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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 761185

WALTER STEVE OWENS

V.

COMMONWEALTH OF VIRGINIA

APPENDIX TO BRIEF

MALCOLM G. CRAWFORD
Spencer & Crawford
31 West Washington Street
Lexington, Virginia 24450

Counsel for Appellant

JIM L. CHIN
Assistant Attorney General
Office of the Attorney General
900 Fidelity Building
Richmond, Virginia 23219

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

May 3, 1976

On or about February 19, 1976, in the County of Rockbridge, WALTER STEVE OWENS did unlawfully and feloniously attempt to break and enter in the night time the United States Post Office in Goshen, Virginia, the property of the United States Government with the intent to commit larceny in violation of §18.2-91 of the Code of Virginia, as amended.

VIRGINIA:

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA

VS.

WALTER STEVE OWENS
Date of Birth: 2-6-52

Indictment For Attempt
To Break and Enter

A Felony Case: #76-102

This day came the Attorney for the Commonwealth and Walter Steve Owens, who stands indicted of a felony, to-wit: attempt to break and enter with intent to commit larceny, appeared in Court according to the condition of his recognizance.

And it appearing to the Court that the accused is not represented by counsel and is indigent as shown by his affidavit now filed with the Court, before accepting any plea of the accused, doth appoint M. G. Crawford, an able and competent attorney at law, practicing before this Court, to defend him.

Thereupon, the accused, after private consultation with his counsel and being advised by the Court of his rights to be tried at a later date, stated that he was ready for trial and desired and consented to the trial on this day. The Attorney for the Commonwealth also consented. Thereupon,the accused was duly arraigned and after being advised by his counsel, pleaded not guilty to the Indictment, which plea was tendered by the

accused in person, and after being first advised by his counsel and by the Court of his rights to trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence of the Commonwealth, the defendant, by counsel, moved the Court to strike the statement and confession made by the defendant and dismiss the indictment which motion was overruled and the Court having fully heard the evidence and arguments of counsel doth find the accused guilty of attempt to break and enter in the night time with intent to commit larceny, as charged in the indictment.

And it being demanded of the defendant if he desired to make a statement or if anything he had or knew to say why judgment should not be pronounced against him according to law and nothing being offered or alleged to delay thereof, the Court doth ascertain his punishment to be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth of Virginia for a term of three (3) years and that the Commonwealth of Virginia recover against the said defendant its costs by it about its prosecution in this behalf expended.

Thereupon, the defendant, by counsel, moved the Court to suspend the aforesaid penitentiary sentence and place the said defendant on probation, which motion was granted, and the Court being of the opinion it is compatible with public

interest so to do, doth adjudge and order that the aforesaid sentence imposed upon the said defendant be and the same is hereby suspended for a period of three (3) years and doth place the said defendant on probation, under the supervision of the Probation Officer of this Court for a period of three (3) years, conditioned upon his good behavior, obeyance of the laws of this state and any other state, to be gainfully employed, to pay the costs of those proceedings, to make restitution, not to use alcoholic beverages or drugs, not to have in his possession a deadly weapon and with the rights reserved to revoke said probation and suspended sentence at any time within the said three (3) years for good cause shown.

The Court certifies that at all times during the trial of this case, the defendant was personally present and his attorney was likewise personally present, and after inquiry, the Court is of the opinion the defendant was ably represented by his counsel for which services he is allowed an attorney's fee of $200.00.

And the said defendant is advised of his rights of an appeal if he so desires and is released upon his probation as heretofore granted.

/s/ Paul A. Holstein

May 16, 1976

VIRGINIA:

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA	)	
	)	NOTICE OF APPEAL
V.	)	AND
	)	ASSIGNMENTS OF ERROR
WALTER STEVE OWENS,	)	
Defendant	)	

NOTICE OF APPEAL

Appellant, Walter Steve Owens, does hereby give Notice of Appeal from the Final Judgment of the Trial Court which was entered on the 17th day of May, 1976.

ASSIGNMENTS OF ERROR

(1) The Trial Court erred in overruling Defendant's Motion to strike the statement and confession made by the Defendant and the admission of said statement and confession into evidence.

(2) The Trial Court erred in finding the accused guilty of the attempt to break and enter in the night time with the intent to commit larceny as charged in the indictment.

STATEMENT

A transcript or a statement of facts, testimony or other incidents of the case will be hereafter filed.

WALTER STEVE OWENS

By Counsel

Malcolm G. Crawford, p.d.
Spencer & Crawford
31 West Washington Street
Lexington, Virginia 24450

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 1976, I mailed a true copy of the foregoing Notice of Appeal and Assignments of Error and Statement to Beverly C. Read, Esq., Commonwealth's Attorney, 2 East Washington Street, Lexington, Virginia 24450.

M. G. Crawford

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 29th *day of* December, 1976.

Walter Steve Owens, Plaintiff in error,

against Record No. 761185

Commonwealth of Virginia, Defendant in error.

From the Circuit Court of Rockbridge County

Upon the petition of Walter Steve Owens a writ of error and supersedeas is awarded him to a judgment rendered by the Circuit Court of Rockbridge County on the 17th day of May, 1976, in a prosecution by the Commonwealth against the said petitioner for a felony; but said supersedeas, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

A Copy,

Teste:

Clerk

EXCERPTS FROM TRANSCRIPT OF TRIAL

FILED JULY 16, 1976

1 CLERK: You have entered a plea of not guilty.
2 Do you wish to be tried by a jury or by the Court?
3 OWENS: By the Court.
4 COURT: Does the Commonwealth agree that the
5 Court will hear this case without a jury?
6 MR. READ: The Commonwealth does agree.
7 COURT: And the Court consents. Do you gentle-
8 men wish to make an opening statement?
9 MR. READ: The Commonwealth will waive an
10 opening statement.
11 MR. CRAWFORD: The Defendant will waive an
12 opening statement.
13
14 LT. F. M. SPENCE,
15 a witness called by and on behalf of the Commonwealth,
16 being duly sworn, testified upon his oath as follows:
17 SPENCE - DIRECT
18 By Mr. Read:
19 Q Please state your full name.
20 A Lt. F. M. Spence of the Rockbridge
21 County Sheriff's Department.
22 Q How long have you been with the Sher-
23 iff's Department?
24 A Eight years.
25 Q Please explain the circumstances under

1 which you had occasion to investigate this matter.
2 A Your Honor, this offense took place
3 in Rockbridge County, at Goshen, Virginia. I answered a
4 call to the United States Post Office. located at Goshen,
5 Virginia, arriving there at 8:45 a.m. on February 20. I
6 located Mr. Greaver, the Postmaster, and I was shown the
7 door in the rear with the pry marks, also the screen that
8 was slit and unlocked. I found matches which were freshly
9 struck lying on the steps and on the ground. After
10 getting a statement from Mr. Greaver I talked to another
11 person in the vicinity and then I traveled to the home of
12 Walter Steve Owens.
13 When I arrived at the home of Walter Steve Owens
14 he was in the house and he came out and at that time I asked
15 Walter Steve Owens to accompany me to the Rockbridge County
16 Sheriff's Office.
17 COURT: Did you place him under arrest at that
18 time?
19 A No sir. In the car, he asked me what
20 did I want with him and I told him he knew what he had done
21 the previous night and he said he did not know what I was
22 talking about and I told him that it took a man to tell the
23 truth, that anybody could lie, and at that point he said,
24 "I done it."
25 MR. CRAWFORD: Your Honor, I object

1 and move that be stricken.
2 COURT: I will save your point, Mr.
3 Crawford.
4 Q Go ahead, Lieutenant.
5 A At that time, Your Honor, the complex-
6 ion of the whole conversation changed. I have been knowing
7 Walter Steve Ownes for four or five years and particularly
8 a couple of years ago when he became involved with a self-
9 inflicted wound. I knew his family and we began to talk
10 about that, his family problems, and the fact that he was
11 unemployed and separated from his wife, and this was all of
12 our conversation on the way to the Sheriff's office.
13 After we got to the Sheriff's office I advised
14 him of his constitutional rights which he stated that he
15 understood. A statement was obtained from him at that
16 time.
17 Q What was the statement?
18 A Pertaining to the entry of the United
19 States Post Office in Goshen on the previous night.
20 Q What did he tell you after you advised
21 him of his rights?
22 MR. CRAWFORD: Your Honor, again I
23 object.
24 COURT: Let him read the statement.
25 A After advising Walter Steve Owens of

his constitutional rights, he made the following statement:

"Yesterday I got together with Donald Loan at the Gulf Station in Goshen, Virginia about 3:00. We rode around a while and drank. We rode on up to Loan's trailer and drank some more liquor. I don't know what made me do it but I wanted to get my family back together. I have not had a job for three months. I thought there was money in the Post Office and if I could get it maybe I could get my family back. It was about 9:00 when I walked around behind the Post Office. I took a leak. I struck a match and found a bar laying on the ground. The screen on the door was slightly cut. I pushed the screen open and unlocked the door. I pryed on the wooden door but could not get the door open. I finally gave up and threw the bar back in the weeds and walked home. "

Your Honor, he was released on bond to his family and did appear in lower court at the preliminary hearing.

Q Where was that statement given?

A At the Rockbridge County Sheriff's Office at 11:45 a.m.

Q Did you completely advise him of his rights prior to taking this statement?

A Yes sir, I did.

COURT: I would suggest that you read

1 into the record exactly what you advised
2 the Defendant.
3 A I advised Walter Steve Ownes that he
4 had the right to remain silent, that anything he said could
5 be used for or against him in Court. That he had the right
6 to have an attorney present of his own choosing and if he
7 did not have the funds to employ one, that one would be
8 appointed by the Court. I further advised Walter Steve
9 Ownes that at any time he and I talked he had the right
10 to stop and say nothing further. He stated that he under-
11 stood those rights.
12 Q Did he state he did not want to have
13 an attorney present?
14 A He did not say it in those words but
15 he said he understood his rights.
16
17 SPENCE - CROSS
18 By Mr. Crawford:
19 Q When you went to the Defendant's house,
20 you must have had some information that led you to believe
21 he was the person that had tried to break into the Post
22 Office.
23 A Yes sir, I did.
24 Q At that time you had no other suspects?
25 A No sir, I didn't.

1 Q Somebody told you they had seen Owens
2 back there?
3 A That's true.
4 Q And you were pretty well convinced that
5 Owens was the one that tried to break in when you went to
6 his house, weren't you?
7 A Yes sir, I was.
8 Q Upon arriving at his house you asked him
9 to come with you?
10 A Yes sir.
11 Q Although you never formally placed him
12 under arrest you did ask him to get in the car with you?
13 A Yes sir.
14 Q And you questioned him about the offense
15 and he first denied that he was involved, is that right?
16 A He asked me --
17 Q Did he say at first that he had not
18 been there at the Post Office and then voluntarily he did
19 tell you?
20 A He told me at the time he did not know
21 what I was talking about and when I said to him, "It takes
22 a man to tell the truth, anybody can lie", he said that he
23 had done it.
24 There was never any statement taken at that
25 time and then the whole complexion of the conversation

1 changed.

2 Q Once he admitted to you that he was the

3 person, coupled with the other person stating that they saw

4 him there, you took him to the Sheriff's Office and took

5 down the written statement, is that right?

6 A Yes sir, we were on the way back to the

7 Sheriff's Office at that time.

8 Q When you asked him to go for a ride

9 you were planning to take him directly to the Sheriff's

10 Office?

11 A Yes sir.

12 Q And he really didn't have a choice,

13 even though he was not under arrest, did he?

14 A I have known Walter Owens for a long time

15 and I knew him to be the kind of person that would not ob-

16 ject and he did not.

17 Q If he had objected then you would have

18 formally placed him under arrest?

19 A No sir, I would not have.

20 Q It is clear from the initial conver-

21 sation in the car that you never gave him any warnings,

22 right?

23 A I did not.

24 Q After he admitted that he did it and

25 you brought him to the Sheriff's Office, then you gave him

1 the standard Miranda warning?

2 A I did.

3 Q Did you at any time tell him specifi-

4 cally anything other than the standard Miranda warning?

5 A No sir, I did not.

6 Q You never told him that the fact that

7 he already told you that he did it could not be used against

8 him?

9 A No sir, I did not.

10 COURT: Would you please repeat that

11 question.

12 Q You never told Owens at the Sheriff's

13 Office, prior to taking down the statement that you just

14 read, that the previous admission he made could not be

15 used against him?

16 A No sir, I did not.

17 Q YOu came directly to the Sheriff's

18 Office from Goshen?

19 A We stopped at Mr. Potter's station and

20 got us a soda and then came on in.

21 Q What was the length of time between his

22 admission to you in the car and his statement that you read

23 today? How much time was there between the two occurrences?

24 A About an hour or an hour and a quarter.

25 Q To your knowledge has the accused ever

1 been convicted of a felony before?
2 A Not to my knowledge, no sir.
3 Q Apparently he was very cooperative with
4 you?
5 A Yes sir, he was.
6
7 SPENCE - COURT
8 By Judge Holstein:
9 Q The result of your investigations led
10 you to this man's home?
11 A Yes sir.
12 Q And according to your statement he
13 voluntarily accompanied you to Lexington?
14 A Yes sir.
15 Q During that period of time -- did you
16 later formally place him under arrest?
17 A Yes sir, we go through a procedure
18 of processing and reading the warrant.
19 Q From what led you to this man's home and
20 then taking him to Lexington in your automobile -- at that
21 stage, until he told you he did attempt to break and enter
22 the Post Office, were you completely satisfied with what you
23 had been told by others which resulted in your going to this
24 man's home, that he was the one who broke and entered the
25 Post Office?

A My feelings at the time -- the individual who saw him enter the alley, Your Honor, I knew this man was without funds and I knew his family situation and I had a feeling that he was responsible but I did not have enough evidence at the time to place him under arrest. He never did make the statement that he was responsible for attempting to break into the Post Office, he just said, "I did it", and then the whole complexion of our conversation changed.

Q When you engaged in that conversation with the Defendant, was that a part of your investigation?

A No sir, Your Honor, he wanted to know where we were going and the reason and I said to him that he knew what he did the night before and I said that it takes a man to tell the truth.

Q Up until that point, were you still in the process of investigating?

A Yes sir. I could not have placed him under arrest at that time, he had only been seen in the alley of the Post Office.

SPENCE - RE-CROSS

By Mr. Crawford:

Q In regard to the Judge's questions as to whether or not -- when was this man placed under arrest?

1 A After he gave the statement.
2 Q After he was brought to the Sheriff's
3 Department he gave you a statement and then he was formally
4 placed under arrest?
5 A Yes sir, that is when the warrant was
6 issued charging him with the offense.
7 Q He was never formally under arrest
8 until the magistrate came and wrote the warrant?
9 A Right.
10 Q But in fact.he was in custody from the
11 moment you picked him up until the magistrate wrote the
12 warrant?
13 A In the sense that I asked him to
14 accompany me.
15 Q Regardless of whether he had told you
16 in the car that he did it, you were planning to bring him
17 to the station and question?
18 A Yes, if he would accompany me.
19 Q Did you ever tell him he did not have
20 to accompany you?
21 A No sir, I did not.
22
23 HENRY GREAVER,
24 a witness called by and on behalf of the Commonwealth,
25 being duly sworn testified upon his oath as follows:

1 Spence on the grounds that if it were
2 considered as a voluntary statement it
3 was not obtained in the proper manner,
4 is that correct?
5 MR. CRAWFORD: Your Honor, my motion to
6 suppress is based on the fact that the
7 first confession is inadmissible in that
8 no warning was given and the second is
9 inadmissible as it is a product of the
10 first.
11
12 WALTER STEVE OWENS,
13 the Defendant, being duly sworn, testified upon his oath
14 as follows:
15 OWENS - DIRECT
16 By Mr. Crawford:
17 Q State your name.
18 A Walter Steve Owens.
19 Q Where are you living?
20 A In Verona now, I was living in Goshen.
21 Q On February 20, 1976, did you have
22 occasion to see Deputy Sheriff Spence?
23 A Yes.
24 Q Where was this?
25 A At my mother's house. I was in bed and

1 my brother-in-law came in and said Freddie was there and
2 wanted to talk to me.
3 Q Then what happened?
4 A I got up and dressed and went down-
5 stairs and Freddie said to get in the car, let's go for
6 a ride and as we was going through Goshen Pass he asked me
7 if I knew anything about a break-in at the Post Office and
8 I told him no. He kept saying, "You know you done it,
9 somebody told me they seen you and it takes a man to tell
10 the truth and admit when he had done wrong", and I said,
11 "Yeah, I admit doing it".
12 Q When he came to pick you up, what were
13 your feelings when he said, "Let's go for a ride"?
14 A I thought he wanted to go for a ride.
15 Q Did you feel you had any choice in the
16 matter?
17 A No.
18 Q Where did you go from the time you got
19 in the car?
20 A We rode through Goshen Pass and stopped
21 and got a bottle of pop and came to Lexington.
22 Q What happened when you got to Lexing-
23 ton?
24 A Then he set down and got a book out and
25 wrote it down.

1 Q Did he give you any warnings at that
2 time?
3 A Yes sir.
4 Q What did you think after he gave you
5 the warnings?
6 MR. READ: Your Honor, I would object
7 to that.
8 MR. CRAWFORD: I think in this situation
9 what was in the Defendant's mind is
10 material, whether he understood his
11 rights, I think it is certainly proper.
12 COURT: Ask him if he understood the
13 warnings. I believe Officer Spence
14 testified the young man said he did
15 understand what was told to him.
16 Q What was your understanding of the
17 warnings given to you?
18 A He just said if I wanted a lawyer the
19 Court would appoint me one. I understood what he meant,
20 but I had already told him in the car.
21 Q Why didn't you ask for a lawyer?
22 A He said something about coming over here
23 and I figured they would appoint me one.
24 Q By the time you got here had you already
25 told Officer Spence that you had done it?

1 A Yes sir.
2 Q Did he ever tell you anything with re-
3 gard to the previous statement, that it could not be used
4 against you?
5 A No sir.
6
7 OWENS - CROSS
8 By Mr. Read:
9 Q Did Freddie question you for any long
10 period of time about this?
11 A All the -- about half the way over.
12 Q How long did it take you to get over
13 here?
14 A About an hour or an hour and a lalf.
15 Q For the whole hour or hour and a half you
16 talked about this?
17 A No, just about 30 or 45 minutes.
18 Q Did he threaten you in any way?
19 A No.
20 Q Did he make any promise to you that you
21 would get leniency if you confessed?
22 A No.
23 Q Was there any kind of pressure used in
24 talking to you to get you to confess?
25 A No, he just said he knew I done it.

1 Q When you got to the Sheriff's Office
2 you just said that you understood what he meant after
3 Officer Spence advised you of your rights?
4 A Yes.
5 Q You understood that you had the right
6 to have an attorney right then?
7 A Yes.
8 Q And you understood that you did not
9 have to tell him anything?
10 A I didn't think it would make any
11 difference, I had already told him.
12 Q Why do you reckon he advised you of
13 your rights?
14 A I don't know.
15 Q Freddie doesn't ordinarily do stupid
16 things, does he?
17 A No.
18 Q So you knew you didn't have to say
19 anything?
20 A Yes.
21 Q He told you that?
22 A Yes sir.
23 Q Are you sure there was anything said
24 about this case after you pulled out of your driveway?
25 A Yes sir.

1 Q Officer Spence's recollection was that
2 nothing was said after you pulled out of your driveway.
3 MR. CRAWFORD: Objection, Your Honor.
4 A We was going through the pass and I
5 finally admitted it.
6
7 Defendant Rests.
8
9
10 MR. CRAWFORD: Your Honor, I would like to
11 renew my motion to suppress both statements.
12 COURT: I will hear argument on it. I believe
13 you have a written memorandum on it?
14 MR. CRAWFORD: Yes sir, Your Honor. There is
15 some discrepency in the evidence as to how long the question-
16 ing went on in the car but I don't feel that is material.
17 The question is whether or not the first state-
18 ment is admissible. It clearly is not. Any admission made
19 while he was in custody in the vehicle cannot be admitted
20 into this Court because he was not given the proper warn-
21 ings. I don't think the Commonwealth contends that. As
22 I understand it they are not attempting to use the first
23 statement, they are simply using the second.
24 We have a situation here where an hour after
25 the man admits to the Deputy Sheriff that he committed the

1 Officer Spence said this was in the investiga-
2 tive stage, the man was not under arrest and he testified
3 that he did not have sufficient evidence to place him under
4 arrest and that had the man said that he would not go with
5 him, he would not have taken him.
6 Either way the Court looks at it, when the first
7 statement was taken the man was not under arrest, there was
8 no reason at that time, according to Officer Spence, to have
9 advised him of his rights, but when they got to the station,
10 as the Bunting case holds the second statement is admissible
11 where you do not have undue influence connected with the
12 first statement, which I submit there was not in this case.
13 COURT: Did I understand correctly from the
14 evidence there was an eye witness?
15 OFFICER SPENCE: There was an eye witness who
16 saw him walk into the alley, Your Honor.
17 COURT: It is my responsibility first to deter-
18 mine whether or not this man's constitutional rights were
19 violated. From what Officer Spence related, this man had
20 not been placed under arrest and in response to what Offi-
21 cer Spence stated to the Defendant, something to the effect
22 that it takes a real man to tell the truth, this man volun-
23 tarily said he did it. Whether or not that might be inter-
24 preted as words of solicitation which drew the admission from
25 the man, that is a question.

1 I think that this boils down to the simple fact
2 of whether or not when he admitted to Officer Spence that he
3 was the one, whether at that time -- it is a concession
4 that he had not been warned at that time -- whether he was
5 formally under arrest and if not whether it is necessary
6 for an arresting officer or investigating officer to warn
7 a man during the investigative stage. It was always my
8 understanding that until the man was formally placed under
9 arrest he need not be warned of his constitutional rights.
10 If the answers are unsolicited I seriously
11 question whether the Miranda warning is required. The only
12 thing I see in the case is that Officer Spence made a state-
13 ment to this man that it takes a real man to admit the
14 truth, or words to that effect.
15 MR. CRAWFORD: Your Honor, I think there is some
16 evidence there was in fact questions asked concerning this
17 crime in that Deputy Sheriff Spence told him which crime he
18 was investigating and that he suspected the accused and
19 although he maybe did not formally say it, did not actually
20 ask, "Did you do it", he was in the process of investigating
21 the crime and trying to find out either by questioning or
22 encouraging him to make an incriminating statement.
23 Secondly, where a man is under arrest, it is
24 our contention that a man does not have to be formally
25 charged and placed under arrest to make that interrogation

1 subject to the Miranda warning. The test is when an invest-
2 igating agency has focused on one particular suspect, I
3 believe that was in the Esposito case, once the investiga-
4 tion is concentrated on one person and that person is in
5 custody then it is necessary to give the Miranda warnings.
6 Officer Spence says the man did not have to
7 go with him because he was not formally under arrest but
8 the man didn't know that. Officer Spence told him to get
9 in the car and he was not going to say he was not going.
10 I submit that the interrogation occurred in the
11 car, the accused was the primary suspect and at that time if
12 he was going to question him at all it was incumbent upon
13 him to give him his warnings.
14 COURT: Suppose the man in response to Officer
15 Spence's statement that it takes a man to tell the truth,
16 suppose at that stage he had remained silent and then was
17 brought to the Sheriff's Office and given his warning and
18 then confessed.
19 MR. CRAWFORD: Then I don't think there would
20 be any question that it would be admissible. But here
21 the questioning was taking place before he was given his
22 warning. It is arguable whether or not there was actually
23 question and answer but there was discussion between the
24 Sheriff and the suspect and no warnings were given and dur-
25 ing the conversation the Defendant did not just say he did

it, he first denied it and he says he denied it and the Sheriff said he told him he didn't know what he was talking about. He did not just volunteer the statement, it was done after questioning and encouragement to tell the truth, and it is submitted that such forms of solicitation are the same as interrogation and before you can try to get the accused to make an incriminating statement it is incumbent upon the officer to warn the accused.

COURT: Certainly it is a concession in this case that the record is void of any promise or threats by the Sheriff. This simply boils down to whether or not a man's response to the statement that it takes a man to tell the truth, whether his voluntary response to that of, "I did it", whether that is a violation of the man's constitutional rights.

Quite often in determining whether a confession is voluntary we have the element of promise, possibly a lesser sentence or probation or perhaps even threats made over a long stretch of time. That is not in this case, it is a very simple issue -- the man I feel accompanied Officer Spence as a friend. He was aware of the man's confused domestic situation and Officer Spence goes about the county and tries to help people and in this case I think the Defendant accompanied Officer Spence as a friend and I think Officer Spence looked upon the Defendant in a friendly manner also.

1 I don't think any disadvantage was attempted
2 to be gained by this purported admission. I just don't
3 think this man's right were violated and I would therefore
4 respectfully overrule your motion to strike Officer Spence's
5 testimony.
6
7 Defense Rests
8
9 MR. READ: Your Honor, Commonwealth will sub-
10 mit this case for your consideration.
11 COURT: Do I understand that this man has no
12 previous record?
13 MR. CRAWFORD: That is my understanding. I
14 don't care to make any argument Your Honor.
15 MR. READ: The Commonwealth has no objection
16 to the Court considering probation for this man and Officer
17 Spence would ask the Court to consider that also.
18 MR. CRAWFORD: With regard to sentencing, I
19 submit that if the Court finds this man guilty he had no
20 previous record and very little damage was done. This man
21 did have too much to drink and taking all this into consid-
22 eration, I submit that this man would be a proper subject
23 for probation.
24 COURT: And is my understanding correct that
25 the Commonwealth has no objection to the Court suspending

1 whatever sentence may be imposed and placing this man on
2 probation?
3 MR. READ: The Commonwealth has no objection.
4 Your Honor, at some point I would like to raise the ques-
5 tion of this man being considered an indigent. I have
6 been informed that he is making $125.00 a week working for
7 the railroad.
8 COURT: I would not consider a man like that
9 to be indigent.
10 MR. READ: I would ask that you vacate the
11 plea of indigency and have him assume the responsibility
12 of paying his attorney.
13 COURT: Of course where a fee is allowed for
14 court appointed counsel it becomes a part of the costs and
15 one of the conditions of probation will be that he pay the
16 costs. I have asked all lawyers to look into this very
17 carefully. The Comptroller's office sometimes raises ques-
18 tions about these fees. When a man makes oath he is an
19 indigent he may be prosecuted for perjury. There is a
20 statute that states when a man makes oath he is an indigent
21 and is represented by court appointed counsel, there is a
22 felony charge to be preferred.
23 I would like to ask this man several questions
24 along that line. Are you employed Mr. Owens?
25 A Yes sir.

1 Q Why can't you afford to pay your attor-
2 ney?
3 A In that little court Judge Hess said
4 something about appointing Mr. Crawford.
5 Q Were you working at that time?
6 A No sir.
7 Q How much do you earn?
8 A I average $100.00 a week.
9 COURT: In that case I am going to insist that
10 you pay your attorney. I feel that the best way to collect
11 it would be to let it stand as part of the costs in this
12 case and I will allow a $200.00 fee.
13 After considering your case and the evidence
14 offered in support of the indictment, I have heard the tes-
15 timony of Officer Spence and I think he is your friend, I
16 heard the testimony of the Postmaster and there is only
17 one conclusion to be reached and I find you guilty as
18 charged. Is there any reason why judgement should not be
19 pronounced against you at this time?
20 OWENS: No.
21 COURT: It is the judgement of this Court that
22 you are hereby sentenced to the penitentiary of this Common-
23 wealth for a term of two years. On the motion of Mr. Craw-
24 ford, your attorney, concurred in by the Commonwealth's
25 Attorney that the Court suspend that sentence and you be

1 placed on probation, it is my considered opinion, after
2 carefully considering all of the circumstances in this
3 case that it would be compatible with the public interest
4 to suspend that sentence and it is so ordered.
5 You are hereby placed on probation under the
6 supervision of a probation officer for a period of three
7 years from this date, conditioned upon the following.
8 You are to pay the cost of this case and if
9 any damage was done to the Post Office you must make resti-
10 tution. According to Mr. Greaver there was about $5.00
11 damage. You must be of good behavior, which means that you
12 must not knowingly violate any law. You are to abstain from
13 the use of drugs and narcotics and you are to abstain from
14 the excessive use of alcohol. I feel certain if you had not
15 been drinking on this night this would not have happened and
16 I put that condition in there because I don't want you in-
17 volved in any more trouble. You are not to have in your
18 possession at any time any firearm or other deadly weapon.
19 You are to seek and maintain gainful employment. I under-
20 stand that you are employed and I expect you to continue to
21 be employed. You are to make every reasonable effort to
22 become a law abiding and respected citizen in your commun-
23 ity. You are to report to your probation officer of this
24 Court or such other person as designated at such times and
25 places as directed and you shall perform and obey such other

1 conditions suggested by your probation officer and you shall
2 cooperate at all times with your probation officer respons-
3 ible for your supervision.
4 Finally, and pay close attention to this,
5 if complaint is made to this Court or any other Court of
6 competent jurisdiction that you have violated any of these
7 conditions, such Court may order a revocation hearing to
8 determine whether your suspended sentence should be re-
9 voked and that you serve that sentence in the penitentiary.
10 Are you acquainted with Mr. Garland Fry, the
11 probation officer of this Court? You will have to come back
12 and see Mr. Fry. Do you work every day?
13 OWENS: Yes sir.
14 MR. CRAWFORD: Your Honor, he lives in Verona
15 and perhaps he could make an appointment to see Mr. Fry at
16 the Staunton office.
17 COURT: He will have to see Mr. Fry. I don't
18 like to see this man lose a day's wages but he must see the
19 probation officer. Mr. Read, will you report that to Mr.
20 Garland Fry?
21 MR. READ: Yes sir, I will.
22 COURT: Mr. Wright, you will ascertain the
23 costs in this matter and this young man will pay $25.00
24 every payday until all the costs are paid.
25