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IN THE

# Supreme Court of Virginia

AT RICHMOND

RECORD NO. 730270

A. E. SLAYTON, SUPERINTENDENT
VIRGINIA STATE PENITENTIARY,

*Appellant,*

v.

ARCHIE ALLEN PARRIGAN,

**APPENDIX**

ANDREW P. MILLER
*Attorney General of Virginia*

ROBERT E. SHEPHERD, JR.
*Assistant Attorney General*

Supreme Court–State Library Building
Richmond, Virginia 23219

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* * *

## PETITION FOR WRIT OF HABEAS CORPUS

Instructions—Read Carefully

In order for this petition to receive consideration by the Court, it must be legibly handwritten or typewritten, signed by he petitioner and verified (notarized). It must set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on an additional page. Petitioner must make it clear to which question any such continued answer refers. The petitioner may also submit exhibits.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury under § 18.1-273. Petitioners should, therefore exercise care to assure that all answers are true and correct.

When the petition is completed, the original and two copies (total of three) should be mailed to the Clerk of the Court. The petitioner shall keep one copy.

Notice To The Petitioner

The granting of a writ of habeas corpus does not entitle the petitioner to dismissal of the charges for conviction of which he is being detained, but may gain him no more than a new trial.

Place of detention: Field Unit No. 28, Rt. No. 2, Ridgeway, Virginia

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief:

Circuit Court, Dickenson county

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

a. Robbery

3. The date upon which sentence was imposed and the terms of the sentence:

a. June 18, 1969

4. Check which plea you made and whether trial was by jury:

Plea of guilty: ———; Plea of not guilty: —X—; Trial by jury —X—; Trial by Judge without jury: ———.

5. The name and address of each attorney, if any, who represented you at your criminal trial:

A. M. Phipps, Clintwood, Va.

6. Did you appeal the conviction? Yes

7. If you answered "yes" to 6, state:
the result and the date in your appeal or petition for certiorari:

a. Denied—December 1969
citations of the appellate court opinions or orders:

a. ————————

8. List the name and address of each attorney, if any, who represented you on your appeal:

Joseph Kuszco—Norton, Va.

B. Habeas Corpus

9. Before this petition did you file with respect to this conviction any other petition for habeas corpus in either a State or federal court? No

* * *

C. Other Petitions, Motions or Applications

13. List all other petitions, motions or applications filed with any court following a final order of conviction and not set out in A or B. Include the nature of the motion, the name and location of the court, the result, the date, and citations to opinions or orders. Give the name and address of each attorney, if any, who represented you:

a. None

D. Present Petition

14. State the grounds which make your detention unlawful, including the facts on which you intend to rely:

a. Illegal arrest—Illegal Transport—Illegal Line Up. On or about Feb. 16, 1969, I was sitting in Greers Cafe, with my brother, Kenneth

I. Parrigan, Carl Greer and various others. Dep. Sherrif Juleius Stanley came up to me and greeted me. He asked me if I would accompany him for the purpose of "clearing up some trouble that happened a few nights ago." He made no mention of what the trouble was, or where we were going. In the squad car, he still made no mention and we engaged in general conversation. Mr. Stanley proceeded to Haysi, Va. to the "Club 83" in Haysi, Va. We sat in a booth at "Club 83," and Mr. Stanley offered to buy me a drink. About 15 minutes later, a man whom I had never seen before walked up to the booth, and Mr. Stanley got up to greet him, shook hands, ect., while I remained in the booth alone. They then turned to me, sitting alone in the booth, and Mr. Stanley said, "does this look like the man." The stranger said "yes." At this point Mr. Stanley handed me a warrant and said "You're under arrest."

(Citations for Cause)

1. U.S. vs Wade
2. Gilbert vs. California
3. Stovall vs Denno
4. Palmer vs Peyton

15. List each ground set forth in 14, which has been presented in any other proceeding:

a. None

List the proceedings in which each ground was raised:

a. None

16. If any ground set forth in 14 has not been presented to a court, list each ground and the reason why it was not:

a. Did not know this was illegal.

/s/ Archie Allen Parrigan
Signature of Petitioner
Unit No. 28, Rt. No. 2, Ridgeway, Va.
Address of Petitioner

State Of Virginia

City/ County Of State of Virginia at Large

The above named petitioner being first duly sworn, says:

1. He signed the foregoing petition;

2. The facts stated in the petition are true to the best of his information and belief.

/s/ Archie Allen Parrigan
Signature of Petitioner

**MOTION TO DISMISS**

* * *

Now comes the respondent, by counsel, and files his Motion to Dismiss the petition for a writ of habeas corpus. In support of said Motion respondent says as follows:

1. Petitioner alleges that he was improperly identified at a confrontation between himself and the complaining witness at a time when he was without counsel.

2. Respondent says that an examination of the transcript of petitioner's trial shows that the identification made by the complaining witness was positive (Tr. 6 and 7). Respondent says further that no objection was made to the identification testimony at the time it was introduced and that by failing to act in a timely manner to prevent its admission, the petitioner waived all objection thereto. *Poole* v. *Commonwealth,* 211 Va. 258 (1970)

Wherefore, respondent prays that the petition be denied and dismissed.

J. D. Cox, Superintendent of
the Virginia State Penitentiary
By: /s/ Counsel

* * *

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

* * *

Place of detention: Field Unit No. 28, Ridgeway, Virginia 24148

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief:

Circuit Court of Dickenson County, Clintwood, Virginia 24228

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

a. Robbery in violation of Title 18.1, Section 91 Code

b. Indictment No. 1740

3. The date upon which sentence was imposed and the terms of the sentence:

a. June 18, 1969—20 years

4. Check which plea you made and whether trial was by jury:

Plea of guilty: ———; Plea of not guilty—X—; Trial by jury: —X—; Trial by judge without jury: ———.

5. The name and address of each attorney, if any, who represented you at your criminal trial:

A. M. Phipps, Esq. Clintwood, Virginia

6. Did you appeal the conviction? Yes

7. If you answered "yes" to 6, state:

the result and the date in your appeal or petition for certiorari:

a. Appeal refused on December 3, 1969

citations of the appellate court opinions or orders:

a. Order dated: December 3, 1969, Supreme Court of Appeals of Virginia refusing writ of error.

8. List the name and address of each attorney, if any, who represented you on your appeal:

Joseph M. Kuczko, Esq. Lambert Building, Norton, Virginia 24273

B. Habeas corpus

9. Before this petition did you file with respect to this conviction any other petition for habeas corpus in either a State or federal court? No

* * *

D. Present Petition

14. State the grounds which make your detention unlawful, including the facts on which you intend to rely:

a. Inadequate assistance of court appointed counsel which violated petitioner's state and federal constitutional rights.

b. The trial court overreached its duty in attempting to advise a co-defendant called as a witness for the defendant as to the witness's privilege on self-incrimination; this deprived petitioner of material witness for defense.

c. The trial Court, without satisfying itself that the defendant understandingly and willingly volunteered as a witness without being forced to testify because of the incident set forth above in Paragraph (b) and without warning the defendant of his right not to be a witness in his own behalf, thereby permitting the jury to hear evidence of prior convictions.

d. Petitioner's arrest was illegal. Prior to the warrant being executed, petitioner was forced to accompany the deputy sheriff to Haysi, Virginia to be identified without his knowledge or advice of counsel or a proper line-up, in violation of state and federal constitution.

e. The Commonwealth's Attorney, in the presence of the jury insisted that the petitioner had three prior convictions for felonies—the Common Law Order Books disclose only two: to-wit: uttering a forged check to Clintwood Lumber Co. and another to Clintwood Bowling Corp.

f. The corpus delicti of robbery was not proven as to the petitioner, to-wit: that the petitioner was the guilty agent or person that struck the victim, or that the petitioner was the person who took the money from the victim, or that petitioner acted in concert or agreement with the person that did strike and remove the money or that petitioner shared the criminal intent of the principal. All that was shown was the petitioner's presence—no aiding or abetting.

15. List each ground set forth in 14, which has been presented in any other proceeding:

a. None

* * *

/s/ Archie A. Parrigan
Signature of Petitioner

* * *

## ANSWER TO AMENDED PETITION FOR A WRIT OF ERROR

Now comes the respondent, by counsel, and for answer to the petition says as follows:

1. Respondent is now detaining petitioner pursuant to a judgment of this Court of June 18, 1969, wherein the petitioner was sentenced to serve twenty (20) years in the Virginia State Penitentiary, having been convicted of robbery.

2. Petitioner in his amended petition for writ of habeas corpus makes the following allegations: that he was denied due process in that he received the inadequate assistance of counsel, that the Trial Court over-reached its duty in attempting to advise a co-defendant as to the privilege against self-incrimination resulting in the witness declining to testify, that the Trial Court further failed to advise petitioner of his rights not to be a witness in his own behalf, that he was illegally arrested and that this arrest occurred after an identification made without the benefit of a proper lineup, that the Commonwealth's Attorney prejudiced the petitioner by insisting that he had been convicted of three prior felonies when he had only been convicted of two and finally that the *corpus delicti* was not proven in that the petitioner was only shown to have been present at the scene of the crime and not actively aiding and abetting.

3. Petitioner's allegation of the inadequate assistance of Court appointed counsel amounts to the mere statement of a conclusion of law and no facts or specific instances are cited to support this allegation. *Penn* v. *Smyth,* 198 Va. 367 (1948).

4. Petitioner alleges that the Trial Court overreached its duty in attempting to advise a co-defendant as to his privilege against his self incrimination, thus resulting in his refusing to testify on behalf of petitioner. A review of the transcript shows that this co-defendant was represented by counsel and that he had not consulted with his counsel prior to taking the stand in petitioner's trial. Thus, the Court was altogether proper in examining thoroughly the question of witness's awareness of the implications of his decision to testify. In addition, petitioner took an appeal to the Supreme Court of Appeals of Virginia and failed to raise this point even though objections had been made at trial. Habeas corpus does not lie as a substitute for an appeal for a writ of error. *Smyth* v. *Midgett,* 199 Va. 727 (1958).

5. Petitioner alleges that the Trial Court erred in failing to advise him of his rights as a witness and this worked to the prejudice of the petitioner. The Record of Trial, as has been pointed out by petitioner rather extensively demonstrates the advice of the Trial Court to the co-defendant called as a witness, as pointed out in paragraph 4 above. Petitioner was present at all times during the course of the trial court's advice to the co-defendant and was thus fully aware of the risks of taking the witness stand. In addition, there is no affirmative duty of the Trial Court to advise petitioner of these risks and such advice, in the presence of the jury, could be interpreted as a comment upon petitioner's failure to testify if he were to decide not to take the stand. Once again, this is a matter that should or could have been raised on appeal and should not be raised for the first time in a petition for a writ of habeas corpus.

6. With regard to petitioner's allegation that he was the victim of an illegal arrest and illegal identification through an improper lineup, the respondent says that an examination of the transcript of the petitioner's trial shows that the identification made by the complaining witness was positive and unequivocal (Transcript 6-7), as were the identifications by numerous other witnesses. Respondent says further that no objection was made to the identification testimony at the time it was introduced and that by failing to act in a timely manner to prevent its admission, the petitioner waived all objection thereto. *Poole* v. *Commonwealth,* 211 Va. 258 (1970).

7. Petitioner further alleges that the Commonwealth's Attorney prejudiced him by insisting that he had been convicted of three prior felonies when he had actually been convicted of only two. During the trial of this case, petitioner stated that he had been convicted of three but had thought that two of them, both dealing with check forgeries, had been combined in one case, thus admitting himself that he had been convicted of three felonies and he gave an explanation of this for the jury (Transcript 68, 71-73). Once again, no objection was made to this at trial and the petitioner has therefore waived all objection thereto.

8. Petitioner finally alleges that the *corpus delicti* was not proven but that he was only established as being present at the scene and not as aiding or abetting. Petitioner raised this point at trial and again in his petition for a writ of error to the Supreme Court of Appeals of

Virginia, which petition was denied on December 3, 1969. This matter can not be raised again in a petition for a writ of habeas corpus.

Wherefore, respondent prays that the amended petition for a writ of habeas corpus be denied and dismissed.

J. D. Cox, Superintendent of
the Virginia State Penitentiary
By: /s/ Counsel

* * *

**SUMMARY OF FACTS**

On February 15, 1969, Rufus H. Yates was the victim of an armed robbery allegedly committed by the petitioner, Archie Allen Perrigan, and two other co-defendants, both of whom plead guilty to the crime, but neither having implicated Archie Allen Perrigan. Two or three days after the offense Deputy Sheriff Julius Stanley approached Perrigan in the City Cafe in Clintwood and asked him to ride to Haysi, a distance of about 20 miles, to which request the petitioner agreed (HCTR 5). Officer Stanley had an arrest warrant in his pocket at the time but did not show the warrant to petitioner or advise him of his constitutional rights (HCTR 6). The victim was brought some 20 miles from an adjoining county by taxi to the same cafe in Haysi. The victim was brought into the cafe where Officer Stanley and Perrigan were seated alone in a booth (HCTR 47). The officer was in uniform at the time (TR 47). The victim was told the officer had somebody and wanted to know if he could identify the subject (HCTR 46-47). The petitioner testified that the victim was brought into the cafe by the taxi driver and Sheriff Stanley asked him if this is one of the boys or doesn't this look like the man (HCTR 32). The crime occurred about 3 A.M. in the morning and the victim admitted he had consumed five or six beers prior to the incident (HCTR 44). The victim specifically identified the petitioner, Archie Allen Perrigan, as one of the three men who robbed him on February 15, 1969, when petitioner was tried in the Circuit Court of Dickenson County before a jury on June 18, 1969 (Trial Transcript 6-7, 9, 14). The petitioner was represented by counsel at the trial and the victim's in court identification of petitioner was not objected to at that time. No objection was raised to the suggestiveness of any earlier identification nor was any mention made of a pretrial identification procedure. The jury found the de-

fendant guilty of armed robbery and fixed his punishment at 20 years in the State Penitentiary. The case is now before this Court on a Petition for a writ of habeas corpus.

## Question Presented

Were the circumstances under which Rufus H. Yates, the victim, identified Archie Allen Perrigan, the defendant, so unnecessarily suggestive and conducive to irreparable mistaken identification as to deprive defendant of due process of law under the Fourteenth Amendment, and to require the exclusion of the in-court identification evidence of Yates?

## Opinion

At the outset it should be noted that this case did not unduly alarm the Court until the recent decision of *Kirby* v. *Illinois,* 40 L.W. 4607, 32 L. Ed. 2d ....., 11 CrLr 3072, (June 7, 1972). In fact the Court prior to the *Kirby* decision felt that the petitioner was entitled to a reversal of the conviction and a new trial because of the denial of his Sixth and Fourteenth Amendment right to counsel (*Powell* v. *Alabama,* 277 US 45; *Johnson* v. *Zerbst,* 304 US 458; *Hamilton* v. *Alabama,* 368 US 52; *Gideon* v. *Wainwright,* 372 US 335; *White* v. *Maryland,* 373 US 59; *Massiah* v. *United States,* 377 US 201; *United States* v. *Wade,* 388 US 218; *Gilbert* v. *California,* 388 US 263; *Coleman* v. *Alabama,* 399 US 1); because of the denial of his Fifth and Fourteenth Amendment right against compulsory self-incrimination, *Mirando* v. *Arizona,* 384 US 4361, and because of the denial of due process under the Fifth and Fourteenth Amendment forbidding a line-up that is unnecessarily suggestive and conducive to irreparable mistaken identification, *Stovall* v. *Denno,* 388 US 293; *Foster* v. *California,* 394 US 440. Although not wholly in agreement with *Kirby,* supra, this Court is of the opinion that the denial of the right against compulsory self-incrimination and the denial of the right to counsel is now a moot question, having been settled by *Kirby,* and the only question now before the Court is whether or not the petitioner herein was denied due process of law under the Fifth and Fourteenth amendment forbidding a line-up that is unnecessarily suggestive and conducive to irreparable mistaken identification.

In this case the Court finds that the Due Process Clause of the Fifth and Fourteenth Amendment forbidding such line-ups which are

unnecessarily suggestive was violated and that the conviction should be reversed and a new trial granted.

Dean Parham H. Williams of the University of Mississippi Law School and on the faculty of the American Academy of Judicial Education of the University of Alabama, emphasizes the importance of applying the "impermissibly suggestive" test in all line-up or show-up cases. In the case at hand the victim was told he was being taken to a cafe where an officer had someone for him to try to identify and upon arrival the uniformed officer asked the victim if this is one of the boys or doesn't this look like the man and at that time Perrigan and the officer were the only parties together in the booth. How could this have been more suggestive? And after having made the identification under these circumstances it would indeed be a rare individual who would come into Court later and say he was mistaken in the identification.

Another weakness in the identification made by the victim is found in the circumstances of the actual crime. The crime occurred about 3 A.M. in the morning on a country road strange to the victim and naturally at a time the victim was terrorized. Also, the victim was intoxicated, having consumed five or six beers by his own admission. The victim was illiterate. These factors point up the inability of the victim to clearly identify the perpetrator of the crime.

The Court in *Kirby* recognized the fact that occasions do arise when the police abuse identification procedures and in the last paragraph of that decision used the following language:

> "What has been said is not to suggest that there may not be occasions during the course of a criminal investigation when the police do abuse identification procedures. Such abuses are not beyond the reach of the Constitution. As the Court pointed out in *Wade* itself, it is always necessary to "scrutinize *any* pretrial confrontation . . ." 388 U.S., at 227. The Due Process Clause of the Fifth and Fourteenth Amendments forbids a lineup that is unnecessarily suggestive and conducive to irreparable mistaken identification. *Stovall* v. *Denno,* 388 U.S. 293; *Foster* v. *California,* 394 U.S. 440. When a person has not been formally charged with a criminal offense, Stovall strikes the appropriate constitutional balance between the right of a suspect to be protected from prejudicial procedures and the interest of society in the prompt and purposeful investigation of an unsolved crime."

Counsel for petitioner in a memorandum dated June 30, 1972, aptly set out the reasons why *Kirby* is inapplicable herein:

> "The Court, in *Kirby* v. *State of Illinois,* limits its determination to whether the per se exclusionary rule of Wade-Gilbert is applicable to pre-indictment confrontations, concluding that the Sixth Amendment guarantee of the right to counsel does not exist until the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment information, or arraignment.
>
> While the holding of the Court is that the right to counsel does not attach until at or after formal charge, it seems fair to interpret the decision thusly: that the Sixth Amendment guarantees to a defendant the right to counsel at or after formal charge, at or after the initiation of adversary judicial criminal proceedings. It is interesting to note that in the *Wade* case the confrontation took place *after* an attorney had been appointed, but without the presence of the attorney and without notice to him. In this respect the *Kirby* decision may be considered to broaden, or, at least, clarify the *Wade* decision. The *Kirby* decision definitely fixes the time when a defendant is entitled to counsel—at or after the initiation of adversary judicial criminal proceedings.
>
> It is certainly debatable what the United States Supreme Court would decide as to whether Archie Allen Parrigan's right to counsel had arisen at the time of his confrontation with Yates. The Sheriff's deputy had a warrant for the arrest of Archie in his pocket, transported Archie fifteen miles and kept Archie in his custody for an hour prior to the showup. If Deputy Stanley had seved the warrant prior to the confrontation, then a formal charge would have been made. That is, adversary judicial criminal proceedings would have been initiated, and the *Kirby* decision would apply. It is interesting to note that under the law of Virginia, after a warrant of arrest charging the commission of a felony, a Sheriff is required to arrest. Deputy Stanley's duty to arrest Archie arose prior to any confrontation with Yates. It is felt by this writer that the United States Supreme Court would not allow the deceit by Stanley to deprive Archie Allen Parrigan of so important a safeguard of his constitutional rights.

> In the Memorandum of Opinion on Behalf of Petitioner heretofore filed in this case, the argument does not turn on defendant's right to counsel, but rather on a defendant's right to due process of law guaranteed by the Fifth and Fourteenth Amendments. The Court in *Kirby* specifically did not determine whether the defendant had been deprived of due process of law. . . .
>
> I conclude that the decision of the *Kirby* case is, generally, inapplicable to the proper disposition of the case against Archie Allen Parrigan. The *Kirby* decision limits itself to when a defendant's right to counsel originates. The issue in the instant case is whether the confrontation was so unnecessarily suggestive and conducive to irreparable mistaken identification so as to deprive Archie Allen Parrigan of due process of law."

In conclusion the Court finds the only reasonable conclusion to be drawn from the facts in this case is that the confrontation, whether it be called a showup or a lineup, of Archie Allen Parrigan by Yates was so impermissibly suggestive and conducive to irreparable mistaken identification as to deprive Archie Allen Parrigan of his Fifth and Fourteenth Amendment guarantees to due process of law.

The Attorney General is directed to prepare an appropriate order consistent with this Opinion.

This 25th day of August, 1972.

/s/ Glyn R. Phillips
Glyn R. Phillips, Judge, 27th Judicial
Circuit Of Virginia

* * *

**ORDER**

This proceeding came on to be heard on September 9, 1971, upon the petition and amended petition of Archie Allen Parrigan for a writ of habeas corpus and the motion to dismiss and answer filed on behalf of the respondent, the petitioner appearing in person and by Joseph M. Kuczko and Gerald P. Coleman, court appointed attorneys, and the respondent appearing by Robert E. Shepherd, Jr., Assistant Attorney General.

Whereupon, the Court overruled the respondent's motion to dismiss, to which action of the court the respondent noted an exception. The Court then heard the evidence, and for the reasons stated in the

written opinion of this Court dated August 25, 1972, the Court is of the opinion that the writ should issue as prayed solely on the issue relating to the suggestiveness of the pretrial identification of petitioner by the victim. As to all other issues, the petition and amended petition for a writ of habeas corpus is denied, to which action counsel for petitioners note their exceptions.

It is, therefore, ADJUDGED and ORDERED that the writ of habeas corpus is granted and the petitioner is awarded a new trial, if the Commonwealth be so advised.

Upon motion of the respondent to set aside the judgment as contrary to the law and evidence, said motion is overruled, to which action respondent duly excepts.

It is further Adjudged and Ordered that the record of the proceedings in this Court held on June 18, 1969, including the transcript thereof, be made a part of the record herein and the transcript of the plenary hearing held herein on September 9, 1971, is also hereby made a part of the record in this proceeding.

Let the Clerk of this Court certify a copy of this order to the petitioner, to Joseph M. Kuczko, Esquire, to Gerald P. Coleman, Esquire, to the respondent and to Robert E. Shepherd, Jr., Assistant Attorney General of Virginia.

Enter this 14th day of September, 1972
/s/ Judge

* * *

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR**

The respondent, A. E. Slayton, Jr., gives notice of appeal from the judgment of the Court rendered herein on September 14, 1972, and assigns the following errors as required by Rule of Court 5:6:

1. The Court erred in overruling respondent's motion to dismiss the petition for a writ of habeas corpus on the ground that petitioner had waived any objection to his identification at the original trial by failing to object to the in-court identification at that time.

2. The Court erred in holding that the petitioner had standing to attack his in-court identification by the victim at the original trial without establishing that his original trial defense counsel ineffectively represented him by failing to object to the in-court identification.

3. The Court erred in holding that the preindictment identification procedure utilized in the original criminal case was so unnecessarily suggestive as to taint the subsequent in-court identification.

4. The Court erred in granting the petition for a writ of habeas corpus on the basis of the suggestiveness of the pretrial identification process where the clear weight of the evidence demonstrated that the in-court identification had a totally independent origin from the pretrial identification procedure.

5. The Court erred in overruling the respondent's motion to set aside the judgment as contrary to the law and evidence on the grounds set forth above.

The transcript and all of the records of the proceedings in the trial of Commonwealth v. Archie Allen Parrigan in this Court on June 18, 1969 and the transcript of the plenary hearing held herein on September 9, 1971 and the other incidents of this proceeding have already been made a part of the record in this proceeding by the judgment order of September 14, 1972 and all of these should be a part of the record in this appeal.

A. E. Slayton, Jr., Superintendent
Virginia State Penitentiary
By: /s/ Of Counsel

* * *

## EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN THE CIRCUIT COURT OF DICKENSON COUNTY, VIRGINIA, OF JUNE 18, 1969

### Testimony of Rufus Hawkins Yates

Direct Examination By Mr. McFall:

[4] * * *

Q. What is your full name, please? A. Rufus Hawkins Yates.

Q. How old are you, Mr. Yates? A. Forty-seven.

Q. Where do you live? A. I live in Buchanan County.

Q. Where in Buchanan County do you live? A. Up on Greenbriar.

Q. Do you have trouble hearing? A. Yes. I have worked so much around a cutting machine it has about made me deaf.

Q. I will stand over here—are you married? [5] A. Yes.

Q. How many in your family? A. I raised nine. Three are married, six at home.

Q. What do you do? A. I cut coal at Harman.

Q. Back in February, on a Friday, the 14th, did you work at your job at Harman? A. Yes, and I come by Haysi and got a haircut and come to Manual's and waited for Earl to bring me home.

Q. Who is Earl? A. He drives a cab.

Q. Is he a brother to Manual O'Quinn? A. Yes.

Q. Does Manual O'Quinn run Club 83 Restaurant in Haysi? A. Yes.

Q. Why did you come to Haysi from your work? A. I come to see if they got parts for my truck I had there and got a haircut.

Q. Where did you go from there? A. To Manual's. I went up to Manual's to get Earl to take me home.

Q. About what time of the evening was it? A. The best I can tell you it was close six o'clock.

Q. After you got there what did you do? A. I got something to eat, maybe drunk a beer and a cup of coffee and come back and these boys—

Q. When you first went there, did you make inquiry about a ride from there to your home? [6] A. Yes.

Q. Did you see Earl at that time? A. Yes. He said he couldn't go until he closed.

Q. You said that after you got something to eat and coffee and drank a beer, what happened after that? A. Well, I went in the restroom and come back out and one of these boys said to talk—to sit down and talk a few minutes and I went and got on a stool and he said, "We will take you home," and I said, "If you will take me home I would just as soon pay you as anybody." I seen they were going wrong. I told

them to stop and let me out and they wouldn't. They brought me over here and knocked me in the head and took my money.

Q. Mr. Yates, how much education have you had? A. None.

Q. Do you read and write? A. No, sir.

Q. You mentioned that some boys came in Club 83. How many were they? A. They were three.

Q. Would you look in the Courtroom and see if either of those three persons is in the Courtroom today? A. Yes.

Q. Where is one that was there? A. One is sitting right here and the other is out.

Q. Where is the one that is here now? A. This one right over here (pointing to defense table).

Q. Are you positive of that? A. Yes.

[7] Q. Is there any doubt in your mind about that? A. No, sir.

Q. As you were riding up to Clintwood in the car from Haysi, where were you sitting in the car? A. In the back.

Q. Where was this man sitting? A. This man was sitting beside the driver.

Q. Could you see him from your position in the back seat? A. Yes.

Q. Did you look at him? A. Yes, sir.

Q. While you were in the restaurant down there, did you talk to him? A. Yes, they were all three together and I talked to them all.

Q. Did you buy any beer while you were talking to them? A. Not while I was sitting with them.

Q. Did you buy beer while they were present in the restaurant? A. I drunk five or six beers while I was sitting on the stool.

[9] * * *

Q. When you were asked—told to get out of the car up there, what happened when you got out? A. When I got my feet on the

ground and got straight one of them whopped me around the side of the head with something. I don't know what he had.

Q. Where in the head were you struck? A. Around through there (indicating forehead). I got out the side the driver was on. He walked around the front end. The driver told me to get out twice before I got out.

Q. Which way did Archie Perrigan get out? A. On the opposite side, walked around the front end of the car.

[14] * * *

Q. You don't know who took you? A. That boy right there was right in the gang. They were all three together.

Q. You don't know who hit you? A. No. I didn't know the boys. I never heard nary a name called.

* * *

**Testimony of Julis Stanley**

Direct Examination By Mr. Kuczko:

[29] Q. Did you make any inquiries at Club 83 about his being there before? A. Yes, I did.

Q. What did you learn? A. I learned that he had been there and had been talking to three boys and that one of them had just come back from Bland County Farm.

Q. After you received that information, did you make any other inquiries? A. Yes, I did.

Q. What other inquiries did you make? A. I found out—I asked if they could identify the boys and they said they could.

Q. Did you make any inquiries in Clintwood? A. Yes, sir.

Q. Did you learn that anyone had been to Bland from Dickenson County? A. Yes.

Q. Who did you learn that was? A. Archie Perrigan.

Q. When had he returned from there? A. Friday, the 14th.

* * *

## EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN THE CIRCUIT COURT OF DICKENSON COUNTY, VIRGINIA, OF SEPTEMBER 9, 1971

### Testimony of Julis Stanley

Direct Examination

[4] * * *

Q. Please state your name, address and occupation. A. Julis Stanley, Clintwood, Route 1, Town Police in Clintwood.

[5] Q. What position did you hold, if any, on June 18, 1969? A. I was deputy sheriff of the county.

Q. Did you have occasion to investigate, take part in the arrest of Archie Allen Parrigan? A. Yes, sir.

Q. When and where was your first contact with Mr. Parrigan, the defendant, in that connection? A. As well as I remember it was next to or about the front of the City Cafe on the sidewalk in Clintwood.

Q. Can you tell us how long subsequently that was to the date the offense was alleged to have taken place on Mr. Yates? A. I don't remember how many days, but it was a short time after the offense.

Q. It could have been two or three days? A. Yes. Anyhow, I don't remember. It was shortly after the robbery.

Q. Did you have a warrant of arrest at the time you first made contact with Mr. Parrigan? A. Yes, I did.

Q. Did you execute that warrant immediately? A. In about— I would say two hours.

Q. What transpired during the two hours? A. I asked Archie Parrigan did he care to ride to Haysi with me and he said, "No, I don't care 'nary a bit.' "

Q. Did he know the purpose of the trip to Haysi? A. No, he didn't.

Q. Did he know that you had a warrant in your pocket for his arrest? [6] A. No.

Q. Was that the warrant charging him with being one of the co-defendants in the armed robbery of Mr. Yates? A. Yes.

Q. You did take him to Haysi. What distance is that, approximately? A. Fifteen miles, I guess.

Q. What did you do when you arrived in Haysi? A. As we were going along he asked what we were going for and I said, "Now, Archie, you know a man has been knocked in the head and robbed and I am taking you to see if you can be identified."

Q. Had you advised him of his constitutional rights prior to that? A. I did when I arrested him.

Q. At that particular time, when that conversation took place, you did not advise he was under arrest and he had a right to an attorney? A. Not when I picked him up in front of the restaurant.

Q. Ordinarily, what was your practice? You had a little card prepared by the Commonwealth Attorney and read it to them? A. That's right.

Q. You had that card with you? A. I have it now.

Q. You did read it to him later at Haysi? A. That's right.

Q. What were you waiting for before advising him? [7] A. I wanted to make positive that was the man that knocked or helped knock him in the head.

Q. What procedure did you use? A. Rufus Hawkins Yates come in the restaurant while we were there.

Q. Had this been pre-arranged? A. I don't know about that.

Q. Did he just come by or— A. I don't know. He come in and three or four were sitting on the right as you walk in the door and several in the back. He had another room and several were in the back. I asked him to look in there and see if he could see anybody, if he could identify anyone that took part in robbing him. He walked out there and said, "nobody in here." I asked him to look in this room, and he pointed his finger and he said, "Yes, that fellow in that booth."

Q. Did Mr. Parrigan know he was being identified? A. Yes, he did. He said, "I can prove I was at St. Paul and the Indian Head."

Q. What was he doing at the time he was being identified? A. He was sitting in a booth.

Q. Anyone else with him? A. No. There was three or four in the booth on the right.

Q. You had placed Mr. Parrigan in the booth? A. Yes.

Q. No one else in the booth? A. No one else.

Q. Was this identification made in his hearing or his presence or just to you on the side? [8] A. He was right in there in the resl taurant.

Q. Mr. Parrigan was sorta interested, I imagine. Did he know what was going on? A. Yes, he did.

Q. He knew Mr. Yates was pointing him out? A. No, he said, "that is one of them."

Q. Mr. Parrigan was looking at Mr. Yates when he pointed? A. No. He dropped his head.

Q. Did he know what he was pointing about? A. Yes, I would say that he did.

Q. Did you immediately arrest Mr. Parrigan? A. I did.

Q. You took out your warrant and executed it, then you read his constitutional rights to him? A. That's right.

Q. Prior to this he did not have an attorney representing him present? A. No, sir, he did not.

Q. When was that warrant issued—the day before ordering the arrest of Mr. Parrigan? A. The same day, I reckon.

Q. Why didn't you arrest him when you first saw him in front of the Courthouse there since you had the warrant? A. I was wanting to get the right man. That is the reason.

Q. In spite of the warrant that had been issued you still wanted to make sure Mr. Yates had the right man? A. Yes, sir.

[9] Q. Why did you have Mr. Parrigan and other people in a line up by— A. Several people was in the building, more than is here in the back building and four or five besides the people that worked there.

Q. But Mr. Parrigan did not have any counsel available until

after you executed the warrant and identification had been made? A. Mr. Phipps I think was representing him.

Q. When was he appointed? A. I don't know.

Q. That was days after you arrested him? A. It might have been, yes, sir.

Q. You did not have any further conversation with Mr. Yates at that time, after he made his identification, after you say he pointed his finger? A. I just don't remember. I have seen him several times, before and after too.

Q. You don't know if Mr. Yates had been advised to be present in this restaurant at this particular time that you were putting up Mr. Parrigan for identification? A. I don't recall. I don't think so.

Q. You cannot tell the Court how it happened that Mr. Yates was there when you went there with Mr. Parrigan? A. He walked in the restaurant.

Q. Isn't it true that one of the other deputies, the Commonwealth Attorney or somebody informed them that you were coming with Mr. Parrigan and to have him there? [10] A. Sir, I don't know.

Q. Did Mr. Yates describe this man before this? A. Yes, he had described him.

Q. And with that description you still were not sure. Did you inform Mr. Yates he was intoxicated? A. Yes.

Q. Did he say at that time he had had some drinks? A. Yes.

Q. That made you more leery of any identification? A. Yes, sir.

Q. Did you advise Mr. Parrigan in the club, in the restaurant while you were seated that a phone call had been made and in a few minutes somebody would be there to identify him? A. No, sir. I didn't make no phone call.

Q. Do you know where Mr. Yates ever seen you in the presence of Mr. Parrigan? A. He did that night.

Q. You didn't leave him along and roam around and drink coffee or— A. No, sir. When he walked in I said, "Can you identify the man that knocked you in the head." He went in the left hand room

first. A lot of people was shooting pool and come in the other and three or four were sitting in the booth and I believe he was at the counter and he pointed at Parrigan and he said, "There is one that helped rob me."

Q. You were drinking coffee at the time? A. Yes.

Q. Did he pass the defendant Parrigan and go to the other [11] room first? A. No. Mr. Parrigan was to the right in another room. He would have gone left-handed.

Q. Did he pass him at any time? A. No.

Mr. Kuczko: That's all.

Cross Examination By Mr. Shepherd:

Q. Did you participate in the investigation for this robbery from the very beginning? A. Yes.

Q. Did you see Mr. Yates right after he had been brought into town by the Sheriff? A. I did.

Q. I believe this occurred on the night of February 14th, is that correct? A. Yes.

Q. The Sheriff's Office was advised as to where he was on that Saturday morning, the 15th. Is that correct? A. Yes, sir.

Q. The warrant indicates it was issued on February 17th. Did this identification take place the same date? A. Yes.

Q. That was about two days after you began investigating this offense? A. Yes, I guess so.

Q. As a result of this, with your conversation with Mr. Yates, did you have occasion to go to the Club 83 to conduct an investigation as to who may have committed the robbery? [12] A. Yes.

Q. As a result of that, did you obtain information that led to Mr. Parrigan? A. Yes.

Q. What sort of information was that? A. That three boys had been there. One of the boys had just got out of the Bland County Farm the day this took place.

Q. Was any other people from Dickenson County that just had been released from the Bland County Farm? A. No. He was the only one that was there.

Q. I believe you indicated on direct examination that you didn't execute the warrant on Mr. Parrigan as soon as you saw him because you wanted to get the right man? A. That's right. I wanted to get him identified first.

Q. By going through this identification process it might have been possible that Mr. Parrigan might have been released if he had not been identified? A. Yes, because I didn't have him under arrest.

Q. As a result of this identification you determined whether or not the warrant would be executed on Mr. Parrigan? A. That's right.

Q. You were just as interested of an innocent man being cleared as you were to get the right man? A. I wanted to see him punished if he was the man. If he wasn't I didn't. That is the reason I took him.

Q. If he had not been identified you wouldn't have executed the warrant? A. No, sir, I wouldn't.

[13] Q. Did Mr. Parrigan go with you voluntarily? Did you tell him he had to go? A. No. I asked him if he wanted to ride to Haysi with me.

Q. He indicated that he would; that he didn't have anything to fear? A. That's right. That he had not been down there.

Q. At the point when Mr. Yates identified Mr. Parrigan, was there any hesitation on his part or was it a fairly quick process once he saw him? A. He went in the back room and come and looked at the boys on the right and then said, "Right there is one of them," and that was Archie Parrigan.

Q. As a result of your investigation, did you determine that Mr. Yates had seen the persons involved on the night this occurred, had he been with these people long enough to get a good look at all of them? A. Yes. Because he had rode from Haysi. They come up the new highway to Clinchco, from there through this way to Clintwood and out 72 and back over on Honey Camp.

Q. Before you took Mr. Parrigan to Club 83, did other persons there indicate that Mr. Parrigan or someone who had been at the Bland Farm was one of them that had been with Mr. Yates on the night in question? A. Well, I don't know where he was with him that night or not. They were there all together, the people that run the place.

Q. Were other people at Club 83, employees that indicated one was from the Bland County Farm? A. Yes.

[14] Redirect Examination By Mr. Kuczko:

Q. Mr. Stanley, a warrant was issued. Who swore out that warrant and alleged certain facts or possible cause to arrest Mr. Parrigan? Did you swear it out, the high sheriff or Commonwealth's Attorney? Someone had to swear it out that Mr. Parrigan was one of the defendants that robbed Mr. Yates. A. I believe I did.

Q. You swore out a warrant before a Justice of the Peace and if Mr. Yates didn't identify him you would not have executed it? A. No, sir.

* * *

**Testimony of Emanuel O'Quinn**

Direct Examination By Mr. Kuckzo

[20] * * *

Q. Please tell the Court your name, address and occupation. [21] A. Emanuel O'Quinn, Haysi, Virginia, restaurant operator.

Q. Do you operate this Club 83 at Haysi? A. Right.

Q. Were you present on the date that Deputy Sheriff, Julius Stanley, brought a prisoner or Archie Parrigan up there? A. Yes, sir.

Q. What were you doing at the time, Mr. O'Quinn? A. As usual, waiting on the customers.

Q. The place was open for buisness at that time? A. Yes.

Q. Did you know that Mr. Stanley was bringing Mr. Parrigan to your place? A. No.

Q. After he arrived, was any phone call made to Mr. Yates from your establishment? A. No.

Q. My information was that some calls were made. You don't know anything about phone calls? A. It is a public phone in my place of business. He could have possibly made a call and I would not have known anything about it.

Q. You knew Mr. Yates? A. Yes, sir.

Q. Did you see Mr. Yates when he arrived? A. Yes.

Q. Was that subsequently after Mr. Stanley and Mr. Parrigan come in? A. Yes, sir.

[22] Q. Did you know what was taking place or what was going on? A. No, I didn't at the time.

Q. Did Mr. Stanley place Mr. Parrigan in a booth or what took place? A. They sat and drank—he might have drank a coke and Mr. Stanley a coffee. I don't believe he was sitting in a booth when Mr. Yates came in.

Q. Mr. Stanley or Archie? A. I don't know where they were sitting in a booth together at the time.

Q. Did you ever see Mr. Parrigan sitting alone in a booth and no one else? A. I don't recall.

Q. Did you see Mr. Yates make any identification of any kind of Mr. Parrigan? A. He walked by the booth and he did tell Mr. Stanley that was one of the boys.

Q. And he was the only one in the booth then? A. I believe he was then.

Q. Did Mr. Stanley immediately arrest him? A. Yes.

Q. He had a warrant and gave a copy of it to him? A. And handcuffed him and read his rights to him.

Q. Mr. Stanley and Mr. Parrigan came into the restaurant together. You don't know where Mr. Yates was—whether he was in a car outside? A. It was sometime later before Mr. Yates came in.

[23] Q. Did they do any such procedure in the restaurant with either of the other two men? A. No, sir.

Cross Examination By Mr. Shepherd:

Q. You didn't testify at the trial, did you? A. No, sir.

Q. Did you know anything else about this offense other than—A. No, sir.

* * *

**Testimony of Earl O'Quinn**

Direct Examination by Mr. Kuczko

[23] * * *

Q. Is your name Earl O'Quinn? A. Yes.

Q. Where do you live? A. Haysi.

Q. What relation are you to Emanuel? A. Brother.

Q. What is your occupation? A. Cab driver.

Q. On this particular day when officer Stanley was in your brother's restaurant, did you bring Mr. Yates in your taxicab to the restaurant? A. I sure did.

Q. Was that pre-arranged? [24] A. I got a phone call asking me to pick him up.

Q. Where did you have to go to get Mr. Yates? A. He was in Buchanan County.

Q. You brought him to the restaurant? A. Yes, sir.

Q. Did you see Mr. Parrigan and Officer Stanley there? A. When we came in there was several people there and Mr. Stanley was over about the bar and I just walked on through and didn't pay much attention.

Q. Did you have any idea what was going on? A. No.

Q. Did you know that Mr. Yates was supposed to identify somebody? A. No, I didn't.

Q. Did you see him make the identification? A. No.

Q. But you did see Mr. Stanley place Parrigan under arrest? A. I seen him put the handcuffs on him.

Q. And got him out and very quick? A. And took him on out.

Q. What does Mr. Yates do? Is his a coal miner? A. He is a coal miner.

Cross Examination By Mr. Shepherd:

Q. Mr. O'Quinn, you testified in the trial regarding the circumstances on the night of the robbery? A. Yes.

Q. You were present at the Club that evening? [25] A. Yes.

Q. Prior to this incident, had you talked to the Sheriff's Department regarding what occurred on the night of the robbery? A. Yes.

Q. I believe you mentioned something about Mr. Parrigan being there on that night and having been to the Bland Farm? A. He was in there and said that he had just got off.

Q. And I believe he sent the good wishes of somebody else there? A. A Coleman boy and somebody else.

Q. Had you given information to the Sheriff's Office prior to the identification by Mr. Yates? A. Yes.

Q. Had anyone else given information in your presence—do you recall? A. Yes. A Mullins girl told them the same thing. She was a witness.

Q. And both of you indicated to the Sheriff's Department that Archie Parrigan had been there that night? A. Yes.

Redirect Examination By Mr. Kuczko:

Q. You understood on the night of the robbery that very same morning that Archie Parrigan had been released from custody from Bland County Farm? A. He was sitting in the back booth and he said that Lonnie Coleman and someone else had sent their wishes.

* * *

**Testimony of Archie Allen Parrigan**

Direct Examination By Mr. Kuczko:

[26] * * *

Q. Please state your name and address? A. Archie Allen Parrigan, Convict, State Road Camp, Unit 28.

Q. You are the petitioner in this Writ of Habeas Corpus? A. Yes, sir.

Q. I believe the record will show you were convicted by a jury on June 18, 1968? A. Yes, sir.

Mr. Shepherd: I believe, for the record, it is 1969.

Mr. Kuczko: Yes. You were sentenced to twenty years?
A. Yes, sir.

Q. You have been confined ever since that date? A. Yes.

Q. You had a Court appointed counsel on that indictment charge? A. Yes, sir.

Q. Had you just returned from the Bland County Farm the same day of this alleged robbery by Mr. Yates? A. Yes.

Q. That morning? A. Yes, sir.

[27] * * *

Q. Just tell where Officer Stanley, the Deputy Sheriff, contacted you here in Clintwood and what happened. A. I was inside the City Cafe talking to my brother, Kenneth Parrigan. He was getting ready to go to work and Mr. Stanley came to the door and Mr. Stanley asked me to go to Haysi, a little trouble over there and he would like to get it straightened out. I first asked what we were going for and he said there had been a little trouble a couple nights back and he would like to get it straightened out.

Q. You were on the main street in Clintwood, out in public, not hiding or anything? A. I was inside this public place with my brother. He could have seen me from his car.

Q. You were not hiding? A. No, sir.

Q. You did go then fifteen miles approximately to Haysi? A. Yes, sir.

[28] Q. You heard Mr. Stanley testify. Did he advise you of anything going to Haysi? A. No. For a little while we didn't talk and I asked what happened and he said a robbery and that I should know and I would find out and there wasn't too much conversation and me and him went in this place. He offered to buy me a drink. I don't think I drank anything.

Q. Would it look obvious to anybody you were with him—a prisoner in his custody? A. I sat there until he give the word. He said, "Let me go in here." I got out and waited on him. We both went in together. He didn't have hold of me and we sat down in a booth, him on one side and me the other and he said, "It will be a few minutes."

I think I played the juke box. In a few minutes Mr. Yates come in. There was two rooms. I was facing the door to the right. He walked in by us and Mr. Stanley got up and showed him he was present and they walked back to where I was at and he said, "This is one of them here that robbed you." Mr. Stanley said that.

Q. What did Officer Stanley say? A. He said, "This is one of them here, isn't it," and Mr. Yates said, "Yes."

Q. You heard the officer address Mr. Yates? A. He got up and greeted him. I don't know where he shook hands or not, but he let him know he was present.

Q. What did Mr. Stanley do then? A. He told me to get up and said, "You are under arrest." He placed handcuffs on me and read my constitutional rights.

[29] Q. Did everything sorta stop in the restaurant? A. They were looking around.

Q. Outside he placed the handcuffs on you? A. It was just a step or two out the door.

Q. It was then he read the card to you? A. Yes.

Q. The car door was open and you were starting to get in the car. Were you taken to a Justice of the Peace immediately? A. No, I was placed in jail.

* * *

Q. Where did Officer Stanley take you? A. We got in the car and he took me to the Clintwood jail and I stayed there until I made a phone call. My father came and bonded me. I think I was fingerprinted while I was there.

Q. Do you know under what circumstances Delmar Whisenhunt was called as a witness in your trial? A. Because he was present. He was there and charged with the robbery. I don't know where he did it or not. I know I didn't.

Q. Were you the first of the three defendants tried? A. Yes, sir.

Q. Did your attorney, Mr. Phipps, know of this procedure involving the arrest, being taken from Clintwood to Haysi? A. I don't

know. I didn't mention it. I didn't know it was illegal until I got to reading the law books up there.

[32] * * *

Cross Examination By Mr. Shepherd:

Q. Mr. Parrigan, what statement did Officer Stanley make to Mr. Yates? A. He got up and greeted him. He walked over to the bar and the door is in front of the bar. They talked a few minutes. I don't know where they went in another room or not. They come to where I was at and Mr. Yates looked at me in the booth and I am almost positive he said, "Isn't this one of the boys," something like that. Mr. Yates said "Yes," and he put me under arrest.

Q. Would it be more accurate to say his statement was "does this look like the man"? A. Yes, sir.

Q. Rather than "Isn't this one of the men." You had not been placed under arrest prior to that time? A. No, sir.

Q. When you left Clintwood and went over to Haysi you didn't have handcuffs on you. Did Mr. Stanley ever tell you that you couldn't leave? [33] A. He didn't exactly say it, but everything looked that way.

Q. You got out of the car first? A. Yes. He said, "We will go in here and wait awhile." I waited.

Q. He didn't stay in the booth all the time? A. He sat there and ordered up drinks.

Q. I believe you testified that when Mr. Yates came in Mr. Stanley went over and talked with him? A. He got up and went over to the bar when Mr. Yates came in the door, but they met each other as quick as he come in the door.

Q. You filed a petition and signed it February 8th, this year? A. Yes.

Q. Did you read that petition before you signed it? A. I was the one that typed it.

Q. I believe you said, "We sat in a booth at "Club 83," and Mr. Stanley offered to buy me a drink. About fifteen minutes later, a man

whom I had never seen before walked up to the booth, and Mr. Stanley got up to greet him, shook hands, etc. while I remained in the booth alone. They then turned to me, sitting alone in the booth, and Mr. Stanley said, "does this look like the man." The stranger said "yes." Does that seem accurate? A. It's close to it.

Q. You didn't say anything here about "walking off together." A. They didn't. They were at the bar.

[34] Q. You say here "Mr. Yates came to the booth." A. He come in the door.

Q. And you say "Here is a man whom I had never seen before walked up to the booth and Mr. Stanley got up to greet him." A. No, but I could reach out and touch him.

Q. Now, you are saying he walked to the bar instead of the booth? A. The booth is next to the bar. You can about reach up and touch it.

Q. You could have heard anything that was said? A. It was pretty noisy.

Q. Mr. Yates was hard of hearing, wasn't he? A. I don't know.

Q. You don't recall the fact that it was necessary—where Mr. Yates said he worked so much on a cutting machine he was deaf and the attorney had to stand next to him? A. He might have.

Q. After this identification was made you were placed under arrest? A. Yes.

[36] * * *

The Court: Mr. Stanley was in uniform at the time?
A. Yes.

[37] Q. Did you know at that time he was an officer? A. Yes, sir, I did.

* * *

**Testimony of A. M. Phipps**

Direct Examination By Mr. Kuczko:

Q. Please state your name and address and profession? A. A. M. Phipps, Clintwood, Virginia.

Q. Were you practicing law back in June 1969? A. Yes.

Q. Were you appointed to represent Archie Parrigan in County Court and Circuit Court of Dickenson County? A. Yes. County Court and Circuit Court.

Q. Do you know what date you were appointed and commenced representing Mr. Parrigan from the date of the alleged offense? A. No, sir, I don't. The records will show.

The Court: February 18, 1969.

Q. When you were appointed, was Mr. Parrigan out on an appearance bond? A. I would say that he was when I was appointed in the Circuit Court, but I am not sure about the other.

Q. You cannot recall if you interviewed him at any time in the jail? A. I don't have any remembrance whether it was in or out.

[40] * * *

Q. Did he ever mention anything to you about this identification procedure that had taken place? A. You mean about the officer taking him down there?

Q. Yes. A. I don't recall about that.

* * *

**Testimony of Kenneth Parrigan**

Direct Examination By Mr. Kuczko:

Q. Tell the Court your name and address. [41] A. Kenneth Parrigan, Clintwood, Virginia.

Q. What is your occupation? A. Coal mine electrician.

Q. What relation are you to Archie? A. Brother.

Q. Were you present the date that Mr. Stanley took your brother, Archie, to Haysi? A. Yes, I was.

Q. Just tell the Court what happened. A. I started to work and stopped in the City Cafe and drank a coke. My brother was in there. When I went in he was sitting there, and Julis came to the door and told him to come on he wanted him to go to Haysi. I took it then he

was under arrest. I drive through Haysi going to work. I came on out the door and followed them and they went to Club 83.

Q. What kind of car was Mr. Stanley driving? A. A white car.

Q. Any identification marks that it was an officer's car? A. It was marked.

Q. Anyone observing would know— A. You would take it a man was under arrest.

Q. Where did your brother sit in the car, front or back? A. I don't recall that.

Q. You didn't go to Haysi? A. I drove right to Haysi by the Club 83 where they were sitting.

Q. You didn't go in? A. I didn't go in. I was running late for work.

[42] Q. Did you know that Deputy Sheriff Stanley had a warrant in his pocket at that time? A. No. He didn't serve any warrant when he come in and got him. I couldn't understand it.

Q. Your brother was not trying to hide? A. He was sitting there with me when he came in and got him.

* * *

**Testimony of Rufus Hawkins Yates**

Direct Examination By Mr. Shepherd:

Q. Would you state your name, address and occupation? A. Rufus Hawkins Yates.

Q. Where do you live? A. In Buchanan County.

Q. And your occupation? A. A miner.

Q. You are the victim in this case involving Archie Allen Parrigan. Is that correct? A. Yes.

Q. You had been robbed on the night of February 14th? A. I sure was.

Q. You testified in the trial, did you not? A. Yes.

Q. At that trial you were asked if you saw any of the three

persons at the Club 83 that took you out in the Courtroom. Is [43] that correct? A. Yes.

Q. Who did you identify? A. Archie and that one over there and that one right there (indicating).

Q. When this trial was conducted in the Courtroom, you did point to Archie Parrigan as one of them? A. Yes.

Q. Why did you point to him? A. He is the one that knocked me in the head.

Q. Can you state whether or not you could identify them? A. Yes, because they hauled me off and knocked me in the head.

Q. Did you have any question of it? A. No.

Q. How long were you with him and the other two that was with you? A. They hauled me from Haysi over here and knocked me in the head. I never got over here until the next morning.

Q. About how long had you been with them? Do you know? A. Not too long.

Q. Did you get a good look at him? A. Yes, sir, I took a good look at him.

Q. When you testified June 18, 1969, you identified Archie Allen Parrigan because he was one of those that robbed you? A. Yes, sir.

Q. And you had no question about it at that time? A. No.

[44] Q. Any question now? A. No, sir.

Cross Examination By Mr. Kuczko:

Q. Mr. Yates, you admitted at the trial of Archie Parrigan that you had five or six beers while you were in the restaurant? A. That's right. Sure did.

Q. Those five or six beers don't bother you one bit? A. No.

Q. How many does it take to affect you? A. I don't know. Never did drink that many.

Q. Does it affect you before you know it? A. No.

Q. Lose count? A. No, sir.

Q. Where was Archie Parrigan seated in this car when you all left the restaurant? A. I was sitting right over there close on the other side of Clintwood.

Q. Who was driving the car? A. That boy. (Indicating).

Q. Delmer Whisenhunt? A. Yes, sir.

Q. Where were you sitting? In the back? A. Yes.

Q. And Benny Strouth was with you in the back? A. Yes.

Q. And Parrigan was next to the driver in the front? [45] A. Yes.

Q. Who was it that told you twice to get out? A. Him and him got out first. He walked around the front end of the car. When he did that it was after dark. I can't tell you which one knocked me in the head—before I got out and I got straight one whacked me around the side of the head.

Mr. Shepherd: I would like for the record to reflect that when he was saying 'him' he was pointing at the petitioner, Archie Parrigan.

Q. Does it say on Page 15—you say you don't know where he got out on the opposite side or followed you out? A. He got out after.

Q. But you don't know where it was the opposite side or followed you out? A. Yes.

"Q. And the boy was in the car when you started to get out?" "A. Yes."

'Q. But he did get out"? "A. Yes, sir."

"Q. How long was it after you got out until you were hit?" "A. Honey, I just got my feet on the ground and straightened up."

A. (Witness) That's right.

Q. Now you are saying he walked on around the front of the car and you said, "Honey, I just got my feet on the ground and straightened up." Is this what you said in Archie Parrigans' trial? A. Yes. I don't remember where I got plumb straight or not.

[46] Q. You say this Parrigan was just getting at the front of the car. A. When he pulled in stopped the driver got out. Archie got out next and walked around to the front end of the car.

Q. Which was the closest to you?

* * *

Q. How did you know to go to Club 83 at Haysi the same time the Sheriff brought Mr. Parrigan there? A. You see I just got in there from work. I was waiting on Earl to come in and take me home. He drove a cab.

Q. How did you know to go to Club 83? A. Earl lived there at the time.

The Court: He is talking about the first time.

Q. I am talking about the second time to identify. A. Earl come to Harman and said they wanted me at Club 83. He come over there with him and got him to take me back.

Q. And Earl told you the Sheriff was there and had one of the boys there and wanted you to identify him? A. I don't know what they told Earl or not.

Q. But you knew the Sheriff had someone there for you to identify? A. He asked me if he caught anybody could I identify him and I said, "Yes."

Q. And they told you the Sheriff had somebody and Earl took you in the taxi? [47] A. Yes.

Q. And you talked to Deputy Stanley when you got there? A. Yes. What he done when I come in there he said "is anybody in the back room there that you can identify that knocked you in the head. I walked to the door and said, "No," and he said, "Any in this room," and I said, "Yes, that fellow right there."

Q. Did Mr. Stanley tell you that he had one over in the booth sitting over there? A. No.

Q. You didn't know he was with Mr. Stanley? A. No.

Q. Was anybody else sitting with Mr. Parrigan? A. No.

Q. Were you with Mr. Stanley when you pointed at Archie Parrigan? A. Yes, him and Archie was sitting in a booth. I was sitting on the other side.

Q. So Mr. Stanley and Archie was sitting there in a booth? A. Yes.

Q. And the officer was in a uniform, that pretty uniform like a Sheriff wears? A. Yes.

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