CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761041

TONY EDWARD LEWIS

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

William J. Rhodes, Jr.
Professional Building
300 North Main Street
Franklin, Virginia

Counsel for Appellant

James E. Kulp
Assistant Attorney General
Attorney General's Office
Criminal Division
900 Fidelity Building
Richmond, Virginia

Counsel for Appellee

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

July 21, 1975

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about the 23rd day of March, 1975, in the County of Southampton, Virginia, Tony Edward Lewis, while an inmate at Southampton Correctional Center, did kill and murder Ronald Albert Barnes, an employee of said institution

Va. Code § 53-291 (1)

against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the July Term, 19 75, of the Circuit Court of Southampton County, on the evidence of E. C. Faison, Robert Saunders, Alfred Lynch and Inv. V. L. Walker

witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

July 21, 1975

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about the 23rd day of March, 1975, in the County of Southampton, Virginia, Tony Edward Lewis, while an inmate at Southampton Correctional Center under an order of conviction of Twenty-five (25) years for rape from Hampton City Circuit Court, entered on August 23, 1973, did unlawfully feloniously and maliciously and by violence to the person and by threat of bodily harm, take, steal and carry away the pocketbook, currency, keys and papers of Ronald Albert Barnes from the possession and control and against the will of Ronald Albert Barnes, said pocketbook, currency, keys and papers being the property of Ronald Albert Barnes or under his control, with intent then and there to permanently deprive the owner thereof

Va. Code § 18.1-91

against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the July Term, 19 75, of the Circuit Court of Southampton County, on the evidence of E. C. Faison, Robert Saunders, Alfred Lynch and Inv. V. L. Walker

witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

July 21, 1975

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about the 23rd day of March, 1975, in the County of Southampton, Virginia, Tony Edward Lewis, while an inmate at Southampton Correctional Center under an order of conviction of twenty-five (25) years for rape from Hampton City Circuit Court, entered on August 23, 1973, did unlawfully, feloniously and maliciously and by violence to the person and by threat of bodily harm, take, steal and carry away the pocketbook, currency, keys and papers of Alfred Lynch from the possession and control and against the will of Alfred Lynch, said pocketbook, currency, keys and papers being the property of Alfred Lynch or under his control, with intent then and there to permanently deprive the owner thereof

Va. Code 18.1-91

against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the July Term, 1975, of the Circuit Court of Southampton County, on the evidence of E. C. Faison, Robert Saunders, Alfred Lynch and Inv. V. L. Walker

witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

July 21, 1975

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about the 23rd day of March, 1975, in the County of Southampton, Virginia, Tony Edward Lewis, while an inmate at Southampton Correctional Center under an order of conviction of twenty-five (25) years for rape from Hampton City Circuit Court, entered on August 23, 1973, did unlawfully and feloniously attempt to escape, while under an order of confinement to the Southampton Correctional Center from the said institution and the custody of the person in charge

Va. Code § 53-291 (2) and
Va. Code § 18.1-17

against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the July Term, 1975, of the Circuit Court of Southampton County, on the evidence of E. C. Faison, Robert Saunders, Alfred Lynch and Inv. V. L. Walker

witnesses sworn and sent to the Jury by the Court.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF SOUTHAMPTON

COMMONWEALTH OF VIRGINIA	)	
vs.	)	MOTION
TONY EDWARD LEWIS	)	

Tony Edward Lewis hereby moves the Court for a change of Venue for the hereinafter noted reasons:

1. The Commonwealth Attorney, Richard C. Grizzard, and the Assistant Superintendent of the Southampton Correctional Farm in Capron, Virginia are related by blood and have connived to influence the feelings of people in Southampton County, Virginia, whereby Tony Edward Lewis cannot possibly obtain an impartial jury and a fair, impartial trial.

2. The site of this alleged offense is the Southampton Correctional Farm, which is in Southampton County, Virginia, and the general feelings of the populace of the County is against negro inmates, and Tony Edward Lewis cannot possibly obtain a jury which is without knowledge of this alleged offense, which precludes Tony Edward Lewis from obtaining a fair, impartial jury, and in turn, a fair, impartial trial.

3. The general atmosphere for the trial with the number of officers and law enforcement officials presents an atmosphere of hostility and prejudice against Tony Edward Lewis, which precludes Tony Edward Lewis from receiving a fair, impartial jury, which, in turn, obviates any possibility of Tony Edward Lewis receiving a fair, impartial trial in Southampton County, Virginia for the alleged offense of the killing of Ronald Albert Barnes, a white employee at the Southampton Correctional Farm.

4. The conditions and setting of this Court for trial are tainted with racial prejudice whereby Tony Edward Lewis cannot obtain a fair, impartial trial.

5. The publicity of the event, in all forms, is conclusively detrimental to a fair, impartial trial for Tony Edward Lewis.

For the aforementioned reasons, I respectfully request this Court for a change of Venue for my trial.

Tony Edward Lewis

Submitted by:

Counsel for Tony Edward Lewis

WILLIAM J. RHODES, JR., p.d.
Professional Building
300 North Main Street
Franklin, Virginia 23851

Certificate

I hereby certify that a copy of this Motion was delivered to Richard C. Grizzard, Esquire, Commonwealth Attorney for the County of Southampton, Virginia.

Counsel for Tony Edward Lewis

Filed
1/12/74

VIRGINIA: In theCircuit Court of Southampton County, on Monday, the 12th day of January, 1976

Commonwealth

vs.

Tony Edward Lewis

This day came the Attorney for the Commonwealth and the attorney for the defendant.

Whereupon, the attorney for the defendant moved theCourt for a Change of Venue, which motion the Court overruled, to which ruling of the Court the attorney for the defendant excepted.

A Copy,

Teste: B.C. Williams Jr. Clerk

Question on Voir Dire
Asked by Def.
Refused & Excepted to
1/12/26
JCG

Do you feel that you can reach a fair and impartial verdict even though the accused is a negro?

7F 15 Granted Jey

If you believe from the evidence beyond a reasonable doubt that Tony Edward Lewis was attempting to escape as defined in an instruction of the Court, and that Ronald Albert Barnes was an employee at Southampton Correctional Center and that Ronald Albert Barnes received bodily injuries from which he died and that the said fatal bodily injuries were inflicted on Ronald Albert Barnes by one or more of the inmates who were attempting to escape, then you shall find the defendant guilty of murder in the first degree and fix his punishment at death.

VIRGINIA: In the Circuit Court of Southampton County, on Monday, the 12th day of April, 1976

Commonwealth

vs. #126-75

Tony Edward Lewis

This day came the Attorney for the Commonwealth, and Tony Edward Lewis, age 19, born October 31, 1956, who was heretofore on the 12th day of January, 1976, convicted by a jury for a felony, to-wit: Robbery of Ronald Albert Barnes, that fixed his punishment at twenty (20) years in the penitentiary, was led to the bar in the custody of the Sheriff of this Court, and came also William J. Rhodes, Jr., his attorney heretofore appointed.

The attorney for the defendant having moved the Court to set aside the verdict, which motion theCourt took under advisement, this day heard arguments on the motion, which motion was overruled and exception 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 of Robbery of Ronald Albert Barnes as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of Twenty (20) years.

The defendant by his attorney moved the Court to allow this sentence to run concurrently with his sentences in Case#125-75 and Case #127-75, which motion the Court overruled.

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 all times during the trial of this case the defendant and his

counsel were present.

The Court orders that the defendant be allowed No days credit for the time spent in jail awaiting trial, he having been incarcerated at Southampton Correctional Center at the time of this offense.

It is adjudged that the Commonwealth recover from the defendant the sum of $577.75 the costs assessed in this proceeding.

William J. Rhodes, Jr., Esq., is allowed $400.00 for his services as Court appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy,

Teste: B A Williams Clerk

-e, the jury, find the accused guilty of Robbery of Ronald Albert Barnes
-s charged in the Indictment and fix his punishment at _____
Twenty (20) Years

J. E. Henry
Foreman

If you believe from the evidence beyond a reasonable doubt that Tony Edward Lewis was attempting to escape as defined in an instruction of the Court, and that Ronald Albert Barnes was an employee at Southampton Correctional Center and that Ronald Albert Barnes received bodily injuries from which he died and that the said fatal bodily injuries were inflicted on Ronald Albert Barnes by one or more of the inmates, who were attempting to escape, then you shall find the defendant guilty of murder in the first degree and fix his punishment at death.

.2th day of April, 1976

Commonwealth

vs. #125-75

Tony Edward Lewis

This day came the Attorney for the Commonwealth, and Tony Edward Lewis, age 19, born October 31, 1956, who was heretofore on the 12th day of January, 1976, convicted by a jury for a felony, to-wit: Attempted Escape, that fixed his punishment at five years in the penitentiary, was led to the bar in the custody of the Sheriff of this Court, and came also William J. Rhodes, Jr., his attorney heretofore appointed.

The attorney for the defendant having moved the Court to set aside the verdict, which motion the Court took under advisement, this day heard arguments on the motion, which motion was overruled and exception 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 of Attempted Escape as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of Five (5) years.

The defendant by his attorney moved the Court to allow this sentence to run concurrently with his sentences in Case #126-75 and Case #127-75, which motion the Court overruled.

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

the time spent in jail awaiting trial, he having been incarcerated at Southampton Correctional Center at the time of this offense.

It is adjudged that the Commonwealth recover from the defendant the sum of $280.00, the costs assessed in this proceeding.

William J. Rhodes, Jr., Esq., is allowed $200.00 for his services as Court appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy,
Te ste: B. A. Williams Jr. Clerk, By: Arlene G. Kitchen D.C.

Commonwealth

vs. #126-75

Tony Edward Lewis

This day came the Attorney for the Commonwealth, and Tony Edward Lewis, age 19, born October 31, 1956, who was heretofore on the 12th day of January, 1976, convicted by a jury for a felony, to-wit: Robbery of Ronald Albert Barnes, that fixed his punishment at twenty (20) years in the penitentiary, was led to the bar in the custody of the Sheriff of this Court, and came also William J. Rhodes, Jr., his attorney heretofore appointed.

The attorney for the defendant having moved the Court to set aside the verdict, which motion theCourt took under advisement, this day heard arguments on the motion, which motion was overruled and exception 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 of Robbery of Ronald Albert Barnes as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of Twenty (20) years.

The defendant by his attorney moved the Court to allow this sentence to run concurrently with his sentences in Case#125-75 and Case #127-75, which motion the Court overruled.

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

The Court orders that the defendant be allowed No days credit for

the time spent in jail awaiting trial, he having been incarcerated at Southampton Correctional Center at the time of this offense.

It is adjudged that the Commonwealth recover from the defendant the sum of $577.75 the costs assessed in this proceeding.

William J. Rhodes, Jr., Esq., is allowed $400.00 for his services as Court appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy
Te ste: B C Williams Jr Clerk, By: William G Kitchen D.C.

VIRGINIA: In the Circuit Court of Southampton County, on Monday, the 12th day of April, 1976

Commonwealth

vs. #127-75

Tony Edward Lewis

This day came the Attorney for theCommonwealth, and Tony Edward Lewis, age 19, born October 31, 1956, who was heretofore on the 12th day of January, 1976, convicted by a jury for a felony, to-wit: Robbery of Alfred Lynch, that fixed his punishment at twenty (20) years in the penitentiary, was led to the bar in the custody of the Sheriff of this Court, and came also William J. Rhodes, Jr., his attorney heretofore appointed.

The attorney for the defendant having moved the Court to set aside the verdict, which motion the Court took under advisement, this day heard arguments on the motion, which motion was overruled and exception 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 of Robbery of Alfred Lynch as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of Twenty (20) years.

The defendant by his attorney moved the Court to allow this sentence to run concurrently with his sentences in Case #125-75 and Case #126-75, which motion the Court overruled.

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

The Court orders that the defendant be allowed No days credit for the time spent in jail awaiting trial, he having been incarcerated at Southampton Correctional Center at the time of this offense.

It is adjudged that the Commonwealth recover from the defendant the sum of $577.75 the costs assessed in this proceeding.

William J. Rhodes, Jr., Esq., is allowed $400.00 for his services as Court appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy Te ste: B C Williams Jr **Clerk, By:** Cecilia G Kitchen **D.C.**

VIRGINIA: In the Circuit Court of Southampton County, on Monday, the 12th day of April, 1976

Commonwealth

vs. #128-75

Tony Edward Lewis

This day came the Attorney for the Commonwealth, and Tony Edward Lewis, age 19, born October 31, 1956, who was heretofore on the 12th day of January, 1976, convicted by a jury for a felony, to-wit: Murder, that fixed his punishment at Death, was led to the bar in the custody of the Sheriff of this Court, and came also William J. Rhodes, Jr., his attorney heretofore appointed.

The attorney for the defendant having moved the Court to set aside the verdict, which motion the Court took under advisement, this day heard arguments on the motion, which motion was overruled and exception 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 of Murder as charged in the indictment and sentences the defendant to death on the 15th day of June, 1976.

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

It is adjudged that the Commonwealth recover from the defendant the sum of $1221.31 the costs assessed in this proceeding.

William J. Rhodes, Jr., Esq., is allowed $400.00 for his services as Court appointed counsel for the defendant in this Court.

A Copy
Teste: B. C. Williams Jr. Clerk, By: Cedline G. Ketchum

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

TONY EDWARD LEWIS, Plaintiff in Error

vs.

COMMONWEALTH OF VIRGINIA, Defendant in Error

PETITION

TO THE HONORABLE JUSTICES OF THIS COURT:

Comes the petitioner, Tony Edward Lewis, by counsel, praying to the Court that a stay of execution be granted to the petitioner as a result of a conviction and final judgment rendered on April 12, 1976, in the Circuit Court of Southampton County, Virginia.

(1) That the petitioner was found guilty by a jury on January 13, 1976, of the murder of Ronald Barnes, a guard and employee at the Southampton County Correctional Center and was sentenced to death under the provisions of Virginia Code Section 53-291.

(2) That the petitioner moved and received a postponement of the execution of the sentence for purposes of a motion to set the jury's verdict aside until April 12, 1976.

(3) That on April 12, 1976, the Honorable James C. Godwin, Judge of the Circuit Court of Southampton

County, Virginia denied the petitioner's motion to set the verdict aside and set the date of June 15, 1976, as the date for the execution of the death sentence against the petitioner.

(4) That the Honorable James C. Godwin denied the petitioner's motion to suspend the imposition of the death sentence until such time as the petitioner's appeal had been reviewed by the Virginia Supreme Court.

(5) That the petitioner has timely filed his Notice of Appeal and Assignment of Error with the Clark of the Circuit Court of Southampton County, Virginia, which copy of same is attached hereto and marked ExhibitII.

WHEREFORE, the petitioner respectfully requests the Honorable Justices of this Court to favorably consider his prayer to postpone the execution of this sentence and to suspend the execution of the aforesaid judgment until the petitioner's appeal and assignment of error to the Supreme Court of Appeals has been reviewed.

Respectfully submitted,

TONY EDWARD LEWIS

By_____
Counsel

WILLIAM J. RHODES, JR.
Professional Building
300 North Main Street
Franklin, Virginia 23851

CERTIFICATE

I hereby certify that true copies of this petition have been forwarded to the Clerk of the Circuit Court of Southampton County, Virginia in Courtland, Virginia, and to Richard C. Grizzard, Esq., Attorney for the Commonwealth, Boykins, Virginia, on this 11th day of May, 1976.

William J. Rhodes, Jr., Counsel for
Tony Edward Lewis

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 14th *day of* May, 1976.

Tony Edward Lewis, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error.

ORDER STAYING EXECUTION

This day came Tony Edward Lewis, by counsel, and filed a petition praying for a stay of execution.

And it appearing to the court that the said Tony Edward Lewis is presently detained in the custody of the Warden of the Virginia State Penitentiary pursuant to a sentence of death imposed upon him on April 12, 1976, by the Circuit Court of Southampton County and that under the terms of the aforesaid sentence, his execution is set for June 15, 1976, it is ordered that the execution of Tony Edward Lewis, which is scheduled for June 15, 1976, be, and the same is hereby, stayed, until September 12, 1976, on the expiration of which time the same may be performed, unless by August 12, 1976, the record and the petition for writ of error to the aforesaid judgment have been filed, in which event enforcement thereof shall be stayed until the final determination of the case by this court.

The above stay, however, is not to discharge the petitioner from custody.

And it is further ordered that a copy of this order be served on the Warden of the Virginia State Penitentiary and on the said Tony Edward Lewis.

A Copy,

Teste:

Clerk

[illegible]wealth, 213 Va. 327, 191 S.E.2d 735; Wright v. Commonwealth, [illegible]h. 352, 192 S.E.2d 748; Wood v. Commonwealth, 213 Va. 346, [illegible] S.E.2d 808; Snider v. Cox, 212 Va. 13,14, 181 S.E.2d 617.

CONCLUSION

For the reasons stated above in Arguments 1 through 6, your petitioner prays that a writ of error to the conviction complained of be granted to him and that the conviction be reviewed and reversed or remanded for a new trial.

CERTIFICATE

The defendant certified that your petitioner is Tony Edward Lewis and his attorney is William J. Rhodes, Jr., Professional Building, 300 North Main Street, Franklin, Virginia 23851, and the appellee is the Commonwealth of Virginia and the attorney for the Commonwealth of Virginia is Richard C. Grissard, Main Street, Boykins, Virginia 23827, Commonwealth's Attorney for the County of Southampton.

The defendant further certifies that this petition will be filed with Colonel Harold G. Turner, Clerk of the Supreme Court of Virginia, at his office in Richmond, Virginia.

The defendant, by counsel, does wish to state orally the reasons for granting this petition.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

TO: The Honorable Clerk of the Circuit Court of Southampton County, Virginia

The plaintiff in error, Tony Edward Lewis, gives Notice of Appeal from the judgment of the Court rendered herein on April 12, 1976, and assigns the following errors as required by Rule of Court 5:6.

1. The jury erred in holding against the defendant in that said verdict was contrary to the law and evidence.

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 occurred.

3. The trial court erred in granting instruction No. 15 to the jury which copy of such instruction is attached hereto and made a part hereof of this Notice of Appeal and Assignments of Error.

4. That the death penalty is unconstitutional per se.

5. That Virginia Code Section 53-291 under which the defendant, Tony Edward Lewis, was convicted, is vague, abstruse and unconstitutional.

6. That the death penalty provision of Virginia Code Section 53-291 is unconstitutional.

7. That the exclusion of any veniremen, on voir dire, due to conscientious scruples against the death penalty as so done by

the Court was unconstitutional under the premise of Witherspoon v. Illinois, 391 U.S. 510, 20 L.Ed. 2nd, 776 (1968), and the Sixth and Fourteenth Amendments.

8. The Court erred in refusing the question on voir dire to the jury as to whether the jury could reach a fair and impartial verdict even though the defendant was a negro.

9. That the defendant could not be convicted as a principal in the second degree under Virginia Code Section 53-291.

10. That the Court erred in denying the defendant's motion to strike the Commonwealth's evidence.

11. That the Court erred in denying the defendant's motion to set the jury verdict aside.

A transcript of testimony and other incidents of the case have been hereinto filed.

TONY EDWARD LEWIS

By _____
Counsel for Plaintiff in Error

WILLIAM J. RHODES, JR.,
Professional Building
300 North Main Street
Franklin, Virginia 23851

Certificate

I, William J. Rhodes, Jr., Attorney at Law, do hereby certify that a copy of the foregoing Notice of Appeal and Assignments of Error has been delivered by mailing to Richard C. Grissard, Esq., Commonwealth Attorney for the County of Southampton, in Boykins, Virginia, counsel of record for the Commonwealth of Virginia, this 10th day of May, 1976.

_____
William J. Rhodes, Jr., Counsel
for Plaintiff in Error

PRESENT: Mr. Richard C. Grizzard,
Attorney for the Commonwealth

Mr. William J. Rhodes,
Counsel for defendant

Mr. Tony Edward Lewis,
The defendant

THE FOLLOWING MOTIONS WERE HEARD IN JUDGE'S CHAMBERS, PRIOR TO ARRAIGNMENT, OUT OF THE PRESENCE OF THE JURY, AND THE DEFENDANT, TONY EDWARD LEWIS, WAS PRESENT:

BY THE COURT: All right, Mr. Rhodes.

BY MR. RHODES: Your Honor, I do move for a change of venue in this case, and I submit to the court, written motions, signed by the defendant, and also endorsed by me as counsel, which reflects our views. In the motion itself, I would submit to the court, so you can follow me as I read, Your Honor, and this is the written motion. I do want to expound on one portion of the motion, which happens to be on the second page, Your Honor, and if you will look at the second page, in addition to that, the publicity

1 in statement number 5, signed by the
2 defendant as well as by myself, will
3 reflect primarily to the publications
4 of the Virginian Pilot on March 24th and
5 March 25th, of 1975, as well as April 16th
6 and July 11th, of 1975, stating the cir-
7 cumstances involving the inmates at the
8 institution in this particular crime, and
9 the killing of Mr. Barnes. We feel, Your
10 Honor, in addition to the written comments,
11 the impartial trial aspect would be denied
12 Tony Edward Lewis, and we feel this would
13 be a circumvention of his constitutional
14 rights, under the 6th and 14th amendment
15 of the United States Constitution, whereby
16 he would be deprived of a fair and impartial
17 trial, if such a trial took place in Sout-
18 hampton County, with the general feelings
19 of the people, and with detriment to Tony
20 Edward Lewis. We would respectfully request
21 the court for a change of venue, as request-
22 ed orally and by written motion.
23 BY MR. GRIZZARD: If it please the
24 court, the pre-trial publicity alleged in
25 the motion, consists of newspaper articles,
26 the first one on March 24th and one on March
27 25th, and in these articles it reports of
28 a disturbance at Southampton Correctional

1 Farm, in which it was stated that some inmates
2 had tried to escape. One of the, I think the
3 one on the 25th, mentioned the fact that Officer
4 Barnes was killed, or died of result of injuries
5 that he received on that date, but that has been
6 some 10 months ago. Like I say, there have been
7 four articles in the newspapers, as cited by
8 Mr. Rhodes, and I don't think there was any-
9 thing prejudicial in the articles, that would
10 justify a change of venue, and as to the other
11 allegations in the motion, I might be kind to
12 Eugene Grizzard, somewhere down the line.
13 I think everybody with the name Grizzard is
14 kin to each other somewhere down the line,
15 but if there is any relation between my family
16 and that of Eugene Grizzard, who is the
17 Assistant Superintendent, I don't know what it
18 is. I believe that he can get a fair trial by
19 a jury from Southampton County, and I think the
20 only way to ascertain that is to actually query
21 the jury, as to whether or not they have any
22 knowledge of this case and if so, would it
23 affect their decision, and whether or not they
24 could give a fair and impartial trial in the
25 case. I would respectfully request the court
26 to overrule the motion.
27 BY THE COURT: Well gentlemen, I
28 have taken this same motion in another case,

1 and of course, the deceased in this case was
2 actually from Greenville County. He was not
3 from Southampton County, and perhaps if the
4 case was being tried in Emporia, where he
5 lived, there might be some basis for this,
6 but under the circumstances, surrounding the
7 case, there has been no undue publicity, such
8 as TV coverage and that sort of thing, that
9 would influence or inflame, and I am going to
10 overrule your motion, and note your exception
11 in the record.
12 BY MR. RHODES: Yes, sir, Your
13 Honor.
14 BY THE COURT: Are there any other
15 motions at this time?
16 BY MR. RHODES: No, sir, there
17 will be some stipulations between Mr. Grizzard
18 and myself prior to trial, and the primary
19 purpose being, to get it before the jurors,
20 and there are some photographs and diagrams,
21 Your Honor.
22 BY THE COURT: Is there any question,
23 the defendant fully understands what he is
24 charged with in these cases?
25 BY MR. RHODES: I have reviewed all
26 this data, and I will ask the defendant, is
27 there anything about any of the four indictments,
28 the one on attempted escape, the one on murder

1 of Mr. Barnes, the one on the robbery of Mr.
2 Lynch and robbery of Mr. Barnes, that is not
3 clear to you in any way, shape, or form?
4 BY DEFENDANT LEWIS: I don't know
5 what you mean by, am I aware.
6 BY MR. RHODES: Are you aware of
7 the charges, and is there anything about the
8 charges that is not clear to you, sir, other
9 than the fact that you say, you did not do
10 these things?
11 BY DEFENDANT LEWIS: That's the
12 only thing.
13 BY MR. GRIZZARD: I have prepared
14 a list of one or two questions, which the
15 Commonwealth would request, be asked on the
16 voir dire.
17 BY MR. RHODES: There are two I
18 have, Your Honor, the normal ones and another
19 one that I would request that you consider on
20 voir dire. There are two I have submitted,
21 one in particular I think is certainly in
22 conformance with what should be, and the
23 other one, would not be within your normal
24 standard of questions.
25 BY THE COURT: Well, I will
26 certainly ask the one about, do you feel
27 you can give a fair and impartial trial to
28 the accused, even though he is an inmate at

1 an institution. As far as giving a fair and
2 impartial verdict, even though the accused is
3 a Negro, I don't think that is a proper ques-
4 tion, and juries are composed of whatever
5 percentage of population, and in this case,
6 it is about fifty-fifty.
7 BY MR. RHODES: I would note an
8 exception to that, and my authority would be,
9 United States v. Gore, 435 Federal, second
10 page, 1110, a fourth circuit decision in
11 1970, and also cited and carried forth in
12 notes where it is stated, the accused has a
13 right to inquire, whether racial prejudice
14 would keep the jurors from reaching a fair
15 and impartial verdict. That is in the 1974
16 supplement to volumne 11 of Miche's, and is
17 cited there.
18 BY THE COURT: I am going to
19 mark on this question on voir dire, offered
20 by the defendant, refused and excepted, too.
21 BY MR. RHODES: Yes, sir.
22 BY THE COURT: I will file it in
23 the record. Is there anything further?
24 BY MR. GRIZZARD: There is a
25 large diagram, which has been prepared, at
26 both the request of the Commonwealth and the
27 defense, of the floor plan of building C-1,
28 at the farm, and by agreement before we

BY THE COURT: Now, ladies and gentlemen, this case that you will hear, or these cases, are cases of Commonwealth of Virginia versus Tony Edward Lewis. Now, the defendant, Tony Edward Lewis, is charged with attempted escape from Southampton Correctional Institution. He is charged with robbery of Ronald Albert Barnes. He is charged with robbery of Alfred Lynch. He is charged with the murder of Ronald Albert Barnes. Now, is there any member of this jury related by blood or marriage to either Mr. Grizzard, who represents the Commonwealth of Virginia as Commonwealth's Attorney, or to Mr. William J. Rhodes, Jr., who represents the defendant, Tony Edward Lewis, or to the defendant, Tony Edward Lewis, or to the victims, Ronald Albert Barnes and Alfred Lynch?

(No response from members of jury.)

BY THE COURT: Are any of you related by blood or marriage to any of these people?

(No response from members of jury.)

1 BY THE COURT: Are any of you
2 currently being represented in any legal
3 matter, by either Mr. Grizzard or Mr.
4 Rhodes?
5
6 (No response from members of jury.)
7
8 BY THE COURT: Now, these
9 offenses are alleged to have happened on
10 about March 23rd, 1975, about a year ago
11 or a little less. Now, there was certain
12 publicity in newspapers and perhaps other
13 news media when these offenses were alleged
14 to have happened. Now, have any of you all
15 read accounts of these charges, or have you
16 seen it on television, or have you heard it
17 discussed?
18
19 (No response from members of jury.)
20
21 BY THE COURT: Do you recall at
22 the time this happened? Do any of you recall
23 it?
24
25 (No response from members of jury.)
26
27 BY THE COURT: Do you recall
28 reading about it in the newspaper?

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1 (No response from members of jury.)
2
3 BY THE COURT: Have any of you
4 heard this case discussed anywhere, or have
5 you heard any of the circumstances discussed,
6 surrounding the charges that are placed
7 against the accused?
8
9 (No response from members of jury.)
10
11 BY THE COURT: Do you feel that
12 you can give a fair and impartial trial to
13 the accused, even though he is an inmate in
14 a penal institution?
15
16 (No response from members of jury.)
17
18 BY THE COURT: Now, one of these
19 charges, the alleged charge of murder of
20 Barnes, is a capital case, and carries
21 capital punishment if convicted. Now, do
22 any of you have any religious or conscien-
23 tious scruples or objections against the
24 imposition of capital punishment?
25
26 (No response from members of jury.)
27
28 BY THE COURT: Do you understand

that capital punishment is the imposition of a death penalty?

(No response from members of jury.)

BY THE COURT: I will ask you again, do any of you have any objections to serving on a jury, where if you find a defendant guilty of a certain charge, you might be required to impose the death penalty?

(No response from members of jury.)

BY THE COURT: Is there any member of this panel, who for any reason whatsoever, feels that he or she cannot render a fair and impartial verdict, both for the Commonwealth of Virginia and for the defendant, Tony Lewis?

(No response from members of jury.)

BY THE COURT: Do you gentlemen have any questions at this time?

BY MR. RHODES: I have none, Your Honor.

BY MR. GRIZZARD: No, sir, I have

none.

BY THE COURT: I have one other question, ladies and gentlemen. Do you or any member of your immediate family work for the State Department of Corrections of Virginia?

(No response from members of jury.)

BY THE COURT: All right, call the next ten into the box.

THE NEXT TEN MEMBERS OF THE JURY PANEL WERE CALLED INTO THE BOX, AND THE REMAINING MEMBERS WERE EXCLUDED FROM THE COURTROOM.

BY THE COURT: Now, ladies and gentlemen, the cases that will be heard today are those of Commonwealth of Virginia versus Tony Edward Lewis. Now, Tony Edward Lewis is charged with attempted escape from Southampton Correctional Institution. He is charged with robbery of Alfred Lynch. He is charged with robbery of Ronald Albert Barnes, and he is also charged with the murder of Ronald Albert Barnes. Now, is

1 any member of the jury related by blood or
2 marriage to Mr. Grizzard, who is the Common-
3 wealth's Attorney, or to Mr. Rhodes, who is
4 defense counsel in this case, or to the
5 defendant, Tony Edward Lewis, or to Ronald
6 Albert Barnes, or to Alfred Lynch.
7
8 (No response from members of jury.)
9
10 BY THE COURT: Is there any
11 member of the jury employed by the State
12 Department of Corrections, or is any
13 member of your immediate family employed
14 by the State Department of Corrections?
15
16 (No response from members of jury.)
17
18 BY THE COURT: Now, are any of
19 you currently being represented in any legal
20 matter, by either Mr. Grizzard or Mr. Rhodes?
21
22 (No response from members of jury.)
23
24 BY THE COURT: Now, there has been
25 certain news media publicity, with regard to
26 these cases and the facts surrounding the
27 charges that have been placed against the
28 accused? Have any of you read in the newspaper,

1 seen on television, or heard it on the street,
2 anything with regard to these cases?
3 BY JURY MEMBER: I read it when
4 it first came out, Your Honor.
5 BY THE COURT: Now, having read
6 these accounts, do you feel that what you
7 have read would affect your verdict in these
8 cases, in anyway shape or form?
9 BY JURY MEMBER: No, sir.
10 BY THE COURT: Have any of you
11 formed any opinion, with regard to this
12 matter?
13
14 (No response from members of jury.)
15
16 BY THE COURT: Now, do you feel
17 that you can give a fair and impartial trial
18 to the accused, even though he is an inmate
19 in a penal institution?
20
21 (No response from members of jury.)
22
23 BY THE COURT: Now, one of these
24 charges, the murder of a prison guard, Ronald
25 Albert Barnes, carries with it a death pen-
26 alty. It is what is called a capital case.
27 Now, do any of you have any religious or
28 conscientious scruples or objections against

1 the imposition of capital punishment?
2 BY A JURY MEMBER: Yes, sir.
3 BY THE COURT: Now, is this
4 objection to the death penalty absolute on
5 your part?
6 BY A JURY MEMBER: Yes, sir.
7 BY THE COURT: Could you in
8 any proper case impose a death penalty?
9 BY A JURY MEMBER: No, sir.
10 BY THE COURT: Would you state
11 your name, please.
12 BY A JURY MEMBER: Tessie Grant.
13 BY MR. GRIZZARD: The Commonwealth
14 would ask that Mr. Grant be excused for
15 cause.
16 BY THE COURT: All right, Mr.
17 Grant, you can stand aside. Now, is there
18 any member of this panel, for any reason
19 whatsoever, feels that he or she cannot
20 render a fair and impartial verdict in
21 this case, both for the Commonwealth of
22 Virginia and to the defendant, Tony Edward
23 Lewis?
24
25 (No response from members of jury.)
26
27 BY THE COURT: Are there any
28 further questions, gentlemen?

1 FOUR ADDITIONAL JURORS WERE CALLED INTO THE BOX, AND
2 THE REMAINING JURORS WERE EXCLUDED FROM THE COURTROOM.
3
4
5 BY THE COURT: Now, ladies and
6 gentlemen, the cases that we will try today,
7 are Commonwealth of Virginia versus Tony
8 Edward Lewis. Tony Edward Lewis is charged
9 with attempted escape, with the robbery of
10 Ronald Albert Barnes, with the robbery of
11 Alfred Lynch, and with the murder of Ronald
12 Albert Barnes. Now, Mr. Grizzard, the Common-
13 wealth's Attorney, represents the Commonwealth
14 in this case. Mr. William J. Rhodes, an
15 attorney from Franklin, represents the de-
16 fendant in this case. Is there any member
17 of the jury related by blood or marriage, to
18 either Mr. Grizzard, Mr. Rhodes, the defendant,
19 Tony Edward Lewis, or to Ronald A. Barnes, or
20 Alfred Lynch?
21
22 (No response from members of jury.)
23
24 BY THE COURT: Are any of you
25 employed by the State Department of Cor-
26 rections of Virginia, or is there any member
27 of your immediate family employed by the
28 State Department of Corrections?

1 (No response from members of jury.)
2
3 BY THE COURT: Now, there has
4 been certain coverage of the circumstances
5 surrounding these charges by the news media.
6 Now, is there any member of the panel who
7 has read any account of it in the news-
8 paper, or have you seen anything on television,
9 or have you heard it discussed?
10
11 (No response from members of jury.)
12
13 BY THE COURT: Do you recall when
14 this happened, any of you?
15
16 (No response from members of jury.)
17
18 BY THE COURT: Now, do you feel
19 that you can give a fair and impartial trial
20 to the accused in this case, even though he
21 is an inmate in a penal institution?
22
23 (No response from members of jury.)
24
25 BY THE COURT: Now, one of the
26 charges placed against the accused is that
27 of murder of Ronald A. Barnes, a prison
28 guard. Now, should the accused be found

1 guilty in this case, this carries a death
2 penalty. It is a capital punishment case.
3 Do any of you have any religious or con-
4 scientious scruples or objections against
5 the imposition of capital punishment?
6
7 (No response from members of jury.)
8
9 BY THE COURT: Do you understand
10 that capital punishment is the imposition of
11 the death penalty?
12
13 (No response from members of jury.)
14
15 BY THE COURT: Is there any member
16 of the jury, who for any reason whatsoever,
17 feels that he or she cannot render a fair
18 and impartial verdict in this case, both for
19 the Commonwealth of Virginia and the defend-
20 ant, Tony Edward Lewis?
21
22 (No response from members of jury.)
23
24 BY THE COURT: Are there any
25 questions, gentlemen?
26 BY MR. RHODES: May we approach
27 the bench, Your Honor.
28 BY THE COURT: Yes, sir.

K. R. PURVIS, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Mr. Purvis, would you state your name, address, and occupation, please?

A K. R. Purvis, Superientent of Southampton Correctional Center, Capron, Virginia. I live on the grounds at the institution.

Q Southampton Correctional Center, what now exactly is that, Mr. Pervis?

A It is an institution for young first felon offenders.

Q Is it part of the State Department of Corrections?

A Yes, sir.

Q It is a penal institution?

A Yes, sir.

Q Do you know the defendant, Tony Edward Lewis?

A Yes, sir.

Q Could you tell the ladies and gentlemen of the jury, whether or not he was an inmate at your institution on the 23rd day of March, 1975?

A Yes, sir, he was.

1 Q Could you tell the ladies and gentlemen
2 of the jury, when he arrived and from what court he came?
3 A I will read from the record, Your Honor.
4 He was sentenced from Hampton City Circuit Court, to 25
5 years for the crime of rape, on the 23rd of August, '73,
6 and we received him at Southampton Correctional Center on
7 August 31st, 1973.
8 Q Did he stay at your institution from
9 August 31st, 1973, up to and through the 23rd day of March,
10 1975?
11 A Yes, sir.
12 Q What building was he assigned to as far
13 as sleeping quarters and so forth on March 23rd?
14 A He was assigned to C-1 building.
15 Q Do you know Ronald Albert Barnes?
16 A Yes, sir, I do.
17 Q Could you tell the ladies and gentlemen
18 of the jury, whether or not Ronald Albert Barnes was an
19 employee of the Department of Corrections, in the State
20 of Virginia?
21 A Yes, sir, he was an employee of the
22 Department of Corrections, assigned to Southampton Cor-
23 rectional Center on that date, and assigned to C-1 building.
24 Q Do you know how long he had been employed
25 by the Department of Corrections, sir?
26 A I don't recollect, sir, but a couple of
27 years, possibly more than that.
28 Q To your knowledge, was he on duty on the

1 night of March 23rd, '75, in that building?
2 A Yes, sir, he was.
3 Q Did you have occasion to see him at
4 approximately 9:30 or 9:40 or 9:45 that evening?
5 A About 9:40, yes, sir, I saw him.
6 Q Where did you see him?
7 A He was being taken out of a cell and
8 put on a stretcher unconscious.
9 Q Did you notice anything else about him
10 at that time?
11 A There was some swelling about his eyes
12 and about his head.
13 Q This was approximately 9:40?
14 A Yes, sir.
15 Q Mr. Purvis, how long have you been over
16 at Southampton Correctional Center?
17 A Since 1957.
18 Q Have you ever heard the term hawking?
19 A Many times, sir.
20 Q Do you know what hawking is?
21 A Yes, sir.
22 Q Would you tell the ladies and gentlemen
23 of the jury what hawking is?
24 A Hawking is a term used by the inmates
25 when they want to observe what is taking place at the in-
26 stitution, especially when they are in their cells and
27 can't see what is taking place up and down the hall. They
28 will use a mirror, sticking out between the bars, so they

can look in that mirror and see what goes on up and down the hall, to see where the correctional officers are.

Q Is that an effective means of observation?

A Yes, with a big enough mirror, you can see what is going on all right.

Q If you had one, say 8½ or 8 by 11, would you be able to see what was going on in the hall?

A Yes, sir.

BY MR. GRIZZARD: All right, answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Mr. Purvis, your primary responsibility on the night in question, was just to see that there was order, and everything back to a tranquil nature after this incident?

A Yes, sir.

Q What conditions did you find when you went to the cell block, sir, of C-1?

A When I went to the compound and approached that building, there were a number of inmates milling around on the yard, that had no business on the yard at that time of night. They were also, when I got

1 in where I could see into the building, there was some
2 inmates loose in the building also, that had no business
3 being loose.
4 Q So, what you are telling us, there were
5 parties on the yard and parties in the building, and they
6 weren't where they were suppose to be?
7 A That is correct, sir.
8 Q Can you give us an approximate number of
9 people in that position?
10 A The people housed in that building,
11 there are approximately one hundred and ten cells in that
12 building, and some are double, and I couldn't tell you
13 exactly without going through the records.
14 Q You have in access of one hundred inmates
15 in C-1?
16 A Yes, sir.
17 Q Would you come over here before us, and
18 you are familiar with this diagram, are you not?
19 A Yes, sir.
20 Q Would you come over here for the benefit
21 of the jury and the court, please sir, and explain to the
22 jury from this diagram, how one enters a cell in C-1 build-
23 ing, and how you go around on the floors?
24 A This is the entrance here, and this is
25 the entrance to the building, and you come from the out-
26 side, and this is the grillwork across the top. You can
27 go from the other stairs to the lower, and you walk in here
28 and these are the cells and these are the cell doors, they

1 other buildings to make sure that they were not involved,
2 and so the officers could not account for them, and I don't
3 know how many were actually out.
4 Q They went somewhere else so they would
5 not be involved?
6 A That's correct, sir.
7 Q I ask you this. How long were you with
8 Mr. Barnes?
9 A I would say between 10 and 15 minutes.
10 Q Did you have occasion to see Tony Edward
11 Lewis that night?
12 A Yes, sir, I did.
13 Q Where was he, sir?
14 A Outside of the building.
15 Q And where was he outside of the building?
16 A To the right of the steps, and that was
17 when I went up the steps going into the building.
18 Q How far would you say outside of C-1?
19 A About from where I am, I'd say about
20 20 or 30 feet from the steps.
21 Q Is R-1 in the vicinity of C-1?
22 A Not in accordance with the other cell
23 buildings. The other cell buildings are in line and are
24 one across the compound.
25 Q Does it face C-1?
26 A No, sir.
27 Q It does not?
28 A No, sir.

1 Q Is it to the rear of C-1?

2 A No, sir, from the front of the building,

3 it is across from the front of the building to the right

4 a little bit.

5 Q So, you found Tony Edward Lewis 20 to 30

6 feet in front of the building, and R-1 is across the way

7 in front of C-1?

8 A Yes, sir, it is.

9 Q But, it is not to the rear of C-1?

10 A No.

11 Q But, you did see the defendant outside

12 in front of C-1?

13 A Yes, sir.

14 Q How high is that fence that surrounds

15 the farm?

16 A I would say it is about 12 foot. I think

17 it is a 12 foot fence.

18 Q Would you come here please. If you would

19 again, Mr. Purvis, to help us a little bit, these are photo-

20 graphs that have been introduced by agreement of counsel,

21 for the benefit of the jury, and this is a photograph show-

22 ing us the rear of building C-1, C-2, and C-3?

23 A Yes, sir.

24 Q Would you turn around to the jury and

25 explain to them the approximate height of this fence?

26 A This is approximately a 12 foot fence.

27 This is C-1 building here, C-2, and C-3, and this is the

28 corner of the educational building. There is a corridor

between this building and that building there, and this is the fence.

Q This is the rear of the building, is that correct?

A That is the back end of the building.

Q You did not see Tony Edward Lewis anywhere back there on that particular night?

A No, sir, I did not. I did not go back there.

Q What are these little wires and strings, and how high are they?

A They are about 18 inches above the other fence, and they are charged with electricity.

Q How many volts, sir?

A 440.

Q Show the jury, and explain to the jury what this photograph represents. Again, we have stipulated, this is the rear of building C-1.

A This is looking directly at the rear of C-1 building through the fence, and again, here is the educational building over here, and this is the dining hall here, and this is a wing off from that where the TV room is, but there is a walkway that comes between this wing here and the kitchen, and this is the corridor that I was talking about, that comes to the fence, and this is the fence.

Q Are there bars on these windows?

A Yes, sir.

of the Chief Medical Examiner in Richmond, and my examination again on March 24th, 1975, commenced between 2 and 3 p.m. The external examination of Mr. Barnes' body revealed that he was a well developed, well nourished, healthy appearing white male. He was 5 feet 9 inches tall, and weighed 191 pounds. He was unclothed at the time of my examination, and his clothing came with him in a separate container. The external examination or the outer surfaces of the body revealed that he had bruises or contusions over his face and chin and hand and side, and some additional scrapes on his hands or abrasions. The internal examination revealed that he sustained several head injuries, consisting of a large bruise over the back of the head, and the internal examination of the brain proper revealed that he had a blood clot, which had formed over the right side of the brain, and bruises of the brain substance proper on both sides, and severe swelling of the brain. The swelling of the brain is the reaction to injury. This was his lethal injury. Additional injuries consisted of bruises or hemorrhages in the left lung and right lung as well. He had bruises in the soft tissues of the neck, on the left neck, and there was a few on the right, but they were more marked on the left. He also had a small ulcer in his stomach, which occurred after his injury. It is called a stress ulcer, and is a reaction of the body to severe head injury. Additional pathological findings indicated, mild bronchitis, which he had had for a long time.

Q From the injuries that you have described,

could you find a probable cause of death?

A Yes, sir.

Q And what was your determination?

A The cause of death was his head injury.

BY MR. GRIZZARD: All right, answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Doctor, I didn't catch it, but when did you first see Mr. Barnes?

A I commensed the external examination at 2 p.m., on the 24th of March, 1975. I began the autopsy proper at 3 p.m.

Q Approximately, what time was his death, or do you know?

A At 8:10 a.m., I believe.

Q You saw him approximately eight hours later?

A Yes, sir.

Q You were not connected in anyway with treatment of him at M. C. V.?

A No, sir.

Q Your total connection with the case was the autopsy on March 25th, at approximately 2 to 3 o'clock

p.m.?

A March 24th, and my connection with Mr. Barnes was the investigation of his death, which included a complete review of his history, and his treatment at the Medical College, and the external examination and the internal examination, with microscopic slides, biopsies, and so forth, which I studied and formulated the report you have received.

Q You did not have the occasion to see him any time on the preceeding day?

A No, sir, I did not.

Q You did not treat him in any capacity preceding his death?

A No, sir.

BY MR. RHODES: That's all.

REDIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Doctor, you filed a report, did you not?

A Yes, sir, this report is a certified copy of the report of investigation by the Medical Examiner, which I certified from our office.

BY MR. GRIZZARD: At this time, Your Honor, the Commonwealth would offer the

report of autopsy, as Commonwealth's exhibit number 13.

BY MR. RHODES: I have no objection, Your Honor, and I would ask that the Doctor be excused and be allowed to return to Richmond.

BY THE COURT: All right, Doctor, thank you very much, and you may go.

ALFRED LYNCH, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Mr. Lynch, would you state your name, address, and occupation, please?

A Alfred Lynch, Jarratt, Virginia, and I am a correctional officer at Southampton Correctional Center.

Q Speak a little louder, please. Were you employed as a correctional officer at Southampton Correctional Center, on March 23rd, 1975?

A Yes, sir.

Q Did you have occasion to be on duty on that date?

A Yes, sir.

1 Q What shift were you working?
2 A The second shift.
3 Q What hours does that entail?
4 A From 4 o'clock until 12 o'clock.
5 Q Is that 4 p.m. to 12 midnight?
6 A Yes, sir.
7 Q Where were you on duty on that shift,
8 sir?
9 A For the first few hours, I worked in the
10 tower on the yard, and then I reported to a building to
11 assist an officer for the night duties.
12 Q What building did you report to?
13 A C-1.
14 Q And what officer were you assisting?
15 A R. Barnes.
16 Q Is that Ronald Albert Barnes?
17 A Yes, sir.
18 Q What time did you get to the building
19 that night?
20 A About 5 or 5:10.
21 Q Did you remain on duty in C-1 the rest
22 of the night?
23 A Yes, sir.
24 Q I want to direct your attention to
25 approximately 9:30 on the night of March 23rd, 1975, and
26 ask you if anything occurred in C-1 building, at Southampton
27 Correctional Center?
28 A Yes, sir, it was an attack made upon Mr.

1 Barnes and I.
2 Q All right, tell the court what happened
3 in that attack, and describe it.
4 A About 9:30 I had just put a man in his
5 cell that wanted to go in while he was watching TV, so, I
6 took him upstairs and let him in his cell. I saw an inmate
7 run into an upstairs shower. After I put the man in his
8 cell, I saw who the inmate was and he was kind of hiding
9 there, down beside the side of the wall, and I asked him
10 who he was and what cell he was in, and he said he was in
11 cell 150.
12 Q Who was that?
13 A Cross, I believe, and then I told him to
14 come downstairs and I would put him in his cell, and so I
15 went on downstairs and he was following me. When we got
16 to the steps, he stopped like he was going to talk to the
17 man in the next cell. I went on down in front of him, and
18 when I got to the first landing, I turned and looked and
19 he was as if he was making his first step down, and I went
20 to the bottom of the steps and when I got to the bottom,
21 I saw this inmate land on top of Mr. Barnes at the door.
22 Q Is that the same inmate you were talking
23 about, Cross?
24 A Yes, sir.
25 Q You saw him land on Barnes, now where
26 was Officer Barnes at that time?
27 A He was standing at the entrance of the
28 building at the gate.

Q When you speak of the gate, what are you talking about?

A It is a set of bars that lead from the front door into the main cell building.

Q Now, this inmate landed on Barnes. What happened to Barnes?

A He fell to the floor.

Q Which side of the gate was he on, the closest to you or the side furtherest away?

A The side furtherest away.

Q Was the cell door open?

A Mr. Barnes had just opened the door. He was getting ready to go out.

Q You say he fell to the floor. Did he fall directly to the floor or up against the bars first?

A He kind of slumped up against the bars and slid down to the floor.

Q How far away was he from you at that time?

A About as far as from here to that partition there.

Q Are you speaking of the railing in front of the jury?

A Yes, sir.

Q That would be approximately 12 feet?

A Yes, sir.

Q All right, this inmate landed on top of Barnes. Tell the court and ladies and gentlemen of the

1 jury, what happened next?
2 A Well, I approached Mr. Barnes to see if
3 he was hurt, and Cross was sitting across Mr. Barnes, and
4 Cross jumped up and when I got close enough to him, he
5 pushed me back, and he said, take it easy, man, take it
6 easy, and then I approached him again and someone grabbed
7 me from behind and started dragging me down the cell build-
8 ing.
9 Q From the time that you observed Cross
10 land on Barnes, and from the time you moved towards Barnes,
11 and you heard this man say take it easy man, take it easy,
12 and this inmate grabbed you, what was the total time?
13 A About a minute or 2 minutes.
14 Q It took you a minute to go across 12
15 feet?
16 A It wasn't long.
17 Q Well, that is what I am asking you. How
18 long was it?
19 A I really don't know. It could have
20 been less than a minute. It couldn't have been too long.
21 Q How did this inmate or this individual
22 grab you?
23 A From behind. He put his arms around my
24 arms and shoulders.
25 Q Would you get behind me and grab me and
26 show the ladies and gentlemen of the jury how this man
27 grabbed you. Your arms were inside his?
28 A Yes.

1 Q Did you notice anything about this inmate?
2 A The only thing I could see, he had on a
3 brown coat, an institutional coat, and black gloves.
4 Q Where were you in the building at this
5 time?
6 A Right at the front when he grabbed me.
7 I was almost at the gate, right near Mr. Barnes.
8 Q Come over here and point it out where
9 you were.
10 A I was right there.
11 Q Is this the iron gate you are speaking
12 of?
13 A Yes, sir.
14 Q And these are the stairwells that you
15 are talking about?
16 A Yes, down here right along right there,
17 and I was approximately right under the steps when I saw
18 Mr. Barnes being landed upon, and slid to the floor.
19 Q You were approximately at the same lo-
20 cation when you were grabbed from behind?
21 A Yes, right along in there somewhere.
22 Q All right, after this man had grabbed
23 you from behind, tell the court what occurred then?
24 A I was dragged back to the back of the
25 building, and when I got to the steel doors, I was told
26 to open cell 130. I opened the cell and V. Joe left the
27 cell as I opened the cell.
28 Q You speak of the steel door, is that

1 the solitary confinement cell?
2 A Yes, sir, and it has a steel door in the
3 front.
4 Q And you said that was cell number what?
5 A Number 130.
6 Q Looking at Commonwealth's exhibit "1",
7 is that the door, and exhibit "9", is that the door you
8 are speaking of?
9 A Yes, sir.
10 Q On the diagram, it would be this door
11 here?
12 A Yes, sir.
13 Q As you were being drug from the front of
14 the building to cell 130, you say you were drug backwards,
15 and as you were being dragged backwards, were you looking
16 toward the front of the building or the back of the build-
17 ing?
18 A The front.
19 Q Could you observe Officer Barnes at any
20 time?
21 A Yes, sir, he was just laying on the floor,
22 and then Cross grabbed him by the feet and started pulling
23 him back.
24 Q Did you see anything happen while he was
25 dragging him back down there?
26 A I'd say about halfway down the cell block,
27 Mr. Barnes seemed like to me regained consciousness a min-
28 ute and tried to get up. When he did, Cross hit him twice

1 with his fist and kicked him several times in the side.
2 Q Is that all you saw of Captain Barnes?
3 A Yes, that is all I saw until after Mr.
4 Barnes was put in the cell with me.
5 Q Where was Cross hitting Barnes?
6 A On this side of his face and his neck,
7 and kicked him several times in his side.
8 Q Is that the only time you saw Cross hit
9 him or strike him at any time?
10 A That was the only time other than when
11 he landed on top of him.
12 Q Did he hit him or strike him at any time
13 after he first got him down?
14 A No, sir.
15 Q Did Captain Barnes have any keys?
16 A Yes, sir, he had cell door keys, main
17 entrance keys, and the lever box keys.
18 Q Did you see his keys at any time during
19 this?
20 A The only time I saw them was when they
21 were in the door. They were still in the doorway and he
22 was on the floor.
23 Q As you got down to cell 130, you said
24 you were told to unlock the cell?
25 A Yes, sir.
26 Q Did you unlock the cell?
27 A I had the keys in my hand from when I
28 had put the man upstairs, and I was going down to cell 150

1 and the keys were still in my hand, and the keys were forced
2 into the lock and my wrist was turned and the door opened.
3 Q What happened to your keys?
4 A I do not know from there, sir.
5 Q Did you just leave them in the door or
6 were they taken from you?
7 A The door was opened and I was pushed,
8 and my hand came back and I still had the keys, and after
9 I was put inside and put on the bed, V. Joe was told to
10 take everything I had and empty my pockets and take the
11 keys. After that, I never saw him and I never saw them
12 any more.
13 Q You say V. Joe was told to do this. What
14 happened to your money and your pockets? Did anybody take
15 your money?
16 A He was told to take everything out of
17 my pockets and throw it out in the hall.
18 Q Did he?
19 A Yes, sir.
20 Q What did you have in your pockets?
21 A My car keys, my wallet, and my wallet
22 had a $10.00 bill in it, and drivers license, and all my
23 papers and I. D. cards, and I had two $1.00 bills in my
24 pants pocket.
25 Q All right, did you ever see any of these
26 items again?
27 A Later that night after I came back from
28 the hospital, I retrieved my wallet back and my drivers

1 license and identification papers.

2 Q Where did you get them from?

3 A From Mr. Purvis when I made a statement

4 that night.

5 Q They were taken simultaneously with the

6 order to take everything out of your pockets?

7 A Yes, sir.

8 Q And someone took them out of your pocket?

9 A Yes, sir.

10 Q Did you ever see Captain Barnes again?

11 A He was placed in the cell with me.

12 Q From the time you went in the cell until

13 the time Captain Barnes was actually put in the cell with

14 you, how long a period of time was that?

15 A About 3, 4, or 5 minutes.

16 Q Now, did you see how Captain Barnes was

17 put in your cell?

18 A No, sir.

19 Q Did you see who put him in your cell?

20 A No, sir.

21 Q Where were you when they put him in there?

22 A I was being held down on the bed on the

23 mattress in the cell.

24 Q Do you know who was doing that?

25 A No, sir, I don't.

26 Q How was Barnes put in the cell?

27 A He was thrown in, and his head was up

28 against the wall and his feet were laid up under the sink.

1 Q Did you notice anything about Barnes at
2 that time?
3 A I noticed that he was bleeding and he
4 was having trouble breathing.
5 Q Where was he bleeding?
6 A From his eye here and from his mouth.
7 Q You say he was having trouble breathing?
8 A Yes, sir, he was kind of gasping.
9 Q Then what did you do at that time?
10 A I turned the bed over and straightened
11 his legs out, and then I broke a window to see if I could
12 holler out to get help, and about that time, I saw Mr. Ivey
13 chase an inmate back around from the back of the building.
14 Q How long were you in the cell with Cap-
15 tain Barnes before you got assistance?
16 A About 5 minutes.
17 Q Did he move at all or say anything or
18 do anything?
19 A No, sir, he didn't say anything and he
20 didn't move.
21 Q He didn't move at all?
22 A He would like tense up and then relax.
23 Q Tense up and then relax. How many times
24 did he do that?
25 A About five or six times maybe.
26 Q What was the lighting condition at the
27 time this started, at approximately 9:30 inside of the
28 building?

A All of the lights were on, all the hall lights and the monitor lights were on.

Q That would be the lights in the ceiling and the lights on the catwalks?

A Yes, sir.

Q Could you see from one end of the building to the other?

A Yes, sir.

Q While you were being drug backwards from the front of the building to the back of the building, did you see anybody or did you hear anybody say anything?

A I heard someone say, Tony, why are you all doing this.

Q Did you ever get a chance to see who had you from behind?

A No, sir.

Q Captain Lynch, had you not been grabbed from behind, would you have been able to go to the assistance of Captain Barnes?

A Yes, sir.

BY MR. GRIZZARD: Answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Mr. Lynch, how about coming over here,

Q Did you ever turn around to look at that time?

A No, sir.

Q Were you frightened?

A After I saw what happened to Mr. Barnes I was.

Q I can understand that, and I believe you mentioned that V. Joe was told to empty your pockets. Who is V. Joe, is that his name?

A That's all I know.

Q He was inside of 130?

A Yes, sir.

Q And someone told V. Joe to empty your pockets?

A Yes, sir.

Q And did anyone do that other than V. Joe?

A I have no idea.

Q Was anyone else in the cell with you other than V. Joe?

A I saw no one else.

Q That person, V. Joe, emptied your pockets and took a wallet and some keys, and did what with them?

A Threw them out in the hall.

Q You saw him throw them in the hall?

A I heard them hit.

Q And then he left?

A He was told to empty my pockets, and stay there and keep me there.

1 Q Now, what is your cell number?
2 A 151.
3 Q Now, on the night in question, will you
4 explain to the ladies and gentlemen of the jury, the system
5 they have at Southampton Correctional Farm, as to one side
6 in and one side being out?
7 A Well, one night the left side goes to
8 the TV room and the right side goes to the basement. The
9 next night the left side goes to the TV room and they switch
10 it up.
11 Q When you say a side goes to the TV room,
12 does that mean everybody has to go to the TV room?
13 A No, sir.
14 Q Just the ones that want to go?
15 A The ones that want to go, they can go to
16 the TV room. The ones that don't stay in their cell.
17 Q On this particular night of March 23rd,
18 1975, were you on the right side or left side?
19 A Left side.
20 Q Was your side in or out?
21 A They was out.
22 Q Now, why were you in your cell that night?
23 A Well, I stayed in to take a shower, and
24 I believe I was on loss of all privileges at the time.
25 Q Where is cell 151 located in the building?
26 A At the front of the building, and it is
27 three cells from the front.
28 Q Now, do you know what hawking is?

1 A Well, it is when somebody takes a mirror
2 and sticks it out the cell door to watch for the man.
3 Q When you say watch for the man, who are
4 you speaking of?
5 A The correctional officer.
6 Q Who were the correctional officers as-
7 signed to C-1 on the night of March 23, of last year?
8 A Captain Barnes and Captain Lynch.
9 Q Is that Ronald Albert Barnes?
10 A Yes, sir.
11 Q And Alfred Lynch?
12 A Yes, sir.
13 Q Now, I want to direct your attention to
14 that night at approximately 9:30, and ask what if anything
15 you were doing?
16 A I was sitting on my door looking out
17 through the mirror.
18 Q What kind of mirror did you have?
19 A That mirror right there.
20 Q Is that your signature on the bottom of
21 this mirror?
22 A Yes, sir.
23 Q And your number?
24 A Yes, sir.
25 Q You put your name and address on there?
26 A Yes, sir.
27 Q And your number?
28 A Yes, sir.

1 Q And what was the condition of this mirror
2 on that night?
3 A It was new when I had it.
4 Q Was it broken?
5 A No, sir.
6 Q What did you subsequently do with this
7 mirror?
8 A Well, I transferred to another building
9 and I went into a cell that had mirrors in them, so, I gave
10 that mirror to another dude.
11 Q Who did you give it to?
12 A Herbert Boyce.
13 Q When you gave it to him, it was not
14 broken?
15 A No, sir.
16
17 BY MR. GRIZZARD: At this time, the
18 Commonwealth would offer the mirror and frame
19 in evidence, as Commonwealth's exhibit "14".
20 BY MR. RHODES: I will reserve any
21 objections, Your Honor.
22 BY MR. GRIZZARD: I will ask to put
23 the mirror in the envelope.
24 BY THE COURT: All right.
25
26 MR. GRIZZARD CONTINUING:
27
28 Q Is this an 8 x 11 mirror?

A Yes, sir.

Q When you hawk with that mirror, can you see up and down the hall?

A Yes, sir, you can see everything with it, front and back.

Q Now, approximately 9:30 on the night of March 23rd, what were the lighting conditions in C-1 building?

A It was good. All the lights was on.

Q When you say all the lights were on, are you speaking of the main lights in the building and the lights under the catwalk?

A The main lights and the catwalk.

Q You would not know about the individual cell lights?

A No, sir.

Q Directing your attention to that night of March 23rd, at approximately 9:30, I want to ask you if you observed anything occur in C-1 building?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury what you saw?

A Well, like I say, I was sitting on my door with a mirror.

Q Robert, I am going to ask you one more time to speak louder so that they can hear you.

A I was sitting on my door with the mirror out, and I noticed something going on at the front of the

1 building, and at the front, Captain Barnes, he came through
2 the front door, and it happened so quick that somebody
3 jumped off the top tier and hit him in the back, and when
4 he hit him, Captain Barnes, he turned around and hit his
5 head on the grill door.
6 Q Robert, which side is the grill door on
7 that you are speaking of? Is it on the side closer to your
8 cell or furtherest?
9 A The one closest to my cell.
10 Q And you say that when this person jumped
11 on him, he hit him in the back?
12 A Yes, sir.
13 Q And did Captain Barnes fall straight in-
14 to it, or turn around and fall and hit it?
15 A He turned around and the back of his head
16 hit the grill door.
17 Q Then what happened?
18 A The dude, he kept stomping him, beating
19 him, and kicking him, and hitting him.
20 Q Do you know who it was that jumped on
21 Captain Barnes?
22 A Yes, sir.
23 Q Who was it?
24 A Cross.
25 Q Now, how far is your cell from where
26 this is taking place?
27 A I'd say about 15 feet, between 15 and
28 20 feet.

1 Q All right now, what did you see Cross
2 do at this time?
3 A Stomp him, kick him, and beat him with
4 his fist.
5 Q What was Barnes doing at this time?
6 A He looked like apparently to be out,
7 unconscious.
8 Q Did you see anybody else in the hallway
9 or on the floor at that time, besides Barnes and Cross?
10 A Yes, sir.
11 Q Who did you see?
12 A Lewis and Lynch.
13 Q What Lewis are you speaking of?
14 A Tony Lewis.
15 Q The defendant in this case?
16 A Yes, sir.
17 Q And when you speak of Lynch, who are
18 you speaking of?
19 A Captain Lynch.
20 Q Alfred Lynch?
21 A Yes, sir.
22 Q Where were they?
23 A Well, Tony Lewis was dragging him down
24 the hall pass my cell when I saw him.
25 Q Was he dragging him when you first saw
26 him?
27 A Well, I will say he was dragging him,
28 but it wasn't like he was on the ground. Tony Lewis had

his arms around Mr. Lynch pulling him down the hall.

Q What I am asking you, is this the first that you saw him or did you see him when he first grabbed him?

A I didn't see him when he first grabbed him.

Q Would you demonstrate to me how Lewis was holding Captain Lynch?

A He was holding him something like this here.

Q All right, when you say dragging, you show me how it was and you are not going to hurt me. Go ahead and do it.

A Like this here, back like this.

Q All right, where was Lewis and Captain Lynch when you first saw them, when you first noticed them?

A They came from the stairwell going upstairs and that is on the left side.

Q In other words, that is where you first saw them?

A Yes.

Q Tell the court what occurred and what you observed when you saw Cross overtop of Barnes, and you saw Lewis with Captain Lynch, dragging him back. Tell the court what you saw and what you observed from that point on.

A Well, Cross, he drug Captain Barnes or Mr. Barnes down the hall a little ways, about halfway down

1 the hall.

2 Q How was he dragging him?

3 A By his feet, and Mr. Barnes came to about

4 halfway down the hall, and he asked him what was wrong,

5 and asked him to hold up and stop beating him, but this

6 dude, Cross, kept on beating him and beat him some more

7 right there, and Captain Barnes apparently went out again

8 unconscious, and then he drug him back down the hall some

9 further to cell 130 and started beating him right there

10 some more.

11 Q Now, while Cross was dragging Barnes

12 down the hall by his feet, what was Lewis doing with Lynch?

13 A He was still pulling Mr. Lynch down the

14 hall, and he got to cell 130 and he opened the door up.

15 Q Now, let me ask you this. When Lewis

16 and Lynch got to 130, approximately where in the building,

17 if you know, was Cross and Barnes?

18 A About at 137.

19 Q All right, how do you know what number

20 cell it was?

21 A Looking through the mirror and seeing

22 how far they was down the hall, that is approximately where

23 it was at.

24 Q Come over here a minute if you would,

25 Robert, and stand this way facing the jury and the diagram,

26 and this is a diagram of the building, and this is the gate

27 here, and cell 151 is located here, and would you point out

28 approximately where Captain Barnes was when you first saw

1 Cross jump him?

2 A Coming through the gate opening right

3 here.

4 Q And where was Lynch and Lewis when you

5 first saw them?

6 A Right in here.

7 Q The stairwell is right here?

8 A Right here at the stairwell on the left

9 side.

10 Q And this is 130 right here, and approx-

11 imately where in this area was Cross with Captain Barnes

12 when Lynch and Lewis were down at 130?

13 A I would say somewhere inbetween here.

14 Q That is between 136 and 137. Did you

15 see Captain Lynch when he was put in 130?

16 A I seen him when he was pushed in there.

17 Q Will you tell the court what occurred

18 after Captain Lynch was pushed into 130?

19 A V. Joe, he was on padlock in 130, and

20 he came out of the cell and Tony Lewis pushed Alfred Lynch

21 in the cell and came out, and V. Joe, he had some type of

22 object in his hand, it was chrome or something and I don't

23 know what it was but it was some type of object, and he

24 hit Captain Barnes with that and kicked him two or three

25 times. Tony Lewis came out of the cell and he ran up to

26 Captain Barnes and kicked him and stomped him.

27 Q Was Captain Barnes still in the same

28 vicinity of 136 and 137 when this happened?

1 A Yes, sir.
2 Q What happened after the cell had been
3 opened and Captain Lynch had been placed in 130, and Vernon
4 Joe had come out and gone up to where Officer Barnes was,
5 and Lewis had gotten back up to where Officer Barnes was?
6 A They both started beating him. Joe is
7 the one that started it, and when he come out of his cell,
8 like I say, he kicked him two or three times and hit him
9 with some type of object that was chrome. Then Tony Lewis,
10 he came out of the cell and came running down and kicked
11 him and stomped him.
12 Q Then what happened?
13 A They put Captain Barnes in the cell.
14 Q Who is they?
15 A Tony Lewis and Cross.
16 Q How did they get Captain Barnes from
17 136 down to this cell?
18 A They drug him.
19 Q All right, go ahead.
20 A After Cross and Tony Lewis put Captain
21 Barnes in the cell, Joe, he was running up and down the
22 hall hollering, everybody is free, you can all go, and
23 everybody is free, and he took the keys and opened up all
24 the doors, and Tony Lewis, he came down the hall and went
25 in the office and got a hammer and started beating the lock
26 off cell 104.
27 Q Now, did you see any keys at any time
28 other than the set that Vernon Joe had?

A Yes, sir.

Q How many different sets of keys did you see that night?

A I saw two different sets.

Q Who had these sets of keys that you are talking about?

A Captain Barnes and Captain Lynch.

Q When did you see Captain Barnes' keys?

A When Cross took them off Captain Barnes.

Q When was that?

A At about cell 137.

Q Do you know whether or not he took anything else from Captain Barnes?

A His wallet.

Q Do you know what he did with the wallet once he got it out?

A Captain Barnes' wallet was on a chain, and he took the money out and gave it to Lewis.

Q What about the keys?

A The keys he gave to Lewis too.

Q All right, that is one set of keys you said you saw, and you said you saw two sets, where was the other set?

A Joe had one set that come off Captain Lynch.

Q All right, you have testified that Joe was running up and down the hall stating that everybody was free, explain to the ladies and gentlemen of the jury

1 Q When he got to middleway of the building
2 and made the statement you have testified to, was anyone
3 present with him at that time, other than Cross?
4 A No, no one but Cross.
5 Q How long was it from that point before
6 Joe and Lewis got there?
7 A I'd say about 2 or 3 minutes.
8 Q Now, when Joe and Lewis, when they got
9 there and after the beating occurred there which you earlier
10 described, was Barnes again unconscious?
11 A Yes, sir.
12 Q Now, how did they drag him from there
13 to 130?
14 A By his feet.
15 Q Was his face up or was his face down?
16 A Face down still.
17 Q Did you see how they actually put him
18 in cell 130?
19 A No, sir.
20 Q During this period of time, did you see
21 any one else in the hallway, other than Michael Cross,
22 Vernon Joe, and Tony Lewis, Alfred Lynch, and Ronald Albert
23 Barnes?
24 A No, sir.
25 Q What happened after the cells were opened
26 and they were running around beating the padlocks off the
27 doors?
28 A I seen Cross in the cell right next to

1 that we can view it a little differently. I believe you
2 were in cell 151. Mr. Grizzard has shown you that?
3 A Yes, sir.
4 Q Would you point that out to the jury
5 again?
6 A Right there.
7 Q 151, and you had your arm out this win-
8 dow with a mirror?
9 A No, sir.
10 Q At that point you did not. All right,
11 how did you observe and what direction were you looking
12 when you saw the dude named Cross jump off the tier?
13 A Which direction was I looking?
14 Q Yes, sir.
15 A Toward the front of the building.
16 Q Who did you see at that time?
17 A Cross.
18 Q And Barnes?
19 A Yes, sir.
20 Q Did you ever see Lynch?
21 A I saw Lynch and Tony Lewis. I saw Tony
22 Lewis and Mr. Lynch when they came out of the stairwell.
23 Q You are saying that Lewis and Lynch came
24 out of the stairwell at that time?
25 A Yes, sir.
26 Q You are absolutely certain of that?
27 A Yes, sir.
28 Q When did you see Lewis grab Captain Lynch?

A I didn't see him grab him.

Q You did not. Did you ever see Captain Lynch go near the body of Captain Barnes and have a conversation with Cross?

A No.

Q Did you ever see Cross shove Captain Lynch back?

A No, sir.

Q Did you ever hear or see any conversation between Captain Lynch and Cross, in the vicinity of where you first saw Barnes?

A No, sir.

Q When is the time you saw Lewis grab Lynch?

A Like I said, just now, I didn't see him grab him.

Q You did not?

A I did not.

Q You saw him at the stairwell with Lewis?

A I seen them coming out of the stairway.

Q When did you next see Lewis and Lynch together?

A When they come by my cell.

Q Were they walking by your cell?

A Lewis was pulling him.

Q Was that when you stuck your mirror out down the hall, when you were doing what you call hawking?

A No, I had my mirror out the window.

the jury?

A Right there.

Q And you are located here?

A Yes, sir.

Q One is directly across from you and one would have been up from you?

A Yes, sir.

BY MR. RHODES: All right, I have no further questions.

PERCELL RICKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Will you state your name, your address, and occupation, please?

A Percell Ricks, and I am presently at Southampton Correctional Center.

Q And were you confined there as an inmate on March 23rd, 1975?

A Yes, sir, I was.

Q Were you in C-1 building?

A Yes, sir.

A Yes, sir.

Q All right now, you say you were in the TV room when you heard a noise?

A Yes, sir.

Q When you came out, did you come down this corridor and go through this door?

A Yes, sir.

Q Leading into the main door?

A Yes, sir.

Q That puts you right here?

A Yes.

Q In relation to the front gate, how far would you be from the main grill door there?

A A little more than the length of his body.

Q That would be approximately 6 feet from the grill door? What did you first do when you approached the hallway there through this door to the main corridor?

A Well, when I came out there was a man, Captain Barnes, and another man standing over top of him.

Q Do you know who that was?

A Cross. He was hitting him, and there was a man standing by the stairway, and this is the stairway coming down here, and Lewis was standing here and he was holding Captain Lynch.

Q Was he across the hall from you or on the same side you were on?

A He was across the hall. He was at the

1 stairwell.

2 Q You say Lewis had Lynch when you first

3 saw him?

4 A No, in the beginning, he moved toward

5 Lynch and he told him to hold it, and he grabbed him around

6 the waist and pulled him back.

7 Q I will be Officer Lynch and you get be-

8 hind me and demonstrate to me how he grabbed him.

9 A Like this.

10 Q He had his arms inside?

11 A Inside.

12 Q All right, what did he do then, Percell?

13 A Well, he was moving towards Sergeant

14 Barnes on the floor, and he was coming up at the time, and

15 he told him to hold it and he grabbed him and pulled him

16 back.

17 Q Pulled him back to where?

18 A Up against this wall right here.

19 Q All right, after you described what you

20 first saw when you came into the room, tell the court and

21 ladies and gentlemen of the jury what happened then?

22 A Well, then I stepped back inside, really

23 to get myself together, because I was trying to picture

24 what was really happening, and I stepped back inside and

25 when I stepped back out in the corridor into the hallway

26 again, at that time, he started dragging him down the hall-

27 way.

28 Q When you stepped back into the main

1 corridor, who was in the corridor at that time?
2 A There was about twenty-five people in
3 there, different individuals talking to this guy.
4 Q About twenty-five individuals there in
5 the TV room or in the main hall?
6 A The majority of them were, I'd say about
7 twenty of them were in the TV room and the rest of them
8 were standing in the door looking.
9 Q What could you observe when you stepped
10 back into the main corridor? In other words, you had seen
11 what occurred up front and you stepped back into the TV
12 room and you stepped back into the hallway. Did you see
13 Captain Barnes or Captain Lynch or the defendant, Tony
14 Lewis or Michael Cross?
15 A Well, when I stepped back out in the
16 hallway, Cross was still beating Sergeant Barnes.
17 Q Was he at the same place or had he
18 moved?
19 A He was starting to move. He was trying
20 to get himself together, and everytime he would try, Cross
21 would kick him or hit him up against the side of the head,
22 and he never could get himself together. He was sort of
23 rolling, trying to get away from the blow.
24 Q Captain Barnes was trying to get himself
25 together?
26 A Yes, sir.
27 Q And everytime, Cross would hit him?
28 A Yes.

Q Do you know where in the building they were at that time?

A Right up here where the writing is.

Q Up here again.

A Yes, right up there.

Q Where was Lynch and Lewis?

A Lewis was standing against the wall coming down by the steps, and he was still holding Captain Lynch.

Q Did you see them move at all?

A No, he couldn't move. He had him.

Q What I am saying, did you see Lewis and Lynch together move?

A No, he was just standing there holding him.

Q What did you do at that time?

A I stepped back in, and when I came back out the next time, Cross was dragging Sergeant Barnes down the hall by his feet, and Sergeant Barnes kept trying to get up, and he would stop to hit him, and by that time I was waiting for Lewis to move away from the door so I could get out of the door to see, and he started pulling Lynch down the hallway too, as if to go down the hallway and he cleared the hallway, and Lynch said, just don't hurt me, and you do what you want to, but please don't hurt me, and he said, shut up, and he was going on down the hallway, but Cross kept stomping and every once in awhile he would hit Captain Barnes, and he was still trying to get him-

1 self together.

2 Q You say they moved on down. Was Sergeant

3 Barnes still trying to get himself together? How long did

4 you observe them?

5 A I didn't see him hit him but a few times

6 before I went back inside of the corridor. When I came

7 back out, I seen him for the time it takes him to get maybe

8 10 or 15 yards from me and enough to clear the doorway,

9 maybe from about here to that door, but not quite.

10 Q The door at the back of the courtroom?

11 A Yes, sir.

12 Q That would be 60 feet, so, they moved

13 from down here about 60 feet, and the last you saw would

14 have placed them somewhere in the vicinity of 147, about

15 down this way?

16 A Yes, but not quite that far.

17 Q What did you do then?

18 A Well, the door partially opened then,

19 and the reason we came out was to help and it was too many,

20 and we ran or I stopped at the door just before I ran down

21 the steps and I saw Cross was still hitting him, so, I ran

22 to get help.

23 Q As you started out the door and stopped

24 to look back, do you know where they were then?

25 A Steady going up the hallway.

26 Q Do you know where Lewis and Lynch were

27 then?

28 A Pretty near the same position that Cross

was. They were going along side by side, and one was dragging one and one was dragging the other.

Q Was that the last you saw of them?

A Until we came back to the building.

Q What did you do when you left the building?

A I left the building and went into a different building and let the guards know what was going on, and when I got back, Cross was on the outside and Lewis went outside.

Q You went from C-1 to the other buildings on the farm trying to get assistance from some other guards?

A Yes, sir.

BY MR. GRIZZARD: Thank you, and answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Mr. Ricks, you have been very helpful so far. I want you to clear a couple of matters for us. Would you come back up here, please? As I understand it, when you first saw Lynch and Lewis, would you point out to us on this diagram where they were?

A Mr. Lynch was standing right here. Mr. Lynch was standing right by the steps, and he started to-

1 wards Mr. Barnes and he was laying down here, and Lewis
2 approached him from this side and pulled him back up against
3 the wall and held him there.
4 Q So, he held him over here, is that cor-
5 rect?
6 A Yes, sir.
7 Q And he didn't pull him down this way?
8 A No.
9 Q How long did Lynch and Lewis stay on
10 this side?
11 A I went back inside, like I say, to get
12 myself together, and when I come back out this time, when
13 I come back out, both of them had started down.
14 Q They were dragging on that side?
15 A He was dragging down this way.
16 Q Who are you referring to?
17 A Lewis was dragging Mr. Lynch.
18 Q In this direction?
19 A Yes.
20 Q On the opposite side from Barnes?
21 A Yes, one was on one side and one on the
22 other.
23 Q I believe you stated earlier, that twenty
24 or twenty-five people were out there. Show us where those
25 twenty people and those five people were?
26 A Well, it was a rough estimate.
27 Q That's all right.
28 A The majority of them was in here in the

1 TV room, and you have got a few in here, and a couple
2 standing around out here.
3 Q In the corridor?
4 A Yes.
5 Q But, they were in the corridor?
6 A Yes.
7 Q And that was as a result of the confus-
8 ion going on?
9 A Yes, sir.
10 Q Was there noise?
11 A Yes, sir.
12 Q Did you hear any cans hit the floor?
13 A I didn't see any cans, but I won't say
14 it didn't.
15 Q There was a lot of noise going on at
16 the time?
17 A A lot of noise.
18 Q I believe you stated that you saw Cross
19 dragging Captain Barnes down this corridor?
20 A Yes, sir.
21 Q Can you show us on this map, and this
22 is cell 149 and 150, show us approximately where you saw
23 him take him and pull him?
24 A He started here and he started dragging
25 him down here, and Mr. Barnes got here and he couldn't get
26 a hold of himself, so, he started dropping him to get a
27 hold of him, and when he did, Sergeant Barnes tried to get
28 up and he hit him a couple of times.

Q This is Cross?

A Yes.

Q Where were Lewis and Lynch?

A They were beside him. One was like this and one was like that, but they were side by side, well, they were not side by side, but they were going down the hall.

Q On the opposite side?

A On the opposite side.

Q Do you know where cell 130 is?

A I know where all of them are at.

Q Did you ever see anybody go to cell 130?

A I can't say about that.

Q Do you know Robert Saunders?

A Yes, sir.

Q What cell was he in?

A He was right up here, up front.

Q Did you see him during all of this?

A No, sir.

Q You didn't see him?

A No.

Q Could you have seen him?

A I don't know. It was people out there and it was confusion.

BY MR. RHODES: I have no further questions.

I will ask you to go into your jury room at this point.

TRIAL CONTINUING IN THE COURTROOM, IN THE PRESENCE OF THE JURY, WITH THE DEFENDANT PRESENT.

OFFICER JUNIUS T. IVEY, JR., being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Mr. Ivey, would you state your name, address, and occupation, please.

A Junius T. Ivey, Jr., I live at Drewryville, Virginia, and I am a correctional officer at Southampton Correctional Center.

Q Speak loud enough so the ladies and gentlemen can hear you.

A Junius T. Ivey, Jr., Drewryville, Virginia, and I am a correctional officer at Southampton Correctional Center, Capron, Virginia.

Q Were you employed as a correctional officer on the 23rd day of March, 1975?

A Yes, sir, I was.

1 Q What was your duty assignment that night?
2 A I was assigned to C-2, to assist the
3 building officer.
4 Q Did you have occasion that night at
5 approximately 9:30, to leave your building and go towards
6 C-1 building?
7 A Yes, sir, I did.
8 Q Would you tell the ladies and gentlemen
9 of the jury, the circumstances under which you left C-2
10 to go to C-1?
11 A I was on the top floor and an inmate from
12 C-1 came to C-2 and said there was some trouble, and Mr.
13 Harrell, the other officer on duty, told me to go to C-1
14 to see if I could help. When I went into C-1, the grill
15 door was open and it is not suppose to be open. I started
16 down the hallway and I heard somebody holler, we are in
17 cell 130. I started down the hallway and an inmate came
18 from the TV room and ran outside. I came back and locked
19 the grill door, and followed that inmate around behind in-
20 between C-1 and the academic school.
21 Q As you go around C-1, between C-1 and
22 C-2 toward the back side, where does that lead you to?
23 A To the fence.
24 Q As you got to the back of C-1 building,
25 could you tell the ladies and gentlemen of the jury what
26 you saw?
27 A I saw two inmates on the fence, carrying
28 a mattress, and one inmate at the base of the fence.

1 Q Now are these two inmates you saw carry-
2 ing the mattress on the fence, would you describe to the
3 ladies and gentlemen of the jury, how they were carrying
4 the mattress?
5 A It seemed as if they had a string or
6 something on the mattress, and the string, they had their
7 arm through the string like this, and they were crawling
8 up the fence and both inmates had one on each arm.
9 Q Now, did you recognize either of those
10 two inmates?
11 A Yes, sir, I did. I recognized the two
12 inmates on the fence and the one at the bottom of the fence.
13 Q Who were the inmates?
14 A The ones on the fence was Boykins and
15 Lewis.
16 Q When you say Lewis, are you speaking of
17 Tony Lewis, the defendant in this case?
18 A Yes, sir.
19 Q This fence that you are speaking of, is
20 that the chain link fence?
21 A Yes, sir.
22 Q How high is that fence?
23 A Approximately 13 feet.
24 Q Now, in relation to the top of that, how
25 high up on the fence had Tony Lewis and Boykins gotten with
26 the mattress?
27 A I'd say their hand was about a foot from
28 reaching the barbed wire.

Q Now, why would you need a mattress to go over the top?

A You could use a mattress as a shield from the electrical shock that travels through the barbed wire.

Q Would you come over here, please, Mr. Ivey. Now, get this way so you can talk to the jury, and looking at Commonwealth's exhibit number 10, this is C-1 and C-2, and C-3 building?

A Yes, sir.

Q Would you point out on the photograph where you saw the inmates?

A Approximately right here.

Q Looking at Commonwealth's exhibit number 11, back of C-1 building, will you point out where you saw Tony Lewis and Boykins on the fence?

A They was climbing up and they had gotten about right here.

Q About a foot from the wire?

A Right.

Q Is there any question in your mind that Tony Lewis was one of those two?

A No, sir.

Q When you saw Tony Lewis and Boykins and this third inmate at the base of the fence, what did you do?

A I told them to come off the fence and I would try to work something out, and they said, and I don't

1 know who said it, but one of them said, look at this fool
2 come around here by himself, we had ought to mess him up,
3 too, and at that time, I went back in the shadows of the
4 building and they kept trying to climb up the fence, but
5 they kept falling and two of the inmates left and ran by
6 me between C-1 and the academic school, back around to the
7 front of the building, and Tony tried to climb the fence
8 a couple of more times and he fell and ran towards the
9 tower.
10 Q The tower, in which direction would that
11 be from the back of the building?
12 A He ran right up to the right.
13 Q That would take you up towards C-3 build-
14 ing?
15 A Right.
16 Q How many times did you tell them to get
17 off the fence?
18 A About two or three times.
19 Q How far is it from the back of C-1 to
20 the fence?
21 A Approximately 60 feet.
22 Q Would that be approximately the length
23 of this courtroom?
24 A Maybe just a little further, but not
25 much.
26 Q Were there any lights out there?
27 A Yes, there are two lights on the corner
28 of C-1 shining towards the fence.

Q Is the fence lighted the whole way down?

A Just about, but the part they were going over, it was more light on this particular part than the rest of it.

Q You say there is a light on either corner, are you speaking of the two back corners of C-1 shining directly to the fence?

A Yes, sir.

BY MR. GRIZZARD: Thank you, answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Mr. Ivey, what is the closest distance you got to the three parties that you saw on the fence?

A When I first came around the end of C-1, I went right up to the fence.

Q Approximately how far would that be?

A Approximately 5 feet.

Q What did you say at that point in time?

A I told them to come off the fence.

Q Were you armed?

A No, I was not.

Q You had no weapon?

A No.

1 Q Who was the third party?
2 A At the base of the fence?
3 Q Yes.
4 A It was Pollois.
5 Q You got within 5 feet of them and you
6 say that Lewis and the other party were on the fence? Did
7 they both have a mattress?
8 A It was one mattress.
9 Q Being shared by both and they both had
10 the rope?
11 A Yes, sir.
12 Q And you are certain that Tony Edward
13 Lewis was one of those three parties?
14 A Yes, I am.
15 Q No doubt in your mind?
16 A No doubt.
17 Q How long have you known Tony Edward Lewis?
18 A Every since I have been working at the
19 farm.
20 Q How long has he been there?
21 A I believe he was there when I came to
22 work there.
23 Q You stated that he got off the fence and
24 ran toward the tower, is that correct, sir?
25 A That's right.
26 Q And when or where did you see him again
27 next?
28 A The next time I saw Tony Lewis, him and

and Boykins was standing outside of C-1 talking.

Q Approximately how much time interval was that?

A I couldn't be sure.

Q Could you give us an approximation?

A It could have been 20 minutes.

Q Did perchance during this confusion you checked your watch to determine the time?

A No.

Q Did you ever go in the vicinity of R-1 that evening?

A No, I didn't.

Q Did you happen to see Superintendent Purvis when you returned to the front of C-1?

A He came over later, but I didn't see him.

BY MR. RHODES: All right, sir, that's all.

J. L. HALSEY, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

1 Q Sergeant Halsey, state your name, address,
2 and occupation, please.
3 A Sergeant J. L. Halsey, Goochland, Virginia,
4 and I am correctional sergeant at Powhatan Correctional
5 Center.
6 Q Sergeant Halsey, I want to direct your
7 attention to the 24th day of March, 1975, and ask you if
8 you had occasion that day to see the defendant in this case,
9 Tony Lewis, and a man named Michael Cross, and a man named
10 Vernon Joe at your institution in Goochland?
11 A I did, sir, at Powhatan. It was in
12 Powhatan County.
13 Q Excuse me. What time of day did you see
14 them?
15 A Approximately 10 o'clock.
16 Q Would you tell the ladies and gentlemen
17 of the jury the circumstances under which you saw them?
18 A On March 24th, 1975, we were notified
19 at approximately quarter to 9 that date, that we would be
20 receiving four inmates from Southampton Correctional Farm.
21 At approximately 10 o'clock, the inmates arrived at our
22 institution. We had an unscheduled shake down and a team
23 available to shake these men down when they came into the
24 institution. Myself and three other officers greeted these
25 men at the front gate. At this time, they were given a
26 light shake down, and at one point, one of the inmates
27 handed me a $5.00 bill at the front gate. We did not go
28 into any complete search at the gate, due to the surround-

1 ings and it was wet weather, and we were more or less in-
2 terested in large bulky things to indicate a weapon at
3 this time, and inmate V. Joe handed me a $5.00 bill at
4 the gate. When I shook him down or prior to my shaking
5 him down, the rest of the men were taken back to the maxi-
6 imum security building within our institution. They were
7 stripped and each of the other three men, Tony Lewis, M.
8 Cross, and the other one had U. S. currency on them.
9 Q All right, what did you get from Tony
10 Lewis?
11 A Inmate Lewis was shaken down, stripped,
12 and he handed me a $10.00 bill, number 95986431 C. Inmate
13 Lewis had this money concealed in his sock.
14 Q What if anything did you get from Michael
15 Cross?
16 A When I searched inmate Cross, he handed
17 me $31.00. He had on two pairs of socks and he had the
18 money concealed inbetween the two pairs of socks. One of
19 the bills was a $20.00 bill, serial number 03767216 C. He
20 had one $10.00 bill, serial number E 09407114 A, and one
21 $1.00 bill, serial number E 75690799 A.
22 Q And the other one, Joe, had one $5.00
23 bill that he had earlier?
24 A He had a $5.00 bill and he had given
25 me that earlier.
26 Q Did you find any other money on him?
27 A No, sir.
28

BY MR. GRIZZARD: Answer Mr. Rhodes.

CROSS EXAMINATION:

BY MR. RHODES:

Q Is there anything unusual about your finding money on inmates from time to time?

A Well, inmates at our institution are not allowed to have U. S. currency.

Q They are not allowed it, but they do get it in their possession from time to time?

A From time to time, yes, sir.

BY MR. RHODES: I have no further questions.

BY MR. GRIZZARD: If it please the court, there are two other witnesses the Commonwealth intends to call. They are on the way from the State Farm now.

BY THE COURT: Will that conclude the Commonwealth's case?

BY MR. GRIZZARD: Yes, sir.

BY THE COURT: All right, you gentlemen approach the bench and you ladies and gentlemen of the jury may take a recess.

1 TRIAL CONTINUING IN THE COURTROOM, IN THE PRESENCE OF
2 THE JURY, WITH THE DEFENDANT PRESENT.
3
4
5 BY MR. GRIZZARD: Your Honor, I
6 have five witnesses to be sworn.
7 BY MR. RHODES: I move for exclusion,
8 Your Honor.
9 BY THE COURT: All right.
10
11
12 ALLEN JEROME JOHNSON, being first
13 duly sworn, testified as follow:
14
15 DIRECT EXAMINATION:
16
17 BY MR. GRIZZARD:
18
19 Q Allen, would you state your name, address,
20 and occupation, please?
21 A Allen Jerome Johnson, 1414 Cornell Drive,
22 Hampton, Virginia.
23 Q Do you know the defendant in this case,
24 Tony Lewis?
25 A Yes, sir.
26 Q Were you an inmate at Southampton Cor-
27 rectional Center on the 23rd day of March, of last year?
28 A Yes, sir.

Q What building were you assigned to?

A C-1.

Q Approximately on or before 9:30 that night, where were you in C-1?

A The TV room.

Q Did you see the defendant in this case, Tony Lewis, in the TV room that night?

A Yes, sir.

Q Did you notice anything unusual about him?

A He was sitting there watching TV like everybody else was and he just had on a pair of gloves, black gloves.

Q Black gloves?

A Yes, sir.

Q What was the temperature in the room that night?

A I don't know, about 65, I guess.

Q Were you hot or cold or what?

A About like it is in the courtroom.

Q Was it the kind of weather you would normally wear black gloves?

A Not really, no, sir.

Q Did you make any comment about them?

A As far as I can understand, it was just unusual about somebody wearing gloves in the TV room.

Q Was there a disturbance in the building later on?

A Yes, sir.

Q When the disturbance started, was he in the TV room?

A No, sir.

BY MR. GRIZZARD: All right, answer Mr. Rhodes.

BY MR. RHODES: I have no questions.

HERBERT BOYCE, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Herbert, would you state your name, address, and occupation, please?

A Herbert Boyce, Southampton Farm.

Q Speak up so the ladies and gentlemen of the jury can hear you. Were you an inmate at Southampton Farm in March, April, May, or June of last year?

A Yes, I was.

Q Do you know Robert Saunders?

A Yes.

Q Did you have occasion to see him or receive anything from him early last year?

1 A C-1.

2 Q Did you have occasion on March 23rd, 1975,

3 to be present in C-1 building?

4 A Yes, sir.

5 Q In the vicinity of 9:30 p.m.?

6 A Yes, sir.

7 Q Did you have occasion at that time, to

8 see anything unusual take place in the building?

9 A Yes, sir.

10 Q Would you please step up to the diagram

11 up here, and let us show you some things for the purposes

12 of the jury? This is a diagram which starts at 101, the

13 main portion, the front portion of the building, and 101

14 going down to 128, and starting on the other side would

15 be 129 working it's way back up to this vicinity. Would

16 you show the jury in what room you resided in block C-1?

17 Specifically, tell them what room number.

18 A 139, right here.

19 Q And will you tell us where you were on

20 that particular night at approximately 9:30 p.m.?

21 A In the TV room, right here.

22 Q Do you know the young man over here, Tony

23 Lewis?

24 A Yes, sir.

25 Q Now, would you please advise the court

26 and the jury what you observed on that particular evening?

27 A I came out of the TV room and I looked

28 down the hall, and I seen V. Joe kicking on Mr. Barnes. I

1 went back in the TV room and stayed in there a few minutes
2 and came back out, and when I went outside of the building,
3 on my way out, I still see V. Joe down the hall and I saw
4 them opening the doors for the top floors as I was going
5 out, and that was it. I went outside of the building after
6 that.
7 Q You left the building at that time?
8 A Yes, sir.
9 Q You say you saw V. Joe doing what?
10 A Kicking Mr. Barnes.
11 Q Did you see anyone else doing that?
12 A No, sir.
13 Q How many people were in the TV room with
14 you?
15 A Twenty or thirty, somewhere around there,
16 I imagine.
17 Q Were there any people outside in the
18 corridor in this section right here?
19 A The first time I came out or the last
20 time I was going out?
21 Q Either time?
22 A The first time it was just people in the
23 TV room hanging around the door, and that was all I saw.
24 The second time, everybody on the top floor was coming out
25 of their cells and I didn't notice too much.
26 Q You took flight with the rest?
27 A Yes.
28 Q Did you at that time go to the courtyard?

A Yes, sir.

Q Did you see Tony Edward Lewis after that?

A Yes, sir, I saw him over by R-1.

Q Where is R-1 located?

A You come out of C-1 and go straight on across the yard, on the other side of the yard.

Q Is that when you saw this young man?

A Yes, sir.

BY MR. RHODES: Answer Mr. Grizzard.

CROSS EXAMINATION:

BY MR. GRIZZARD:

Q You were in the TV room with Tony Lewis earlier?

A Yes, sir.

Q Now, at the time of the disturbance, was Tony Lewis in the TV room?

A I don't remember.

Q You don't remember?

A No, sir.

Q When you first heard the disturbance in the hallway, what did you do?

A I stayed in the TV room for a few minutes before I went out by the hall.

Q For a few minutes?

1 A Yes, sir.

2 Q When you finally got to the doorway here,

3 leading from the TV room to the main hall, where did you

4 see Captain Barnes?

5 A In the middle of the hall, about 2, 4,

6 6, 8, or 10 cells down, I imagine.

7 Q Somewhere around cell 144?

8 A Somewhere around there. All I know, it

9 was in the middle of the hall.

10 Q And the only person you saw around him

11 at that time was Vernon Joe?

12 A Yes, sir.

13 Q Do you know Michael Cross?

14 A I don't know him that good, no.

15 Q You know who we are talking about?

16 A I know who you are talking about?

17 Q Did you see him?

18 A I didn't see but one person in the hall

19 at the time.

20 Q Do you know whether or not it was Michael

21 Cross instead of Vernon Joe that you saw?

22 A I am pretty sure it was Vernon Joe. I

23 am pretty sure of that.

24 Q You know Officer Lynch?

25 A Yes, sir.

26 Q Did you see Officer Lynch at all?

27 A I never saw him until later on that

28 night, until they were bringing me back over to the build-

ing.

Q Now, you are telling the jury that you don't remember whether or not Tony Lewis was in the TV room?

A No, sir.

Q You are also telling the jury that the only time you recall seeing Tony Lewis was over at R-1?

A I saw him when I was over on C-2 stairs walking, he was over next to our window.

Q You didn't see him in the office?

A I saw him as I was going out, I believe, by the office there.

Q Then, you did see him again?

A Well, it was after I left.

Q He was in the office doing what?

A I don't know, I was in a rush getting out.

Q Do you recall making a statement to Investigator Walker and Captain Fason, on March 28th of 1975?

A Yes, sir.

Q Do you remember signing that statement in the presence of Captain Fason?

A Yes, sir.

Q Is that your signature?

A Yes, sir.

Q Would you read that statement and refresh your memory?

1 A I remember everything in here.
2 Q Just one minute. Have you read it?
3 A Yes, sir.
4 Q You have refreshed your memory. Now,
5 I am going to ask you again, if you recall whether or not
6 Tony Lewis had left the TV room before this ruckus started?
7 A A few minutes before, yes.
8 Q Well, when you say a few minutes before,
9 are you talking about 5 minutes, 10 minutes, or 1 minute?
10 A Oh, about 5 or 10 minutes.
11 Q So, you are positive now that he was
12 not in the TV room when this happened?
13 A By my statement, yes.
14 Q I am not asking you by your statement.
15 I am asking you about what you are positive of.
16 A Well, what I remember now, I don't re-
17 member if he was in there, but by reading this statement,
18 from what I said at the time, I can say, that was on the
19 statement.
20 Q Well, this was given on March 28th?
21 Would your memory be more accurate then than on today?
22 A Yes, sir.
23 Q If you stated in that statement that
24 Tony Lewis left the TV room 10 minutes before the ruckus
25 started, then that would be accurate?
26 A Yes, sir.
27 Q So, it would be your testimony today,
28 that he was not in the TV room when it started?

1 A Yes, sir.
2 Q You said you saw Tony Lewis in the office
3 with keys, throwing them around, running on the top left
4 tier, do you recall making that statement?
5 A No, sir.
6 Q Is that in error in this statement?
7 A I really think that that is an error in
8 the statement.
9 Q Did you read this before you signed it
10 on April 1st, 1975?
11 A I don't think I read it. I think I just
12 signed it.
13 Q Did you also state at that time that
14 Tony Lewis did not come back in the TV room, and I will
15 testify to that in court?
16 A Yes, sir.
17 Q Did you make that statement?
18 A Yes, sir.
19 Q So, then you don't know where Tony Lewis
20 was when this took place? Was he in the office or not?
21 A At the time it took place?
22 Q Right, did you see him at any time during
23 the ruckus with keys?
24 A On my way out, yes.
25
26 BY MR. GRIZZARD: All right, that's
27 all.
28

1 SAMUEL LETCHER LEWIS, being first
2 duly sworn, testified as follows:
3
4 DIRECT EXAMINATION:
5
6 BY MR. RHODES:
7
8 Q Would you please state your name, age,
9 and address, please?
10 A Samuel Letcher Lewis, Jr., I am 20 years
11 old, and I am now living at Southampton Correctional Farm.
12 Q How long have you been there?
13 A I have been there since September 14th,
14 1973.
15 Q Are you related to this young man here?
16 A Yes, sir, he is my brother.
17 Q So you are an inmate at Southampton
18 Correctional Farm, and you were an inmate there on March
19 23rd, 1975?
20 A Yes, sir.
21 Q What building were you living in at that
22 time?
23 A I was living in R-1.
24 Q Did you have occasion on that particular
25 night of March 23rd, 1975, to see Tony Edward Lewis?
26 A Yes, sir.
27 Q Where did you see him, and approximately
28 what time did you see him?

1 A I am not sure about the time, but I
2 believe 9:30 or somewhere between 9:30 and 10.
3 Q What was the occasion for your seeing
4 him on that night?
5 A I was standing out in the hall talking
6 to some more dudes, and like this certain dude called me
7 down the hall and asked me was this my brother coming
8 across the yard, so, I called out his name and he answered,
9 and I said, yes, that's my brother. I told him to come to
10 the front of the building, and he come to the front of the
11 building. I asked him what was going on, and he told me
12 what was going on, that the dudes over there beat up the
13 guards and he didn't want to have nothing to do with it,
14 so, he came to the building.
15 Q That was on the night of March 23rd?
16 A Yes.
17 Q And this was at R-1 building?
18 A Yes, sir.
19 Q Did you notice anything unusual at that
20 time?
21 A Everybody was running across the yard,
22 all the inmates.
23 Q Where were they coming from?
24 A Out of C-1 building.
25
26 BY MR. RHODES: Answer Mr. Grizzard.
27
28 CROSS EXAMINATION:

BY MR. GRIZZARD:

Q This was 9:30 to 10 o'clock?

A Sometime inbetween, I am not sure of the time.

Q What were you doing in R-1 building at that time?

A That is the building I sleep in.

Q Had you gone to bed or were you watching TV?

A I was just standing in the hall talking.

Q Were there any guards at the building at that time?

A One.

Q Who was that?

A Captain Boone.

Q And you are stating that Lewis, your brother, Tony Lewis, got to R-1 while Captain Boone was there?

A The guard was in the building when he came to the building.

Q The building had already been locked?

A Yes, sir.

Q Had the guards left and gone to C-1?

A I don't know where he went to, but I assume he went to C-1.

Q The point I am making, when you saw your brother, the guard had secured the building and left the

building for some purpose, and you don't know what it was?

A Yes, sir.

Q This was before you saw your brother?

A I am not going to say that. I can't say that. When I came downstairs, the guard wasn't there.

Q Right, because he had already locked R-1 up?

A Yes, the door was locked.

Q They had locked R-1 and gone somewhere else?

A Yes, sir.

Q And that was before you saw your brother on the yard?

A Yes, sir.

BY MR. GRIZZARD: That's all.

CHARLES RANDOLPH, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. RHODES:

Q Would you please state your name, address, and age?

A Charles Randolph, and I am 23 years old.

1 Q Where are you presently located?
2 A Southampton Farm.
3 Q How long have you been there?
4 A About 3 years.
5 Q Were you there on March 23rd, 1975?
6 A Yes.
7 Q Where were you living on March 23rd,
8 1975?
9 A R-1.
10 Q Did you have occasion on the night of
11 March 23rd, 1975, to see Tony Edward Lewis?
12 A Yes, he came over to R-1.
13 Q What time did he come to R-1?
14 A I don't know the time.
15 Q Did you notice anything unusual that
16 took place that night at the farm?
17 A All I know, a whole lot of dudes, I
18 could see them out of C-1.
19 Q Do you know where Tony Lewis was re-
20 siding that night?
21 A He was at R-1.
22 Q Living at R-1?
23 A No. He won't living there.
24 Q Where was he living at that time?
25 A In C-1.
26 Q Under what circumstances did you see
27 him at R-1?
28 A I know that he came over there, and he

1 called me and his brother and we came downstairs, and
2 Captain Boone came back and told us to go downstairs, and
3 told us the dudes over there were fighting the guards or
4 something like that, and I asked him was he in it and he
5 won't in it.
6 Q He came to R-1 and Captain Boone told
7 him to stay there, and he indicated to you some dudes were
8 fighting over in C-1?
9 A Yes, against the guards.
10 Q At that particular time, did you notice
11 anything unusual in the yard between C-1 and R-1?
12 A Yes, a whole lot of guards and inmates
13 were running around the farm.
14
15 BY MR. RHODES: All right, answer
16 Mr. Grizzard.
17
18 CROSS EXAMINATION:
19
20 BY MR. GRIZZARD:
21
22 Q You were with Samuel Lewis?
23 A Yes, sir.
24 Q And were you all upstairs or downstairs?
25 A Upstairs.
26 Q Is that where you saw Tony Lewis?
27 A Yes, he came and the dude called us and
28 we went in the room and talked, and we came up to the window

1 and we told him to go to the front.

2 Q He called you all first?

3 A Yes.

4 Q You didn't see him running across the

5 yard and call to him?

6 A No, the dudes called me and anyhow, I

7 know the dudes called me.

8 Q What dude called you?

9 A Reggie Warren, he was at the state farm

10 and he called and we went to the window pane and he asked

11 Sam, was that his brother, and he came to the window pane,

12 and we told him to go to the front and we went downstairs

13 to talk to him.

14 Q You all left where you were and went

15 around to the front of R-1?

16 A Downstairs.

17 Q Downstairs in R-1, and Tony came inside?

18 A He stood at the doorway first, and Captain

19 Boone had left and Captain Boone came back and told him to

20 stay there.

21 Q Captain Boone had left and came back,

22 and he told him to stay there. Was Captain Boone there

23 when you first saw Tony Lewis?

24 A I believe he was downstairs. We was up-

25 stairs, I don't know.

26 Q How long did it take you to get down-

27 stairs?

28 A It don't take long.

1 Q How long, 30 seconds?

2 A Not that long. We got down there and

3 he won't there.

4 Q Captain Boone had left?

5 A Yes, sir.

6 Q And the building had been locked?

7 A Yes.

8 Q And there was noway for Tony Lewis to

9 get inside?

10 A He was outside.

11 Q And he couldn't get inside because the

12 building was locked.

13 A Right.

14 Q Because Captain Boone had locked it up

15 and gone somewhere else?

16 A He went to C-1 I think. It won't no

17 guard there.

18 Q So, this is some period of time after

19 the disturbance in C-1 had started?

20 A I believe so.

21 Q And do you know where Tony Lewis was

22 when that was going on?

23 A No, sir.

24

25 BY MR. GRIZZARD: That's all.

26 BY MR. RHODES: That's all we have,

27 Your Honor, from this witness, and as indicated,

28 we will be willing to start tomorrow morning,

1 A Yes, sir.
2 Q Are you familiar with the term of hawking?
3 A Yes, sir.
4 Q Would you explain to the court and the
5 jury what you mean by hawking?
6 A Looking through the mirror, looking down
7 the hall.
8 Q Did you have a mirror in your cell at
9 that time?
10 A Yes, sir.
11 Q Did you see a disturbance that took
12 place in the hall at that time?
13 A Yes, sir.
14 Q Would you tell the court and jury what
15 you observed and what you know?
16 A Well, I was in the cell and I heard a
17 loud noise, you know, like a table or something falling
18 over, and I stuck my mirror out the door and I saw a tall
19 dark skinned dude on top of Captain Barnes in the hall.
20 I was looking out the door and all the doors were locked,
21 and the dude started hollering, stop kicking the man, you
22 know, and so he was kicking him and dragging him down the
23 hall, you know, and so this other guy, Captain Lynch, he
24 came from upstairs, and during this time, Lewis, he grabbed
25 him from the back and started holding him, and this other
26 tall dude, he kept on kicking Captain Barnes and dragging
27 him down the hallway, so, he throwed him in the back cell
28 back there, you know, and then this time, Tony Lewis pushed

1 Captain Lynch in there behind him, and they locked the
2 door and the dudes started running up and down the halls
3 and leaving out of the building.
4 Q Did you see the entire thing?
5 A Yes, sir.
6 Q Do you know Tony Edward Lewis?
7 A Yes, sir.
8 Q At any time did you ever see him strike,
9 hit, or kick Captain Barnes?
10 A No, he didn't strike or hit none of the
11 guards. He was just holding the man around his waist.
12 Q Who was he holding?
13 A Captain Lynch. Captain Lynch didn't try
14 to get away, he just stood there still, and he was holding
15 him around the waist.
16 Q Do you know any one by the name of Cross?
17 A I have seen pictures of him, yes, I know
18 him.
19 Q Do you know anyone by the name of V. Joe?
20 A Yes.
21 Q Did either one of these men that I have
22 named, were they involved in this?
23 A Well, they were in the hall. I heard
24 Cross was the one that kicked him and I saw him but ---
25 Q You don't know his name?
26 A I just can't up and say it was him. He
27 was new to me in the building.
28 Q I will ask you again. Did this young man

at anytime attack, hit, strike, or kick Captain Barnes?

A At no time, no, sir.

Q And you were able to see the entire matter?

A I saw the whole thing.

Q Would you come up here, please, to the diagram, and this is a diagram of C-1 cell, and we start up here and you are living as I understand in 102. Would you point out where you were?

A Right here.

Q Stand around so all the jury members can see you now. This is where you were?

A Yes, sir.

Q Can you tell us where this started and what you saw. Here is the TV room over here and here is the front part of the cell coming in the bars, and you are in 102?

A Right.

Q Would you tell us from there how they went down the hall and what you saw as they went down the corridor?

A What is this side here?

Q This is the left side as you come in. This is the right side.

A Is this the top tier?

Q Right.

A The tall dude that jumped on Captain Barnes, he was on this side of the tier on the top, and he

1 jumped off the top tier on Captain Barnes down in the bot-
2 tom, so the laundry room is right here and here is a table,
3 and Captain Barnes fell over there by the door and he started
4 kicking him and dragging him down the hall, down this way
5 right past my cell, and I was looking at him, and this is
6 the TV room back here.
7 Q The TV room would be down here?
8 A The TV room is here and Tony Lewis come
9 out of here, and Captain Lynch came from downstairs and
10 from the stairway he come out, and Tony Lewis, you know,
11 Captain Lynch came out of here downstairs, and Tony Lewis
12 grabbed him around the waist and was holding him while
13 Cross, he was kicking Captain Barnes and dragging him down
14 the hall. Kicking him and dragging him, and he kicked and
15 dragged him all the way down the hall, and the dudes were
16 hollering, stop kicking him, you are killing him.
17 Q Explain to the jury when you say these
18 dudes, where were these dudes?
19 A All of them I could see, and everybody's
20 got mirrors and you can see if you stick them out the bars,
21 you can see down the hall.
22 Q That is what you call hawking?
23 A Right. He drug and kicked him and put
24 him in the cell, and it was cell 130 I think.
25 Q This is 130 here, the steel door, and
26 you were located at 102 here?
27 A Right.
28 Q And could you see from 102 with your

1 hawking, all the way down to here?

2 A You could see all the way down that side.

3 Q At anytime did you ever see Tony Lewis

4 do anything to Barnes?

5 A No, sir.

6 Q Have a seat again. On the night this

7 occurred, was there confusion in this cell and a lot of

8 people running around in the cell section?

9 A People was running all over the building.

10 Q After this occurred, were you taken by

11 anyone and statements taken from you?

12 A Yes, a few days later.

13 Q Do you know who took these statements

14 from you?

15 A I know it was Mr. Grizzard or Mr. Purvis

16 one.

17 Q Are you still at Southampton Farm?

18 A Right.

19 Q You are not there now are you?

20 A No.

21 Q How long did you stay at Southampton

22 Farm, after this took place?

23 A Maybe a month and maybe not that long.

24 Q You were sent to some other section?

25 A Yes, sir.

26

27 BY MR. RHODES: All right, answer

28 Mr. Grizzard.

A Like I say, I don't know who the man is. I heard his name and they said he was the dude.

Q So, when you saw him, he was beating on Captain Barnes and hitting him and kicking him?

A Yes.

Q Did you see him take Barnes' keys?

A No, I couldn't say exactly what he was doing.

Q Did you see him take Barnes' pocketbook or his money?

A I couldn't see those small things, like he would go in his pocket and all, but I could see he was the only one hitting him.

Q Captain Barnes had the keys to the building in his hand or on his person?

A He use to carry them on his side.

Q Did you see Cross get them?

A At the time, Cross was getting in front of me and different things, but I couldn't see whether he was pulling his keys off. I could see him motion like he was going in his pocket.

Q When you first looked in the alley, all you saw were two people?

A That's right.

Q And that was Barnes and this dude who you don't know, that I am calling Cross?

A Yes.

Q They are the only two people you saw?

1 A Uh-huh.

2 Q Did you say Captain Lynch came from up-

3 stairs?

4 A Captain Lynch, when I got there I sit

5 down on the stool and I was looking out the door at what

6 Cross was doing to him and hollering out the door, and so

7 Captain Lynch was coming down off the top tier, and he was

8 putting them in the cells at the time or something after

9 they had took a shower.

10 Q Which side did he come down on, your

11 side or the other side?

12 A I was on the bottom on this side. He

13 was on the top over there. I could look up.

14 Q You could look across and see him on the

15 tier above you?

16 A Right.

17 Q And this diagram, showing the upstairs

18 tier, you were looking up and you saw Captain Lynch stand-

19 ing on the tier upstairs?

20 A Right.

21 Q Where was Tony Lewis?

22 A At this time, Tony Lewis was in the TV

23 room or somewhere.

24 Q He was in the TV room?

25 A Right.

26 Q Can you tell me how you can see through

27 that door and through those walls into the TV room?

28 A I say he was in the TV room because I

1 saw him come out of there.

2 Q You saw him come out of the TV room?

3 A Right.

4 Q Captain Lynch came downstairs across

5 from your cell?

6 A Did what?

7 Q He came down the stairs closest on the

8 side he was on, didn't he?

9 A Yes.

10 Q And that would be across from your cell?

11 A Uh-huh.

12 Q Almost directly across from it?

13 A Right.

14 Q And you are saying he came down into

15 the hallway, and then Tony Lewis did what?

16 A Grabbed him from behind the waist. He

17 had his arms down like this, and he grabbed him from be-

18 hind the waist and held him. He just held him there.

19 Q Well, what did Captain Lynch do when he

20 first got downstairs?

21 A He just walked downstairs and looked at

22 the dude, Cross kicking Captain Barnes, and he made an

23 attempt and I don't know what he was going to do, but Tony

24 Lewis grabbed him from around the waist.

25 Q You are saying Captain Lynch started to

26 Captain Barnes?

27 A Right.

28 Q And that Lewis stopped him and that Lewis

1 up here at the door looking in, I am talking about, was
2 anybody in this part of the building other than those four
3 men?
4 A No, not at that time.
5 Q What happened when they opened the steel
6 door?
7 A The dude, Vernon Joe, or whatever you
8 call him, he was in the cell that they put them in. He
9 come out of the cell.
10 Q What did he do?
11 A Joe came out of the cell and he grabbed
12 Captain Barnes or something and started dragging him.
13 Q Did he hit Captain Barnes and kick him
14 or jump up on his back?
15 A He didn't what you say jump up on him.
16 Q Did he go over and shake his hand?
17 A No, sir.
18 Q What did he do?
19 A He hit him, yes, he kicked him.
20 Q And that was right in front of cell 130,
21 or was it further up the hall?
22 A He was maybe a little further back, I
23 don't recall.
24 Q Now, how did all the dudes get out of
25 their cells?
26 A How did everybody get out of their cells?
27 Q Yes.
28 A Dude Cross, he took the keys and pulled

1 the latch.

2 Q Cross took the keys and pulled the latch?

3 A Yes.

4 Q Where did he get the keys?

5 A He had to get them off Captain Barnes or

6 Captain Lynch one.

7 Q What did Lewis do?

8 A I recall Lewis running up on the top

9 tier.

10 Q Did he have a hammer in his hand?

11 A Not to my knowledge, I don't recall.

12 Q Did you see him knock any padlocks off

13 some cells?

14 A No, I didn't see him.

15 Q But, it was just those four people in

16 the hall from when it started until when the officers were

17 placed in cell 130?

18 A Those four.

19 Q Barnes, Lynch, Cross, and Lewis?

20 A Right, that's all.

21 Q And Lynch could not go to Barnes because

22 Lewis had him? Is that right?

23 A I don't know if Lynch was trying to get

24 to Captain Barnes. I know Lewis had him.

25 Q In any event, Lewis had him so he could

26 not get to him?

27 A No, Lewis had him and I don't know if

28 he tried to get to him or not.

1 what you saw?

2 A Well, about 9:30 that night, everybody

3 was in their cell and one side of the building was out to

4 look at TV, so the noise broke out in the building, and Mr.

5 Lewis here came past my cell, him and another guard, going

6 back towards the steel door area. About that time, they

7 brought another guard past and they were struggling in the

8 hall, and it was a tall inmate but his back was facing to-

9 wards the other side so I couldn't see his face, who he

10 was, and he was beating on Officer Barnes, the one that is

11 dead, so, they went back towards the steel door area and

12 let Vernon Joe out, and he come up the hall and he ran to

13 Cross and he stomped him and threw a glass and hit him in

14 the back of the head with it, and he took the man's keys

15 and went up front and opened one side of the tier up and

16 was letting the men inmates out of their cells to do what

17 they wanted to do, and about that time, another guard, Mr.

18 Ivey, came in and ran the other inmates back into their

19 cells.

20 Q So, at the time this first started, as

21 I understand, you say the dude's back was to you and you

22 couldn't see his face. Was he beating on Captain Barnes?

23 A He was a tall inmate.

24 Q Was it Tony Edward Lewis?

25 A No, sir.

26 Q Where was Lewis at that time?

27 A He was in the back of the building with

28 the other guard.

Q Do you know who that other guard was?

A Officer Lynch.

Q And I believe you have stated, V. Joe or Vernon Joe came out of the locked up cell?

A Yes, sir.

Q Do you know the number of that cell?

A 129 I think.

Q What happened at that time from what you recall?

A When he came up front, Officer Barnes was already on the floor in front of my cell, and I don't know if he was already dead or what, but Joe started running and he was kicking him and throwing a glass at him.

Q Where was this young man at that time?

A Standing in the back area of the building.

Q Did he ever come up there and kick Barnes?

A No, sir.

Q Did he ever touch Barnes?

A No, sir.

Q Did he ever take anything off Barnes?

A No, sir.

Q If you will come over here and I want to show you a diagram, that is a diagram of C-1. You were in 116 and that would be on this side, and this is 116 right here. All right, this is what you call 129, the lock up, and it is actually 130. This is the front portion of the cell. Now, would you explain to the jury, and turn

1 talking, me and my inmate across the hall, and the noise
2 broke out in the building, so, I stuck my mirror out there
3 to see what was going on up front.
4 Q What did you see then, who did you see?
5 A I seen Officer Lynch and Lewis. Lynch
6 was coming from out the stairway on the top tier, and when
7 he seen Lewis, he just stopped and put his hands in the air
8 and went on towards the back.
9 Q He walked all the way to the back with
10 his hands in the air?
11 A No, he didn't keep his hands all the
12 way in the air to the back, but when he seen Lewis, he
13 just threw them in the air and started walking, and he put
14 his arms down and went back to the back area.
15 Q Lewis never actually had a hold of Lynch?
16 A No, sir.
17 Q He just walked him down to the back of
18 the building?
19 A Yes, sir.
20 Q When they got to the back of the building,
21 who opened the cell?
22 A Lewis opened the cell.
23 Q How did Lewis open the cell?
24 A I don't know, I don't know that it was
25 already opened or he might have just pulled it open.
26 Q Well, don't you have to have a key to
27 get that cell open?
28 A Yes, sir.

1 Q Where did the key come from?
2 A I don't know that either.
3 Q This beating that took place in front
4 of your cell, that was while Lewis was at the other cell
5 with Captain Lynch?
6 A Yes, sir.
7 Q Did you see this other dude take the
8 money from Captain Barnes at that time?
9 A I didn't see who took the money.
10 Q He was right in front of you, wasn't he?
11 A I don't know who went into the man's
12 pockets and took his possessions from him.
13 Q Do what?
14 A I seen them beating the man in front of
15 my cell.
16 Q Right, you saw that and you also saw
17 Lewis and Lynch come up here, and I will be Lewis and you
18 be Lynch and come over here, and I come down the steps and
19 I am Tony Lewis, and I am standing there waiting for you.
20 Were they facing each other?
21 A Yes, sir.
22 Q When Captain Lynch sees Lewis, what did
23 he do?
24 A He put his hands up like this. I don't
25 know what words he said, but he put his hands down and
26 started towards the back area.
27 Q Lewis never put his hand on him?
28 A No, sir.

Q Is that all you saw?

A That's all.

Q Did you see any beating of Captain Barnes?

A No, sir.

Q Did you see this man anywhere in the building other than with Captain Lynch?

A Like I saw Captain Barnes coming down the hall, but he wasn't with him.

Q So, you saw him with Lynch, but you did not see him with Barnes?

A Right.

Q Would you step up to this diagram, please. Step on this side so the jury can see us. This is a diagram that has been drawn of C-1 building. What cell were you in?

A I was in 110.

Q This is cell 110, and where is what they call the lock up cell?

A In the back.

Q This is the back of the building here, do you know what number it is? It starts 125 and goes back. You were at 110 in the front portion of it. Did you ever see Captain Barnes?

A Right, I did.

Q Where was he?

A Down here.

Q Was he on the floor or standing up?

A He was standing up when I saw him.

Q The only time you saw Tony Edward Lewis, where was he. Point out to us where he was.

A I was standing on the gate here and I saw him coming down the hall.

Q He was with Lynch?

A Right.

Q You never saw him with Barnes?

A Right.

Q All right, have a seat if you will. On the night in question, did you give a statement to anyone at the farm?

A Sir?

Q Did you give a statement to any of the authorities, were you questioned?

A Pertaining to this here?

Q Yes, sir.

A I was questioned about it, either the next day or the day after.

Q How long did you stay there after March 23rd?

A Until July 3rd.

Q Then you were moved to where?

A I moved from there to Camp 7 and changed.

BY MR. RHODES: All right, thank you and answer Mr. Grizzard.

CROSS EXAMINATION:

BY MR. GRIZZARD:

Q Just a couple of questions. You show me how Lynch and Lewis were walking down the hall arm and arm. Come up here and show me who had who.

A Really, I couldn't tell.

Q Were they walking like this?

A No, one of them was in front of the other one.

Q And you don't know which one was which?

A I can't say.

Q The only time you saw Captain Barnes, he was standing up at the front of the building?

A Yes, sir.

Q Didn't you see him walk down to cell 130?

A No, I didn't.

Q You never saw him go to 130?

A No.

Q You did give a statement as Mr. Rhodes asked you earlier, over at the farm didn't you?

A To who, one of the guards?

Q Yes, on March 28th?

A Yes, I did. I didn't want to get involved and I told them I was in the bed and I didn't get out of bed.

Q You told them you didn't see anything?

A Right.

Q That you heard some noise, but you didn't even go to the gate?

A Right.

Q And you didn't look out the gate and you didn't see any guards?

A Right.

Q And you didn't see Barnes?

A Right.

Q And you didn't see Lynch?

A Right.

Q And you didn't know what was happening, and that you stayed in bed?

A Right. That was because I didn't want to get involved in none of it.

BY MR. GRIZZARD: That's all.

KEITH PRICE, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. RHODES:

Q Would you state your name, and age?

A My name is Keith Price and I am 19 years old.

1 and grabbed me in the collar and told me to come on, and
2 I ran out in the front of the building and waited until
3 the officers and everybody came back around, and it was
4 total chaos in the building and people were throwing trash
5 cans and this and that.
6 Q You were in cell 104 and you mentioned
7 a dude beating on Barnes. Who is the first man you saw
8 beat on Barnes?
9 A It was the man that was dragging him
10 down the hall.
11 Q Do you know his name?
12 A I know his face.
13 Q And you mentioned another dude was let
14 out of the cell. Who was that person?
15 A That dude, I don't know his name but
16 his last name was Joe. We call him Joe.
17 Q Was he in 130? Was he in the lock up
18 cell?
19 A One of the steel doors on the left side.
20 Q Did you ever see this man, Tony Edward
21 Lewis at anytime strike, hit, kick, or do anything to Cap-
22 tain Barnes?
23 A He wasn't around Captain Barnes. He
24 took Captain Lynch to the steel door, and he came back to
25 the front after he let Joe out.
26 Q Who was that dude that grabbed you and
27 knocked on your door?
28 A That dude's name is Joe.

1 Q I believe you said he also kicked Captain
2 Barnes?
3 A When he came out of the cell, he stopped
4 and he came running out hollering, and he had a mirror in
5 his hand, and like he kicked the man up side the head and
6 hit him with the mirror, and then he ran on up the hall
7 talking about, we are going to kill them. We are going to
8 kill everybody that don't go.
9 Q I believe you have stated that you saw
10 Tony Edward Lewis with Lynch, is that correct?
11 A Yes, sir.
12 Q Do you know how he was going with him
13 and what he was doing to him?
14 A Yes, when the man threw his arms up,he
15 put his arms around him and he was behind him, and they
16 walked back towards the cell door. Tony Lewis was walking
17 backwards and Mr. Lynch was faced this way.
18 Q Come back over here if you will, please.
19 Turn around so the jury can see you and this lady can hear
20 everything plainly that you say. You were in cell 104?
21 A Right.
22 Q This is 104?
23 A Right.
24 Q This is the front portion and this is
25 the rear cell, and this is the first floor, and you walk
26 in the front door and this is your left-hand side and this
27 is the right-hand side. You were on the right-hand side?
28 A Yes, in 104.

1 Q Show the jury where these people were
2 in this corridor. First of all, where was Mr. Barnes?
3 A This is the place where Mr. Barnes first
4 hit his head on the bar when the dude jumped on him. He
5 started dragging him down, and I would say to the center
6 of the aisle going down the hall. Tony Lewis was standing
7 by the steps and the stairs are here, between that and the
8 shower, and Mr. Lynch came down the steps, and when he got
9 to the bottom of the steps, that was when he raised his
10 hands and Tony Lewis took him on this side, the side that
11 I am on, the right side of the building, and they walked
12 all the way down here, going this way towards the steel
13 door. The dude that had grabbed and was dragging Mr. Barnes
14 got to about the middle of the building, and that was when
15 the dude stomped and kicked him and hit him, and Tony Lewis
16 went to one of these cells over here, one of the steel doors
17 and let the dude, Vernon Joe, out, and he came running down
18 the hall, and when he got to Barnes, he kicked him and then
19 hit him with a mirror. After he hit him with a mirror, he
20 came running up the hall back and forth, and Tony Lewis
21 came from the steel door after he let him out, he came to
22 the front of the building. There were some dudes in the
23 TV room, standing out there about five or six of them, and
24 they ran on out the door, and Tony Lewis went out the door,
25 and this dude came to my cell and started beating on my
26 lock.
27 Q Did you have the occasion to tell the
28 authorities about this matter?

1 Q And about that time is when they were
2 about middle way the building, about cell 137?
3 A That is where the other dude was with
4 Captain Barnes.
5 Q About cell 137?
6 A I don't know what cell it was.
7 Q About the middle of the building?
8 A Right, about the middle.
9 Q Somewhere along this vicinity?
10 A Yes, sir.
11 Q That would put him somewhere along 139
12 or 138 or 137, somewhere in that area?
13 A Right.
14 Q That was where Cross started beating
15 Captain Barnes again?
16 A Who?
17 Q Cross, the first dude that had him.
18 A Yes.
19 Q You identified his picture that night,
20 didn't you?
21 A Yes.
22 Q You said that was the man?
23 A Yes.
24 Q You identified him that night as Cross?
25 A Right.
26 Q He was beating on Captain Barnes, and
27 that is when he took the money out of his wallet?
28 A I never saw that.

Q Is that when he took his keys?

A I never saw the keys being taken.

Q Did you see Lewis or Joe take Captain Lynch's pocketbook?

A No. As soon as he grabbed him, he took him all the way to the back.

Q I understand that, but they put Captain Lynch in the cell?

A Right.

Q Did they leave the cell door open?

A No, sir.

Q They closed the cell door?

A No, sir.

Q Did anybody go in there with him?

A There was nobody in the hall but the four people.

Q You are talking about what four, Joe, Lewis, Cross, and Barnes.

A Right.

Q Well, after Joe got out and came up there and kicked Captain Barnes, what condition was he in then, was he on his feet or on his hands and knees, or was he face up or face down?

A Well, see he was sitting up, he was trying to sit up, and he was telling him, he said, I am cool, I am cool, and that is when he came back kicking him, and he rolled back over and he hit him in the head with the mirror.

1 Q In Richmond?
2 A Yes, sir.
3 Q Were you an inmate at Southampton Cor-
4 rectional Center on March 23rd, 1975?
5 A Yes, sir.
6 Q What building were you located in, sir?
7 A C-1.
8 Q And what particular cell?
9 A I don't know exactly, but I think it
10 was 149.
11 Q Did you notice anything unusual that
12 night that took place in C-1?
13 A I was in the TV room in the TV area,
14 sitting there watching the program on TV, me and Tony Lewis,
15 and we were talking about the women out in the street you
16 know, and I heard a whole lot of noise and so I walked on
17 and Tony said he had to go to the bathroom to use the
18 bathroom, so he went on out there to use the bathroom, and
19 I came on out after I heard this noise, and I told Tony to
20 come on to go with me, and we went outdoors. The door was
21 open and we went outside.
22 Q So, you were in the TV room with Tony
23 Lewis and he said he had to go to the bathroom?
24 A Yes, sir.
25 Q When did you next see Tony Lewis?
26 A When I came back out.
27 Q Out of the TV room?
28 A Yes, sir.

Q How much time had elapsed?

A I'd say approximately 5 or 10 minutes.

Q And that was when you met Tony Lewis, is that correct?

A Yes, sir.

Q What did you two do at that time?

A We went outside.

Q Did you go out the front door?

A Yes, sir, the front door. That is the only door you can go outside is the front door.

Q And you went out with Tony Lewis? Did anyone else go out with you other than Tony Lewis?

A It was me and him and some more in the yard. I didn't see nobody else.

Q How long did you stay with Tony Lewis after you went out of the building?

A I stayed with him the whole time.

Q Where did you go?

A Over to R-1.

Q Where is R-1 located?

A Let's see, like you come out R-1 building you turn to your left, and that's like the dining hall is right there, and the R-1 building is right beside, kind of like going across a driveway to the other side to the mess hall and canteen, it's all right together.

Q Roughly, how much distance would that be in yards or feet?

A I am not sure to tell you the truth.

1 Q Did you see him when he went upstairs?
2 A No, sir, I did not.
3 Q You are saying Tony Lewis was in the
4 TV room when this started?
5 A Yes.
6 Q When you heard the noise?
7 A When I heard the noise.
8 Q James, do you remember talking to In-
9 vestigator Walker?
10 A Walker?
11 Q Yes, of the Virginia State Police?
12 A I talked to somebody, but I don't know
13 whether it was Walker or not.
14
15 BY MR. GRIZZARD: Your Honor, could
16 we have Mr. Walker stand up?
17 BY THE COURT: Yes, sir.
18
19 MR. GRIZZARD CONTINUING:
20
21 Q Do you remember talking to that man?
22 A Yes, sir.
23 Q Do you remember giving him a statement?
24 A Yes, sir.
25 Q Do you remember signing that statement?
26 A Signing it, yes, sir.
27 Q Is that your signature?
28 A Yes, sir.

1 Q Do you remember going over this state-
2 ment and signing it in front of Mr. Jones?
3 A Going over it?
4 Q As to what you said on the night in
5 question?
6 A No, sir, I don't remember going over it.
7 Q You don't remember going over it?
8 A I remember signing it and I remember
9 putting my name on the paper there.
10 Q You put your name on the paper?
11 A Yes, sir.
12 Q You didn't pay any attention to what
13 was in it?
14 A No, I put my name on it, I signed the
15 paper.
16 Q You said you put your name on it and
17 signed the paper?
18 A Yes, sir.
19 Q You did not read it?
20 A No, sir.
21 Q I am going to ask you if you told In-
22 vestigator Walker and signed this statement in which you
23 said, that Tony Lewis was not in the TV room when it
24 started?
25 A Was not in the TV room, no, sir.
26 Q Tony was not there at that time. That
27 was an answer to a question, when you left the TV room and
28 heard a noise and heard Lynch upstairs. "Was Tony Lewis in

1 the TV room at this time? A No, Tony Lewis was not there
2 at that time. Q Do you know him? A Yes, I know him
3 personally." Did you make that statement to Investigator
4 Walker?
5 A Yes, sir, I said I knew him.
6 Q Not that you know him personally, but
7 that he was not in the TV room when you first heard the
8 noise?
9 A When I first heard the noise, I told the
10 man he was in the TV room. He had to go to the bathroom
11 and I heard some noise in the TV room.
12 Q He was not in the TV room when you heard
13 the noise?
14 A Yes, he was in the TV room when I heard
15 the noise.
16 Q This statement said, and the question
17 now that is asked you, and I want you to listen to it,
18 "When you left the TV room, that is you yourself, and you
19 heard a noise and you heard Lynch upstairs, was Tony Lewis
20 in the TV room at this time?" Now the noise you heard was
21 this man jumping on Captain Barnes. You have heard the
22 question, and your answer was "no, Tony was not there at
23 that time."
24 A He went to the bathroom, and the man said
25 he had to use the bathroom and he would be right back.
26 Q He wasn't in the TV room when that noise
27 happened?
28 A I heard some noise when I was in the TV

1 room, I was trying to tell you.
2 Q Tony Lewis wasn't in the TV room and you
3 have testified before this jury today, he was in the TV
4 room when you heard the noise.
5 A Right, he was in the TV room. He was
6 in there when I heard the noise and he said he had to go
7 to the bathroom.
8 Q Are you saying today he was in the TV
9 room?
10 A Yes, he was in the TV room.
11 Q Then this statement is in error?
12 A I told the man that.
13 Q This statement is in error?
14 A Right. I told the man himself that he
15 was in the TV room.
16 Q I am going to ask you again in answer
17 to the question, "Did you see Mr. Barnes get hurt?"
18 A I did see him get hurt, I seen somebody
19 beating him.
20 Q Just a second and let me ask the question.
21 Then you said, "Yes, I seen him get hurt. Q Did you see
22 who hurt him? A Well, I will tell you like I said, the
23 man ain't never done nothing to me, he was always good to
24 me. I figured something seemed funny and I don't know what
25 it was, but this dude kept peeping out the door, a tall
26 dark skin fellow. Q What door? A He was in the TV room
27 with me. He kept on getting up and looking out and he got
28 up four or five times. The man caught him upstairs in the

1 bathroom and I went on back in the TV room, and I heard a
2 crash and I came out the door to see Mr. Barnes laying on
3 the floor. I wondered what they were doing. All of a
4 sudden, the man got hit and I came out the door and Mr.
5 Barnes got hit. One of the dudes in the TV room, he had a
6 towel carrying around with him." Did you make that state-
7 ment?
8 A Had a towel. I didn't say that.
9 Q Did you make that statement that I just
10 read?
11 A Did I make the whole statement?
12 Q Yes, didn't you tell them that the dude
13 that jumped on Captain Barnes had gotten up four or five
14 times during the night, peeping out in the hall to see what
15 was going on?
16 A I told him somebody was peeping out in
17 the hall and that is all I told the man, that somebody was
18 peeping out.
19 Q Four or five times?
20 A I don't remember saying no four or five
21 times. I don't even know the dude.
22 Q That was the same man that jumped on
23 Captain Barnes?
24 A I guess it was.
25 Q The same man that left and got caught
26 in the bathroom upstairs and was sent down?
27 A I don't know about him getting in the
28 bathroom. I don't remember that.

1 Q You say you went outside with Tony Lewis?
2 A Yes, sir.
3 Q You went straight to R-1?
4 A Yes, sir.
5 Q Just you and Tony Lewis?
6 A Yes, sir.
7 Q I will ask you again if you remember
8 making this statement, "Q Did you see Joe and the other
9 guy beating up on him? A Yes, I went on outdoors, me,
10 two white dudes and a black dude. Q Who are they? A
11 Johnson, Ray King, and Crazy Horse. Q You went straight
12 out of the building? A Yes, I went out the door and Wild
13 Man ran out there too, and we didn't want to get involved."
14 Did you make that statement?
15 A Yes, some dude went out the door.
16 Q Did you make that statement?
17 A Yes, I made that statement.
18 Q Now, Crazy Horse is a boy named Pollois?
19 A I don't know his name.
20 Q It is not this man?
21 A No.
22 Q So, the only ones you mentioned that you
23 were with that night was Johnson, and is that Allen Johnson?
24 A I don't know his real name.
25 Q And Ray King, he is a white dude?
26 A Yes, he was already out the door.
27 Q And Crazy Horse?
28 A Yes, Crazy Horse was already out there

too.

Q Crazy Horse is a white dude?

A Right.

Q And the four of you went out together, and you didn't mention Tony Lewis in that statement.

A No, I didn't mention his name in that statement.

Q Then, all of a sudden today, you remember that Tony Lewis was in the TV room when it started.

A He was in the TV room.

Q And Tony Lewis was with you personally?

A Yes, we went to R-1 building.

Q Wait a minute and just answer my questions. You went out of the building together and went straight to R-1?

A Went straight to R-1.

Q Were you at the fence trying to go over the fence when this man was seen back there by Officer Ivey?

A No, I won't back there.

BY MR. GRIZZARD: That's all.

REDIRECT EXAMINATION:

BY MR. RHODES:

Q This statement was taken by this gentlemen over here, was it not?

1 Q Were you so employed in that capacity
2 on March 23rd, 1975?
3 A I was.
4 Q On March 23rd, of '75, were you assigned
5 to any particular building?
6 A R-1 building.
7 Q Were you working on March 23rd?
8 A Yes.
9 Q What shift were you working, sir?
10 A The shift 4 to 12.
11 Q Did anything unusual happen in C-1 to
12 your knowledge that night?
13 A Yes.
14 Q Did you have occasion to see Tony Edward
15 Lewis on the evening in question?
16 A Yes.
17 Q And where did you see him, sir?
18 A After I was informed that it was trouble
19 over at C-1 building by an inmate, I went over to C-1 build-
20 ing and I found that Officer Barnes and Officer Lynch were
21 in cell 130.
22 Q I realize that, but did you have occasion
23 to see this man?
24 A Yes.
25 Q Where did you see him?
26 A Outside of R-1 building.
27 Q Where is R-1 building located?
28 A It is right across from between the

1 dining hall and C-1.
2 Q Does it face C-1 building?
3 A No, it doesn't face it.
4 Q Where is it located in relation to C-1?
5 Is it across from it?
6 A No.
7 Q Is it a yard separating it?
8 A It is on the side more or less.
9 Q What would you say the distance would be
10 between C-1 and R-1?
11 A Maybe about 300 or 400 yards.
12
13 BY MR. RHODES: Thank you.
14
15 CROSS EXAMINATION:
16
17 BY MR. GRIZZARD:
18
19 Q Officer Boone, you received information
20 that there was trouble at C-1?
21 A That's right.
22 Q You locked up R-1?
23 A That's right.
24 Q You left R-1 and went over to C-1?
25 A That's true.
26 Q And how long were you over at C-1?
27 A Approximately about 30 minutes.
28 Q When you went back to R-1, that is when

1 you saw Tony Lewis?

2 A That's true.

3 Q It was after you received information

4 from other inmates that you left and went over, and one of

5 the inmates was Percell Ricks?

6 A That's true.

7 Q You didn't see Tony Lewis prior to going

8 to C-1?

9 A Repeat that again.

10 Q You didn't see Tony Lewis before you went

11 to C-1 and came back?

12 A No, it was after I went to C-1 and came

13 back.

14 Q When you got back, he was out on the

15 steps?

16 A Yes.

17 Q And he made a point to call your attent-

18 ion to the fact that he was over there too, didn't he?

19 A That's true.

20 Q What did he do?

21 A It was Tony Lewis and J. Smith when I

22 left C-1 building going back to make a count at R-1 build-

23 ing, I see Tony Lewis and Smith standing on the steps of

24 R-1. When they see me coming back towards R-1 building,

25 that is when they started back towards C-1 building. Tony

26 Lewis said Officer Boone, you see where I am, and you know

27 I didn't have nothing to do with it. I told him to go back

28 to the building, that everybody had to go back to the build-

ing to make a count.

Q He said, Officer Boone, you see where I am, and I am over here and I had nothing to do with it?

A Yes, sir, that is what he said.

BY MR. GRIZZARD: That's all.

ROBERT CURTIS SMITH, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. RHODES:

Q Would you clearly and loudly state your name, your age, and present location?

A Robert Curtis Smith, age 20, Southampton Farm.

Q How long have you been at Southampton Farm?

A About a year and a half.

Q Were you there on March 23rd, 1975?

A Yes, sir.

Q What building were you living in at that time, sir?

A C-1.

Q And what cell number?

Q Where was Tony Lewis at this time?

A Standing at the door, making sure Captain Lynch didn't come out, I guess.

Q That cell, do you know what number it is?

A 130.

Q Could you tell us how far 130 is from where Captain Barnes was at that time?

A About eight or nine cells.

Q Did you see Tony Lewis at anytime kick, hit, or do anything to Captain Barnes?

A No, sir.

Q Did you see him at anytime take anything or put a hand on his body?

A No, sir.

Q Did you have your eyes on him the entire time he was in that section of C-1, between looking at what was going on and him?

A Yes.

Q He was with Captain Lynch, I believe you stated?

A Yes, sir.

Q Would you please step up here a minute, please look at this diagram. For your information, this is a diagram of C-1, and your cell number is 121 which puts you approximately right here. Here is cell 130. Now, would you advise the jury and turn around so the lady can catch your voice and hear exactly what you say, and show

A Yes, sir.

Q And would you describe to the ladies and gentlemen of the jury, how he was dragging him?

A He had him from behind, had his hand around his chest and pulling him backwards.

Q Was he walking backwards or was Captain Lynch's feet dragging?

A He had his feet down, but they were dragging and he had his hand up.

Q His hand up like this?

A Yes.

Q When they got down to the cell, how did he get the cell door open?

A He told Captain Lynch to open the door.

Q Did Captain Lynch open it?

A Yes.

Q What happened to his keys?

A I don't really know, I think he handed them to Tony, I am not sure.

Q Did you see anybody take Captain Lynch's wallet?

A No, sir.

Q Did you see Captain Lynch's wallet thrown out in the floor?

A No, sir.

Q While the beating of Captain Barnes was taking place almost in front of your cell, did you see anybody take any keys or money from him?

A I might have but I am not sure.

Q After Lynch got in the cell, you testified that Lewis stayed at the door to make sure Captain Lynch didn't come out?

A Yes, sir.

Q And had he not been at the door, then Captain Lynch could have come out to assist Captain Barnes?

A True.

Q Did you talk to Tony Lewis that night?

A No, sir, not that I remember.

Q Do you recall stating that you asked Tony Lewis what had happened?

A I think I was on the sidewalk when I asked him something like that. He come running back by me when I come out, and I was going to C-2 to get away from all of this.

Q Where was he coming back from when he came back by you?

A I don't know, he was just coming down the sidewalk.

Q And what did you ask him?

A I asked him what happened or something like that, and he said, I couldn't make it.

Q Speak up and I want the ladies and gentlemen of the jury to hear you. You asked him what happened and he said what?

A I asked him what happened, and he said, we couldn't make it or something like that. I don't know

what he was saying.

Q What did he do then?

A He went on back in C-1.

Q But, that night, right at the time this was going on, you asked him what had happened, and he made the statement, we couldn't make it?

A Yes.

Q Did anybody get over the fence that night?

A I heard they did, but I don't know for sure.

BY MR. GRIZZARD: That's all.

BY MR. RHODES: That is the defense, Your Honor.

BY MR. GRIZZARD: I have one rebuttal witness.

EARL T. JONES, called as a rebuttal witness for the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. GRIZZARD:

Q Captain Jones, would you state your name, address, and occupation?

VIRGINIA,

IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY:

COMMONWEALTH

v.

TONY EDWARD LEWIS

TRANSCRIPT of motions and sentencing in the above matter, when heard on April 12, 1976, before The Honorable James C. Godwin, Judge.

PRESENT: Mr. Richard C. Grizzard,
Attorney for the Commonwealth

Mr. William J. Rhodes, Jr.,
Counsel for defendant

Mr. Tony Edward Lewis,
The defendant

MR. GRIZZARD: Your Honor, the trial in this matter was with a jury on January 12 and 13, 1976, and the jury imposed five years on escape, twenty years on each count of armed robbery, and the death penalty on the murder charge. He is here today on sentencing.

THE COURT: All right, Mr. Rhodes.

MR. RHODES: The defendant is ready, and if Your Honor will recall, at the conclusion of the trial on January 13 of this year, a motion was made by the defendant to postpone for a period of time the sentencing in this case until such time as the transcript had been made available and studied by counsel for defendant, as well as the commonwealth's attorney, for possible motions by the defendant. That is why we are here today, Your Honor. Initially, I would move to set aside the verdict as being contrary to the law and the evidence, the verdicts rendered on armed robbery, one escape and one murder charge by the jury on January 13th. Your Honor clearly remembers, and it is conceded by the defendant, that the Court denied the defense motion to strike the Commonwealth attorney's evidence atthe conclusion of the Commonwealth's case, and subsequently denied the motion to

strike the evidence against the defendant after hearing all the evidence in the case. Your Honor, I would request today that you give some consideration to the motion to set aside on the basis of the evidence that you heard in the case. I will not be repititious and recite to the Court the entire trial of 268 pages of this transcript, but I would say to Your Honor that a number of witnesses in this case gave extremely conflicting evidence as to what transpired in this case. There is no question that Captain Barnes lost his life in this cell block at Southampton Correctional Farm on the date in questions. There is no doubt that two other parties, who were charged with this crime, were involved in the commitment of that crime, but the evidence, Your Honor, as reflected by Samuel A. King on page 139 and 142 of the transcript, and Samuel Letcher Lewis on page 147 and 148, and Charles Randolph on pages 150 through 152, and James Michael Weathers, on pages 158 and 160, and James Ball on pages 175 and 176, and Willie Nathaniel Bailey on pages 184 and 185, and Keith Price on pages 186 and 193, substantiate very clearly throughout the course of the trial that the defendant in this case did not at any time rob Captain Barnes, and the evidence further reflected by them and Captain Lynch, that he did not rob Captain Lynch, and further substantiated, in my opinion, without doubt, that the defendant, Tony Edward Lewis, never inflicted any blows on the deceased party. He was involved with Captain Lynch only, and at no time throughout the entire trial was any evidence produced by the Commonwealth, and we have evidence that is definitely

conflicting, and certainly contrary to the law. I would ask the Court to also consider, if you would, Your Honor, that the Judge is in a position to re-evaluate and reconsider the jury's decision relative to these matters. We know that the escape factor was obvious, but there was conflict there as to whether this young man was in another cell block with two other parties, or whether he was on the fence with two other inmates, as alleged by one witness. Captain Boone said he was in the vicinity of another building, and not in the vicinity of C-1 when this ruckus was going on. The death penalty is extremely harsh with the evidence presented in this case, and I would ask the Court to consider instruction 16, as given to the Commonwealth over my objection, and instruction number 24, which the Court granted and charged the jury to consider, that the mere presence of a person at the scene of the commission of a crime is not sufficient to constitute him as a principal in the second degree, nor is his mere consent to the commission of a crime sufficient. This says, Your Honor, basically what the evidence in this case was. Tony Edward Lewis was there; he was involved in some type of ruckus and some type of disorder within cell block C-1 on the night in question, but there was no evidence, beyond a reasonable doubt, that this young man committed the murder, or in any way consented to it or was involved in the perpetration of the crime by words, deeds or any other action, and I would respectfully request the Court to set aside the jury's verdict as it pertains to the two robbery charges, and to the escape, and to the murder

charged imposed by the jury on this young man on January 13 of 1976. This is something, the Court having heard the case and having heard the evidence, and after knowing now what the jury has done, can re-evaluate and reconsider this extremely harsh punishment that was imposed upon this young man for the crimes for which he was charged. I really appreciate your taking the time and opportunity to review it with us, and I would carefully request the Court to reconsider this matter, and grant us the motions, as requested.

MR. GRIZZARD: If it please the Court, the evidence in the case was quite clear that the inmate named Cross jumped on Captain Barnes, and that Tony Lewis grabbed the other guard, and that both guards were taken back to what they call the steel door, cell number 130; Officer Lynch by the defendant and Officer Barnes by Cross. During the process of carrying Barnes back to the cell, and what have you, his keys were taken from him. There is evidence that his pocketbook was taken; not his pocketbook, but the contents of his pocketbook were taken. It is clear that Officer Lynch, when he was placed in the cell by Lewis and Joe came out, that someone came back in while Lewis was standing at the door, and took Officer Lynch's pocketbook. The evidence was clear that Lewis took his keys. There is no question but that Lewis was one of the men trying to get over the fence. The defendant's witnesses, which have been listed by Mr. Rhodes, Samuel Lewis, Charles Randolph and

Michael Weathers and James Smith, and what have you, all indicate that Lewis was involved. As I recall, the biggest part of the statement of these witnesses, and one in particular, Robert C. Smith, one of his final statements was that Lewis was making sure that Lynch couldn't come out of the cell. The only way for these people to accomplish what they were trying to accomplish on the night of the offenses was for two men to overpower two guards. Cross could not overpower both of them at the same time. He had Barnes, the defendant had Lynch. The jury heard the testimony; they heard all the witnesses, and the correctly found the defendant guilty of attempted escape, they correctly found him guilty of robbery of Alfred Lynch and guilty of robbery of Ronald Barnes, and also murder of Ronald Barnes. The Commonwealth would respectfully request the Court to overrule the motion to set aside the verdict as contrary to the law and the evidence. The verdict of the jury is completely within the evidence that was put forth in this trial. The Commonwealth would ask the Court to sentence the defendant in accordance with the jury's verdict.

MR. RHODES: I would have other motions to make once you rule on my primary motion, Your Honor.

THE COURT: As far as the motion is concerned, there is no question about the law involved in these cases. The questions involved are factual questions, and of course, the factual questions and the conflicts in evidence must be

determined by the jury. The Court cannot do that, and that is the function of the jury, and the jury has to determine these questions. Therefore, I will overrule your motion, and note your exception in the record.

MR. RHODES: Thank you, Your Honor. Inasmuch as you have overruled my motion in that regard, I would move to have the two charges of armed robbery and escape, and he was given twenty years, and twenty years, and five, respectively, to run concurrently.

MR. GRIZZARD: The Commonwealth opposes that Your Honor. They were separate offenses, and the jury gave him twenty years on each, and he should serve twenty years on each.

THE COURT: All right, Tony Edward Lewis, stand up. Now, Lewis, you have been found guilty of murder, of attempted escape and two charges of armed robbery. Do you know of any reason, other than what you have testified to, why you should not be sentenced in these cases?

DEFENDANT LEWIS: Yes, I have some reason. The reason why I think I shouldn't be sentenced, because you see, number one, he is lying. You can see from that because when he said he was in the cell with the mirror, and my witness said he was in the hall at the time the thing happened, and he said I ain't touched the man, and I ain't

beat the man or nothing, and Robert Saunders said I did. One of them is lying, okay. When the whole thing happened, he should know whether I beat the man or not, and Sammy said he was hawking with the mirror, and yet he is in his coll and looking out there with the mirror, and said he seen me beat the man, and my man said I didn't. And another thing, why I shouldn't be sentenced, they ain't had no proof that I robbed the man. They can't say the man had no money on him, and just because they got ten dollars off me when I went to the state farm, and I got proof where I got that but it's too late now. And another thing, Captain Lynch, he don't know who had him. He is going by hearsay. He don't know who had him, and at first he said when Barnes was laying on the floor and he was coming down the steps and was going towards Barnes, and yet they are trying to say that I came out of the bathroom or the T. V. room and grabbed him from behind as he was coming down the steps. That's all I've got to say.

THE COURT: Of course, the questions that you raised are questions that have been determined by the jury.

DEFENDANT LEWIS: Right.

THE COURT: That is the function of the jury to determine those questions as to who might be telling the truth and who might not. Now, in accordance with the jury's verdict on the charge of attempted escape, I am going to

sentence you at this time to five years in the state penitentiary. On the charge of robbery of Ronald Albert Barnes, as charged in the indictment, and in accordance with the jury' verdict, I am going to sentence you at this time to twenty years in the state penitentiary. On the charge of robbery of Alfred Lynch, as charged in the indictment, I am going to sentence you, in accordance with the jury's verdict to twenty years in the state penitentiary. On the the charge of murder, the jury has found you guilty of murder in the first degree and fixed your punishment at death. Now, at this time, the Court will sentence you to death, in accordance with the law of the State of Virginia. The date of execution will be fixed at June 15, 1976. Now, I want to advise you that you have a right to appeal these cases, and Mr. Rhodes will explain this to you in more detail. Of course, at this time, he will be remanded to the state penitentiary.

MR. RHODES: I would like to make one more motion, if I may, Your Honor. The stay of execution motion I know is normally made to the supreme court, but I would move this Court to suspend the imposition of the death penalty until the Supreme Court of the United States rules on its constitutionality, which will transpire around June of '76. I think there is some latitude and authority for Your Honor to suspend, and I cite Smith v. Commonwealth, 134 Va. 589, and 21 American Jurisprudence Second, section 618 under criminal law, and I would respectfully request

the Court to grant that motion to suspend the imposition of that sentence until after the supreme court does make its decision, Your Honor.

THE COURT: Well, of course this matter will be just as any other matter, and the supreme court is the one who would have to grant the stay of execution, and these questions are now before the United States Supreme Court, and undoubtedly they will grant a stay, but that is for the court of appeals, not the trial court to do it at this time. Then, of course, we will be governed by whatever ruling is made.

MR. RHODES: I understand, Your Honor.

THE COURT: Of course, I am going to overrule your motion, and note your exception.

MR. RHODES: Yes, sir.

I, Joyce Gray Harrell, having been duly sworn, do hereby certify that I was the court reporter in the Circuit Court of Southampton County on April 12, 1976, at the time of the hearing of motions and sentencing herein.

I further certify that I have transcribed the proceedings faithfully and accurately, to the best of my ability.

Given under my hand this 26th day of May, 1976.

Joyce Gray Harrell
Court Reporter