
A. Yes, you may. (The witness hands letter to counsel)
Q. This letter is addressed of course, to 'Mr and Mrs E. L. Duffield,' and they're the Defendant's parents, are they not, General?
A. Yes sir, and that's what I wrote.
page 163 } Q. Now, was anything said in Court, before you left, concerning appeal, by the Judge or anyone—was there anything mentioned about appeal, before you left and went back to your office, on January 7th?
A. Not that I recall.
Q. And 'you do not recall whether you mentioned appeal to Duffield at any time,' I believe that was your testimony, was it not sir?
A. I didn't say 'at any time.'
Q. On January 7th, I'm talking about now, on that day?
A. I don't recall, but I know when the family came back to the office and talked for several hours, before they had to go back out west, we explored every possibility as to what could be done.
Q. Now I'm going to ask you again, and I'm not commenting on how you handled the case General, at all—but I want to ask you this question about a matter which is quite serious; this man was given the death penalty, and I note that your letter shows nothing whereby you recommended appeal, or anything of that nature—it just does not do it, does it?
A. The letter speaks for itself, Mr. Pinion.
Q. (Mr. Pinion shows paper to the witness) It does speak for itself General, and I show it to you, and I would like you to look at it.
page 164 } A. (Witness looks at paper) Yes, sir.
Q. Would you mind answering my question, please sir—it does not recommend appeal, does it sir?
A. No sir, I can't match words with you. The letter speaks for itself, Mr. Pinion, and it's what I wrote, and I also testified that I talked to the family about it.
Q. So you wrote to other members of the Defendant's family, and you asked the other members of his family later on, about it, but you didn't necessarily ask Loren Neal Duffield himself 'whether he desired to employ other counsel, or take any other procedure'—now why was that, General?
A. The client I was representing was by appointment by

the Court, he was an indigent person, he had no funds to pay for counsel.

Q. Well, how were you paid?

A. By the State, I was paid by the Clerk of the Court.

Q. Then there were no outside resources—is it a fact that nobody outside of the State paid for your expenses in representing Duffield and also the psychiatrists, by the way?

A. Well, it's true that somebody had to pay for the psychiatrist.

Q. And so then, the family did put out some money?

page 165 } A. I don't recall the exact amount, but they did put out some money, I'll make that correction, for the expense of the psychiatrist they hired, but I don't remember who else.

Q. But you accepted this case of course, and your client was an indigent client, right?

A. Yes, sir—I'm usually employed counsel, and I was sure at the time, that the State wanted me to handle this man's case, but now I'm not.

Q. Sir, let me assure you, that you are very, very experienced, and I don't have to really assure you of that fact, and there's no doubt you could do a much better job of getting the answers to questions out of me, than I am doing of getting the answers out of you—so you're very well qualified, and there's no question about that, and the question I'm trying to get an answer to at the present time, is that when this man was given the death sentence, which is the ultimate, the end, and as you have intimated today 'you did not feel it was part of your duty to your client, to go as far as you could, to appeal,' even though he was indigent and unable to pay—this man was facing the end when he was given the death sentence, he was facing the worst sentence a man could receive—now why didn't you appeal, why didn't you feel disposed, on January 7th when you argued the motion to set aside the verdict, why wasn't it necessary in your opinion,

page 166 } that your argument in this case should have been typed up, and why didn't you feel it was your duty to appeal his case to the Supreme Court of Virginia?

Mr. Harp: Objection, Your Honor. I think the witness has already answered that question.

The Court: Overruled.

Mr. Harp: Note my exception, if Your Honor please—it

just looks like to me, that is just a statement by Mr. Pinion.

Mr. Pinion: No sir, I'm not trying to make a statement.

The Court: I don't think counsel can put words in this witness' mouth.

Let me put this in at this point, if I may—because a man is given the death sentence, General, by a Court or jury, would you advise him because of that, *per se,* that he should appeal?

A. In most cases, I would advise him to take every possible advantage or remedy that he may have, unless he had told me 'he didn't want it.'

Q. What was the situation, as far as this Petitioner was concerned?

page 167 } A. The situation was, that I notified his parents and everybody concerned, that 'if they so desired, they could do it, but that I could not do anything else', and I also advised them of what the necessary legal action was, in order to do it,' and it so states that right in this letter.

Q. When you say 'to do it,' you're speaking of appeal?

A. Yes, sir.

Q. Did the Petitioner himself, at any time, state to you one way or the other, that he 'wanted to take an appeal'?

A. From what he told me, Your Honor, he indicated to me, and I don't know how many times, that 'he wasn't entitled to any appeal.'

I might add, that I didn't even know anything about this Habeas Corpus hearing coming up, Your Honor, until I got a 'phone call from Richmond, and the Attorney General wanted me to testify.

Q. You have answered my question then, 'that

page 168 } you would not have recommended appeal'?

A. In this case, Your Honor, the Defendant was 'guilty, by reason of insanity', in his plea.

Q. I understood his plea was 'not guilty, by reason of insanity,' was it not?

A. I didn't mean that, Your Honor.

Mr. Pinion: For the record, Your Honor, his plea was 'not guilty,' that's correct, but he was not guilty, because of insanity, and that was his plea, which you understood at that time, did you not, General Sands, being a professional man, and being used to pleas based upon that, that—

Mr. Harp: That's not a question, Your Honor.

William H. Sands

By Mr. Pinion:

Q. As a question to you then, General Sands, did Duffield tell you to 'go ahead, and appeal his case'?

A. That's a matter of Court record now, Mr. Pinion.

Q. It's in the Court's record all right, sir. Now as to his plea, when such a plea was entered by your

page 169 } client, what would you say, in your professional opinion, was his position in the case—when your client was given the death penalty, shouldn't he have appealed?

Mr. Harp: Objection, Your Honor.

The Court: On what grounds do you base your objection, to that question?

Mr. Harp: It's a general question, not something that hasn't been asked before, it's repetitious, and counsel has been over it all before.

Mr. Pinion: I'm just trying to get a more definite answer, Your Honor.

By Mr. Pinion:

Q. You still of course, had your own professional opinion, regardless of what decision was rendered in this matter, as to whether or not your client was 'not guilty, by reason of insanity' on January 7th, correct?

A. My professional opinion,—

Q. Let me ask you this, sir—was your opinion on January 7th, based upon the evidence and was your argument based upon the evidence on January 7th?

A. But the Court didn't agree with me, and it overruled my motion.

Q. Right. Then your argument was based upon the fact that he was not 'guilty, by reason of insanity,' correct?

page 170 } A. I argued, based upon the transcript of the testimony which had been taken.

Q. Let me put it this way—did you not state, that 'Duffield did not wish to appeal'?

A. I have stated, that 'Duffield indicated that he did not wish to appeal,' and he also indicated to me several times afterwards, that 'he did not wish to appeal.'

Q. And do you still state at this time, that the Defendant entered the same plea, of 'not guilty, by reason of insanity'?

A. That's the same thing that I wrote in this letter to his family, when I told them what to do, if they wanted to do anything, and I sent a copy of it to Duffield.

Q. What was your professional opinion, when your client entered such a plea?

A. What was my professional opinion, at that time?

Q. Normally, you would not take the advice of an indigent client, would you?

A. It was his decision, his plea.

Mr. Harp: Your Honor, that's the same question counsel asked a little while ago.

Mr. Pinion: It is not, sir.

The Court: I don't believe it is, Mr. Harp.

page 171 } Mr. Harp: Please note my exception.

(Mr. Pinion held a conference with the Petitioner.)

Mr. Pinion: I have no further questions, for General Sands.

REDIRECT EXAMINATION

Examined By Mr. Harp:

Q. General Sands, when did Mr. Duffield tell you that 'he did not desire you to appeal his conviction'?

A. Well, he indicated that to me several times, when I saw him at the Jail, and I believe he also indicated it to me when I argued the motion to set aside the verdict.

Mr. Harp: That's all, Your Honor. This witness can stand aside, as far as I'm concerned.

We rest, if Your Honor please.

(Mr. Pinion held a conference with the Petitioner.)

Mr. Pinion: The Petitioner rests, if Your Honor please.

The Court: All witnesses summoned to testify in this case, are excused.

All right gentlemen, argument?

(Counsel presented argument to the Court.)

page 172 }

VIRGINIA:
In the Corporation Court of the City of Norfolk

LOREN NEAL DUFFIELD,
Petitioner

vs.

C. C. PEYTON, Superintendent
Virginia State Penitentiary,
Respondent

HABEAS CORPUS
RECORD

Stenographic transcript of the Decision of the Honorable Linwood B. Tabb, Judge sitting for the Corporation Court of the City of Norfolk, on the above entitled matter, on September 29, 1966.

APPEARANCES:

O. EUGENE PINION, Esquire, Counsel for the Petitioner.

RENO S. HARP, Esquire, Assistant Attorney General, Counsel for the Respondent.

Reporter sworn.

page 173 } JUDGE'S DECISION

The Court: Are you gentlemen ready?

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

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

The Court: This is in the matter of "Loren Neal Duffield vs. C. C. Peyton, Superintendent of the Virginia State Penitentiary."

This matter was fully heard as to all the evidence and argument of counsel, and pursuant to a request of counsel the matter was taken under advisement in order to allow the Court an opportunity to read and study the evidence which was presented in this hearing, and this matter now comes on for a Decision of this Court.

Mr. Pinion: Your Honor, do you have the Order that I presented to you, and that you refused? If so, I'd like to have—

The Court: I don't have that Order, Mr. Pinion, but counsel requested that the Petitioner be brought down from the Virginia State Penitentiary in order that page 174 } the Petitioner might sit here and hear my Opinion in this case, I refused to do so, and exception was taken to that.

The Court takes the view that since all I would be rendering would be my Decision or Opinion, the case having been fully heard, that this would be a civil matter and that it's not necessary that the Petitioner be present.

Does that cover it, Mr. Pinion?

Mr. Pinion: Yes, Your Honor.

JUDGE'S DECISION

The Court makes the following Findings of Facts and Conclusions of Law: The United States District Court denied the Petition for Writ of Habeas Corpus. On appeal to the Fourth Circuit Court of Appeals, this matter is now being heard for the first time within the State Court, with a view towards exhaustion of the State remedies.

The first contention of the Petitioner is that, "articles of clothing were taken from his home in violation of his Constitutional rights." The clothing was later page 175 } introduced in evidence at the trial and used by the police in investigation of the case prior to trial.

The deceased, a young girl fourteen years of age, had been reported as missing. The Petitioner on the same night of her disappearance, and, as it later developed in evidence, made a false report to the police claiming "he had been robbed." The police went to Petitioner's home. He was not there on their arrival. His wife upon mere inquiry gave the clothing of the Petitioner to the police. When he came home the police exhibited the clothing to him and asked his permission to take the clothing to Headquarters. He readily granted them permission and gave his consent to the officers to take the clothing and readily and freely accompanied them to Police Headquarters. He, in fact, drove his own automobile. It is significant that at this point the police had before them his false Robbery report, and a Missing Persons case. They did not know of the Murder and Rape of the girl.

The Petitioner offered to put on the clothes consisting of trousers and a T-shirt and be present in a line-up. He did so, and he was identified by one Major Padgett, the brother of the missing child whose body was later found Raped and

Murdered. He had voluntarily agreed to put on his clothes and to be in the line-up, as to his second contention, this was voluntarily done by this Defendant and it is significant that at this stage the police did not know of the Murder—only the Defendant knew this. page 176

As to the third contention: the Defendant was questioned. No threats were made 'to this Petitioner. Petitioner stated that the police raised their voices, and that one shook a fist at him.' The *Petitioner did not make* any confession at that time. The evidence further shows that no officer shook his fist at him, nor was he threatened.

He shortly went into a room with Detective C. F. Sanders. There was only this Petitioner and the Detective, and to use the Petitioner's own words in describing his treatment, the Petitioner stated, (Tr. 21, lines 2 through 9) *this Detective, "treated him very kindly, talked in a nice tone* and *treated him in a very pleasant way, just like a father."* At this time the Petitioner admitted the crime to the Detective Sanders, and *for the first time in their investigation, the police had information that they were not investigating a "Missing Person," but a Rape and Murder,* and through the Petitioner's assistance, guidance and direction, the body of the young girl was found.

This confession was not secured by threat, promise or coercion, nor was the will of the Petitioner over borne. The confession was freely and voluntarily given; in fact, throughout the confession the Petitioner was 'calm' and further, the confession was made only after the Defendant had been advised as to his rights, as has long been the custom, in these Courts. (Tr. page 93, line 20 through page 94, line 15); this was a voluntary confession, and I find that the Defendant's rights prior to giving it were protected. page 177

It is also contended that "he waived preliminary hearing," and that "no counsel was appointed at preliminary hearing." It is noted that the Defendant waived preliminary hearing on two occasions, and on each occasion it is further noted that he was brought before the lower Court twice on different Warants concerning this offense and the Judge of that Court talked to this Petitioner. (Tr. page 120, line 7 through 13).

The Petitioner was indicted on April 1, 1963; on April 3, 1963, William H. Sands was appointed to represent the Petitioner. After talking with this Petitioner, it was decided that a motion should be made to have the Petitioner examined at Southwestern State Hospital. This matter was discussed with the Petitioner, and the Petitioner approved this. Petitioner

was present in Court with his experienced attorney and upon hearing the said motion, the Court granted the motion. The case was tried on September 25th and 26th, of 1963.

Petitioner next contends that, "he was denied
page 178 } effective counsel, because of counsel failing to object and to appeal his case." The entire record of the trial was before this Court, as Exhibit "P-1." This entire record has been read and studied by this Court. This Petitioner's Court-appointed attorney's representation at trial was preceded by long and numerous conferences between the attorney and the Petitioner, as well as numerous conferences with members of the Petitioner's family.

At the trial of the case, counsel objected to certain photographs which were admitted into evidence, however, the failure of counsel to object to some other of the photographs did not show ineffective representation. It was a matter of judgment on counsel's part as to these, as well as to whether counsel should have cross examined members of the deceased's family when they testified. In this regard, counsel showed good judgment and acute trial strategy. Counsel effectively examined the Medical Examiner, showing that certain abrasions could have been caused by brush rather than brutality. It appears to this Court that counsel showed good judgment in not needlessly cross examining the F.B.I. expert.

In regard to the confession, it is clear that the psychology of counsel's questions in cross examination, was to buttress the defense of insanity, by showing "no emotion." Counsel called witnesses, including Dr. Furr, a
page 179 } Psychiatrist, who further testified that a sexual deviate was abnormal. It is obvious that the employed Psychiatrist could not offer for the Petitioner evidence that he was insane, and counsel admittedly used him to show that sexual deviation was abnormal. Counsel further called the Petitioner's father, whose testimony showed early impressions. The cross examination by this Petitioner's attorney of Dr. Blalock, was expertly done and at length. The trial Court commented at the conclusion, of 'the splendid job of counsel.'

The photographs C-9, C-10, C-11 and C-12 were not inflammatory. They showed the injuries, scars and scratches on the victim's body. They were relevant to show the resistance to the Rape; and the photograph C-10 showed one of the murder weapons, the knotted scarf C-9 showed the body as it was found at the scene. None of these photographs were inflammatory.

It is a matter of judgment with an attorney as to whether witnesses should be cross examined and as to how they should be cross examined. Many fools of inexperience rush into this

while more experienced practitioners leave a witness alone. It cannot be said here that it was wrong judgment for this experienced, competent trial lawyer not to have cross ex-examined.

The issue was, "not guilty, by reason of insanity," which is frequently the only defense today when page 180 } there is actually no defense. Counsel pushed this issue, cross examined on it, and introduced the best evidence which was available. Counsel was both competent and effective. This, "entire record, Exhibit P-1," and all the evidence before this Court discloses that there was not ineffective representation of counsel. The Court finds that the Defendant had competent, effective, and experienced counsel.

I find that the argument of the Commonwealth's Attorney was forceful; and again, it is a matter of judgment as to when objections should be made on argument.

I find that the question of appeal was discussed with this Petitioner, as well as with members of his family. There was no act or omission by his attorney, nor by the Court or State concerning his appeal. I find that this Petitioner failed to appeal, because *he did not want to appeal.* It is significant that the only step for any relief appeal or otherwise was taken on April 17, 1964, when a letter was presented the District Court; nor was any relief sought in the State Courts prior to this.

As to Conclusions of Law, I find that the Petitioner's consent to the officers taking his clothing, was voluntary and free from coercion. The use of these articles in the line-up and in the investigation and trial did not violate any Constitutional rights of the Petitioner.

page 181 } The confession in this case was neither a product of threats, violence or coercion—psychological, or physical. These facts herein enumerated, are entirely different from those in *Escobedo vs. Illinois,* 378 U. S. 478 (1964); no request was made for counsel here and Petitioner was fully advised concerning his rights, including the right to counsel, and in a few minutes the Petitioner told one Detective who "treated him like a father," what he had done. This was the first time the police knew that they had a possible Murder instead of a Missing Person, and it was the first time they knew they were looking for a dead body instead of a live one. When there was only a *general inquiry* into this matter, the Defendant made a statement, prior to *any focus on any particular person.*

Even though the Defendant was advised of his rights, including his right to counsel, he made no request to call or consult with counsel. There is no requisite of the United

States Constitution or the Constitution of the Commonwealth of Virginia which would have required the police to have stopped their investigation in order that counsel be brought in. *Hammer* vs. *Commonwealth,* 207 Va., 135, 145.

The Petitioner voluntarily waived preliminary hearing before the Court. Preliminary hearing in Virginia is not jurisdictional but merely procedural. *Snyder vs. Commonwealth,* 202 Va., 1009.

page 182 } Counsel was appointed in this case shortly after indictment, and in ample time for the preparation of his motion for commitment of the Petitioner for mental observation and for the trial of the case months later. There was effective counsel and effective representation, from the time shortly after indictment throughout counsel's arguments on final motions, and advice as to appeal with Petition and members of his family. There is no so-called question of incommunicado, and there was no postponement of defense preparation. Here, as was injected in the case of *Jay R. Timmons* vs. *C. C. Peyton,* (1966) #10,042, decided April 29, 1966 in the U. S. C. A. (4th), the Petitioner was present at the hearing after consulting with and in concurrent with counsel on this motion for commitment.

The allegations of ineffectiveness, because Mr. Sands failed to object to certain evidence, to cross examine certain witnesses, to object to certain remarks of counsel and the Court, do not establish that counsel was ineffective, nor has it been shown that counsel erred in his judgment. Based upon a review of all the evidence, and especially, "Exhibit P-1" the record of the original trial, the Court holds that this Petitioner had competent and effective counsel, and that the Petitioner has failed in proving these allegations.

page 183 } This Court is quite conscious of the authority cited *supra,* and the fact that the Fourth Circuit Court of Appeals, among other things, is concerned and dissatisfied with the law of Virginia as it relates to the question of insanity. On *page 10 of the Advance Sheets,* it states: ". . . . the strongest reason supporting our holding . . . is the fact that under Virginia law, the burden of proof rests upon a Defendant who pleads insanity. Indeed, we feel that this case is a classic example of the prejudice which is caused by this rule."

There is also a significant fact in this decision, that while that Court feels bound by the decision of *Leland* vs. *Oregon,* 343 U. S. 790, decided by the United States Supreme Court, they *seriously doubt if it would be upheld by the present Court.*

This Court has never been aware that in any criminal case does the burden of proof change. The Commonwealth bears the burden of proof beyond a reasonable doubt. A man is presumed to be sane, and if he seeks to show that he is insane, then the *burden of going forward with that evidence* shifts to the Defendant. The burden of proof never shifts, but rests on the State. The Defendant does not have to prove insanity, under Virginia law, *beyond a reasonable doubt.* He must prove his insanity *to the satisfaction of the jury, that he was insane at the time of commission of the criminal act. Jones* vs. *Commonwealth* (1960) 202 Va. 236; *Wessels* vs. *Commonwealth,* 164 Va. 664; *Holober* vs. *Commonwealth,* page 184 } 191 Va. 826.

It would appear that in addition to the above view, in this decision concerning the Virginia law as to insanity, that the Fourth Circuit Court of Appeals must also concern themselves, not withstanding a full and complete jury trial on the issues, with the question of *whether a Petitioner is a proper subject for execution.*

The Court, in discussing the Defendant and the crime, stated: ". . . we are dealing with a Defendant" whose heinous crime, with no apparent motive leaves one with the conviction that the Petitioner is not a proper subject for execution. We cannot agree with the District Court, which 'expresses no independent view as to the sanity of the Petitioner' that the moral question of executing a person of Petitioner's mentality is for the Executive Branch."

It would appear here, that this case is entirely different on the facts, but with the two issues raised in the decision of the Fourth Circuit Court of Appeals. It would seem that the question of whether or not a particular Defendant is a proper subject for execution, and whether or not it is regrettable that the Supreme Court of Appeals of Virginia has no opportunity to reverse its holding on this point, referring to the Virginia law concerning insanity, will eventually become issues in this case.

It would appear that the Legislature of our page 185 } State fixes punishment for particular offenses, capital or otherwise, and not as yet has the Supreme Court of the United States or the Supreme Court of Virginia held as a matter of law that a Petitioner or Defendant is insane, or that the imposition of capital punishment by a jury is un-Constitutional, nor that the Virginia law of insanity should be changed because it is un-Constitutional or deprives Petitioners of Constitutional rights.

This Petitioner, having failed to prove the allegations con-

tained in his Petition, his Petition for a Writ of Habeas Corpus is denied and dismissed.

(Mr. Harp hands paper to Mr. Pinion.)

Mr. Pinion: If Your Honor please, on behalf of the Petitioner, who is not here today, and who has a right to appeal, I'm stating to the Court that an appeal will be undertaken at this time.

The Court: Mr. Pinion, you will advise the Petitioner concerning his appellate rights, and the Court appreciates your services render to the Court in this matter.

page 186 } Mr. Harp, you will prepare an Order, please.

Mr. Harp: Yes, Your Honor—I already have one prepared.

Mr. Pinion: I too, have prepared an Order in compliance with the Court's ruling.

The Court: Mr. Pinion, pursuant to request, a transcript was prepared from the last hearing in this matter, and that transcript has been studied by the Court and will be placed with the Clerk to await such decision the Petitioner may make concerning appeal, and that transcript will be filed as an Exhibit with the Clerk.

Mr. Pinion: All right, Your Honor.

The Court: It will not be necessary, in the event of appeal, to have another transcript typed up—this one will be filed as Exhibit P-2 in the Clerk's office; however, it will be necessary to follow the usual procedure, and file the usual papers and take the usual steps, in the event of appeal at this time.

page 187 } Mr. Harp: Your Honor, are the Findings of Facts and Conclusions of Law going to be typed up, and made part of the record?

The Court: They will be typed up and made a part of the transcript, in the event an appeal is desired, yes sir.

Mr Harp: Thank you, Your Honor.

page 188 } JUDGE'S CERTIFICATE

I, Linwood B. Tabb, Judge of the Corporation Court of the City of Norfolk, Part Two, who presided over the *Habeas Corpus* trial of the case of Loren Neal Duffield vs. C. C. Peyton, Superintendent, Virginia State Penitentiary, on June 7, 1966, rendering my Decision on September 29, 1966, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all of the evidence adduced,

together with all motions and objections of the parties, all rulings of the Court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of the said cause.

As to the original exhibits introduced in the evidence as shown by the foregoing report, to-wit: Petitioner's Exhibit P-1 and P-2 as well as Respondent's Exhibit R-1 and R-2, which have been initialed by me for the purpose of identification, it is agreed between the attorney for the Petitioner and the attorney for the Respondent, that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this case in *liew* of certifying to the said Court copy of said exhibits.

I further certify that this certificate has been tendered to and signed by me within the time prescribed by Section 8-330 of the Code of Virginia for tendering and signing
page 189 } bills of exception and certificates of record, and that reasonable notice in writing has been given to the attorney for the Respondent of the time and place at which said certificate has been tendered.

Given under my hand this 25th day of October, 1966.

LINWOOD B. TABB
Judge of the Corporation Court of the City of Norfolk, Part Two Norfolk, Virginia

page 190 } CLERK'S CERTIFICATE

VIRGINIA: IN THE CLERK'S OFFICE OF THE CORPORATION COURT OF THE CITY OF NORFOLK, PART TWO ON THE 25TH DAY OF OCTOBER, 1966.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, Part Two, do certify that the foregoing report of the testimony and other evidence of the trial in the case of Loren Neal Duffield vs. C. C. Peyton, Superintendent, Virginia State Penitentiary, Respondent, was lodged and filed with me as the Clerk of said Court on the 25th day of October, 1966.

W. L. PRIEUR, JR.
Clerk of the Corporation Court of the City of Norfolk, Part Two

By G. C. THOMAS
Deputy Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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