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SUPREME COURT OF VIRGINIA
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APPENDIX

730370

IN THE SUPREME COURT OF VIRGINIA

MALCOLM MARVIN JEFFERSON — Appellant

versus

COMMONWEALTH OF VIRGINIA — Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF POWHATAN

February 8, 1972

The grand jury charges that:

On or about November 22, 1971 in the County of Powhatan MALCOLM MARVIN JEFFERSON did feloniously kill Raul Mederires Monte against the peace and dignity of the Commonwealth.

Va. Code 53-291
53-291 (1)

A True Bill

Charles M Hogg
Foreman

Upon the evidence of A. E. Hillman and E. M. Lloyd, witnesses sworn in open Court and sent to the Grand Jury to give evidence.

W E Mayo
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF POWHATAN ON THE 1ST DAY OF DECEMBER, 1972.

2

COMMONWEALTH

vs.

MALCOLM MARVIN JEFFERSON

FELONY
(Murder)

This day came again the Attorney for the Commonwealth and Malcolm Marvin Jefferson and came also V. Cassell Adamson, Jr., his attorney of his own choosing.

This trial having begun on November 30, 1972, and continued to the 1st day of December, 1972, and it being determined that all of the jurors, and the alternate, were present; the Court examined the jurors and alternate as to whether they had read, heard, seen or discussed any matters concerning this case, and each answering in the negative, the trial was ordered to proceed.

The Court and jury heard the additional evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the court to strike the Commonwealth's evidence, which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted.

After hearing the evidence, the instructions of the Court and arguments of counsel, the alternate juror was excused, and the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open Court, reading:

> We, the jury, find the accused guilty as charged in the indictment and fix his punishment at death.

s/ D. S. Rose, Jr.

The attorney for the defendant then moved the court to set aside the verdict, which motion was overruled and exception was noted.

The court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the court finds the defendant guilty as charged in the indictment and sentences the defendant to death, according to law, and doth set the date of execution of said sentence to be May 2, 1973.

After pronouncing sentence, the court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and of his right to proceed in forma pauperis and to have the assistance of court-appointed counsel, at which time the defendant expressed his desire to petition for an appeal and the Court doth appoint V. Cassell Adamson, Jr., to assist in the appeal.

At all times during the trial of this case the defendant and his counsel were present.

The defendant is remanded to the Virginia State Penitentiary, from whence he came.

A COPY:

1/2/73

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V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRIGNIA

vs.

MALCOLM MARVIN JEFFERSON

NOTICE OF APPEAL

AND

ASSIGNMENTS OF ERROR

To: William E. Maxey, Clerk
Powhatan Circuit Court
Powhatan, Virginia

The defendant, Malcolm Marvin Jefferson, gives Notice of Appeal from the judgment of the Court rendered herein on the indictment of December 1, 1972, and assigns the following errors as required by Rules of Court 5:1 Section 4:

1. The trial Court erred in denying defendant's motion to quash the indictment because the only punishment provided for upon conviction is the death penalty and such penalty constitutes cruel and unusual punishment under the Constitution of the State of Virginia and the Constitution of the United States.

2. The trial Court erred in denying the defendant's motion for a change of venue to conduct the intended trial in a courtroom other than the location where the alleged offense occured.

3. The trial Court erred in denying defendant's motion to empanel a jury from a distant county to try the case due to local hostility and prejudice existing in Powhatan County subsequent to the alleged crime against the defendant and about the alleged offense.

4. The trial Court erred in not granting defendant's motion to empanel a jury from a distant county or area in Virginia to try the case due to widespread gossip and other information circulating among Powhatan County residents concerning the alleged crime.

5. The trial Court erred in denying defendant's motion to empanel a jury from another county or area of Virginia due to widespread prejudice and rumors circulating in Powhatan County concerning the alleged crime. See trial transcript for November 30, 1972 page 3, line 15 through 19.

6. The trial Court erred in denying defendant's motion for a change of venue to try the case in a courtroom other than the scene of the alleged crime. See trial transcript for November 30, 1972, page 3, line 23 through 24.

7. The trial Court erred in denying defendant's motion for a continuance to conduct tests for a mental examination to determine if defendant was responsible for his actions at the time of the alleged crime and whether he was capable of standing trial and assisting with his defense. See trial transcript November 30, 1972, page 4, line 1 through 24; page 1, lines 1 through 3. NOTE: Although a mental examination was made in May or June of 1972, the trial occured in November and December of 1972 and defendant's counsel was concerned that defendant's mental condition may have been altered during the intervening period.

8. The trial Court erred in trying the defendant under Section 53-291 of the Code of Virginia as the only penalty provided for upon conviction is the death penalty and the death penalty constitutes cruel and unusual punishment under the Constitution of Virginia and the Constitution of the United States. See trial transcript November 30, 1972, page 5, lines 4 through 9.

9. The trial Court erred in denying defendant's motion to quash because the Commonwealth had an election to prosecute the defendant under Section 53-291 of the Code of Virginia with a mandatory death penalty or to prosecute the defendant under Title 18 of the Code of Virginia for the crime of

murder which is not punishable by death upon conviction. Furman v. Georgia recently decided by the United States Supreme Court held the optional death penalty is unconstitutional due to a discrimination element and it is submitted that so long as the alternative right exists to prosecute defendant under Title 18 where the death penalty cannot be imposed or Section 53-291 where the death penalty is mandatory constitutes an election on the part of the Commonwealth's Attorney hence making prosecution under Section 53-291 invalid. See trial transcript November 30, 1972, page 5, lines 13 through 24, page 6, lines 1 through 18.

10 The trial Court erred in denying defendant's motion to quash because he was not given a speedy trial as requested under the United States Constitution. See trial transcript November 30, 1972, page 6, lines 19 through 24, page 7, lines 1 through 24, page 8, lines 1 through 4.

11. The trial Court erred in denying defendant's motion for a change of venue to conduct the trial in another county. See transcript for November 30, 1972, page 8, lines 9 through 20.

12. The trial Court erred in not granting defendant's motion to empanel a jury from a distant county or area in Virginia to try the case. See trial transcript for November 30, 1972, page 8, lines 15 through 21.

13. The trial Court erred in trying the defendant under Section 53-291 when at the time of the alleged crime, defendant was in the custody and care of the Powhatan Sheriff's Department and not in the custody and care of decedent or any guard of the Virginia penal system once he had been removed from the prison truck and taken inside the courtroom to await trial.

14. The trial Court erred in using the venire presented on November 30, 1972 when said venire was not representative of the population of Powhatan County in that it contained a disproportionately small percentage of Negroes and women. See trial transcript for November 30, 1972, page 20 lines 13 through 24, page 21 through 24, lines 1 through 4.

15. The trial Court erred in refusing to allow defendant to question prospective jurors whether their children attended private school and if so the reasons therefor. See trial transcript for November 30, 1972, page 34, lines 16 through 24, page 35 and 36 and 37, lines 1 through 22.

16. The trial Court erred in refusing to strike juror Goom for cause due to his inquiries made to witnesses about the alleged crime and his general knowledge of the situation. See trial transcript for November 30, 1972 page 57, lines 8 through 18.

17. The trial Court erred in introducing a photograph depicting guard Snider's supposed condition after the alleged crime when said picture was of no probative value to the case. See trial transcript for November 30, 1972 page 130, lines 6 through 24 and page 131, line 1.

18. The trial Court erred in introducing a picture supposedly depicting the condition of Guard Snider after the alleged crime without establishing a proper chain of evidence. See trial transcript for November 30, 1972 page 131, lines 8 through 24 and page 132 lines 1 through 7.

19. The trial Court erred in allowing admission of unretouched photographs showing the location of decedent outlined on floor without proper foundation. See trial transcript for December 1, 1972 page 19, lines 10 through 25, page 20, lines 1 through 25, page 21, lines 1 through 20.

20. The trial Court erred in not declaring a mistrial when the Commonwealth's Attorney put on a demonstration supposedly showing how handcuffs could be opened easily when the cuffs involved in demonstration were admittedly supplied by the Commonwealth Attorney's office were defective and had been modified to make opening easier. See trial transcript for December 1, 1972 page 24, lines 10 through 25, pages 25 and 26 and page 27, lines 1 through 19.

21. The trial Court erred in introducing photographs showing bullet hole in door to Judge's chamber without proper foundation and without evidence establishing the location of the door at the time the bullet hole was made.

See trial transcript for December 1, 1972, page 53, lines 23 through 25, page 54, 55, 56, 57 and 58, lines 1 through 5.

22. The trial Court erred in allowing testimony concerning the position of Captain Netherland in the courtroom at the time he fired at defendant and the other inmate. See trial transcript for December 1, 1972, page 62, lines 21 through 25, page 63, lines 1 through 6.

23. The trial Court erred in not granting a mistrial for testimony from Dr. Jordan concerning the closeness of the weapon inflicting a bullet hole in a body which was admittedly beyond his expertise. See trial transcript for December 1, 1972 page 88, lines 13 through 25, page 89 and page 91, lines 1 thorugh 16.

24. The trial Court erred in introducing a convict's shirt for the purpose of establishing color without a proper chain of evidence establishing the shirt introduced as that worn by the defendant. See trial transcript for December 1, 1972 page 100 lines 4 through 25, page 101 and page 102, line 1.

25. The trial Court erred in the introduction of the wallet with the papers in it belonging to the decedent without proper foundation and for lack of probative value. See trial transcript for December 1, 1972 page 107, lines 13 through 25 and page 108.

26. The trial Court erred in not allowing defendant's motion to strike the Commonwealth's evidence after conclusion of the Commonwealth's case. See trial transcript for December 1, 1972 page 144, lines 17 through 25, page 145 and page 146, lines 1 through 2.

27. The trial Court erred in not giving defendant's instruction as follows: "The trial Court instructs the jury that if Washington or some other person in a planned escape attempt killed the decedent, the defendant will be found not guilty." See trial transcript for December 1, 1972 page 153, lines 21 through 25 and page 154, lines 1 through 13 and lines 20 through 25 and page 155, line 1.

28. The trial Court erred in permitting an instruction as follows: "The Court instructs the jury that if you believe beyond a reasonable doubt that the accused, Malcolm Marvin Jefferson, by himself or with another planned to escape and in pursuance with such plan and during such plan or attempt escape Captain Raul Mederires Monte was killed by the accused, Malcolm Marvin Jefferson or James Edward Washington, then you will find him guilty of murder."

29. The trial Court erred in not allowing defendant's motion to strike after conclusion of all evidence. See trial transcript for December 1, 1972 page 155, line 25 and page 156, lines 1 through 12.

30. The trial Court erred in not setting aside the verdict on motion made by defendant. See trial transcript for December 1, 1972, page 162 lines 23 through 25 and page 163, lines 1 through 10.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing Notice of Appeal and Assignment of Error was delivered to the Commonwealth's Attorney, Jose Davilla, Jr. this 2nd day of January, 1973.

_____
V. Cassel Adamson, Jr.

11/29/72

9

V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

vs.

MALCOLM MARVIN JEFFERSON

MOTION

Comes now the defendant, Malcolm Marvin Jefferson, by counsel, and states to this honorable court that he does not believe he can obtain a fair trial before a jury obtained from Powhatan County residents.

WHEREFORE, the defendant, Malcolm Marvin Jefferson, by counsel, moves this honorable court to require a jury be impounded from a distant region of the State of Virginia and to be used in any trial against him under the indictment charges.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing motion was delivered this _____ day of November, 1972 to Jose Davilla, Special Prosecutor, City Hall, Richmond, Virginia and the honorable James B. Wilkinson, Hustings Court for the City of Richmond, City Hall, Richmond, Virginia.

_____
V. Cassel Adamson, Jr.

11/29/72 10

V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

vs.

MALCOLM MARVIN JEFFERSON

MOTION FOR CONTINUANCE

Comes now the defendant, Malcolm Marvin Jefferson, by counsel, and moves this honorable Court to grant a continuance on the trial of the case for the indictment currently pending against him for the following reasons:

1. That at the time of the offense alleged the defendant was legally insane and not responsible for his actions.

2. That notwithstanding the allegations of paragraph one (1) and alternatively that subsequent to the alleged crime, the defendant has become legally insane and not responsible for his actions.

3. That notwithstanding the allegations of paragraphs one (1) and two (2) and alternatively presented, defendant is incapable of assisting in the defense of this case by reason of insanity.

WHEREFORE, your defendant, Malcolm Marvin Jefferson, by counsel, hereby demands that a continuance be allowed so determination can be made whether the defendant is legally capable to stand trial and is able to assist with his defense.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing Motion for Continuance was delivered this 27th day of November, 1972 to Jose Davilla, Special Prosecuto

City Hall, Richmond, Virginia and to the honorable James B. Wilkinson, Hustings Court for the City of Richmond, City Hall, Richmond, Virginia.

V. Cassel Adamson, Jr.

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V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

vs.

MALCOLM MARVIN JEFFERSON

MOTION FOR A CHANGE OF VENUE

Comes now the defendant, Malcolm Marvin Jefferson, by counsel, and states to the honorable court that he does not believe that he can obtain a fair trial in the Circuit Court of Powhatan County and therefore moves this honorable court to grant him a change of venue in accordance with the provisions of Section 19.1-224 of the Code of Virginia as amended.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for a Change of Venue was delivered this ____ day of November, 1972 to Jose Davilla, Special Prosecutor, City Hall, Richmond, Virginia and the Honorable James B. Wilkinson, Hustings Court for the City of Richmond, City Hall, Richmond, Virginia.

_____
V. Cassel Adamson, Jr.

13

10/11/72

V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

vs.

MALCOLM MARVIN JEFFERSON

MOTION TO QUASH

Comes now the defendant, Malcolm Marvin Jefferson, by counsel, and moves this honorable court to quash and dismiss the indictment pending against him upon the basis that Section 53-291 of the Code of Virginia under which the indictment is brought is unconstitutional, in that the only penalty provided for upon conviction is the death penalty and such penalty consitutes cruel and unusual punishment under the Constitution of the United States as recently interpreted by the United States Supreme Court and that such penalty further constitutes cruel and unusual punishment under the Constutition of the State of Virginia.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Quash was delivered this 9th day of October, 1972 to Jose Davilla, Special Prosecutor, City Hall, Richmond, Virginia and Honorable James B. Wilkinson, Hustings Court for the City of Richmond, City Hall, Richmond, Virginia.

_____
V. Cassel Adamson, Jr.

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V I R G I N I A :

IN THE CIRCUIT COURT OF POWHATAN COUNTY

COMMONWEALTH OF VIRIGNIA

vs.

MALCOLM MARVIN JEFFERSON

MOTION TO QUASH

Comes now the defendant, Malcolm Marvin Jefferson, by counsel, and moves this honorable court to quash and dismiss the indictment pending against him upon the basis that the Commonwealth in having an election to prosecute the defendant under Section 53-291 of the Code of Virginia as has been done with the only penalty provided for upon conviction is the death penalty or to prosecute the defendant under Title 18 of the Code of Virginia for the crime of murder which is not punishable by death upon conviction pursuant to Furman vs. Georgia recently decided by the United States Supreme Court as an element of discrimination exists wherein the death penalty is optional with lesser punishment. As a similar alternative exists in this case Furman vs. Georgia makes unconstitutional any further proceeding under an indictment where no other punishment is provided than the death penalty.

MALCOLM MARVIN JEFFERSON

By_____
Of Counsel

V. Cassel Adamson, Jr.
Crozet House
100 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing Motion to Quahs was delivered this 10th day of October, 1972 to Jose Davilla, Special Prosecutor, City Hall, Richmond, Virginia and the Honorable James B. Wilkinson, Hustings Court for the City of Richmond, City Hall, Richmond, Virginia.

_____
V. Cassel Adamson, Jr.

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CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 22 1974
RICHMOND, VIRGINIA

Transcript of May 26, 1972

(3)-4)

BY THE COURT:

Q. This is Malcolm Marvin Jefferson?

Mr. Adamson: Right, Your Honor.

Q. All right, you've filed three motions, Mr. Adamson?

A. I have.

Q. All right, the one on the Constitution as that penalty being cruel and unusual, the court, under the law now of this State, will overrule those. Refuse the continuance based on what the Supreme Court of the United States might do.

A. Well, Your Honor, note the exception to both of your rulings.

Q. Okay. Now on the change of venure.

A. Your Honor, on this motion of change of venue, I'd like to call Mr. Lewis to the stand.

DIRECT EXAMINATION

of

(5) Thomas R. Lewis

BY MR. ADAMSON:

Q. What is your occupation?

A. Attorney.

Q. How long have you been practicing?

A. Since January.

Q. 19--

A. Seventy-two.

Q. How long have you been a resident of Powhatan County?

A. Since September of 1971.

Q. And is your brother also an attorney and resident of Powhatan County?

A. Yes, he is.

Q. How long has he been practicing?

A. Ten years.

Q. How long would you say your association with Powhatan County has lasted?

A. Off and on over a 10-year period, since my brother moved here.

Q. And you feel that you have legal knowledge of the county pulse so to speak? The general feeling contained in the county?

A. Being at the Court House Square, I feel that I do.

Q. Would you say the Court House Square forms the heart of the County?

A. Yes.

DIRECT EXAMINATION

of

Thomas R. Lewis

(8-10)

BY MR ADAMSON:

Q. Based on your knowledge and your involvement in local affairs and in your opinion, do you think the defendant could obtain a fair tri by a jury in Powhatan County?

A. I do not.

Q. Whay do you say this?

A. Because everyone and everybody in the county who's going to be on the jury, I say I don't know who's going

to be on the jury, but I'm sure they've heard, and this of course is my own opinion, and that's what you asked for.

Q. Yes.

A. Has heard about it and probably has preconceived notions as to the guilt or innocence. The very fact that Captain Monty was killed.

Q. Now, would you say that the State Farm is something of an industry to the county?

A. Industry --

THE COURT: I'll take judicial notice of the fact that the State Farm in Powhatan is somewhat of an industry to the County of Powhatan.

Q. Would you say also that it is an issue or source of contention among county residents?

A. To some extent, yes.

Q. And do you recall any of this becoming manifested during this recent case where I believe an escapee from, I think it was Beaumont, who was involved in the rape of a county woman?

A. Yes. Yes. That was when I first moved to Powhatan and the trial was held.

Q. Do you recall the sentiment of those people at that time?

A. People were -- particular people who live out on Route 711 were upset because of the fact the Farm was this prox-

imity and that this man had escaped -- Beaumont, excuse me.

CROSS EXAMINATION

of

Thomas R. Lewis

(10-26)

BY MR. DAVILA:

Q. Mr. Lewis, the Court House Square is the pulse of the County, is that correct?

A. As far as I'm concerned it is.

Q. Do you know how many people are in the Court House Square?

A. No, I wouldn't want to guess.

Q. You don't have any idea?

A. No. The reason I say that is because --

Q No more than about 50, is it?

A. No, I wouldn't say so.

Q. The population is 8000? This is where most of your conversation has occurred, around the Court House Square?

A. Well, I'm talking about the Clerk's Office.

Q. You say everyone's quite upset, that's 15 people?

A. This is --

Q. Fifteen people?

A. I would say everyone is upset.

Q. Everyone is upset? You've talked to 15 people?

A. You asked for my opinion.

Q. How many people have you talked to?

A. I just picked 15 out of the air.

Q. Fifteen out of the air?

A. It could have been 10, it could have been 60.

Q. It could have been 60? It could have been 60 --

A. It could have been.

Q. -- that you've talked to about this case?

A. Well, in cocktail parties, a group of men get around and chat, counting those.

Q. All right now, it's been the topic of conversation, how many social gatherings, do you recall?

A. I couldn't say. It's been some time.

Q. You've been here since September, you've been

practicing law since January?

A. Right.

Q. You've never handled any jury felony cases? Have you ever handled any felony cases, period?

A. No.

Q. But that's your opinion you came up with?

A. Yes.

Q. All right. You say Captain Monty's children are in school?

A. Yes.

Q. Are you familiar with the age limit of the jurors serving on jury duty?

A. I don't understand the question.

THE COURT: They have to be 21.

A. Oh, I know that, but --

Q. School children can't serve as jurors?

A. That wasn't my -- okay.

Q. You say I'm sure they've heard about this but you don't know definitely whether they have?

A. Who's this?

Q. The people -- the majority of residents in the county?

A. Oh, naw, --

Q. How about a third of the residents in the county?

A. In my opinion?

Q. You're only issuing your opinion and your opinion is based on surmise and speculation?

A. Yes.

Q. All right, sir. Now, you say that it has been a source of contention to the county residents, the rape case that you described?

A. Yes, sir.

Q. I see. How many people do you know on Route 711?

A. Ah, quite a few.

Q. How many?

A. Five families.

Q. Five families? That would be roughly 10 people?

A. I don't --

Q. Have you talked to all 10 people about this?

A. No.

Q. You have not?

A. No.

THE COURT: Do you live on 711?

A. (Inaudible)

Q. You have not talked to all 10 people?

A. (Inaudible)

Q. How many people have you talked to on 711?

A. Somewhere between one and 10.

Q. One and 10? And you say they're upset, the ones you've talked to?

A. Uh huh.

Q. Are they upset?

A. Yes.

Q. Did they indicate to you that they were?

A. (Inaudible)

MR. DAVILA: I have no further questions.

THE COURT: Mr. Lewis, let me ask you this.

(15) EXAMINATION OF THE WITNESS

BY THE COURT:

Q. You say on the question of you talked to people, have people expressed any opinion as to the case? I mean, --

A. Yes, sir.

Q. -- they said Captain Monty was shot in the Court House and they've charged two people?

A. Yes, sir.

Q. And I know (inaudible).

A. The general drift of it.

Q. The general drift of it. Now, do you think those same people, based on the law and evidence that comes with the case, would be so prejudiced that they could not give a fair

and impartial trial to the accused?

A. In my opinion --

Q. This young lady that's your secretary --

A. In my opinion, in the real estate business, --

Q. All right.

A. -- in my opinion, I don't think they could get a fair trial in Powhatan.

Q. The opinion is one thing but what it's based on is something else. Do you think of the three people that you mentioned earlier, if they heard the case and the evidence completely exonerated one of the accused or both of the accuseds, do you think they would convict them anyway?

A. I'll have to say no.

Q. So, they might have -- what they surmise or what they heard, they might have formed an opinion, but you don't think that they would disregard the instructions of the Court to give a fair and impartial trial, do you?

A. No, sir.

Q. Or if there happened to be a plea of insanity, which we heard earlier or some indication of that, and it was proved by clear and convincing evidence or the preponderance of the evidence required by law, do you think the people would be so biased or prejudiced that they would not give a fair and impartial trial to the accused?

A. If such was the case, I feel that they could but I think -- my feeling is that the populace of Powhatan County have a preconceived notion about this.

Q. Well, unless you can have preconceived notions -- well, anybody who reads the newspaper --

A. Well, --

Q. -- or looks at television when something happens.

A. -- I think that coupled with the fact that it happened right here and if it happened in California, it wouldn't make too much --

Q. Then let me ask you this. Then your opinion is based purely on your ideas and not the facts that you have gathered?

A. Right. Right.

Q. And this is just a personal opinion of your part?

A. Right, backed up by categal conversation of the people.

Q. Now, at the time the alleged offense took place, was there any gathering of the citizens of Powhatan at the Court House or anything of that nature?

A. There were quite a few people around.

Q. Well, I mean all people go to points of excitement --

A. Right.

Q. -- but I mean to do anything to the accuseds?

HENDRICK STENOGRAPHIC SERVICE
2827 OAKLAND AVE.
RICHMOND VIRGINIA 23228

A. Oh, no.

Q. It was nothing like a lynch mob or anything of that order?

A. No, sir.

Q. In fact, hasn't it been rather calm and cool in Powhatan by the citizens of Powhatan County? Haven't they acted calm and cool although they may have discussed it?

A. Uh huh.

Q. Have you heard any inflammatory remarks against the accuseds in any way?

A. No, sir.

Q. All right. I don't live up here but I haven't heard of anything like that. Of that nature. But don't you really feel that, should they get a jury that did not know Captain Monty, and that might be really a problem being he was so well known up here, --

A. Well, Your Honor, --

Q. -- that the people would give him a fair and impartial trial based on all those facts?

A. -- you could get a difficult situation. You asked my opinion and then you asked --

Q. I'm trying to get to what your opinion is based on. See, I have to kinda skim your testimony because of the fact that you represent one of the defendants.

HENDRICK STENOGRAPHIC SERVICE
2827 OAKLAND AVE.
RICHMOND, VIRGINIA 23228

A Well, --

Q So, now I'm trying to get your --

A If I said no, then I would be casting dispersions on the people of Powhatan County that they're so bigoted or biased that they couldn't. My personal opinion is that it would be very difficult. Let me put it that way.

Q Is what you're saying, it would be difficult to pick a jury, but there is a great possibility that a jury could be picked that would be fair and impartial and give the accused a fair and impartial trial?

A I wouldn't say a great possibility. I would say there would be a much greater possibility somewhere outside of Powhatan County.

Q Oh, yes, we could move it to New York State, but we would have no jurisdiction up there. But this is a matter of proof by the accused only. But have you heard any real inflammatory things in the county? "We ought to kill those people," and things like that?

A Well, a few comments like that were made.

Q Well, were they inflammatory or were they just --

A They weren't said to incite a mob action or --

Q All right, sir.

THE COURT: We'll let Mr. Lewis now off the hook. (Laughter) All right, Mr. Adamson.

WITNESS STOOD ASIDE

1 MR. ADAMSON: Your Honor, this is an extremely
2 serious case as you all are well aware.
3 THE COURT: Any criminal case is extemely serious
4 to the Court.
5 MR. ADAMSON: I thank you. Any time there is a
6 Court House shooting, particularly a Court House killing,
7 it attracts widespread attention. This particular sleepy
8 little town of Powhatan is got --
9 THE COURT: How about the farmers up here?
10 Aren't they going to be on the jury?
11 MR. ADAMSON: Yes, sir, they can.
12 THE COURT: I mean --
13 MR. ADAMSON: We assume that they'll be on the
14 jury.
15 THE COURT: -- you're talking like the jury is
16 going to be picked purely from the Court House, but what
17 is the square mileage of Powhatan County? I mean, I'm
18 quite sure they've got some farmers up here. I passed
19 some on the road.
20 MR. ADAMSON: Yes, sir, Your Honor, --
21 THE COURT: And those people are busy farming.
22 I imagine there's many people in the county that haven't
23 heard about it.
24 MR. ADAMSON: My point, Your Honor, is this is

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1 a very -- like most rural communities, very little happens
2 from day to day, from month to month and year to year,
3 but all of a sudden something like this happens. If this
4 happened in Richmond there would be a little bit of news-
5 paper coverage, there'd be an article in the paper. It
6 wouldn't be a topic of conversation at social gatherings.
7 THE COURT: Oh, I think it would. I've prosecuted
8 cases in the City of Richmond where there was a great
9 deal of discussion. The Allen Carroll Fruitt case,
10 which the Court remembers very well, there was a great
11 deal of discussion at that time. It was run on the front
12 page of the Richmond News Leader and also the Times Dis-
13 patch, but they didn't come -- the difference being in
14 my mind, the newspapers were not trying for -- well, to
15 put it bluntly, the blood of the accused. Having completely
16 and totally ignorant jurors adds nothing to the system.
17 Where a man might read something in the newspaper and
18 then he comes to Court, I imagine many times, he wonders,
19 I wonder if I'm hearing the same thing here that I read
20 in the newspaper two months ago. In the absence of any
21 showing of any inflammatory thing by clear -- not clear -
22 convincing proof, but by certainly the preponderance
23 of the evidence - that the people of Powhatan would be
24 prejudiced and not give this man a fair and impartial

1 trial, the Court's of the opinion that the motion at this
2 time to grant a change of venue should be denied. I
3 think you have a different problem in the fact that your
4 case is now set secondly.
5 MR. ADAMSON: That's going to be raised next.
6 THE COURT: Well, I will have to cross that bridge
7 when I get there.
8 MR. ADAMSON: May I make a few other observations
9 if I may?
10 THE COURT: Yes, sir.
11 MR. ADAMSON: That -- I lost my train of thought.
12 THE COURT: Well, use the best at that time.
13 Just except to whatever the Court did. (Laughter) Well,
14 we were talking about you have the second trial and, Mr.
15 Adamson, I do have some problem with that based on some-
16 what the amount of publicity that the first trial gets.
17 That could cause widespread circulation in the county.
18 It could cause a lot of comment in the county and actually
19 at that time maybe Mr. Jefferson would be entitled to a
20 change in venue somewhere else. But the way I look at
21 it now, the first trial, there's going to be a lot of
22 talk in every part -- in the eastern part of Virginia.
23 MR. ADAMSON: Yes, sir.
24 THE COURT: Until you get to tidewater and north-

1 even Virginia. I mean around the Richmond area especially,
2 which would include Richmond, Henrico, Chesterfield,
3 Goochland. You'd have to say it would probably be moved
4 over to Goochland. And maybe at that time in your case,
5 I might bring another venire from some other place. I'll
6 have to cross that bridge when I get there.
7 MR. ADAMSON: But the distinction Your Honor made
8 was that a newspaper article has wide dissemination that
9 a person could read it and then try a case two or three
10 months later and something in the back of his mind register
11 that he read an article about it in the paper. And you're
12 saying that as long as the paper is not inflammatory,
13 that, of course, there would be no objection. I agree
14 with that, but we have more than that here. When you
15 have something that has become a household word in this
16 county, such as this has become, you have got -- you
17 have rumors, you have half-truths circulating among the
18 general population.
19 THE COURT: Well, that's pure speculation on
20 your part. I doubt seriously if nine out of 10 people
21 in this county could tell you the name of the accused
22 here today now.
23 MR. ADAMSON: But I bet they could tell you the
24 details of what happened.

1 THE COURT: I doubt very seriously --

2 MR. ADAMSON: What they think happened.

3 THE COURT: -- that they would. Well, I'm going

4 to overrule your change of venue at this time and I'll

5 have to wait until after the first trial to see how much

6 it is to go on that because eventually I might bring

7 another venire from another county in.

8 MR. ADAMSON: I'd like to except to that. Also,

9 I'd like to state another reason I'd like to have in

10 the record.

11 THE COURT: All right.

12 MR. ADAMSON: Try the place -- to try the case

13 at the murder scene.

14 THE COURT: Well, you can put that in there.

15 It just happened to take place there.

16 MR. ADAMSON: Are you overruling that?

17 THE COURT: I'm overruling that.

18 MR. ADAMSON: I except to that, also.

19 THE COURT: In fact, that would almost be the

20 best evidence. It just happened to take place in the

21 courtroom.

22 MR. ADAMSON: It just happened --

23 THE COURT: I certainly wouldn't let the Common-

24 wealth bring in a body and lay it there, but if it were a

1 shootout across the street, every juror would be able
2 to know what across the street was, being familiar
3 with the scene, that point really doesn't bother me, it
4 just happened to take place in the courtroom.
5 MR. ADAMSON: Will Your Honor have all repairs?
6 I mean all damage repaired at the time?
7 THE COURT: Well, we've got one chair that's
8 got a bullet hole in it. We're going to take that chair
9 out.
10 MR. ADAMSON: The railing has a crease in it.
11 THE COURT: And the railing, we're going to get that
12 filled in with wood and stained. Now, the hole in the
13 ceiling, I don't know what put that up there. But I don't
14 see where that's prejudicial and the jury -- if they can
15 put plastic wood in that and paint that up the jury won't
16 notice.
17 MR. ADAMSON: Are there any stains or spots on the
18 floor? I don't remember any.
19 THE COURT: I didn't see any blood -- you mean
20 blood stains?
21 MR. ADAMSON: Yes, sir.
22 THE COURT: No, I didn't see any. They must have
23 all been gotten up. We're not going to have any blood
24 scenes or anything like that, but suppose they took a

picture of the deceased laying there?

MR. ADAMSON: Well, it's one thing to see a picture, but it's one thing to (inaudible).

THE COURT: Wait a minute, don't worry about that.

MR. ADAMSON: That would be a very pointed piece of evidence.

THE COURT: I don't know, that's what a picture's for to point that out. But after all, isn't this history? And I'm not saying it 'cause I really -- whether anyone is guilty or not, I have no idea because I don't know any of the facts other than just placed before me. Ya'll brought that out. But isn't that history? Isn't that a fact? Now, why shouldn't the jury be able to see the facts? I mean that's the way we're supposed to try a case, on the facts. You know, the truth shall make you free. I think that was said somewhere and that's the whole thing of our adversary system. It's to try to get to the truth and we've just got to face that. Well, at this time, Mr. Adamson, I'm going to overrule your motion and I'm not saying at a later time I might not have to reverse myself based on what happens in the first trial.

MR. ADAMSON: Yes, sir. My exceptions noted for the record for all three motions.

(28-30)

17 THE COURT: I'm planning on really keeping the
18 jury together once we get them.
19 MR. DAVILA: Overnight?
20 THE COURT: Overnight.
21 MR. DAVILA: Where will they lodge?
22 THE COURT: Huh?
23 MR. DAVILA: Where?
24 THE COURT: Well, I guess we'll have to take them

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to Richmond to let them sleep. We will have to make it at the Holiday Inn South. We will just have to do that, because I would not want them going back in the county. I think that is really the gravest risk we have, of them going back in the county during the course of the trial. But if we don't have any trouble getting the jury and we get to work on the case and we try the case, we might be able to finish in a day.

MR. DAVILA: Would it be incumbent, sir, for the Clerk to issue some more summons for some more jurors? We only have --

THE COURT: Well, we're going to issue it for 24 and 40 additional, haven't we, Mr. Maxey?

THE CLERK: Yes, sir.

MR. DAVILA: Forty additional?

THE CLERK: I haven't picked any, that's the figure that you mentioned the other day.

THE COURT: Yes, sir.

THE CLERK: We said we would wait until today to see what --

THE COURT: Yes.

MR. DAVILA: Forty additional?

THE COURT: Well, I'll make sure that we enter an order in the case that we will need additional people

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1 under the Harmon case and maybe we'll summons in 60
2 additional jurors -- prospective jurors.
3 THE CLERK: Sixty additional?
4 THE COURT: Sixty jurors.
5 MR. ADAMSON: Is there a different list that
6 will be used for Washington?
7 THE COURT: Oh, yes. It will have to be separate
8 venires. We will get an entirely different venire for
9 him.
10 MR. ADAMSON: That's what I wanted to go into.
11 THE COURT: But after the Washington case, if
12 we can try that, then we'll get a better idea exactly how
13 many people in the county know how much. But I've found
14 on these things, people come in and they haven't read the
15 newspaper, they haven't looked at the television and if
16 you ask them, say, "Do you know anything about the case,"
17 99 out of 100 don't know anything about the case. And
18 that's in the city where there's a lot of people. Finally
19 one of them will speak up say, "I live right around the
20 corner where it happened," something like that. Of
21 course, I don't think nobody can live within two miles
22 of the Court House. See, you're talking about the Court
23 House Square, and nobody can live within two miles of
24 the Court House Square and be on the jury.

Transcript of November 30, 1972

(3)-8)

BY THE COURT:

Q. We have some motions, now, gentlemen, which the Court will rule on; first of which was for bringing in a jury from another county. At this time the Court overrules that motion.

Mr. Adamson: Note the exception.

Q. Well, you can except to all of them

A. At the same time I would like to make the exception after each ruling.

Q. And one is change of venue. The Court overrules that motion, and the defendant excepts.

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1 Of course, the motion for a continuance was
2 granted, so that one has been ruled on. Motion for
3 a continuance was granted for a mental examination,
4 so I don't have to rule on that. That's already
5 been ruled on. You were granted the continuance.
6 MR. ADAMSON: My point on making that motion
7 was that approximately five months have elapsed
8 since the other examination, and that perhaps a
9 change has.....
10 THE COURT: This is the one that you made,
11 the motion that the man be examined and it be
12 determined whether the man is able to stand trial.
13 MR. ADAMSON: My point was that perhaps.....
14 THE COURT: Let's take the motions one at a
15 time. I granted that motion, so it's no argument.
16 (Off the record discussion between the Clerk and
17 the Court.)
18 THE COURT: What are you doing, making a motion
19 for another continuance?
20 MR. ADAMSON: Yes, sir.
21 THE COURT: Now?
22 MR. ADAMSON: Yes, sir.
23 THE COURT: Oh, that's another one. Excuse me.
24 I'm sorry. You are claiming he is insane at this

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1 time and mentally incompetent?

2 MR. ADAMSON: I just don't know, but perhaps

3 somebody might tell me.

4 THE COURT: All right, the motion to quash the

5 indictment, that 53-291 Code of Virginia, is

6 unconstitutional and it constitutes undue punishment,

7 the Court will overrule that.

8 MR. ADAMSON: Will the Court note my exception?

9 THE COURT: Yes, sir. Here is the one....Well,

10 the Supreme Court has decided the constitutionality

11 of the death penalty in certain cases. Now we will

12 get to the ones just filed.

13 MR. ADAMSON: Your Honor, there was one more filed

14 in the Court papers. There was a motion filed which

15 states in essence that the Furman case which was

16 recently decided by the Supreme Court, what is known

17 as the death penalty case, indicated that the death

18 penalty was bad and was not permissible where an

19 election existed.

20 Now, in those situations granted, the elective

21 death penalty was within the power of the jury, and

22 we contend that a similar election exists here. The

23 election is within the Commonwealth's Attorney,

24 because the Commonwealth's Attorney has the alternative

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to prosecute under Section 53-291 which is the statute we are here on today, and the alternative of proceding under Title 18 which is your standard murder statute.

THE COURT: Does he have an alternative?

MR. ADAMSON: I take the position that so long as the Title 18 statutes do not preclude this particular situation.....

THE COURT: This is a special legislation for a special situation, under Title 53-291.

MR. ADAMSON: It covers a special situation, but it does not preclude prosecution under Title 18.

THE COURT: As to the natural conclusion you could prosecute him under carrying a firearm in public. The Commonwealth Attorney has no option here. The Commonwealth Attorney is bound by the Statutes of Virginia. I overrule your motion, and you may have your exception.

MR. ADAMSON: Please note my exception.

THE COURT: And denial of a speedy trial; overruled.

MR. ADAMSON: Will the Court please note an exception? Can we put something into the record as to the dates so an appellate court could rule on it should it become necessary?

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1 THE COURT: I think the action speaks for
2 itself, Mr. Adamson. The dates are all listed on these.
3 I might add for the record, the Court has been trying
4 the case ever since it has been designated, with
5 everything possible as to available dates. The case
6 was set for trial in early June, and the motion was
7 made to refer the defendant for a mental examination.
8 And it has been the request of the defendant to try
9 the defendant, Washington, before Jefferson was tried.
10 That is my understanding of it, anyway. All right,
11 gentlemen.
12 MR. ADAMSON: I would like to make one more
13 indication on that last motion; that although the
14 motion was made in June by the defense, the motion was
15 for a mental examination; now, the defendant was
16 examined in the Virginia State Penitentiary within
17 a week or ten days after the motion was made. A
18 determination was made that he should not be sent to
19 Central State or Eastern State or whatever facility
20 is now being used for further evaluation. And we submit
21 that once the examination was made and the report made
22 back to the Court, that the time started to toll again
23 as part of his, as part of the speedy trial process.
24 THE COURT: All right, the Court overrules the

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motion.

MR. ADAMSON: And will the Court note the exception?

THE COURT: Yes, sir. All right, gentlemen, are you now ready to call the jury?

MR. DAVILA: The Commonwealth is ready, Your Honor.

MR. ADAMSON: Your Honor, I think we have another motion or two. Maybe we have shuffled them off, or maybe you have already ruled upon them, but we would like to make a motion for the change of venue, to try the case in another Court.

THE COURT: I told you, at the time I am overruling that motion. We will have to see the jury. Of course, we cannot have a partial jury.

MR. ADAMSON: There were two motions; one was for the change of venue in another county, and a second motion was to bring a jury in from a distant region of the state.

THE COURT: At this time the Court is overruling both of those motions.

MR. ADAMSON: And will the Court note my exception?

THE COURT: Yes, sir. Mr. Clerk, they may be called by lot.

CLERK: Richard L. Foulp, number 16 on the list.

(24)

8 CLERK: Arthur W. Bartlam, number 58. Clyde B.
9 Poore, number 49. Harry R. Jones, number 48, Frank
10 Matthews, number 13.
11 THE COURT: That's five, isn't it?
12 CLERK: Yes, sir.
13 THE COURT: All right, Sheriff, will you send
14 those five in here?

Examination of Jury by the Court

(25-34)

5 THE COURT: Gentlemen, at this time the Court is
6 going to ask you some questions. We will assume your
7 answers are correct unless you indicate to the contrary
8 by raising your hand. Have all of you been residents of
9 the Commonwealth of Virginia at least 12 months and of
10 the County of Powhatan at least six months immediately
11 prior to your receiving your summons to serve on this
12 jury? Are all of you over the age of 21 years? Do any
13 of you live within two miles of the courthouse? Are any
14 of you related or do you know Raul Mederires Monte, the
15 deceased and Malcolm Marvin Jefferson, the defendant?
16 Did you know them, or are you related to them in any way
17 by blood or marriage? You will be sworn if you are picked
18 to serve on this jury, to determine the facts of the case
19 as the evidence is presented in court. At the conclusion
20 of all of the evidence the Court will instruct you as to
21 the law in this case, which will be on the presumption of
22 innocence, the duty of the Commonwealth to prove every
23 element of trial beyond a reasonable doubt; should the
24 defendant not take the witness stand it will be no

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presumption against him. I don't know whether he will or not, but if he does not it will be no presumption against him. Would you follow your oath and follow the instructions of the Court? Do any of you have any knowledge relative to the alleged crime wherein the defendant, Malcolm Marvin Jefferson is charged with the murder of Mr. Monte? The alleged crime allegedly took place in this very courtroom. Have any of you read anything about the crime, heard anything on the radio or seen anything on television relative to this particular alleged crime?

JUROR: I saw it in the paper. We all saw it in the paper.

THE COURT: Did you read it, sir?

JUROR: I read it in the paper.

THE COURT: Do you recall what you read in the newspaper?

JUROR: I can't right now. I thought it was all over.

THE COURT: Did anyone else?

JUROR: I read it also.

THE COURT: Do you recall what you read?

JUROR: No, sir.

THE COURT: Do you recall what you read?

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JUROR: I got some of the details out of it, yes, sir.

THE COURT: I ask you gentlemen this: Would this in any way influence you in giving both the defendant and the Commonwealth a fair and impartial trial based on the evidence and the law that you receive, hear and receive in this courtroom on this trial?

JUROR: I would have to hear it for myself in order to pass an opinion.

THE COURT: Would it affect any of the other two gentlemen that said you read something?

JURORS: (Nod in the negative)

THE COURT: Are any of you sensible of any bias or prejudice that would keep you from giving both the Commonwealth and the defendant a fair and impartial trial based on the law and the evidence as presented in this courtroom? The fact that it might turn out that the defendant was a convict in the Virginia State Penitentiary, would that prejudice you in any way? Would any racial issue prejudice you in any way? And I take it, gentlemen, none of you are sensible of any bias or prejudice that would keep you from giving the Commonwealth and the accused a fair and impartial trial.

All right, does counsel have any further questions?

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1 MR. DAVILA: I do have further questions, but I
2 would ask the Court to voirdire with reference to the
3 punishment.
4 THE COURT: Are any of you ...Do any of you have
5 any religious or conscientious scrupples against the
6 imposition of capital punishment in the proper case?
7 Do all of you understand what capital punishment is? You
8 do understand that? Do you have any religious or con-
9 scientious scrupples against the imposition of capital
10 punishment in the proper case? All right, Mr. Davila?
11 MR. DAVILA: Have any of you gentlemen ever been
12 represented, or do you know Mr. V. Cassel Adamson repre-
13 senting the defendant in this matter? Or do you know or
14 have you been represented by his father, Mr. V. Cassel
15 Adamson, Sr.? He, too, is an attorney. Do all of you
16 gentlemen know what capital punishment is; the death
17 penalty? Mr. Matthews?
18 JUROR MATTHEWS: Yes, sir.
19 MR. DAVILA: You are a cook, are you, sir?
20 MR. MATTHEWS: Yes, sir, that's correct.
21 MR. DAVILA: And Mr. Foulp, you are a farmer?
22 MR. FOULP: Yes, sir.
23 MR. DAVILA: And, Mr. Bartlam, you are a banker?
24 MR. BARTLAM: Yes, sir.

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1 MR. DAVILA: Thank you very much.

2 MR. ADAMSON: Your Honor, do you have that list

3 of questions which I put up there?

4 Mr. Bartlam, I understand you work with Richmond

5 Federal?

6 MR. BARTLAM: Yes, sir.

7 MR. ADAMSON: What is your capacity?

8 MR. BARTLAM: I am assistant treasurer.

9 MR. ADAMSON: And, as such, do you take loan

10 applications, things of that sort?

11 MR. BARTLAM: Some, yes, sir.

12 MR. ADAMSON: Your Honor, may I have the second

13 sheet? I don't want to ask the same questions twice, and

14 I would like to have a chance to look over my notes.

15 THE COURT: It might save time if you ask the

16 questions.

17 MR. ADAMSON: Sir?

18 THE COURT: Go ahead, ask them.

19 MR. ADAMSON: You say to go ahead and ask them?

20 THE COURT: Yes, sir.

21 MR. ADAMSON: I believe His Honor asked if any of

22 you gentlemen lived within two miles of the courthouse.

23 Are any of you friendly or associated with, related to

24 anyone in the prosecutor's office for the City of

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1 Richmond or the prosecutor's office for the County of
2 Powhatan, Mr. Blandford? Are any of you all related to
3 a police officer anywhere, or any member of the
4 Sheriff's Department or any other law enforcement agency?
5 Have any of you ever served as a law enforcement officer
6 either in your civilian or possibly military career?
7 Have any of you ever been a victim of a crime? Have any
8 of your immediate family been the victim of a crime?
9 JUROR: Counsel, does that take in robberies?
10 THE COURT: Yes, sir. What is your name, sir?
11 JUROR: Foulp.
12 THE COURT: Would you explain that?
13 JUROR: House broken into about four years ago.
14 MR. ADAMSON: Was there a trial?
15 JUROR: No, sir, nobody ever apprehended anybody.
16 MR. ADAMSON: Are you related by blood or marriage
17 to a guard or other employee of the Virginia State Penal
18 System? Do any of you live within three miles of Powhatan
19 State Farm? Have any of you had any dealings or
20 experiences with negroes or blacks which might make it
21 difficult for you to sit as an impartial juror today?
22 Do you feel that because the defendant is a colored man
23 or Negro or black, as the current term is, that it would
24 affect your judgment in any way as to the outcome of your

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1 decision of guilty or innocence? Do you promise to
2 consider only the facts and evidence in the case and to
3 completely disregard the defendant's race, creed and
4 color?
5 Your Honor, I would like to part from the list
6 and question an individual juror. Mr. Bartlam, do you
7 have any children of school age?
8 MR. BARTLAM: Yes.
9 MR. ADAMSON: Do they attend the Powhatan Public Schools?
10 MR. BARTLAM: No, they are at Huguenot Academy.
11 MR. ADAMSON: Why is this?
12 MR. BARTLAM: Well, I feel my kids get a better
13 education at the Academy.
14 MR. ADAMSON: Is there any inherent reason you feel they
15 will get a better education?
16 MR. BARTLAM: No, it's just that I have looked
17 over both systems, and I made my own opinion, purely my
18 own opinion, and I selected the Academy.
19 MR. ADAMSON: When did your children first enroll
20 in the Huguenot Academy?
21 MR. BARTLAM: When I moved up here three years ago.
22 MR. ADAMSON: Where did you come from?
23 MR. BARTLAM: From Chesterfield, annexed area.
24 MR. ADAMSON: I see. And you came here before

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1 annexation?

2 MR. BARTLAM: Yes, sir.

3 MR. ADAMSON: I see. And was the racial make-up

4 of the public school system a factor in your election to

5 go to Huguenot Academy?

6 MR. BARTLAM: No, sir, in fact, I had my little

7 girl enrolled in the public school system when I first

8 moved here.

9 MR. ADAMSON: I see. And did she ever attend the

10 public school?

11 MR. BARTLAM: Yes, for two days.

12 MR. ADAMSON: Mr. Poore, I understand you are

13 retired, is that correct?

14 MR. POORE: No, farmer and truck driver.

15 MR. ADAMSON: Farmer and truck driver?

16 MR. POORE: Yes, sir.

17 MR. ADAMSON: Mr. Foulp, are you retired?

18 MR. FOULP: Yes.

19 MR. ADAMSON: You used to work for the Government?

20 MR. FOULP: Civil Service Retirement.

21 MR. ADAMSON: I see.

22 MR. FOULP: And farming.

23 MR. ADAMSON: I have no further questions.

24 THE COURT: All right, the Court declares these

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1 five gentlemen as prospective jurors and will ask them
2 to go to the jury room.
3 (The five prospective jurors leave the courtroom.)
4 THE COURT: Mr. Adamson, we didn't ask about the
5 witnesses, but they weren't related to anyone at the
6 State Farm, and most of the witnesses are from the
7 State Farm.
8 MR. ADAMSON: Can we call them back and ask that
9 question? It's an oversight on my part.
10 THE COURT: All right, call them back. I will
11 ask the question.
12 (The jurors return to the courtroom.)
13 THE COURT: Gentlemen, the Court overlooked ask-
14 ing a question. It's numerous witnesses in the case.
15 The Clerk will read the list of the witnesses at this
16 time anticipated being called, and if you are related to
17 any of them by blood or marriage or know any of them,
18 would you please raise your hand? Mr. Clerk?
19 CLERK: Richard J. Poppleton, Fred Jordan, E. D.
20 Henderson, A. F. Hillman, E. M. Lloyd, W. R. Blandford,
21 Brown E. Snyder, J. D. Netherland, Dr. Robert W. Bradley,
22 Mullin J. Utt, Grover E. Hamilton, Spears W. Williams,
23 R. W. Tate, Herbert L. Berryman, Willie E. Thorne, J. C.
24 Franklin, Sgt. H. Catron.

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THE COURT: Any of you gentlemen recognize any of the names?

JUROR: I recognize some of them.

THE COURT: Are you related to them by blood or marriage?

JUROR: No, just know them.

THE COURT: All right, any further questions?

MR. ADAMSON: Yes, sir. Was the question asked by the Court whether there was any relation to the deceased?

THE COURT: Yes.

MR. ADAMSON: I just wanted to be sure.

THE COURT: All right, gentlemen, I will ask you again to retire to your jury room. Thank you.

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(37)-71)

23 CLERK: Eddie Lee Barley, number 98; Douglas C.

24 Bradberry, number 2.

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1 MR. DAVILA: Are you going by the list you gave
2 me this morning?
3 CLERK: No, I'm using the original list. The
4 list has been corrected. John W. Worsham, number 50
5 Wallace B. Worsham, number five, Irvin N. Bell, number 19
6 (The prospective jurors are called into the
7 courtroom and duly sworn.)
8 THE COURT: Have a seat there, gentlemen. The
9 Court is going to ask you some questions, and we will
10 assume your answers are correct unless you indicate
11 otherwise. Have each of you been a resident of the
12 Commonwealth of Virginia at least 12 months and the
13 county of Powhatan at least six months immediately prior
14 to receiving your summons to serve on this jury panel?
15 Do any of you live within two miles of the courthouse?
16 (Two jurors raise their hands.)
17 THE COURT: How far do you live?
18 JUROR: Just under two miles.
19 THE COURT: And you?
20 JUROR: Less than two miles.
21 THE COURT: All right, gentlemen, the Court is
22 going to excuse these two jurors, Bradberry and John
23 Worsham. I will excuse you. Let's call two more.
24 CLERK: W. L. Penning, number 15, Julia W.

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that I don't know whether I could give an unbiased, unprejudiced decision on it.

THE COURT: Well, I am going to excuse you, sir. Thank you. You may be excused. All right, did you raise your hand?

JUROR: Yes, sir.

THE COURT: Did you know Mr. Monte?

JUROR: I have done some work for him. I was working at the car dealership three years ago. I knew him fairly well up there as a friend.

THE COURT: Would that prejudice you in any way in giving the defendant a fair and impartial trial?

JUROR: I kind of believe it would. He was like, a fairly good friend.

THE COURT: All right, sir, I will excuse you. All right, the jurors in Virginia are the finders of fact. They are the sole judges of the credibility of the witnesses. At the conclusion of the trial the Court will give you certain instructions as to the law. Would each of you follow the law given to you by the Court, that the defendant is presumed to be innocent; the Commonwealth must prove every element of the trial beyond a reasonable doubt, and if he doesn't take the stand it's no presumption against him, and so on down the

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1 Anderson, number 6.

2 (The additional jurors are duly sworn.)

3 THE COURT: The Court is going to ask you a few

4 questions, and we will assume your answers are correct

5 unless you indicate to the contrary. Have you been

6 residents of the County of Powhatan for at least six

7 months and the Commonwealth of Virginia at least 12 months

8 immediately prior to your receiving your summons to serve

9 on the jury?

10 This is to the whole panel; are all of you over

11 the age of 21 years? Do any of you live within two miles

12 of the courthouse? The alleged crime is, the defen-

13 dant is charged with the murder.....Malcolm Marvin

14 Jefferson is charged with the murder of Raul Mederires

15 Monte. Are either or any of you related by blood or

16 marriage to either party? Did any of you know Mr.

17 Monte or the defendant Jefferson?

18 JUROR: Yes, I knew Mr. Monte well.

19 THE COURT: How well?

20 JUROR: Well, I lived within a mile of him for

21 approximately 18 months, and I used to hunt with him.

22 THE COURT: You considered him a close personal

23 friend?

24 JUROR: A close personal friend, and I might add

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1 THE COURT: Which two witnesses are they?
2 JUROR: Mr. Williams and Mr. Hamilton.
3 THE COURT: I think I will excuse you.
4 JUROR: You think you will?
5 THE COURT: Yes, mam. You are excused.
6 All right, the two remaining gentlemen, are you sensible
7 of any bias or prejudice in any way that would keep you
8 from giving the Commonwealth and the defendant a fair and
9 impartial trial based on the law and the evidence as
10 presented in this court?
11 JUROR: I was sitting on jury duty at the time
12 the incident happened.
13 THE COURT: What?
14 JUROR: I was sitting on jury duty; I said I
15 was suppose to be serving on the jury at the time the
16 incident happened.
17 THE COURT: Were you here at the courthouse?
18 JUROR: Yes, sir, I wasn't in the courthouse, but
19 I was outside, and I know Lawyer Blandford and several
20 of the people.
21 THE COURT: You were right outside the courthouse?
22 JUROR: Yes, sir, I was on my way in here when
23 it happened.
24 THE COURT: I will excuse you too. What is your

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1 line, would each of you follow the instructions of the
2 Court? All right, now, the Clerk will read a list of
3 people who are potential witnesses in the case. I will
4 ask you if you know any of the witnesses that he names,
5 that when he completes the list you advise the Court, or
6 if you are related to them by blood or marriage.
7 CLERK: Richard J. Poppleton, Fred Jordan, E. D.
8 Henderson, A. F. Hillman, E. M. Lloyd, W. R. Blandford,
9 Brown E. Snyder, J. D. Netherland, Dr. Robert W. Bradley,
10 Mr. Mullin J. Utt, Grover E. Hamilton, Spears W. Williams,
11 R. W. Tate, Herbert L. Berryman, Willie E. Thorne, J. C.
12 Franklin, Sgt. H. Catron.
13 JUROR: I know two of them, my neighbors.
14 THE COURT: They are your neighbors?
15 JUROR: Yes, sir.
16 THE COURT: Are you friendly with them?
17 JUROR: Yes.
18 THE COURT: Oh, you are? Sometimes the situation
19 comes when you are not too friendly with them. Would
20 that prejudice you in any way or make you give their
21 testimony more weight than any other witnesses?
22 JUROR: Well, I'd put a lot of dependence in it,
23 I think; that they were here and all that's happened,
24 and I certainly think they would give dependent testimony.

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name?

JUROR: Irvin Bell.

THE COURT: Mr. Bell, you are excused and do not have to serve. That leaves one gentleman. Do you know anything about this case?

JUROR: Huh?

THE COURT: Have you heard, read or seen anything about this case, wherein the guard at the penitentiary was allegedly shot here in the courtroom?

JUROR: No.

THE COURT: All right, sir. Do you all have any questions?

JUROR: I know Mr. Blandford.

THE COURT: Pardon?

JUROR: I know Mr. Blandford.

THE COURT: You know Mr. Blandford?

JUROR: Yes.

THE COURT: I assume most people in Powhatan County know Mr. Blandford. Mr. Blandford is not in the case. He is a witness. Mr. Blandford is Commonwealth's Attorney up here and has been Commonwealth's Attorney some time. I expect a lot of people would know him. Would that affect you anyway, knowing Mr. Blandford, in giving a fair and impartial trial?

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JUROR: By knowing Mr. Blandford?

THE COURT: Could you give both the defendant and Commonwealth a fair and impartial trial based on the law and evidence as it comes into court here?

JUROR: I guess I could.

MR. DAVILA: For the Court's information, I am not going to call Mr. Blandford. I would ask the Court to exclude him from the list.

THE COURT: From just knowing Mr. Blandford, would that affect you in any way in reaching a verdict?

JUROR: I don't guess it would.

THE COURT: All right, any questions from counsel?

MR. DAVILA: I have no questions.

MR. ADAMSON: I have no questions.

THE COURT: All right, the Court declares him a proper juror. Will you retire to the jury room, please?

(The jury leaves the courtroom.)

MR. DAVILA: May it please the Court, I ask the Court to disregard the subpoena directed to Mr. Blandford. I have no intention of calling him as a witness.

THE COURT: Mr. Blandford is excused.

CLERK: Marvin Barley, number 21. James R. Donathan, number 61; Leon T. Bates, Sr., number 53;

Earl S. Morris, number 64, James R. Regins, number 69.

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(Whereupon the five prospective jurors come into the courtroom and are duly sworn by the Clerk.)

THE COURT: Gentlemen, the Court at this time is going to ask you some questions and will assume your answers correct unless you indicate to the contrary. Have all of you been a resident of the Commonwealth of Virginia for at least 12 months;the county of Powhatan for at least six months immediately prior to receiving your jury summons? Are all of you over the age of 21? Do any of you live within two miles of the courthouse? Do any of you know, or are you related to either Raul Mederires Monte or Malcolm Marvin Jefferson? At the conclusion of the trial the Court will give you certain instructions, such as presumption of innocence for the defendant; he is presumed to be innocent; Commonwealth must prove every element of the crime beyond a reasonable doubt, and should the defendant not take the stand it is no presumption against him. You gentlemen will all be under oath if you are on the jury. Will you follow the oath and follow the law given you by the Court? The Clerk will now read a list of names of the prospective witnesses in the case. When he concludes the list if you know any of them will you please let the Court know, or if you are related to any of them by blood or marriage?

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1 CLERK: Richard J. Poppleton, Fred Jordan, E. D.
2 Henderson, A. F. Hillman, E. M. Lloyd, Brown E. Snyder,
3 J. D. Netherland, Dr. Robert W. Bradley, Mullin J. Utt,
4 Grover E. Hamilton, Spears W. Williams, R. W. Tate,
5 Herbert L. Berryman, Willie E. Thorne, J. C. Franklin
6 and H. Catron.
7 THE COURT: I noticed some of you indicated...
8 I reckon many of you know the doctor. Is that purely
9 on a patient-doctor relationship?
10 JUROR: That's all.
11 THE COURT: Is it any other respective witness
12 that you knew?
13 JUROR: No, sir.
14 THE COURT: I was thinking that some of you knew
15 the doctor of Powhatan County. All right, are any of you
16 sensible of any bias or prejudice, race, religion, or
17 whether the defendant might have been a convict in the
18 State Penal System; are you sensible of any bias to pre-
19 vent you from giving him a fair and impartial trial?
20 Do all of you gentlemen know what the term capital pu-
21 nishment means? Do you have any religious or conscientious
22 scrupples against the imposition of capital punishment
23 in the proper case? Are any of you sensible of any
24 bias, prejudice or any other reason whereby you couldn't

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1 give the defendant a fair....the defendant and the
2 Commonwealth a fair and impartrial trial based on the law
3 and the evidence as presented in this court? This case,
4 or the allegation in this case is that the defendant
5 Malcolm M. Jefferson did kill Guard Monte in this
6 courtroom. Have any of you gentlemen read, heard or seen
7 anything relative to this charge?
8 JUROR: I have, yes.
9 THE COURT: What did you hear, sir?
10 JUROR: I just read something in the paper about
11 it, that's all.
12 THE COURT: Do you recall the articles and the
13 facts set forth in the article?
14 JUROR: Well, just that he was killed and so
15 forth and so on. I don't know where it was.
16 THE COURT: Would that in any way prejudice you
17 against giving the defendant a fair and impartial trial?
18 JUROR: No, sir. Well, I know Captain Monte.
19 I did a lot of work for him.
20 THE COURT: He was a friend of yours, sir?
21 JUROR: Well, not really a friend.
22 THE COURT: Would your relationship with him,
23 would that make you bias in any way?
24 JUROR: Well, it should not.

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THE COURT: It should not? Well, could you be a little more positive, sir, whether it would or not?

JUROR: No, I don't think it would make any difference, sir.

THE COURT: All right, anyone else? All right, gentlemen, I will reiterate the question. Are any of you sensible of any bias or prejudice whatever that would keep you from giving the Commonwealth and the accused a fair and impartial trial based on the law and the evidence?

All right, does counsel have any questions?

MR. DAVILA: I take it from the answers you have given, gentlemen, that in a proper case you can impose the death penalty? Mr. Donathan, you are a truck driver?

JUROR: Yes, sir.

MR. DAVILA: And Mr. Bates, you are a lift operator?

JUROR: Yes, sir, Defense General Supply, sir.

MR. DAVILA: And Mr. Morris, you are a carpenter?

JUROR: Yes, sir.

MR. DAVILA: And Mr. Riggins, you are a machinist?

JUROR: Yes, sir.

MR. DAVILA: Do any of you gentlemen know, or have you ever been represented by Mr. Adamson, defense counsel in this particular matter? I have no further questions.

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1 THE COURT: All right, Mr. Adamson?

2 MR. ADAMSON: Gentlemen, are any of you all friend-
3 ly with or associated with the Commonwealth's Attorney's
4 Office for the City of Richmond or for the County of
5 Powhatan? Are any of you all a relative or closely
6 associated with the police department, or any kind of
7 police department, sheriff's department, law enforcement
8 agency? Have any of you ever been law enforcement
9 officers either as a civilian or in military life? Have
10 any of you ever been a victim of a crime? Have any of
11 your immediate families ever been a victim of a crime?
12 Are any of you related by blood or through marriage to
13 any employee or guard in the Virginia Penal System? Do
14 any of you live within three miles of the State Farm?

15 MR. DAVILA: What was that other question you
16 asked? What was that you asked about related?

17 MR. ADAMSON: Are any of you related to a guard
18 or other employee of the Virginia Penal System, State
19 Farm personnel? I have no further questions.

20 MR. DAVILA: Mr. Barley, are you related to anyone
21 in the Virginia Penal System, either State Farm or Road
22 Camp or anywhere?

23 JUROR: Oh, no. No, sir.

24 MR. DAVILA: I have no further questions.

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1 THE COURT: All right, the Court declares these
2 five gentlemen as prospective jurors. Will you retire
3 to the jury room?
4 (Whereupon the five prospective jurors leave the
5 courtroom.)
6 THE COURT: Gentlemen, would you all object to
7 increasing the number of calls?
8 MR. ADAMSON: I think five is a good working
9 number. I think we have already come up with eleven
10 out of the twenty. We have been going about an hour on
11 the jury.
12 THE COURT: All right.
13 CLERK: Charles P. Blankenship, number 44;
14 Beverly Gills, number 23, Leslie C. Wells, Sr., number 4,
15 Wilbert Jones, number 29, John Jefferson, number 28.
16 (Whereupon the five prospective jurors came into
17 the courtroom and were duly sworn by the Clerk.)
18 THE COURT: Gentlemen, the Court and the attorneys
19 will ask you a few questions. I assume your answers
20 are correct until you indicate to the contrary. All
21 of you have been residents of the Commonwealth of
22 Virginia for at least 12 months and the County of
23 Powhatan for at least six months immediately prior to
24 your receiving a summons to serve on the jury? All of

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you gentlemen are over the age of 21? Do you live within two miles of the courthouse? The alleged crime is, the defendant, Malcolm M. Jefferson did kill Raul M. Monte in this courtroom. Did any of you gentlemen read anything about that; have you heard anything about it or seen anything about it?

JUROR: Well, this fellow at the State Farm lives in my house. We rent, and we have discussed the case.

THE COURT: Have you formed an opinion as to the guilt or innocence of the accused?

JUROR: Well, more or less I have.

JUROR: Sir, I am guidance counselor in Powhatan School. Mr. Monte's child is one of our school children, and I had the unpleasant task of informing him of his father's being killed. I have had several conversations with his son. I really haven't formed an opinion, but it would put me in an awkward position.

MR. DAVILA: I ask that Mr. Blankenship be excused.

THE COURT: I will excuse those two. I think I will go on and call two more.

CLERK: Joseph F. Goode, Sr., number 22; Charles H. Groom, Jr., number 42.

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(Whereupon those two prospective jurors come into the courtroom and are duly sworn by the Clerk.)

THE COURT: These questions will just apply to the two prospective jurors that just came in. Have you gentlemen been residents of the Commonwealth of Virginia for at least 12 months and the County of Powhatan at least six months immediately prior to your receiving a summons to serve on this jury?

JURORS: Yes, sir.

THE COURT: Both of you are over the age of 21?

JURORS: Yes, sir.

THE COURT: Do either of you live within two miles of the courthouse? All right, we will go back to all the prospective jurors now. The alleged crime that will be tried in this case is the defendant Malcolm Jefferson did kill one Raul M. Monte. Do any of you know either of the parties? Have you all heard anything about this case, seen anything about it or read anything about it?

JUROR: I read it in the paper.

THE COURT: And has that in any way prejudiced your opinion one way or the other? Have you formed an opinion on what you have read?

JUROR: No, sir.

THE COURT: Neither of you have formed any opi-

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1 nion on what you have read?

2 JURORS: No.

3 THE COURT: Are any of you related by blood or

4 marriage to the defendant or the deceased? Do any

5 of you know the deceased, or do any of you know the

6 defendant? At the conclusion of the trial the Court will

7 give certain instructions, such as the presumption of

8 innocence of the accused; the Commonwealth must prove

9 its case beyond a reasonable doubt, and should the

10 defendant not take the stand that is no presumption

11 against him. Will each of you gentlemen follow your

12 oath and follow the instructions of the Court as given

13 to you? All right, are you gentlemen familiar with the

14 term capital punishment, what it means? Do any of you

15 have any religious or conscientious scrupples against

16 the imposition of capital punishment in the proper case?

17 The Clerk will now read a list of names of the prospec-

18 tive witnesses. At the conclusion of the list would you

19 state whether you know any of them or if you are related

20 to any of them by blood or marriage?

21 CLERK: Richard J. Poppleton, Fred Jordan, E. D.

22 Henderson, A. F. Hillman, E. M. Lloyd, Brown E. Snyder,

23 J. D. Netherland, Dr. Robert W. Bradley, Mullin J. Utt,

24 Grover E. Hamilton, Spears W. Williams, R. W. Tate,

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1 Herbert L. Berryman, Willie E. Thorne, J. C. Franklin,
2 H. Catron.
3 THE COURT: Did any of you gentlemen recognize
4 any of the names?
5 JUROR: I go to church with John Netherland.
6 THE COURT: Would that in any way prejudice you
7 one way or the other? Have you talked to him about the
8 case?
9 JUROR: No, sir, I haven't. He wouldn't talk
10 about the case.
11 THE COURT: All right, your relationship with
12 him, would that in any way make you give his testimony
13 more weight than it would other witnesses?
14 JUROR: No, it wouldn't, sir.
15 THE COURT: Well, would you try the case purely
16 from the witnesses as they appear in court and the
17 testimony they give, and hear their testimony?
18 JUROR: Yes, sir.
19 THE COURT: I assume most of you know the doctor
20 up here; all on a patient-doctor relationship. I don't
21 see how his testimony could affect you as to guilt or
22 innocence; the doctor's testimony. All right. Are you
23 gentlemen sensible of any prejudice whatsoever, whether
24 it be religion, racial or the fact the defendant is a

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1 convict in the Virginia State Penal System? Are you
2 sensible of any bias or prejudice of any kind that would
3 influence you and keep you from giving the Commonwealth
4 and the defendant a fair and impartial trial based on
5 the law and the evidence? All right, have any of you
6 ever been represented by Mr. Cassel Adamson or Mr.
7 Davila? Mr. Adamson is representing the defendant; or
8 Mr. Aubrey Davis? Any questions of counsel?
9 MR. DAVILA: Do any of you gentlemen know Mr.
10 Adamson at all? Mr. Wells, you are an equipment operator?
11 JUROR: Yes, sir.
12 MR. DAVILA: And, Mr. Jones, you are a machine
13 operator?
14 JUROR: Yes.
15 MR. DAVILA: And, Mr. Jefferson, where do you
16 work?
17 JUROR: Ellis Palmer.
18 MR. DAVILA: Ellis Palmer? Mr. Goode and Mr.
19 Groom are the last two gentlemen? Thank you. I have
20 no further questions.
21 MR. ADAMSON: Gentlemen, are any of you all friend-
22 ly or associated with the Commonwealth's Attorney's
23 Office for the City of Richmond, or the Commonwealth's
24 Attorney's Office for the County of Powhatan County?

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Do you all have any association or close tie by blood or marriage to any police officer or member of a sheriff's department or any other law enforcement officer? ARe any of you related by blood or marriage to a guard or other employee of the Virginia State Farm down here in Powhatan or any road camp?

Mr. Groom, you indicated that Mr. Netherland would not discuss the case. Did you have occasion to ask him about the case?

JUROR: Oh, naturally, yes, sir.

MR. ADAMSON: You asked him about the case?

JUROR: Yes, sir, but he wouldn't say nothing, and he's in my Sunday School Class at church. That's how I know him.

MR. ADAMSON: So, this was curiosity on your part, and not really....I mean it was not just common knowledge that you knew he wouldn't talk about it, is that right?

JUROR: That's right.

MR. ADAMSON: Mr. Goode, I understand you are a trash collector, is that correct?

JUROR: Yes, sir.

MR. ADAMSON: Any of you all live within three miles of the State Farm?

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I have no further questions.

THE COURT: All right, the Court declares these gentlemen as prospective jurors. Would you mind retiring to the jury room? That's 16 back there. Gentlemen, I believe the Court can only call four more, because if he calls five and all are qualified I don't know how we would eliminate one.

MR. ADAMSON: Your Honor, I move to strike Mr. Groom for cause; that he indicated a certain amount of interest in the thing by trying to ask Mr. Netherland for facts and details. He said he asked him several times and Mr. Netherland wouldn't talk about it. I think that's a kind of uncommon interest to show;that it indicates a relationship that would be proper to strike him for cause.

THE COURT: The Court will overrule your motion.

MR. ADAMSON: Will the Court note an exception?

THE COURT: Yes, sir.

CLERK: Desota Rose, Jr., number 18; William E. Lawman, number 27, Glenn H. Smith, number 39; James O. Hasher, number 66.

(Whereupon the four prospective jurors come into the courtroom and are duly sworn by the Clerk.)

THE COURT: Gentlemen, have your seat. At this

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1 time the Court is going to ask you some questions and
2 will assume your answers are correct until you indicate
3 to the contrary. Are all of you residents of the
4 Commonwealth of Virginia and have been for at least 12
5 months, and the County of Powhatan at least six months
6 immediately prior to receiving your summons to serve on
7 this jury? All are over the age of 21 years? The
8 charge that is to be tried in this case is that Malcolm
9 M. Jefferson, the defendant, did kill Raul M. Monte in
10 this courtroom. Did any of you know Mr. Monte or the
11 defendant, Jefferson; do you know him? Are you in any
12 way related to them by blood or marriage? Do any of
13 you gentlemen live within two miles of the courthouse?
14 At the conclusion of the trial the Court will give you
15 certain instructions, such as the defendant is presumed
16 to be innocent until the Commonwealth proves his guilt
17 beyond a reasonable doubt. The facts of the case must
18 be proved by the Commonwealth beyond a reasonable doubt.
19 And should the defendant not take the stand this is not
20 to be any evidence whatsoever against him. And there
21 will be other instructions. You will be under oath to
22 follow the instructions. Will each of you gentlemen
23 follow your oath and follow the instructions of the
24 Court? Are either of you gentlemen sensible of any

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1 bias whatsoever, whether it be racial, religion, or the
2 evidence might show that the defendant was a convict in
3 the Virginia State Penitentiary; are you sensible of any
4 bias or prejudice which would keep you from giving the
5 defendant and the Commonwealth a fair and impartial trial
6 based on the law and the evidence as presented in this
7 Court? Are each of you gentlemen familiar with the term
8 capital punishment, what it means? Do you have any
9 religious or conscientious scrupples against the imposi-
10 tion of capital punishment in the proper case? The
11 Clerk at this time will read a list of names which are
12 prospective witnesses in the case. If you are related
13 to any of them by blood or marriage, or if you know them,
14 will you please raise your hand?
15 CLERK: Richard J. Poppleton, Fred Jordan, E. D.
16 Henderson, A. F. Hillman, E. M. Lloyd, Brown E. Snyder,
17 J. D. Netherland, Dr. Robert W. Bradley, Mullin J. Utt,
18 Grover E. Hamilton, Spears W. Williams, R. W. Tate,
19 Herbert L. Berryman, Willie E. Thorne, J. C. Franklin,
20 H. Catron.
21 THE COURT: Do any of the jurors know any of the
22 prospective witnesses? Have any of you gentlemen read or
23 heard anything about the case or seen anything on televi-
24 sion about it?

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JUROR: Just read it in the paper, that's all.

2nd JUROR: Yes, I read it in the paper.

3rd JUROR: I read it in the paper too.

4th JUROR: I heard about it, but I didn't take it seriously.

THE COURT: Well, the gentleman that heard about it and the three gentlemen that read about it, have you formed an opinion as to the guilt or innocence of the accused based on what you have read or heard?

ALL JURORS: No, sir.

THE COURT: All right, then you have not formed any opinion and will abide by the evidence and the law; the evidence as presented in the courtroom, should you become a juror? Do any of you know, or have you ever been represented by Mr. V. Cassel Adamson who is representing the defendant, or Jose R. Davila or Mr. Davis who are representing the Commonwealth? Are any of you friendly with or know the Commonwealth's Attorney of the City of Richmond or the Commonwealth's Attorney's Office in the County of Powhatan? If so, raise your hand.

JUROR: I know Mr. Blandford, hunt with him some, that's all.

THE COURT: Would your relationship with Mr. Blandford in any way bias you against the defendant?

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1 All right, gentelmen, you may ask your questions.
2 MR. DAVILA: Mr. Rose, you work for Dupont?
3 JUROR: Yes, sir.
4 MR. DAVILA: Mr. Lawman, you are a mechanic, sir?
5 JUROR: Yes, sir.
6 MR. DAVILA: And Mr. Smith, you are a truck driver?
7 JUROR: Yes.
8 MR. DAVILA: And Mr. Hasher, maintenance?
9 JUROR: Yes, sir.
10 MR. DAVILA: I have no further questions.
11 THE COURT: All right, Mr. Adamson?
12 MR. ADAMSON: Mr. Hasher, what did you say you do?
13 JUROR: Mechanic, Porsher-Allen.
14 MR. ADAMSON: Are you Mr. Hasher or Mr. Lawman?
15 JUROR: Lawman.
16 MR. ADAMSON: You are Mr. Lawman?
17 JUROR: Yes, sir.
18 MR. ADAMSON: Mr. Hasher, what is your occupation?
19 JUROR: Maintenance; do maintenance work.
20 MR. ADAMSON: I see. Gentlemen, do any of you
21 all have any associations with the Sheriff's Department
22 or Police Department in any way, anywhere? Do any of
23 you have a relative by blood or marriage that is a
24 police officer or other law enforcement officer? Have you

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1 or any members of your immediate family ever been the
2 victims of a crime? Are you related by blood or marriage
3 to any guard or other employee of the Virginia Penal
4 System? Do any of you live within three miles of the
5 State Farm? I have no further questions.
6 THE COURT: All right, gentlemen, the Court
7 declares these gentlemen proper prospective jurors and
8 will ask them to retire to the jury room. And I believe
9 that gives us the total of 20 at this time. All right,
10 Mr. Sheriff, return the 20 prospective jurors.
11 MR. DAVILA: Your Honor, before we do that, can
12 we take a brief recess?
13 THE COURT: Well, what I thought we would do,
14 you would take your strikes, and then we would take a
15 recess.
16 MR. DAVILA: If Your Honor pleases, prior to
17 striking, I would like a couple moments to get my notes
18 together and go to the bathroom. I apologize to the
19 Court.
20 THE COURT: All right, the Court will recess,
21 and everyone will remain seated until the defendant is
22 removed from the courtroom. We will return at quarter
23 after 12:00.
24 (Recess until 12:15.)

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1 THE COURT: All right, Sheriff, you can return
2 with the prospective jurors. All right, you may strike.
3 CLERK: Approach the bench as your name is
4 called: Richard L. Foulp, Arthur W. Bartlam, Clyde B.
5 Poore, Marvin Barley, Leon Bates, Sr., Earl S. Morris,
6 Wilbert Jones, Charles H. Groom, Jr. Will those whose
7 names were not called have a seat over there? Harry R.
8 Jones, Frank L. Matthews, Eddie Lee Barley, James R.
9 Donathan, James Riggins, Leslie C. Wells, Sr., John
10 Jefferson, Joseph Goode, Desota Rose, Jr., William E.
11 Lawman, Glenn H. Smith, James L. Hasher.
12 THE COURT: All right, gentlemen, you are
13 excused from futher attendance. The Court appreciates
14 your attention this morning.
15 I am going to ask you gentlemen to fill up the
16 jury box. You stay where you are, sir.
17 All right, Mr. Clerk, I will get you to swear the
18 jurors.
19 (Whereupon the jurors were duly sworn.)
20 THE COURT: Gentlemen, since it might be somewhat
21 of a late trial the Court is going to empanel two
22 alternate jurors at this time. In accordance, I will
23 ask you to retire to your jury room so that can be taken
24 care of. I trust that the delay will not be too long.

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1 If you will, retire to your jury room. It will be
2 appreciated by the Court.
3 (Whereupon the jurors retired to the jury room.)
4 THE COURT: Gentlemen, the Court would like to
5 draw four names and each side get one strike, and the two
6 omitted will be the alternate jurors. Is there any
7 objection from the Commonwealth?
8 MR. DAVILA: No, sir.
9 THE COURT: From the defense?
10 MR. ADAMSON: Sir, I didn't hear you.
11 THE COURT: We will draw four names. Each side
12 will get one strike, and the two remaining will be the
13 alternate jurors.
14 MR. ADAMSON: No objection, sir.
15 THE COURT: All right, draw four:
16 CLERK: Ronald A. Boyer, number 32, Guy W. Martin,
17 number 31, Horrace Hubbard, number 12, Julian M. Whitlock,
18 number 11.
19 (Whereupon the four prospective alternate jurors
20 are brought in and duly sworn by the Clerk.)
21 THE COURT: Gentlemen, the Court is going to ask
22 you some questions. We will assume your answers are
23 correct unless you indicate to the contrary. All of you
24 have been residents of the Commonwealth of Virginia for at

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1 least one year and the County of Powhatan for at least six
2 months immediately prior to receiving your summons to
3 serve on this jury?
4 JUROR: You mean registered voters?
5 THE COURT: No, sir, residents.
6 JUROR: Yes, sir.
7 THE COURT: All of you are over the age of 21?
8 The alleged crime which the Court is trying today is the
9 murder of one Raul M. Monte, allegedly done by the
10 defendant, Malcolm M. Jefferson. Did any of you gentlemen
11 know Mr. Monte, or do you know the defendant, Jefferson,
12 or are you related to either by blood or marriage?
13 JUROR: No, I don't know him, but I was up here
14 the day the thing took place. I was on the jury.
15 THE COURT: You were on the jury?
16 JUROR: Yes, sir, right out the front door.
17 MR. DAVILA: What is your name, sir?
18 JUROR: Martin.
19 THE COURT: Let's call another one.
20 CLERK: Robert L. Brown.
21 (Whereupon Mr. Brown comes in and is duly sworn.)
22 THE COURT: These questions just apply to Mr.
23 Brown, the prospective juror just called in. Have you been
24 a resident of the Commonwealth of Virginia at least 12

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1 months and of the County of Powhatan at least six months
2 immediately prior to receiving your summons to serve on
3 this jury?
4 JUROR: Yes, sir.
5 THE COURT: You are over the age of 21?
6 JUROR: Slightly.
7 THE COURT: All right, these questions go to all
8 the prospective jurors. Do any of you live within two
9 miles of the courthouse? The alleged crime that the
10 Court is trying today is the murder of one R. M. Monte,
11 allegedly by the defendant, Malcolm M. Jefferson. Do
12 any of you know any of the parties? Are you related to
13 them by blood or marriage? At the conclusion of the
14 trial the Court will give certain instructions, such as
15 the defendant is presumed to be innocent; the Commonwealth
16 must prove all the elements in the crime beyond a reaso-
17 nable doubt. If the defendant does not take the stand
18 there is no presumption against him for his failure to
19 testify. If you gentlemen should happen to serve on the
20 jury, you have an oath to follow the instructions of the
21 Court. Would you follow your oath and follow the instruc-
22 tions of the Court? Are all of you gentlemen familiar
23 with the term capital punishment, what it means? Do
24 any of you gentlemen have any conscientious or religious

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1 scrupples against the imposition of capital punishment
2 in the proper case?
3 JUROR: I do.
4 THE COURT: You do? What are they, sir?
5 JUROR: My conscious wouldn't allow me to take
6 part in determining the life or death of a person.
7 THE COURT: Would that make you hang the jury?
8 JUROR: Sir?
9 THE COURT: Would you refuse to find a man
10 guilty no matter what the evidence is?
11 JUROR: Yes, sir.
12 THE COURT: I am going to excuse you, sir.
13 MR. DAVILA: What is your name, sir?
14 JUROR: Ronald Boyer.
15 THE COURT: At this time the Clerk will read
16 the names of witnesses. If any of you gentlemen know the
17 witnesses or are related to them by blood or marriage,
18 please indicate by raising your hand at the conclusion
19 of the entire list.
20 CLERK: Richard J. Poppleton, Fred Jordan E. D.
21 Henderson, A. F. Hillman, E. M. Lloyd, Brown E. Snyder,
22 J. D. Netherland, Dr. Robert W. Bradley, Mullin J. Utt,
23 Grover E. Hamilton, Spears W. Williams, R. W. Tate,
24 Herbert L. Berryman, Willie E. Thorne, J. C. FRanklin,

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1 H. Catron.

2 THE COURT: Yes?

3 JUROR: I know four or five of them.

4 THE COURT: Would that relationship that you have
5 with the four or five of them, that you know, affect in
6 any way your giving a fair and impartial trial both to
7 the Commonwealth and the defendant?

8 JUROR: No, sir.

9 THE COURT: You raised your hand?

10 JUROR: Yes, sir.

11 THE COURT: Which one?

12 JUROR: Mr. Utt.

13 THE COURT: Mr. Utt?

14 JUROR: Yes, sir.

15 THE COURT: Would your relationship with Mr. Utt
16 in any way affect your giving the Commonwealth and the
17 accused a fair and impartial trial?

18 JUROR: No, sir.

19 THE COURT: To all of you gentlemen, are you
20 sensible of any prejudice or bias whatsoever, whether it
21 be racial, religion or the fact that the defendant might
22 be shown to be a convict in the Virginia Penal System;
23 would that in any way affect you in giving both the
24 Commonwealth and the accused a fair and impartial trial

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1 based on the law and the evidence? Do any of you know
2 Mr. Cassel Adamson who represents the defendant and Mr.
3 Jose R. Davila who represents the Commonwealth, or Mr.
4 Davis who is assisting Mr. Davila? Do any of you have
5 any immediate family that's connected with any police
6 department, sheriff's department or any other law enforce-
7 ment agency? Have any of you gentlemen served in a law
8 enforcement agency, either in civilian life or military
9 service? All right, gentlemen, do you all have any
10 questions?
11 MR. DAVILA: I have no questions.
12 MR. ADAMSON: Mr. Brown, have you served as a
13 Justice of the Peace before?
14 JUROR: No, sir.
15 MR. ADAMSON: I have no questions.
16 THE COURT: All right, I am going to let each
17 side take one strike, and the Court will only have one
18 alternate juror. That's what the statute asks.
19 MR. DAVILA: May I ask for the purpose of identi-
20 fication, Mr. Hubbard, you are a warehouse man?
21 JUROR: Yes, sir.
22 MR. DAVILA: I'm sorry, I didn't know you. Mr.
23 Whitlock, you are a carpenter?
24 JUROR: Yes, sir.

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1 MR. DAVILA: And I know Mr. Brown.

2 (Whereupon the attorneys strike.)

3 CLERK: Gentlemen, approach the bench as your

4 name is called. Horrace Hubbard, Robert L. Brown.

5 THE COURT: Gentlemen, you are excused from

6 further attendance of Court, and the Court thanks you

7 for coming down this morning.

8 All right, Mr. Clerk, will you administer the

9 oath? You will be serving as an alternate juror and

10 will take the same oath as the other jurors.

11 (Whereupon the alternate juror is duly sworn.)

12 THE COURT: Mr. Whitlock, you are an alternate

13 juror. You will participate in every aspect of the

14 trial and have a place in the jury box whereby you can

15 hear all the evidence and observe all the exhibits, and

16 be a juror for alternate purposes. However, if there is

17 no reason to excuse one of the jurors,at the conclusion

18 of the case you will be excused and not take part in the

19 deliberation because you are an alternate juror. But,

20 at the same time you should listen very attentively to

21 all of the evidence and participate in everything the

22 jury does until that time. And at that time the Court

23 will further instruct you. Would you now retire to the

24 jury room with the other jurors? I will ask you, Mr.

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1 Whitlock, will you occupy the seat on the end of the
2 jury box, here, when you come back?
3 (The juror retires to the jury room.)
4 THE COURT: If counsel does not have an objec-
5 tion, I would think one alternate juror would be suffi-
6 cient. Mr. Davila, do you have any objection?
7 MR. DAVILA: No, sir.
8 THE COURT: Mr. Adamson?
9 MR. ADAMSON: I have no objection.
10 THE COURT: All right, Sheriff, you may remove
11 the one chair from the jury box. Gentlemen, I understand
12 that it is now 20 minutes to 1:00. So we will have some
13 schedule, the jury will have to go to Midlothian to eat
14 lunch, and I understand that will take a little bit more
15 time than usual. I think at this time we will recess for
16 lunch and will start back at 2:00 o'clock at which time
17 we will have opening statements. And at the conclusion
18 of the opening statements present evidence. We will go
19 to approximately 5:00 this afternoon, and if counsel has
20 no objection we will recess until, or adjourn until
21 tomorrow morning at 9:00 o'clock. If any objections are
22 to be exercised, exercise them now.

DIRECT EXAMINATION

of

Willie Thorne

(75)

BY MR. DAVILA:

Q. Sir, what is your name?

A. Willie Edward Thorne.

Q. And your occupation?

A. Virginia State Penitentiary Guard.

(76)

Q. Directing your attention to November 22, specifically, of 1971, the date in question, did you have occasion to initially see the defendant, Malcolm Marvin Jefferson?

A. Yes,sir.

Q. Approximately what time of day and where did you first see him?

A. About 8:30 in the morning.

Q. Where was it?

A. In the M building hallway.

Q. What building was that?

A. M building; maximum security.

Q. That's in Powhatan County?

A. Yes, sir.

Q. What was the occasion for your seeing him.

A. I had to dress him out that morning to go to court.

(79 - 84)

4 Q. Did you handcuff one of them?

5 A. Yes, sir.

6 Q. Which one?

7 A. Washington.

8 Q. Were the cuffs secure?

9 A. Yes, sir.

10 Q. Do you recall who handcuffed Malcolm Marvin Jefferson?

11 A. Lieutenant Tate.

12 Q. Did you observe that?

13 A. Yes, sir.

14 Q. Did you observe as to whether they were secure;

15 the cuffs were secure or not?

16 A. Yes, sir; tested them.

17 Q. What else did they have on other than handcuffs

18 so far as security is concerned?

19 A. Waist chain.

20 Q. After that occurred what happened? Did they remain

21 there or leave?

22 A. They were taken out to the control room for to come

23 through the main gate.

24 Q. Did you go with them?

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A. Yes, sir, came into the control room, that's all.

Q. How far did you accompany them?

A. To the control room, that's all.

Q. All right, sir. Now, if you will, describe how the handcuffs and chain were situated on Malcolm Marvin Jefferson and James Edward Washington?

A. Well, the lock key will be turned to the inside, the chain around the waist, and his hands here, and he could move from here to here.

Q. Do they have leverage?

A. Yes, sir, they can move their hands, yes, sir.

Q. What are some of the things they can do when they have the chain and handcuffs on?

A. They can also smoke.

Q. Do your prison clothes as a rule have a shirt front pocket in them?

A. Yes, sir.

Q. Could they reach up to them in the pockets?

A. Yes, sir, most of them have cigarettes in the pockets.

Q. Have you ever seen these handcuffs released by other means besides the key?

A. Yes, sir.

Q. What?

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A. Hair pins, fountain pens.

Q. At my request did you have occasion to bring today with you a set of handcuffs similar to the ones that were used on the day in question, and also a chain?

A. Yes, sir.

Q. Do you have them with you?

A. Yes, sir.

Q. Will you pull them out, please sir?

MR. DAVILA: With the Court's indulgence, may I move?

THE COURT: Yes.

BY MR. DAVILA:

Q. Stand up, if you will, Mr. Thorne. How is that chain put around the individual inmates, and how was it put on Malcolm Marvin Jefferson on the day in question?

A. It would be put around his waist like this. This part will run through here, then the cuff goes through and goes on his arm.

Q. These cuffs go on the inside?

A. Yes, sir.

Q. How do they attach to this?

A. Goes through.

Q. Which cuff? And then the cuffs are put on the individual like so?

A. Yes, sir.

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1 Q. All right, sir, can you open that?

2 MR. ADAMSON: Mr. Davila, could you stand

3 aside so I can see?

4 MR. DAVILA: Excuse me.

5 A. It's too tight.

6 Q. I'm pushing a little bit down. What does that do?

7 A. It locks them.

8 Q. Locks them?

9 A. Yes, sir.

10 Q. And now maneuver it, if you will?

11 (The witness demonstrates moving his hands.)

12 Q. I've got to get this thing up. I believe you

13 stated that you had seen these cuffs in the past released with

14 a hair pin?

15 A. Yes, sir.

16 Q. Is that the fashion which Malcolm Marvin Jefferson

17 was secured on the morning in question?

18 A. Yes, sir.

19 Q. Mr. Thorn, would you answer Mr. Adamson's questions?

20 A. Yes. sir.

21 CROSS-EXAMINATION

22 BY MR. ADAMSON:

23 Q. Mr. Thorn, isn't the waist chain customarily a

24 little tighter than what you just displayed?

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A. Not necessarily; just so the inmate can smoke if he wants to without taking them off.

Q. Can you say this afternoon that the cuffs that were placed on Malcolm Jefferson and the waist chain was loose enough to leave him the amount of movement which you have just demonstrated to the Court?

A. Yes, sir.

Q. You can say this unequivocally?

A. Yes, sir.

Q. You made reference to seeing a pair of cuffs opened by, I believe, a fountain pen and, I believe, some other object. Have you ever seen an individual with cuffs on, the locks fastening his body with the waist chain, open a pair of cuffs?

A. Yes, sir.

Q. Would you explain when this was?

A. When was it?

Q. I mean, what were the circumstances?

A. Well, just this fellow officer, just messing around showed different officers the way of getting out.

Q. In other words, this is some professional person who works for the State who gives demonstrations of things of this sort?

A. No, sir, just other guards that I had to work with.

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1 I've seen them do it.

2 Q. Is this some kind of sport or some sort of game

3 they indulge in?

4 A. No, sir. Well, experienced person, older guards,

5 they will try to teach them that people can get out of the

6 type of cuffs if they are not watched too good.

7 Q. Well, isn't the reason the key hole side of the

8 cuff is facing the body is to prevent such an occurrence from

9 happening?

10 A. Well, like when you ride them in the back of a

11 truck, another man is facing.....

12 Q. You didn't answer the question.

13 A. Yes, sir.

14 Q. Isn't the reason for placing the key hole toward

15 the body to prevent such a likelihood?

16 A. By whom?

17 Q. Of an individual getting out of his cuffs.

18 A. That's right.

19 Q. Now, have you ever seen aninmate remove his cuffs

20 in the situation you were just in?

21 A. No, sir.

(85)

DIRECT EXAMINATION
of
J. C. Franklin

BY MR. DAVILA:

Q. Sir, what is your name?

A. Joseph Charles Franklin.

Q. And what is your employment?

A. I'm a farmer and a carpenter.

Q. Directing your attention to November 22, 1971, did you have occasion at that time to be employed at the State Penitentiary?

A. Yes, sir, I did.

Q. State Farm?

A. Yes, sir.

Q. And, what capacity, sir?

A. Well, I was working maximum security.

Q. You were a guard?

(86-87)

Q. Do you recall how he was transported to the courthouse?

A. Yes, sir, he was transported in a paddy wagon.

Q. All right, sir, who was driving that paddy wagon, do you recall?

A. Lieutenant Tate.

Q. and what mode of transportation did you proceed in, if any, to the courthouse?

A. I rode with Captain Monte behind the paddy wagon. Lieutenant Tate and Mr. Berryman were in the paddy wagon in front.

Q. Where were you all?

A. Behind the paddy wagon in the pick-up.

(87)

Q. When you arrived here, where did you go, you, yourself?

A. I stayed out at the right front corner facing the road.

Q. Would have been this side?

A. Yes,sir.

Q. Were you outside?

A. Yes, sir.

Q. What was the purpose of your remaining there?

A. I was security guard there.

Q. Did you have a weapon?

A. Yes, sir.

Q. What kind?

A. Had a shotgun and a short gun.

(90-91)

BY MR. DAVILA:

Q. Did you have occasion to observe the inmates prior to their entry into the courthouse as they were being escorted into the courthouse?

A. Yes, sir, I seen them when they came in .

Q. Did they appear to be secure?

A. They did.

Q. What did they have on?

A. They had waist chain and handcuffs.

Q. Through what door were they brought into, the inmates?

A. The inmates?

Q. Yes.

A. They were brought in the front door.

DIRECT EXAMINATION
of
Herbert L. Berryman

(94-95)

BY MR. DAVILA:

Q. Sir, what is you name?

A. Herbert Berryman.

Q. And your employment?

A. I'm construction worker now.

Q. In November of 1971, more specific, November 22, 1971, were you employed as a guard at the State Farm?

A. Yes, sir.

Q. Directing your attention to that date in the early morning hours, did you have occasion to see the defendant, Malcolm Marvin Jefferson, and also James Edward Washington at the State Farm?

1 A. Yes, sir.

2 Q. Approximately what time and where did you initially

3 see them?

4 A. Well, I saw them in maximum security building around

5 8:00, something like that. We dressed them out for coming to

6 court.

7 Q. Were they issued new clothing at the time?

8 A. Yes, they were.

9 Q. Did you see them being stripped and searched?

10 A. I didn't see them being stripped, but when they

11 came out to us they were stripped, and Officer Thorne, he run

12 his metal detector, tested over them, and we dressed them out

13 there.

14 Q. All right, sir, were they later dressed?

15 A. Yes, sir.

16 Q. And secured?

17 A. Yes, sir.

18 Q. How were they secured, sir?

19 A. Well, they were secured with handcuffs and a chain.

20 Q. Did you see them being secured?

21 A. Yes, sir.

(96)

Q. When you arrived, where did you all go, specifically, in this vicinity?

A. Well, the vehicle was parked to the side, here, and I was posted behind the vehicle, and Officer Franklin was posted somewhere out front, and Officer Snyder was posted out there near the corner of the building.

Q. The vehicle to which you refer was the paddy wagon, was it not?

A. Yes,sir.

Q. Did you remain outside or did you come inside?

A. I remained outside.

(160 - 162)

CROSS EXAMINATION
of
Herbert Berryman

BY MR. ADAMSON:

15 Q. Did you watch them dress?

16 A. Yes, sir.

17 Q. And did you watch the handcuffs and waist chain be

18 put on them?

19 A. Yes, sir, I did.

20 Q. Did you have occasion to test the handcuffs and

21 the waist chain?

22 A. No, I didn't.

23 Q. Did you see others test the handcuffs and waist

24 chain in your presence?

A. Well, when they put them on they pushed, applied a little pressure to the handcuffs after they locked them to see if it was locked.

Q. In other words, you heard the cuffs click as they went on the wrist, and then they shoved the locking button; checked it to see if it was tightened further, but the locking button was holding, is that correct?

A. Correct.

Q. Would you stand up and demonstrate how much movement a person would have with the waist chain on and cuffs?

A. Well.....

Q. That's all? Would you say you have approximately six inches of movement up and down?

MR. DAVILA: May it please the Court, I think the movement indicates it is more than six inches.

THE COURT: He just asked the question. The admissibility of the distance.....

MR. ADAMSON: I want to get it into the record, and we can't take a television picture of it.

WITNESS:

A. A little more than that.

Q. Would you say six to seven, eight inches?

A. Something like that.

Q. You think eight inches would be a fair statement,

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fair estimate for the maximum upward and downward movement?

A. Yes, sir.

Q. And side to side?

A. Well, that depends. He can slide the chain around, see. That's just around his waist.

Q. I see. And don't regulations require the handcuffs placed on the man have the key hole towards the person's body and not away from it?

A. Well, I don't know that it's a regulation, but that's what we usually do.

Q. That's the way you are suppose to do it?

A. Yes, sir.

Q. Was that followed in this particular situation?

A. Yes, sir.

(104)

DIRECT EXAMINATION
of
MULLIN J. UTT

BY MR. DAVILA:

Q. Sir, what is your name?

A. Mullin J. Utt.

Q. Where are you employed, sir?

A. Lumber business.

Q. Directing your attention to Novmeber 22, 1971, the date of this offense, did you have occasion to appear at this courthouse?

A. I did.

Q. Approximately what time did you arrive?

A. Aobut 25 minutes to 10:00.

Q. What was the purpose of your being here?

A. I was on the jury, summond for jury.

(107 -109)

2 Q. Where were you standing when you were talking to
3 Mr. Monte?
4 A. Setting on the seat next to the door.
5 Q. And you heard a gun go off?
6 A. Heard the gun go off.
7 Q. And what did you do then?
8 A. Well, Mr. Monte jumped up and run by me and come
9 down the aisle. And I think he hung his foot in the bench.
10 Q. What route did he take; go around the back of the
11 courthouse?
12 A. Yes.
13 Q. And he came down this aisle?
14 A. Yes, and caught his foot in the seat here and fell
15 about three down.
16 Q. Did he fall?
17 A. Yes, he fell on the floor.
18 Q. All right, where did he go then?
19 A. Well, another shot went off, and I got down behind
20 the seats up there. I don't know.
21 Q. Did you see anything happening in the area from
22 which the shots came?
23 A. Yes, there was a guard, Mr. Snyder, and two
24 inmates, were scuffling right there, over there in the corner.

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Q. By the steps?

A. Yes.

Q. The guard and two inmates?

A. Yes.

Q. Approximately, altogether, how many shots did you hear ?

A. Well, around six to eight.

Q. Did you eventually get out of the courtroom?

A. I went out of the courtroom after they shot about five or six times.

Q. And did you hear additional shots?

A. Mr. Netherland came in the door, and he shot up through here somewhere. I don't know where he was shooting. I went outside.

Q. How many shots did you hear once you got outside of the courthouse?

A. I heard about one more, one or two more. I'm not sure.

Q. Can you be a little bit more specific about the scuffling between the two inmates and guard? Do you recall any positions or anything of that nature?

A. No, they were all scrambled together. I couldn't tell you.

Q. Now, can you be a little more specific as to what

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1 area they were scrambling together in?

2 A. Well, just in there about where that heat vent is.

3 Q. Where the heat vent is?

4 A. Yes, sir, in that corner where you step up.

5 Q. Is that right underneath the window?

6 A. Yes, sir.

Q. Now, Mr. Utt, as Captain Monte fell, at that time, to that point, had there been any shots fired from the back of the courtroom?

A. No, sir.

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(111 -115)

DIRECT EXAMINATION
of
Spears W. Williams

BY MR. DAVIAL:

Q. Sir, what is your name?

A. Spears Watkins Williams.

Q. Where are you employed, sir?

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A. For myself.

Q. Sir?

A. Farmer, do some carpenter work on the side.

Q. Directing your attention to November 22, 1971, the date of this offense, did you have occasion to appear at this courthouse on that morning?

A. Yes, sir.

Q. What was the reason for your being here?

A. I was summoned on jury.

Q. Approximately what time did you arrive at the courthouse?

A. It was just near at 9:45, could have been two or three minutes either way.

Q. Did you come inside the courthouse?

A. Yes, sir.

Q. Who did you observe in the courthouse when you arrived?

A. I saw Mr. Monte standing right there, and I saw Mr. Snyder standing over these two men.

Q. All right, sir, did they eventually move elsewhere?

A. Mr. Monte finally went back to the back.

Q. Which side of the courthouse?

A. He was standing back in the corner there.

Q. Over on this side?

A. Uh huh.

Q. And where did you go?

A. Well, I was right behind you, maybe three feet back there, about that second bench there.

Q. Did you have occasion to see or hear anything unusual that morning?

A. I tell you, I was looking around at those pictures up there, and all at once I heard a scuffle break loose.

Q. Where was the scuffle?

A. Oh, it was between Sheriff Patterson and that walk there.

Q. Up to the Clerk's bench?

A. Yes.

Q. Who did you notice in the scuffle?

A. Well, from what I could see Mr. Snyder was trying to hold these two men.

Q. What did the two men....Were they inmates or civilians?

A. Inmates.

Q. Did they have inmate clothing on; penitentiary clothing?

A. I think they did. I think they did.

Q. Can you express specifically what they were doing?

A. Well.....

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1 Q. Were they on the floor, or were they standing up?
2 A. They were standing up when I saw them, and all at
3 once I heard that scuffle break loose over there, and I looked
4 over there and he looked like he was trying to hold them both
5 away. I could see they had taken his gun, and it wasn't but
6 two or three seconds before I heard three shots go off. And
7 about that time Mr. Monte come running up the aisle there.
8 Q. What route did he take, Mr. Williams?
9 A. When I saw him he was coming around and back there,
10 and he hung his foot there on the benches and tripped two or
11 three of the benches up, and fell, but he jumped up and ran
12 in on the men. And the man on this side, he hit him with
13 something and kind of broke them loose.
14 Q. Was that an inmate he hit?
15 A. Yes, sir. And about that time I turned and
16 started out, and I heard two more shots go off.
17 Q. Now, where were you when you started out?
18 A. Oh, I was right back of that gentleman there;
19 right back there.
20 Q. After you heard the second series of two shots,
21 how many shots had been fired altogether, roughly?
22 A. I heard five before I got to that, around that
23 column and the door. I met another guard come running in the
24 door back there, and I heard some more shots. I couldn't say

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how many.

Q. Was that Captain Netherland you saw coming in?

A. Well, I don't know him.

Q. Were you inside when you saw that guard coming in that door or outside?

A. I was between that column and the door.

Q. Did you eventually get outside?

A. Yes, sir.

Q. How many shots did you hear when you were outside?

A. I couldn't say.

Q. Did you see more than two inmates in this courthouse that date?

A. No, sir, I certainly didn't.

Q. Would you answer Mr. Adamson's questions?

A. Yes, sir.

(117-118)

5 Q. As you went out the door was anyone coming in the
6 door?
7 A. Yes, sir, I met this third guard coming running in
8 the door, and I think it was several around the door. I was
9 in a hurry to get out. I didn't find out who the men were.
10 Q. Well, did they come into the courtroom after you
11 got out, or did they come in at the same time you were going
12 out?
13 A. I couldn't tell you that. I know I met that man
14 coming in with a gun, and some more folks were around the
15 door; how many, whether they were coming in or going out; it
16 was such a mess there.
17 Q. Is it possible that the guard came into the court-
18 room at the same time that you went out?
19 A. I met the guard between that column there and the
20 door.
21 Q. Between the column and the door?
22 A. And I couldn't say just where it was, but I know
23 I met him between the column and the door.
24 Q. And he was heading through the door?

1 A. Yes, sir, coming around, right around there.

(118 - 129)

18 DIRECT EXAMINATION
of
19 BY MR. DAVILA: Brown E. Snyder

20 Q. Sir, what is your name?

21 A. Brown Snyder.

22 Q. What is your employment?

23 A. Guard, State Farm, Southside.

24 Q. Were you so employed on November 22, 1971?

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A. Yes, sir.

Q. Directing your attention to that date, did you have occasion to see the defendant, Malcolm Marvin Jefferson?

A. Yes, sir.

Q. Approximately what time of day and where did you first see him?

A. It was somewheres between 8:00 and 8:30 in the maximum security building.

Q. What were they doing at the time? What was he doing?

A. I escorted him out of the front gate, sir. I didn't see him when he was dressed.

Q. Was he later transported to this courthouse?

A. Yes, sir.

Q. Did you later come to this courthouse?

A. Yes, sir.

Q. How did you arrive?

A. I come with Captain Netherland.

Q. Approximately what time did you get here?

A. Roughly around 9:25.

Q. And what did you do when you initially got here?

A. I took my post out in front of the courthouse on the right hand side of the front.

Q. After you took your post did you later switch your post?

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A. Well, I stayed there until Jefferson was brought inside, and I come inside the courthouse.

Q. Was that at the direction of your supervisor?

A. Yes, sir.

Q. Now, when you came inside of the courthouse, how many inmates were in the courthouse?

A. Two, sir.

Q. And do you recall where they were?

A. Yes, sir.

Q. Where?

A. One was sitting in the chair, and the other one was on the bench.

Q. The chair where the Deputy Sheriff is?

A. Yes, sir.

Q. Do you recall which inmate was sitting in the chair?

A. Yes, sir, Washington.

Q. Speak up?

A. Washington was in the chair, and Jefferson was on the bench.

Q. Did you post yourself inside this courthouse at a position?

A. Yes, sir, in the far corner.

Q. Did they appear to be secure to you at the time?

A. Yes, sir, appeared to.

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1 Q. Were there any other inmates in this courthouse?
2 A. No, sir.
3 Q. Did Captain Monte have occasion to come into the
4 courthouse?
5 A. Captain Monte was in the courthouse when I come in,
6 sir.
7 Q. Where was he located, sir?
8 A. He was in the left hand side about the second bench
9 back from the back.
10 Q. Was he seated, or was he standing?
11 A. He was seated, sir.
12 Q. Did you have any conversation or hear any conver-
13 sation from either inmate?
14 A. Yes, sir.
15 Q. What was that, sir?
16 A. Washington turned around and asked me to go to the
17 bathroom. At first I didn't understand what he said, so I
18 asked him again. So then I asked Captain Monte, and he said,
19 he told me to go ahead and take him and he would watch the
20 other inmate for me.
21 Q. He would watch what?
22 A. He would watch Jefferson. So I brought, I started
23 up to the front.
24 Q. You did what?

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A. I started up the front with him. In other words, he was setting on the chair and got up. I followed him up.

Q. What was the path that you all took?

A. I come up through the aisle. Washington got up from the chair and started up the side over here, up these steps, coming back to the door.

MR. DAVILA: May I ask him to follow that route, please?

THE COURT: Yes, you may.

BY MR. DAVILA:

Q. Would you step down, please? Your testimony was in effect you came up along.....

A. I was standing right over here, sir.

Q. Trace your route?

A. All right, I come up here, and I come up through here, and at the same time I was trying to keep my eyes on Jefferson as I came back. Washington had got up and was heading this way.

Q. Take the route that you took?

A. I was going through here and up these steps here, sir.

Q. Then what occurred?

A. I got about this step here, and I had one foot on the step. Washington turned on me.

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Q. You got to the step and Washington did what?

A. Turned on me. As he turned he was grabbing my gun.

Q. Speak up.

A. All right, sir. He grabbed at...I was trying to hold him with this hand and trying to hold the revolver, and someone hit me from the back.

Q. How did he hit you; do you recall?

A. He jumped on me from the back.

Q. Then what occurred?

A. He was struggling with me too, and I felt two hands on my revolver as I was holding it. Next thing I know I was laying on the floor. As best I can say, I was somewhere along in here. When I reached up, looked up, I seen Captain Monte laying on the floor there.

Q. You saw Captain Monte laying on the floor where?

A. Right along this area, here, sir.

Q. Was his head up, or face up or down?

A. Face up.

Q. Was his head towards the Clerk's Bench or what?

A. Away from the Clerk's bench.

Q. What did you do then?

A. I seen the revolver laying there. I took a dive for the revolver.

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Q. Prior to that time had you heard any shots?

A. Yes, sir.

Q. How many?

A. About three, sir.

Q. Did you hear the shots before you observed Captain Monte?

A. While we were struggling.

Q. While you were struggling?

A. Yes, sir.

Q. You saw Captain Monte here? What did you do when you saw Captain Monte?

A. Like I say, I dove for that gun. Then I come up here, backed up a little ways, turned around, got a glimpse of somebody going in this door marked private.

Q. Was this gun your gun that you grabbed here?

A. No, sir.

Q. Show us how you grabbed that gun. Where was it approximately?

A. Well, like I say, I made a plunge for it.

Q. Plunge for it:

A. Like that, somehow, and jumped up, swung around about like this, and he was going that way.

Q. Why were you watching that way?

A. Like I say, I saw a glimpse of someone going

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1 through this door marked private.

2 Q. What was the position of that door when you ob-
3 served that person?

4 A. The best of my knowledge it was closed.

5 Q. Was it closed completely?

6 A. I don't recall.

7 Q. How could you observe someone in the door if it
8 was closed?

9 A. I got the glimpse of someone going through it.

10 Q. When did you get the glimpse, when you were in
11 that position over there?

12 A. Yes, I believe so.

13 Q. That gun you grabbed over here was not your gun,
14 was it?

15 A. No, sir.

16 Q. Did you remain posted here?

17 A. I backed up a little bit.

18 Q. Did you remain posted?

19 A. I remained there until I was told to go get an
20 ambulance.

21 Q. Did you see anyone in that room after you remained
22 posted?

23 A. I seen Jefferson when he come out of this room.

24 Q. Describe that, if you will, in detail? Would you

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have a seat on the witness stand?

A. Well, he was called for by Lieutenant Tate; called for him to come out. Also I called for him to come out, and he come out with his hands up.

Q. Was that Malcolm Marvin Jefferson that came out of that door with his hands up?

A. Yes, sir.

Q. Was he secure at that time?

A. No, sir, he was not.

Q. Describe his arms, if you will?

A. Both of them were up in the air.

Q. Show us.

A. Like that.

Q. Did you notice whether he had any handcuffs on?

A. Sir, I don't recall.

Q. But they were that far apart?

A. Yes, sir.

Q. Did you notice whether he had any chain on?

A. No, sir.

Q. When he came out where did he go?

A. He was directed to set down on the steps, and that's what he did. He set down on the steps.

Q. Did you at any time see Washington?

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A. Yes, sir, when he come out of this door over here.

Q. Was he secure?

A. No, sir.

Q. How do you know he was not secure?

A. Well, when he grabbed me he wasn't secure, sir.

Q. What do you mean, when he grabbed you; over there?

A. Yes, sir.

Q. Why do you say that?

A. Because his hands were free.

Q. Pardon?

A. Both hands were free. He had one hand up here on me and the other down on the side, sir.

Q. You said he went after your gun, is that right?

A. Yes, sir.

Q. Initially; and then you felt two hands on the gun?

A. Yes, sir.

Q. What type of weapon were you carrying on the day in question?

A. 38 Smith and Western.

Q. How many rounds did it have in it?

A. I had five, sir.

Q. What color were the bullets?

A. The color of them?

Q. Yes, sir.

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A. They were copper colored.

Q. You had an empty cylinder?

A. Yes, sir, we have to carry it.

Q. Was the trigger hammer on the empty cylinder?

A. Yes, sir.

Q. Had you checked that on that day?

A. I check it everytime before I go out, sir.

Q. I'm going to hand you a weapon and ask you if you can identify that weapon?

A. Yes, sir.

Q. Is that your weapon?

A. Yes, sir, it is.

Q. Open it up, if you will. It has six chambers, does it not?

A. Yes, sir, it has.

Q. How many cartridges were in that that morning prior to this incident?

A. Five.

Q. And the color of your bullets was copper colored?

A. Yes, sir.

Q. How were you carrying that weapon?

MR. DAVILA: We move to introduce this weapon as Commonwealth's Exhibit Number 1.

THE COURT: So received in evidence.

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WITNESS:

A. On the right hand side, sir.

Q. In what?

A. Short holster.

Q. I hand you what purports to be a holster and ask if that was your holster?

A. It was mine.

Q. On the date in question prior to this incident was the strap intact that appears to be torn at this time?

A. Yes, sir, it was.

MR. DAVILA: I move to introduce this, sir, as Commonwealth's Exhibit Number 2.

MR. ADAMSON: May I see it?

BY MR. DAVILA:

Q. I hand you another weapon and ask you if you can identify that weapon?

A. To the best of my knowledge it's Captain Monte's, sir.

Q. Is that the one you retrieved on the floor?

A. Yes, sir.

(132-133)

10 Q. Do you recall what type or caliber of amunition
11 you were carrying in the gun that day?
12 A. No, sir.
13 Q. The color of the bullets were copper?
14 A. Yes, sir, they were.
15 Q. Do you recall approximately how many shots were
16 fired?
17 A. From my own, sir, four.
18 Q. That entire day?
19 A. No, sir, I don't.
20 Q. Had you at any time prior to this scuffle, had you
21 fired that weapon at all that morning?
22 A. No, sir.
23 Q. When did you first discover that your weapon was
24 missing?

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1 A. Not until everything was over, sir.

2 Q. Do you recall, or did you see Captain Netherland

3 fire in this courthouse that morning?

4 A. Sir, I never even seen him come in the door.

5 Q. Do you recall seeing or hearing any shots coming

6 from the rear of this courthouse?

7 A. No, sir.

8 Q. At any time?

9 A. No, sir.

10 Q. Did you hear any sounds from Captain Monte?

11 A. No more than a small groan.

12 Q. Small what?

13 A. Groan.

14 Q. When did you hear this groan?

15 A. When he was laying on the floor, sir; exactly when,

16 I don't know, but I remember hearing one small groan.

17 Q. Again, I will ask you were there any other inmates

18 in this courthouse?

19 A. No, sir.

20 Q. Prior to this or after the scuffle, besides

21 Washington and Jefferson?

22 A. That was all, sir.

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(139-144)

BY MR. ADAMSON:

Q. How many vehicles came over from the state farm with the inmates?

A. Three, sir.

Q. And you had the paddy wagon, and what guards were in the paddy wagon?

A. In the paddy wagon was Lieutenant Tate and Guard Berryman.

Q. And was that the first vehicle in the procession?

A. Yes, sir.

Q. And the second vehicle was what?

A. It was the pick-up truck with Captain Monte and Guard Franklin.

Q. And the third vehicle?

A. State car, myself and Captain Netherland.

Q. Did you supervise, or were you present while the defendant and Washington were placed in the paddy wagon?

A. Yes, sir.

Q. And did they appear cuffed at that time?

A. Yes, sir, they did.

Q. Did you see them emerge from the paddy wagon at the courthouse?

A. Yes, sir.

Q. Did they appear cuffed at that time?

A. Yes, sir, they did.

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Q. And did you accompany both men into the courtroom?

A. No, sir, I stayed outside until they had come into the courtroom.

Q. Who accompanied them in?

A. Mr. Tate and Mr. Netherland.

Q. Then you came in?

A. Then Mr. Netherland come through the door and asked me to come in, yes, sir.

Q. And Mr. Tate and Mr. Netherland were outside, is that correct?

A. That's correct.

Q. Now, when you say Washington turned on you, is it your testimony that at the time Washington turned on you that his hands were free?

A. Yes, sir.

Q. And is it your testimony that shortly after Washington turned on you and a struggle ensued with Washington, that you were hit from behind?

A. Yes, sir.

Q. Could this blow have been consistent with a person diving or running at you?

A. I don't know exactly what you mean, sir.

Q. Well, could it be consistent with a person with his hands cuffed running like a football block into you, or

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1 was it the blow of a fist?

2 A. It was just a thump on the back, sir. I couldn't

3 say whether it was....I know it was more hands than mine

4 there involved.

5 Q. Did you ever during the struggle see Mr. Jefferson?

6 A. No, sir.

7 Q. You just felt the presence of another person whom

8 you believe was Mr. Jefferson?

9 A. That's right, sir.

10 Q. Did you become aware of Captain Monte entering

11 the struggle?

12 A. No, sir.

13 Q. In other words, the first time you saw Captain

14 Monte he was on the floor and he never got up from that

15 position?

16 A. That's right, sir.

17 Q. And is it your testimony that you were not aware

18 of any shots being fired from the rear of the courtroom?

19 A. I heard shots, sir, but I don't know how many.

20 Q. Were you aware of where they came from?

21 A. No, sir, it was so fast.

22 Q. In other words, you just heard a series of shots?

23 A. Series of shots. Only shots I know of were during

24 the struggle. I heard three shots then, and after that it

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1 was a series of shots.

2 Q. And you don't know the number?

3 A. No, sir.

4 Q. And did you see Washington go through that door?

5 A. No, sir, I did not.

6 Q. And you caught a fleeting glimpse of someone

7 going through this other door marked private?

8 A. That's right, sir.

9 Q. But until the man came out you couldn't tell who

10 it was?

11 A. No, sir, I couldn't.

12 Q. Now, when Washington asked to go to the men's room,

13 did you have to indicate to him where the men's room was lo-

14 cated?

15 A. No, sir.

16 Q. Did he appear to know where it was located?

17 A. Yes, sir, he did.

18 Q. And so he just kind of got up and you got up and

19 both started heading into the proper direction, is that cor-

20 rect?

21 A. After I asked Captain Monte.

22 Q. After you asked Captain Monte? How, what do your

23 regulations say about the distance you are to follow behind a

24 prisoner?

A. I'll put it this way, sir: To my knowledge, then if I knew the men were not securely handcuffed I would have been further away, but to my knowledge they were handcuffed securely, or I would not have been that close.

Q. You use the term they, but you should say him. You are referring to Washington, is that correct?

A. Yes, sir.

Q. Would you customarily follow a cuffed man as close as you did?

A. Not on the outside, no, sir.

Q. And at what distance are you trained to follow a prisoner?

A. 10-15 feet.

Q. 10 to 15 feet?

A. (Nods in the affirmative)

Q. And how far were you from him when he turned?

A. I was on the steps, sir. I had one foot on the steps.

Q. When he turned did he have to step forward to get to you, or was he right there as he turned?

A. He was right there as he turned, sir.

Q. And, so you were within 18 inches, two feet or so?

A. Yes, sir.

MR. ADAMSON: I have no further questions.

MR. DAVILA: I have one further question.

RE-DIRECT EXAMINATION

BY MR. DAVILA:

Q. I believe your testimony was to the extent that you saw Jefferson come out of that door?

A. Coming out, yes, sir.

Q. And he was unsecured?

A. Yes, sir.

(144-156)

DIRECT EXAMINATION
of
Grover E. Hamilton

BY MR. DAVILA:

Q. Sir, what is your name?

A. Grover E. Hamilton.

Q. Where are you employed?

A. I am unemployed at the present time.

Q. Where were you employed November, 1971?

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A. State Police Headquarters, State Police Garage.

Q. Directing your attention to November 22, 1971, did you have occasion to come to this very courthouse in the early morning hours?

A. Yes, sir, I was on jury duty.

Q. Approximately what timd did you arrive here, sir?

A. Just about 9:30.

Q. Did you have occasion to come into the courthouse?

A. Yes, sir.

Q. When you first came into the courthouse did you observe any guards in the courthouse?

A. Yes, sir, it was one in the corner of the courthouse over there.

Q. Who was that, sir?

A. Well, I couldn't tell you for sure, because when I come in everything happened right then.

Q. Did you later find out who he was back there?

A. That was Mr. Monte.

Q. All right, sir, did you see any other security officers?

A. Well, it was one in the scuffle up here in the corner.

Q. Well, I'm talking about when you first came in?

A. When I first came in?

Q. When you first initially came into the courthouse did you observe Captain Monte at that time?

A. When I came in the door and turned around I saw the scuffle, and Mr. Monte came running behind me.

Q. All right, where were you when you first saw the scuffle?

A. I had just come through the door and turned, and was standing right back of the last bench, just about on this aisle over here.

Q. Where was the scuffle that you observed?

A. In this corner.

Q. Could you see who was involved in the scuffle?

A. Well, I couldn't actually tell you faces.

Q. Well, how about bodies?

A. Well, it was three of them involved in it.

Q. All right, sir, and it was ....

A. It was two in the convict clothing and a guard.

Q. A guard?

A. Yes, sir.

Q. Could you describe their position?

A. Well, they were laying on, kind of their heads on those steps right there and bodies back out this way.

Q. Who was on the bottom? Was it a guard or inmate?

A. It was an inmate on the bottom.

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Q. Who was in between?

A. It was a guard in between.

Q. Who was on top?

A. It was an inmate on top.

Q. Now, did you notice anything unusual besides the scuffling? Did you ever see any arms or legs during the scuffle?

A. Well, I could see them there scuffling, and then I saw the arm with a gun in it.

Q. Show us how you saw that arm. Was it upright, or how was it?

A. He was struggling to try to get free and going out this way with it. Of course,he was laying down.

Q. What type of clothing was on that arm?

A. Inmate type of clothing, rustic brown type of clothing.

Q. Now, I show you a shirt and ask you if that's the type of color that you saw?

A. Yes, sir.

Q. Now, Mr. Hamilton, did you see the gun fire at all?

A. Yes, sir, I saw it fire the first shot. But it was still, it was pointed at the ceiling.

Q. And do you recall how many shots were fired?

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A. In all or.....

Q. No, initially.

A. Well, I saw the one fired, and then as I turned, was going out, another one fired, and just about as I was at the door, and then, of course, I went out, and I know at least two more were fired.

Q. All in all, approximately how many shots do you recall hearing?

A. Six. I mean this all happened real quick, and fast, but I know that there were at least six shots.

Q. The inmate that was on the bottom of the scuffle, was his face down or upward?

A. The way his gun was in his hand he would have had to be face up.

Q. Was the guard's face down or face up?

A. The guard was face-down.

Q. The inmate on top, was his face up or face down?

A. Face-down.

Q. And do you recall where Captain Monte was during this time?

A. Like I say, I had come in the door and was standing back there and watching the scuffle. The shot went off, and Mr. Monte came from back in that corner, came around the back, bumped into this bench and kind of fell to his knees, and

when he got to this last opening right here is when I was turning to go out.

Q. Did you see Captain Netherland during this particular episode?

A. I think it was Captain Netherland, but I can't say for sure that it was him, but as I went out the door, after I got out on the steps, then two guards came around the corner. I think, I'm sure it was two.

Q. Had Captain Netherland fallen before they came around on the steps? I mean Captain Monte, had he fallen?

A. Yes, sir, he had fallen before I ever went out. And I saw them on the outside.

Q. Did you see Captain Monte get up?

A. He was coming through this gate as I was turning, and that's as far as I saw him.

Q. He had already fallen?

A. He was coming back up on his feet right at that opening.

Q. I see. Did you hear any more shots at that time?

A. When he was there I turned to go out the door, and another shot went off right then, and just as soon as I cleared the door there were two more shots.

Q. As you cleared the door where was Captain Netherland? Was he still outside or.....

A. I can't say for sure it was him, but it was two guards that came around the corner, this corner of the building, coming toward the front door.

Q. They had not gotten inside up to that point?

A. No, sir.

Q. And they were the last two shots you heard?

A. After the guard came in it was two more shots that I recall.

Q. All right, so as you were leaving and Captain Netherland was coming around, you heard two additional shots in the courtroom?

A. I heard four before Mr. Netherland came in.

Q. You heard four?

A. Yes, sir.

Q. Before Mr. Netherland came in, and then you heard two additional ones when Captain Netherland came in?

A. Well, whichever guard it was that came in. I couldn't say it was Captain Netherland for sure, but whoever the guard was that came around the corner and came in, it was two shots fired after he came in.

Q. Also, I believe your testimony is that Captain Monte was just past the entrance?

A. He had one hand on each side of that, and he was coming to his feet as I was turning to go out.

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Q. And at that time how many shots did you hear?

A. It was one up to that point.

Q. Yes, sir, right.

A. And then as I turned, as long as it took me to turn and open that door it was another shot fired.

Q. And he was in a position of coming up?

A. When I turned to go out the door.

Q. And at that point you heard two more shots?

A. After I had gone through the door.

Q. You heard two more shots?

A. Yes, sir.

Q. And Captain Netherland had not reached that door when you heard those two shots, is that correct?

A. No, sir, he hadn't reached the door.

Q. All of this happened in Powhatan County, Virginia?

A. Happened right here in this courthouse.

Q. All of this happened in Powhatan County, Virginia?

A. Yes, sir.

Q. Would you answer Mr. Adamson's questions?

A. Yes, sir.

CROSS-EXAMINATION

BY MR. ADAMSON:

Q. Mr. Hamilton, when you came into the courtroom, did you come in with another juror?

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1 A. Yes, sir.

2 Q. And what was that man's name?

3 A. Mr. Spears W. Williams, I believe it is.

4 Q. And did you precede Mr. Williams in the courtroom,

5 or did Mr. Williams precede you?

6 A. I opened the door for Mr. Williams, and he came

7 in, and I turned and closed the door.

8 Q. And after getting inside, as you closed the door

9 and turned around, you saw the struggle underway, is that

10 correct?

11 A. Yes, sir, just as soon as I turned from the door

12 and took a step back of that bench it was happening.

13 Q. And did you see Captain Monte as you were closing

14 the door?

15 A. I could see some people. It was a couple men in

16 the corner, but I really hadn't looked to see who it was.

17 Q. And when it came time to leave the courtroom, who

18 went out first, you or Mr. Williams?

19 A. I went out first.

20 Q. You went out first?

21 A. Yes, sir.

22 Q. And was that because you were closer to the door?

23 A. Both, Mr. Williams and I, were standing right

24 back of that bench. I was on the aisle side, and with all

this commotion going on I turned to Mr. Williams, and I said,

"Get out of here before you get killed", and I turned and went out the door, and Mr. Williams was still standing there after I went out the door, which I turned.....

Q. So, Mr. Williams was in a position to see more than you were, is that correct?

A. Yes, sir.

Q. And as you got out of the door you saw a guard running towards the door from around the building, is that correct?

A. Yes, sir, after I had gotten out to the steps.

Q. Did you recognize that guard running towards the door as being Captain Netherland?

A. I couldn't say definitely.

Q. Is it possible that Captain Netherland actually entered the courtroom before this other individual came around from the side of the building towards the courtroom?

A. Well, I don't follow you.

Q. In other words, having two guards coming in instead of one?

A. I don't quite follow you.

Q. In other words, is it possible for Captain Netherland to have entered the courtroom almost simultaneous with your exiting the courtroom and before you became conscious of this other man coming around the side of the building? Is

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that possible?

A. I don't think so. I went out. After I had gotten out to the porch I saw the guards coming, and I didn't run into nobody coming through the door.

Q. Were there people standing on the porch at the time you went out?

A. I don't rightly no, sir.

Q. You don't know?

A. No, sir.

Q. Is it possible there were people standing on the porch at the time you went out?

THE COURT: I think you asked the witness that and he said he didn't know. He can't testify to possibilities.

BY MR. ADAMSON:

Q. So, in other words, after exiting the building, you saw a guard running around the side of the building and saw him go into the door, is that correct?

A. Yes, sir.

Q. And did you, again, come into the courtroom after once leaving it?

A. Not until after everything was all over with and later on that day.

Q. And were there numerous guards around that morning?

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A. Yes, sir.

Q. Do you know approximately how many guards were around?

A. Well, it was, I know it was one standing over on.. this is outside; and one standing outside over here, and it was one back here. They were the ones with the shotguns that stayed outside. They were out there when I went out.

Q. But there were numerous guards in the vicinity?

A. Yes, sir.

MR. ADAMSON: I have no further questions.

RE-DIRECT EXAMINATION

BY MR. DAVILA:

Q. When you were leaving this courthouse was there anyone in the back of the courtroom inside shooting as you were leaving?

A. Oh, no, sir.

MR. DAVILA: No further questions.

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1 THE COURT: I was going to put that in the
2 record. Ladies and gentlemen of the jury, it has been
3 stipulated between counsel for the Commonwealth and
4 counsel for the defendant that these are the following
5 facts: That the defendant, Malcolm Marvin Jefferson,
6 was an inmate of the penal institution as defined in
7 Section 53-9 of the Code of Virginia, to-wit:
8 The Virginia State Farm of Powhatan County, Virginia
9 on November 22, 1971; that is the date the alleged
10 offense occurred; and that Mr. Monte was an employee
11 of that penal institution, to-wit: The Virginia
12 State Farm of Powhatan County, Virginia, on November
13 22, 1971 at the time of the alleged offense; that the
14 defendant, Malcolm Marvin Jefferson was in the
15 custody of the Virginia State Farm System, Powhatan
16 County, Virginia, at the time of the alleged offense
17 on November 22, 1971. Both attorneys have stipulated
18 this, and it now becomes a fact in the case for
19 your consideration.

Transcript of December 1, 1972

(3-8)

18 DIRECT EXAMINATION
of John D. Netherland

19 BY MR. DAVILA:

20 Q What is your name?

21 A John D. Netherland.

22 Q Are you employed?

23 A Virginia State Penitentiary Farm.

24 Q How long have you been so employed, Capt. Neth-

25 erland?

A Since August 1959.

Q You were so employed on November 22, 1971, were you not?

A Yes, sir.

Q Did you have occasion on that date to see the defendant, Malcolm Marcin Jefferson?

A Yes, sir.

Q Where and at what time did you first see him?

A Approximately 9:15 at the State Farm as he was being loaded into the paddy wagon for transportation to court.

Q Did you later come to court?

A Yes, sir.

Q Who did you come with?

A I came with Guard Snyder.

Q What vehicle were you travelling in?

A Travelling in 1968 Ford car.

Q How many inmates were being transported to this courthouse on that day?

A Two.

Q Who were they?

A Jefferson and Washington.

Q James Edward Washington?

A Yes, sir.

Q When you came to the courthouse, where did you

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1 arrive?

2 A Drove up in front at the courthouse.

3 Q And where did you go from there?

4 A I got out of the car and came on into the court-

5 room and looked around and then went back out.

6 Q What was the purpose of coming into the courtroom?

7 A Just to look the situation over, see how many

8 was in so and so.

9 Q Were there any people in the courthouse?

10 A Very few scattered people.

11 Q Were there any inmates in the courthouse at that

12 time?

13 A No.

14 Q Where did you go after you observed the courtroom?

15 A Back out and told Lt. Tate to bring in the two

16 men that we had in the paddy wagon.

17 Q Did you see that they were escorted into the

18 courthouse?

19 A Yes, sir.

20 Q Did you follow them in?

21 A Yes, sir.

22 Q Where did the inmates go when they came into

23 the courthouse?

24 A They came on in and I instructed them to sit on

25 the bench and the chair right in front of the rail.

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Q Is that the position where the Deputy Sheriff is sitting now?

A Yes, sir.

Q And is the bench in essentially the position as it was that day?

A Yes, sir.

Q Do you recall what inmates sat where?

A I do not.

Q After they were seated where did you go?

A After they were seated Guard Snyder came into the courtroom and he was standing back near the door.

Q On which side of the courthouse?

A On my left from where I am sitting now.

Q All right, and did you see Capt. Monte?

A Yes, sir.

Q Where was he situated?

A On the last bench back to my right.

Q Over on this side?

A Yes, sir.

Q Were there any other guards in the courthouse when you left?

A No, sir.

Q Were there any other inmates in the courthouse besides Malcolm Marvin Jefferson and James Edward Washington?

A No, sir.

Q Where did you go when you left?

A I went outdoors and Guard J. C. Franklin was positioned at the end of the courthouse near the hedge and I walked over to him and instructed him that I would have relief guard out there for him about every 30 minutes, and then after I talked to Guard Franklin I went around the courthouse to the back corner where Lt. Tate had backed up the security paddy wagon.

Q All right, sir. And what did you do after that?

A I was back there checking the view that Guard Berryman would have from the back of the courthouse and also the side of the courthouse. While back there, I was checking this view that he might have, and I heard two shots inside the courtroom.

Q What did you do as result of hearing those two shots?

A I broke into a run toward the front of the courthouse to enter and I was coming around the front corner, and I heard the two additional shots, at least two additional shots, maybe three.

Q Were you armed on that day?

A Yes, sir, I was.

Q What type of weapon were you carrying?

A Carrying a 38 colt, six-inch barrel.

Q I am going to hand you a weapon and ask if you

can identify this weapon?

A Yes, sir.

Q Is that the weapon that you were carrying on the day in question?

A Yes, sir, it was.

Q Was it loaded?

A Yes, sir, it was.

Q How many cartridges, live round did you have?

A Five.

Q Was the hammer on the empty cylinder?

A Yes.

Q That is a six cylinder weapon, is it not?

A Yes, sir.

Q Now I move to introduce this as Commonwealth Exhibit.

(9-19)

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Q Did you draw your weapon before you came into the courthouse?

A Yes, sir, I did.

Q And do you recall where Lt. Tate was with reference to your entering the courthouse? Did he enter before or after you?

A He entered after I did.

Q And what did you do when you entered?

A When I entered the door, I had my weapon in my hand and I was just inside the entrance door, and I looked to my right. I saw a man going through this door marked 'Private.'

Q You saw a man going through that door marked 'Private?' Did you notice what he had on?

A It was a dark brown prison jacket, prison coat.

Q Now specifically when you observed this man, or that man where were you standing in this courthouse?

A Standing just inside the entrance door.

Q And was the door marked 'Private' that is that door, was that open or was it closed?

A It was opened at an angle when I entered the door.

Q If Your Honor please, I would like for him to show the gentlemen of the Jury the position of that door.

THE COURT: All right.

Q Would you step down, Capt. Netherland, and show the gentlemen of the Jury the position of that door?

A Yes, sir.

Q I don't think all of the gentlemen can see. Can they? Could they move so they could see, Your Honor?

THE COURT: Yes, sir.

Q Was it about three-quarters open?

A Yes, sir.

Q What was the position of the party that you saw in that room?

A As I entered the door about like this, and then around out of sight.

Q Did you see the face?

A No, sir.

Q You just saw the right shoulder as he--

A He was going around the door.

Q Going around the door?

A Yes, sir, going out of my sight around the door.

Q Did the door shut completely?

A Yes, sir.

Q Are you familiar with that room?

A Yes, sir.

Q Are there any entrances or exits to the outside from that room?

A Yes, sir, a door to the immediate right and two

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windows there.

Q Does that door go outside?

A Yes, sir.

Q When the door shut--come back around, if you will. When the door shut, Capt. Netherland, did it again open?

A It opened later-when I first saw the man going round the d-or I directed a shot through that door.

Q You fired your pistol at that door?

A Yes, sir.

Q Do you recall where the bullet went?

A Yes, sir, to the right about three or four feet up from the floor.

Q All right, sir.

A About waist height.

Q Did the door later open?

A Yes, sir, the door did later open.

Q What did you observe then?

A There was a man standing just inside the door.

Q All right, sir, Did you notice any other parties in the courtroom at that time?

A Not at that time. Immediately after I fired, I saw a man coming out from behind the Judge's bench.

Q And what was the position?

A He was crouched down.

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Q And what was his clothing?

A Brown clothing with a dark coat on.

Q What did he do when he came out there behind the Judge's bench?

A Dive through the Jury Room door into the Jury Room.

Q What did you do as result of that?

A I immediately directed a shot in that direction.

Q Was it high or low?

A It was low.

Q Did that shot eventually hit a chair in this courtroom?

A Yes, sir.

Q Where was the chair?

A Sitting where you are sitting.

Q Sheriff, would you get the chair?

MR. ADAMSON: I presume the chair is being introduced for the purpose of showing the bullet hole in it and not the position of the chair at the time the bullet went through it?

THE COURT: Did you see the bullet hole in the chair?

THE WITNESS: Yes, sir.

Q Is that the same position of the bullet hole that you saw on that day, is that the same chair?

A Yes, sir.

Q We would move to introduce it as Commonwealth's Exhibit.

THE COURT: Number 6.

(The article referred to was marked Commonwealth's Exhibit Number 6 and admitted into evidence.)

Q Do you recall where the bullet went after it passed through the chair?

A Passed through the chair and ricocheted off the counter top.

Q Talking about this counter top here?

A Yes, sir, and then it struck the door jamb to the Jury Room.

Q Where is the door jamb?

A The facing.

Q Is this up in the lefthand side? Stay there if you will, up in this area?

A Yes, sir.

Q Did you fire any other shots through this door?

A Yes, sir, I fired one other shot through the door,

Q Do you recall where that shot went?

A A little to the right and above the door knob.

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Q This position?

A Yes, sir.

Q I believe you stated that you had five live rounds in your weapon?

A Yes, sir.

Q Had you checked that pistol that morning?

A Yes, sir.

Q What color were the bullets themselves, the heads of the bullets?

A Made out of lead, kind of a silver color.

Q All right, sir. Now when you fired, or rather your first shot was fired toward the door marked 'Private' was it not?

A Yes, sir.

Q Was there anyone within your range when you fired outside of the door other than that individual behind the door?

A No, sir.

Q And all totalled that day, how many shots did you fire?

A Three shots.

Q That would have left two live rounds, is that correct?

A Yes, sir.

Q How tall are you, Capt. Netherland?

A Six feet.

Q Now, I want you to describe to the gentlemen of the Jury what you did after you fired the shots.

A What I did after I fired them? After I fired-- my three shots were fired from the same position back of the courtroom, then I came around in the aisleway over there and stopped just behind the counter in this particular area in here.

Q And what occurred after that?

A We hollered for the men to come out. Jefferson came out first. He came out of the door marked 'Private.'

Q Jefferson came out of the door marked 'Private?'

A Yes, sir.

Q What was his general demeanor when he came out?

A He came out with his hands raised.

Q How? Show us if you will.

A Came out--

Q Was he secured?

A No, sir, he was not.

Q Did you see any handcuffs on him?

A He had a handcuff on one hand dangling.

Q And the other hand was free?

A The other hand was free, yes, sir.

Q He came out with his hands up, is that correct?

A Yes, sir.

1 Q And where did he go from there?

2 A He came down and we had him to be seated on the

3 step at the end of the bench.

4 Q Between the clerk's bench and the window?

5 A Yes, sir.

6 Q What about Washington, did he remain in the

7 room, or--

8 A He remained in the room for maybe as much as a

9 minute and then he came out.

10 Q Did you direct any statements toward him?

11 A I told him to come on out or we was coming in to

12 get him.

13 Q What did he say?

14 A He later came out.

15 Q Did he make a statement?

16 A He made a statement, "Get some people in here and

17 I will come out."

18 Q Describe his demeanor as he came out.

19 A He came out and he also had his hands loose

20 with one hand still cuffed, with the cuff dangling.

21 Q Were his hands down or up?

22 A His hands were raised also.

23 Q How?

24 A Same direction.

25 Q Where was the handcuffs on him?

A Still cuffed to one hand, dangling down.

Q And the other hand was free?

A Yes, sir.

Q That is the same manner in which Jefferson came out?

A Yes, sir.

Q Do you recall whether either one of them had any chain on?

A No, sir, I do not.

Q Did you later find a chain or was a chain found in your presence?

A A chain was found but I didn't find it.

Q Were did Washington go when he came out?

A He was seated on the step in front of the Jury Room door.

Q Now during the course of your firing all of your shots, where were you standing?

A At the--just inside the entrance door at the back of the courthouse.

Q If you will stand up and show the gentlemen of the Jury how you positioned yourself while you were firing, I would appreciate it, just stand up there. Don't go back there.

A I was standing in this position.

THE COURT: Better describe the position. That

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is not going to be in the record.

MR. DAVILA: May I direct him to the back of the courtroom?

THE COURT: I am not talking about that. I am talking about how his arm was.

Q Do it again, if you will. Now describe the manner in which you are holding your arm.

A Holding it in upright position in front of me.

Q In front of you, is that correct?

A Yes, sir.

Q Now, did you have occasion during the course of this incident to see Guard Snyder?

A I didn't see Guard Snyder until I had moved up to the railing. I didn't see anyone.

Q Where was Snyder at the time?

A He was over in this area and then there was some scuffling, and then he actually came up behind the rail back there.

Q Did you at any time see Capt. Monte?

A I saw Capt. Monte after I moved up to that position.

Q Where was he?

A Laying in the floor at the end of this bench here.

Q Face up or down?

A Face up.

Q What direction was his head?

A His head was back toward the back of the courthouse.

Q Did you examine him to see whether he was alive or not?

A I later walked over to him after we got the inmates back under control. And I couldn't see there was any life there.

MR. DAVILA: Waive the poll.

MR. ADAMSON: Waive the poll.

Q I hand you three pictures, Capt. Netherland and ask you if those pictures depict with chalk marks the position of Capt. Monte's body when you observed it?

A Yes, sir, they do.

Q That first picture shows that Capt. Monte's head was in what direction?

A To the back of the courtroom.

Q And was it within this area here?

A Yes, it was.

Q All right, sir. The second picture, I ask you if that also depicts the position of the body of Capt. Monte on the day in question?

A Yes.

Q And the third picture?

A Yes, sir.

MR. DAVILA: Move to introduce those as Commonwealth's Exhibit.

MR. ADAMSON: And would the Court note my continuing objections?

(The items referred to were marked Commonwealth's Exhibit Number 7 and admitted in evidence.)

Q Are you the keeper of certain records for the

1 issuance of guns?

2 A Yes, I am.

3 Q At the penitentiary?

4 A Yes, sir.

5 Q All right, sir. I am going to hand you Common-
6 wealth's Exhibit Number 3 and ask you to look at the
7 serial number on that weapon and tell me who that weapon
8 belonged to.

9 A This is the weapon belonging to the State of
10 Virginia. The weapon carried by Capt. Monte on the day in
11 question.

12 Q Thank you, sir. Capt. Netherland, directing your
13 attention to May 12, 1972, did you have occasion to come to
14 this courthouse with me and Investigators Hillman and
15 Lloyd?

16 A Yes, sir, I did.

17 Q On that date, did you have occasion to stand in
18 the back of the courthouse with your arm in an upright
19 position for purposes of measurement of distance from your
20 hand in which you had the weapon and the floor?

21 A Yes, sir.

22 Q And did Mr. Lloyd take those measurements?

23 A Yes, he did.

24 Q You recall that, sir?

25 A Yes.

1 Q Now Capt. Netherland, I am going to hand you a
2 chain and a pair of handcuffs and ask you if this is simi-
3 lar to the chains that are used with reference to securing
4 inmates for transportation purposes?
5 A Yes, sir, it is.
6 Q How is that chain placed on inmates?
7 A Placed around his middle and this link being
8 back through the chain and handcuffs come through here
9 securing his arm.
10 Q I hand you a set of handcuffs sir, and ask you
11 if they or that style of handcuff is the same that was used
12 on the day in question on Malcolm Marvin Jefferson and
13 James Edward Washington?
14 A Yes, sir.
15 Q And I will ask you to secure those handcuffs
16 just secure them.
17 A Secure them on me?
18 Q Now are they secure now? Lock them. Can they
19 be opened?
20 A Yes, sir, they can.
21 Q How?
22 A They can be opened with a key or with this pin
23 knocked out of this one, I can open that one without a
24 key.
25 Q Let the record show that Capt. Netherland is

1 using a pencil to open the handcuffs. I move to introduce
2 this as Commonwealth's Exhibit, and I would move to intro-
3 duce the chain as Commonwealth's Exhibit.
4 MR. ADAMSON: I would object, Your Honor, to the
5 introduction of both of those items. The handcuffs and
6 chain by testimony are just chains and handcuffs similar
7 to those used on the day in question. We have no way of
8 knowing whether that particular set of handcuffs opens
9 easily and whether other sets are more difficult to open,
10 or anything of the like. And I just don't feel it would
11 be appropriate to introduce those handcuffs and that chain
12 unless they were the ones used on Mr. Jefferson on the
13 day in question.
14 THE COURT: All right, Mr. Davila?
15 MR. DAVILA: As I recall the evidence, Capt.
16 Netherland says they were the same style and make that they
17 were used on the day in question. These were--we have no
18 way of knowing that they were the same handcuffs used on
19 Mr. Jefferson on the day in question.
20 THE COURT: Sustain the objection.
21 MR. DAVILA: Very well, sir.
22 MR. ADAMSON: And would His Honor instruct
23 the Jury to disregard the demonstration of the opening of
24 these handcuffs, because we don't know if these particular
25 set opens more easily than any of the sets in question or

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1 whether, or anything about it.

2 THE COURT: Mr. Davila?

3 MR. DAVILA: If Your Honor please, as we estab-

4 lished and certainly by inference the Jury can draft the

5 conclusion that if they are the same style and make on the

6 day in question, the handcuffs could have been opened in

7 the same manner, not necessarily with a pencil but with

8 something else. The evidence up to this point is at one

9 point during the course of this transportation, these in-

10 mates were secured, and when they were arrested after the

11 affray with Guard Snyder, they were unsecured. The evidence

12 was they had chains around them, they had handcuffs. We

13 have established the same style and make as far as the

14 chain and handcuffs are concerned, so by inference the Jury

15 can certainly draft the inference from the testimony I

16 offered that they are opened rather easily and that is

17 thepurpose of allowing that testimony.

18 THE COURT: I understood that that particular

19 pair of handcuffs had a pin missing, so he could open it

20 with a pencil. There is no evidence that a pin was missing

21 at the time this took place, so I am going to instruct the

22 Jury--

23 MR. DAVILA: May I ask Capt. Netherland some

24 questions?

25 THE COURT: All right.

1 Q Is the pin missing in this set of handcuffs?

2 A There is one pin missing, yes, sir.

3 Q Can you open the handcuff if the pin is still

4 there?

5 A Not necessarily unless you have a key or some

6 object similar to a key.

7 Q How about with a pencil?

8 A No, sir, you cannot do it with a pencil.

9 No, sir.

10 Q You recall whether Jefferson's handcuffs had

11 a pin missing or not on the day in question?

12 A No, sir.

13 THE COURT: Very well, sir. Gentlemen of

14 the Jury, the Court is instructing you to disregard the

15 testimony of Captain Netherland and the demonstration

16 because there is no evidence that on the date in question

17 the handcuffs on either Jefferson or Washington had that

18 defect in them. Do you understand that gentlemen?

19 All right, sir.

20 Q Capt. Netherland, all of this happened in

21 Powhatan County, Virginia?

22 A Yes, sir.

(28-32)

CROSS-EXAMINATION
of John A. Netherland

BY MR. ADAMSON:

Q Capt. Netherland, were you in charge of the six guards bringing the two inmates to the courthouse on the day in question?

A I was in charge of the guards. I was not in charge of them, no, sir.

Q And what was Capt. Monte's position in so far as in relation to you?

A He was equal in rank.

Q Equal rank?

A Yes, sir.

Q So both of you had kind of co-inclusive or co-dominion over the guards, is that correct?

A Yes, sir, in the sense of equal rank. Capt. Monte was more of, or he dealt closer with the inmate population as far as a lay counselor type relationship.

Q But there was not a situation where some of the guards were your people and some were his people, is that correct?

A That is correct.

Q Now when did you first see Mr. Jefferson at the prison that morning?

A I saw him as he was being loaded into the paddy wagon.

Q Did you see anyone check the cuffs?

A No, sir, I didn't.

Q Did you make inquiry as to whether the metal detector test had been run?

A No, sir.

Q Isn't it customary that the cuffs be affixed to a person's wrist with the keyhole facing the body?

A There is no instructions as to which way the keyhole will face.

Q Isn't it customary to have the keyhole facing the body?

A I put them on both ways.

Q Now, when you heard the shots and came into the courtroom, you came in pretty fast?

A Yes, sir, I was.

Q And as soon as you were in the door, did you stop or did you have a certain amount of momentum which kept you coming forward?

A I stopped. I stopped just inside the door.

Q And at that point you directed shots, is that correct?

A Yes, sir.

Q Did you fire at all from the hip?

A No, sir.

Q Did you fall to your knee?

A No, sir.

Q In order to fire?

A No, sir.

Q How do you explain a bullet passing through the back of a chair and akimming this rail in front of me, which appear to me to be approximately equal height, unless you were firing from the hip or firing from a kneeling position?

A My first shot was directed to this door, and my arm was extended. I saw the movement of the man coming out from the end of the bench and I immediately pulled the gun down to try to hit the man. He was low.

Q So your testimony that the man who went into that door, the Jury Room, crossed behind the bench, before going into that room?

A No, sir, I don't know how he crossed over. When I saw him he was coming out from behind--

Q He emerged from behind where the Judge is now sitting toward that door, is that correct?

A Yes, sir.

Q And when Mr. Jefferson came from the door marked 'Private,' the Judge's chambers, did he make any outcall or request to get additional people in before he came out?

A Not that I know of. Washington is the one that made the request to get the additional people in here.

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1 Q In other words, that indicated to you a fear
2 that harm would befall him unless certain witnesses or
3 neutral witnesses were present when he emerged?
4 MR. DAVILA: May it please the Court, I am
5 objecting. He is asking for inference that can only be
6 drafted--
7 MR. ADAMSON: I will withdraw the question,
8 Your Honor.
9 THE COURT: No necessity for the Court to rule.
10 The question is withdrawn.
11 Q After the building was secure, after the inmates
12 had come out and were taken into security, did you turn
13 your weapon over to anyone?
14 A Yes, sir, after the inmates were gone, I did,
15 yes, sir.
16 Q At approximately what time was that?
17 A Somewhere in the neighborhood of ten o'clock.
18 Q And who did you turn your weapon over to?
19 A Turned it over to Investigator Hillman.
20 Q And was he here or at least in the vicinity at
21 the time of the whole occurrence?
22 A I don't know where he was up until I turned the
23 weapon over to him. I turned it over to him after it was
24 over with.
25 Q Now after firing your weapon, did you reload it?

A No, sir.

Q Why not?

A I turned it over to him just like it was.

Q Would it not normally have occurred to you to reload your weapon after firing it and after securing the trouble?

A No, sir, because we had the inmates back under control and I had instructed the guards to load them back into the wagon. They were loaded back up. I had no reason to reload it at that point.

Q And who owns your gun?

A The State.

Q And who supplies the ammunition for your gun?

A We order it through Purchase and Supply in Richmond.

Q When you say we, you mean the State Farm?

A Yes, sir.

(34-41)

DIRECT EXAMINATION
of Ralph W. Tate

BY MR. DAVILA:

Q What is your name, sir?

A Ralph W. Tate.

Q Where are you employed?

A Virginia State Farm.

Q Were you so employed on November 22, 1971?

A Yes, sir.

Q Did you have occasion on that date in the early morning hours to see the defendant, Malcolm Marvin Jefferson?

A Yes.

Q When and what time was it that you first saw him?

A Eight to eight thirty we got him out of the cell

1 to dress him out to come to court.

2 Q Did you observe him being stripped down and search-

3 ed?

4 A Yes, sir.

5 Q Was anything found?

6 A No, sir.

7 Q Was he secured in your presence?

8 A Yes, sir.

9 Q With what?

10 A Handcuff and chain.

11 Q Did they appear to you to be secure at the time?

12 A Yes, sir.

13 Q Did you later accompany other guards and inmates

14 Washington and Jefferson to the courthouse, this very

15 courthouse?

16 A Yes, sir.

17 Q What did you do when you arrived, sir?

18 A I drove the paddy wagon and brought the two

19 inmates to the--over here. We parked it on the outside of

20 the building here, and posted the guard, shotgun guard. And

21 I came on in the building here with Capt. Monte and Mr.

22 Netherland, and Mr. Netherland told me to go back out and

23 bring the prisoners into the courthouse and move the paddy

24 wagon where the guard could sit in it on the back of the

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25 building. I went out, got the two inmates out of the

1 wagon, brought them into the courthouse and turned them
2 over to Mr. Netherland.
3 Q Did you leave?
4 A Sir?
5 Q Did you leave at that point?
6 A Yes, sir, I went back out and got in the paddy
7 wagon and backed it back to the other end where the guard
8 could sit in it and observe the back of the courtroom.
9 Q What guard?
10 A Guard Berryman.
11 Q Where was Guard Franklin?
12 A Posted on this corner of the building out here.
13 Q Did you see Guard Snyder come into the courtroom?
14 A When I went out, when I brought the prisoners
15 and I was going back off the steps, I met Guard Snyder
16 coming in.
17 Q Did Capt. Netherland eventually come out of the
18 courthouse?
19 A After I backed the wagon up for the guard, Capt.
20 Netherland, he came out and looked the situation over.
21 Q And did you remain in the truck or did you get
22 out of the truck?
23 A No, sir, I got out of the truck and the guard got
24 in the truck and I rolled the windows up and shut the door,
25 and after I got out of the truck, I realized that the guard

had the key himself and when I asked Mr. Netherland, "You think I should keep the key or let the guard keep the key?" He said, "I think you should keep it." I went back to the truck, got the keys from the guard, shut the door, and started this away towards the front of the building, and I heard some shots.

Q Approximately how many shots did you hear?

A Right at the time I heard two or three shots, and I knew the guard was in the truck with the windows up and I didn't know whether he heard them or not, and I ran back to the truck and opened the door and told him to get out right quick, so he got out of the truck and I started round the building for the front here and Mr. Netherland, he was in front of me coming in, and I heard more shots, as I come around the back way.

Q Was Mr. Netherland in the courthouse when you heard shots?

A Yes, sir. The last I heard when I was coming through the door right there.

Q Where did you go when you were coming into the courthouse?

A On this side over there about between the last seat and the second seat, there along that area right there.

Q What did you observe?

A The only person when I came in was Mr. Netherland, he was standing by the end down the back of the seats right back there. And I didn't see anyone else at the time. Then the door marked 'Private' here opened about halfway, or little better than halfway, and I saw inmate Jefferson standing back there. His right side was facing me as his left hand up, I could see his hand up over his head. And I called to Jefferson to come out. Then the door went back to.

Q You mean it shut?

A The door went back shut, and I noticed movement out of my right eye from this area over here, and someone down low come right across this way and in behind this solid piece right here, and when he came up there I noticed it was Guard Snyder and he had a weapon in his hand, and about that time the door marked 'Private' opened up again and I saw Jefferson standing in there in almost the same position as before, and I called to him a couple more times to come out. And Guard Snyder called for him to come out, and Jefferson said, "Don't shoot," and he came out with his hands up.

Q How were his hands up?

A Came out with his hands up like this.

Q They weren't secure?

A They were like this right here when he came out.

1 Q Did he have any handcuffs on his hands?

2 A From back there I never noticed the handcuffs.

3 Q Did you eventually see the handcuffs on his

4 hands?

5 A Oh, yes.

6 Q How were they?

7 A Unhooked from his right hand, hooked to his left

8 dangling down.

9 Q Nothing on his right hand?

10 A No, sir.

11 Q Did he have a chain on?

12 A Yes.

13 Q Describe the manner in which he came out and

14 where he went.

15 A Came out of the door marked 'Private.' When he

16 came out here we told him to take a seat on top of these

17 steps over here and that is where he sat down.

18 Q Did you notice anyone in this room?

19 A Yes, sir, after Jefferson came out and sat down

20 on there, Mr. Netherland called for Washington, said, "Come

21 out of there, Washington," called to him several times and

22 that door opened up just a little bit and Washington, I

23 could see his head come round side of the door facing and

24 looked out this way, and said, "Get some people in here and

25 I will come out." And the door shut back. And Mr. Nether-

land said, "If you don't come out of there, I am coming in there after you." Jefferson called out, "Come on out of there, Washington." So Washington came out and we set him on top of this step.

Q Did you have a weapon on that day?

A Yes, sir.

Q Did you ever fire it?

A Never, no, sir.

Q After Washington came out and sat on the step, what did you do?

A Gave my weapon to Mr. Netherland, went down and for the purpose to see how Washington was secured. Washington had the handcuff off his right hand fastened to the left hand a'dangling, didn't have any safety chain on him. I hooked the handcuff back onto his right hand and I started looking for safety chain that was supposed to be on him.

Q Was it later found?

A Yes, sir.

Q Where did you find it?

A I went on across this area through there, crossed over and found it in the corner over here where he started up on the step.

Q Did you find any weapons?

A Yes, sir, as I went across this area right here when I got right over here I found a weapon laying

1 in the floor right here.

2 Q I hand you Commonwealth's Exhibit Number 1 and

3 ask if this is the same weapon you found on that day?

4 A Yes, sir, to the best of my knowledge that is

5 the weapon.

6 Q What did you do with that?

7 MR. ADAMSON: Your Honor, I think you ought

8 to see if he had it marked or anything of that sort. He

9 says to the best of his knowledge. That is not a very

10 clear identification. If they are going to try to tie it

11 up they ought to establish a little more background work.

12 THE COURT: Did he mark it in any way?

13 A No, sir, I didn't mark it any way at all.

14 Q What did you do with the weapon when you got it?

15 A Picked it up by the handle, then by the barrel,

16 and with one inmate sitting on these steps and one over

17 here, I handed the weapon across this area to Investigator

18 Henderson, who was along this area.

(48-49)

DIRECT EXAMINATION
of E. D. Henderson

BY MR. DAVILA:

Q What is your name, sir?

A Investigator E. D. Henderson, Virginia State Police.

Q Were you so employed with the Virginia State Police on November 22, 1971?

A I was.

Q Directing your attention to that date, did you have occasion to be here in this courtroom?

A I did.

Q Early morning hours?

A Yes, sir.

Q Approximately what time?

A Between 9:40 and 9:45.

Q What were you doing here, what did you come to court for that day? For court?

A Yes, sir.

Q Investigator Henderson, when you came into this courthouse, what did you observe?

A As I came through the front doors and came up this way, starting up this aisle, I observed Capt. Netherland, who was approximately halfway down this aisle here, standing in between the benches just a little bit, Judge

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1 to the left rear, and Mr. Blandford to his left rear.
2 Mr. Washington was seated over here on the steps leading
3 to the Jury Room. Mr. Jefferson over on these steps by
4 the clerk's desk. Lt. Tate was standing back in this
5 area here and Capt. Monte was laying here, sir, with the
6 head toward the public area and the feet toward the clerk's
7 desk.
8 Q Did you have occasion after you entered to re-
9 ceive anything from Lt. Tate?
10 A Yes, sir, I did.
11 Q I hand you Commonwealth's Exhibit Number 1, and
12 ask you if this is what you received from Lt. Tate?
13 A Yes, sir.
14 Q Now, did you have occasion Investigator Henderson
15 to observe the weapon as far as cartridges are concerned?
16 A Yes, the weapon had--it is a six shot weapon, and
17 it had one cylinder empty, four being expended, and one
18 live round left in it.
19 Q You mean four rounds were expended, and already
20 shot?
21 A Yes, sir.
22 Q And one live round?
23 A Yes, sir.

(72 - 74)

11 Q What is your name?

12 A R. W. Bradley, profession physician.

13 Q Are you located in Powhatan County?

14 A Yes, sir.

15 Q How long you been practicing?

16 A Since 1948.

17 Q Directing your attention to November 22, 1971,

18 did you have occasion by request to appear in this court-

19 house?

20 A Yes, sir.

21 Q Did you have occasion upon entering to see the

22 body of one Raul M. Monte?

23 A Yes, sir.

24 Q Did you have occasion to examine it?

25 A Yes, sir.

1 Q What did you observe when you initially saw the
2 body?
3 A The body was on its back lying in the area right
4 over on the floor there, just in front of the gate. And
5 death had taken place when I first saw him. I examined
6 the body and found two bullet wounds. You want me to de-
7 scribe them?
8 Q Yes, sir, if you will.
9 A The bullet wounds, the one entered in the left
10 chest back just below the scapula and exited in the front
11 just below the nipple a couple of inches. There was a
12 second wound which went in on the right somewhat in the
13 same area and came out just above the pelvis on the right
14 side.
15 Q Did you examine the gentleman's clothing?
16 A Yes, sir. There were wounds or openings in the
17 clothing and in the shirt and the jacket compatible with
18 the body wounds, front and back. In addition, there was
19 a third wound or tear in the clothing and in his billfold,
20 through which a bullet had apparently passed without going
21 into the flesh, went through his hip pocket.
22 Q Specifically, if you will, the trouser holes,
23 where was the hole near his waist band in the trousers?
24 The one that you described.
25 A It was--

1 Q The one that you described in the area of the
2 wallet.
3 A It was the left hip pocket. It actually came
4 out through the pocket. The pocket and the billfold was
5 perforated.
6 Q All right. Did you notice anywhere what appeared
7 to be gun powder on the clothing?
8 A There was gun powder on at least one of the
9 wounds. I don't remember which one and it could have been
10 both. I did not record this. But from memory there was
11 gun powder on the clothing on at least one of the wounds.
12 Q That indicates to you that they were contact
13 shots, does it not?
14 A Yes, sir.

(153-155)

14 THE COURT: All right, we will discuss them in
15 order. Give me yours, Mr. Adamson. . . . Number one will
16 be presumption of innocence. Number two, reasonable
17 doubt, the long one. Number three, credibility of wit-
18 nesses. Number four, failure of the accused to testify.
19 Number five, the Commonwealth has undertaken to prove
20 the guilt of the defendant by circumstantial evidence.
21 Now, the one on, "The court instructs the Jury that if
22 Washington and some other person in a planned escape attempt
23 killed the decedent, the defendant will be found not
24 guilty." I am going to refuse that because I don't think
25 it is a good statement of the law.

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1 MR. ADAMSON: I would object to the ruling, or
2 except to the ruling.
3 THE COURT: And furthermore, there is no evidence
4 to support that.
5 MR. DAVILA: We object.
6 MR. ADAMSON: We would ask that it be given.
7 MR. DAVILA: I understand the law to be that the
8 person is responsible for their action whether they are
9 reasonably contemplated or not, so for that reason it is a
10 misquote of the law.
11 THE COURT: All conspirators are bound by the
12 act of one, so I will refuse that. I will mark that C.
13 MR. ADAMSON: Note my exception.
14 THE COURT: Refused. No theory at all that it
15 was an accidental killing. All testimony was that the gun
16 was in contact, so I don't see how that could be accident-
17 al. Furthermore, I don't feel that that is the law under
18 this particular case. I will mark that D and refuse it.
19 Under the same theory as the other one.
20 All right, gentlemen. There are 13 instructions.
21 Four have been refused. Mr. Adamson, is there any further
22 objection you want to put in the record on this?
23 MR. ADAMSON: No, sir, the instructions each
24 of the four have been read, they were refused by the Court
25 and I believe the Court noted my exception to its ruling on
each of the instances.

(159-162)

23 THE CLERK: Malcolm Marvin Jefferson, stand up.

24 "We the Jury find the accused guilty as charged in the

25 indictment and fix his punishment in death." Signed by

G. Rose, Jr., Foreman. Gentlemen of the Jury, is this your verdict, and so say all of you?

THE JURY: Yes.

THE COURT: Gentlemen, do you wish to poll the Jury?

MR. DAVILA: Not the Commonwealth.

MR. ADAMSON: Yes, sir.

THE COURT: Gentlemen, will you answer as your name is called and indicate whether this is your verdict?

THE CLERK: Jones?

MR. JONES: Yes.

THE COURT: Is this your verdict?

MR. JONES: What is that?

THE COURT: Is this your verdict, the way you understood?

MR. JONES: Yes, yes.

THE CLERK: Matthews?

MR. MATTHEWS: Read it again. I didn't hear it.

THE CLERK: We the Jury find the accused guilty as charged in the indictment and fix his punishment at death."

MR. MATTHEWS: I thought it say it was in the second degree. We agree on the thing, I don't know.

THE COURT: Is that your verdict or not?

MR. MATTHEWS: I have the verdict as guilty, but

I didn't have it on the form.

THE COURT: I don't understand what you mean. Is that your verdict or not?

MR. MATTHEWS: No, not my verdict.

THE COURT: It is not his verdict. Then the Jury will retire back to the Jury room and commence their deliberations again. Gentlemen, retire to the Jury Room.

(The Jury left the courtroom at 7:48 p.m.)

THE COURT: All right, sir, secure the prisoner. Gentlemen, court will be in recess until the Jury returns.

(Whereupon the court recessed at 7:50 p.m., to be reconvened when the Jury returned.)

+ + +

THE COURT: All right, gentlemen, the defendant is in the room. Bring the Jury in, sheriff.

(The Jury returned to the courtroom at 7:55 p.m.)

THE COURT: All right, gentlemen, you waive the poll of the Jury?

MR. DAVILA: Waive the poll.

MR. ADAMSON: I ask for the poll. Oh, excuse me, I waive the poll.

THE COURT: Gentlemen, have you reached a verdict?

THE JURY: Yes.

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1 THE CLERK: Will the Foreman bring the verdict
2 forward?
3 Malcolm Marvin Jefferson, stand up. The verdict
4 of the Jury is, "We the Jury find the accused guilty as
5 charged in the indictment and fix his punishment at death."
6 Signed by D. S. Rose, Jr., Foreman.
7 THE COURT: Gentlemen, you want the Jury polled?
8 MR. DAVILA: Commonwealth waives the poll.
9 MR. ADAMSON: I wish to have the Jury polled.
10 THE COURT: Gentlemen of the Jury, if this is
11 your verdict you will answer yes. If it is not your
12 verdict, you will naswer no when your name is called.
13 THE CLERK POLLED THE JURY.
14 THE COURT: The Jury has been polled and all
15 votes were in the affirmative?
16 THE CLERK: All votes in the affirmative.