214 Va. 142

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Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE

SUPREME COURT OF APPEALS

OF VIRGINIA

AT RICHMOND

RECORD NO. 8204

DONALD RAY GILBERT,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA,

Appellee,

APPENDIX

Robert J. Surovell
Surovell, Smith, Parks & Malone
4041 University Drive, Suite 500
Fairfax, Virginia 22030

Counsel for Appellant

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PETITION (filed 3-1-72)

Form No. JC-1—Petition to Filed in all Juvenile Cases (Law of 1950) Juvenile Docket No.

MMONWEALTH OF VIRGINIA:
n the Juvenile and Domestic Relations Court of the County of Stafford

COMMONWEALTH OF VIRGINIA
In re PETITION

Donald Ray Gilbert, Route 2, Box 211E, Stafford, Va.

Child or minor of 15 years of age (born 11th day of November, 19 56)

To the Honorable Francis B. Gouldman *Judge—Associate Judge:*
NAME ADDRESS

Your Petitioner, James M. Minter, Principal, Stafford Jr. High
a probation officer—law enforcement officer—reputable person, respectfully represents unto your Honorable Court as follows:

NAME W-C Address (if unknown so state)

That Donald Ray Gilbert
whose parents are

	NAME	W-C	AGE	ADDRESS
Father	David E. Gilbert			As above
Mother	Mildred P. Gilbert			As above

or whose guardian/custodian/person having control and supervision, or nearest known relative is

NAME W-C AGE ADDRESS

is in need of the care and protection of the State in that he/she comes within the purview of the Juvenile and Domestic Relations Court law of 1950 and is in need of the care and protection of the State in that within the said City or County of Stafford, Va. the said Defendant is defiant, incorrigible and beyond the control of the school authorities.

That conditions are such that his/her welfare demands that custody be immediately assumed by the Court:

WHEREFORE, your petitioner prays:
That summons may issue to said child or minor;
That his/her custody be immediately assumed;
And that the said parents/guardian/custodian/person having control and supervision be summoned to appear before your Honor's Court and show cause why said child or minor should not be dealt with according to the provisions of the above mentioned law, and that the Court have the necessary investigations made and hear and determine the matters herein set forth and shall enter such judgments and orders as will best conserve the welfare of said child or minor.

Given under my hand, this 1st day of March, 19 72.

/s/ James M. Minter, *Petitioner.*

Principal, Stafford Jr. High (Address)

STATE OF VIRGINIA, to-wit:

This day personally appeared before me, Margaret Musselman, Deputy, ~~Associate Judge~~ Judge—Clerk of the aforesaid Court, the above-mentioned petitioner, and made oath (affirmation) that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand, this 1st day of March, 19 72.

/s/ Margaret Musselman, ~~Associate Judge~~ Dep. Judge—Clerk.

I have reviewed the above petition and direct the following:

1. ☐ Petition denied.
2. ☐ Investigation ordered returnable ..... day of ....., 19 ....
3. ☒ That summons/detention order be issued and served on the child or minor and the matter set for hearing on the 15th day of March, 19 72. Also parents, witnesses, etc., be summoned to appear.

Date 3/1/72 By order of /s/ Francis B. Gouldman, ~~Associate Judge~~ Judge—Clerk.

JUDGMENT APPEALED FROM

AND

OPINION OF JUDGE

(Page 10 of original record
Written Order not available
to counsel)
(Entered 6-12-72)

The Honorable S. Bernard Coleman ruled verbally from the bench that it was an unhappy dilemma before him; however, in light of the fact that the defendant was already on probation and that he had committed various offenses in the community, including intoxication and driving without a permit, and that the school authorities could not handle the defendant because of his behavior, that he was going to commit him to the State Department of Welfare and Institutions.

ASSIGNMENTS OF ERROR

(Filed 6-13-72)

The said Donald Ray Gilbert, the infant Defendant, will apply to the Supreme Court of Virginia for Writ of Error to reverse said judgment, and sets forth his assignments of error as follows:

1. The Court erred in entertaining highly prejudicial hearsay testimony over the repeated objection of Counsel.

2. The Court erred in failing to sustain a motion to strike the Commonwealth's case upon the grounds that the statutory offense in question, incorrigibility (section 16.1-158 (1) (g) 1950 Code of Virginia, as amended) had neither been properly alleged in the petition nor proved by presentation of a prima facie case.

3. The Court erred in entertaining testimony of truancy over the objection of Counsel when truancy had not been alleged in the petition.

4. The Court erred in finding incorrigibility by virtue of the fact that there was no showing that the child was incorrigible toward its parents or other lawful custodian which incorrigibility is the only incorrigibility recognized by the statute in question section 16.1-158 (1) (g) of the 1950 Code of Virginia as amended.

5. The Court erred in committing the infant defendant to the State Department of Welfare and Institutions pursuant to the provisions of section 16.1-178 (4) 1950 Code of Virginia

as amended in that there was no showing of exhaustion of local resources as required by the statute.

6. The Court erred in failing to release the infant defendant from his compulsory school attendance obligation pursuant to the provisions of section 22-275.4:1 1950 Code of Virginia as amended in that said release constituted a lawful method of dealing with the child's school behavior problems within his own locality and; therefore, said disposition should have been preferred pursuant to the provisions of section 16.1-178 (4) 1950 Code of Virginia as amended.

7. The Court erred in committing the infant defendant to the State Department of Welfare and Institutions in that said commitment was not in accord with the child's best interests.

STATEMENT OF FACTS

Type of Proceeding

(Filed 8-11-72)

This cause came on upon an appeal from the judgment of the First Regional Juvenile and Domestic Relations Court sitting in the County of Stafford. The cause was heard on the 12th day of June, 1972, at 2:00 p.m., before the Honorable S. Bernard Coleman, Judge of the Stafford County Circuit Court. Robert J. Surovell, of the Firm of Surovell, Smith, Parks & Malone, represented the infant Defendant; and, the Commonwealth was represented by Daniel M. Chichester, Commonwealth Attorney for the County of Stafford.

Commonwealth's Case

The Commonwealth called Benjamin Carver, Assistant Principal for Discipline, Stafford Junior High School. The witness was sworn.

Testimony of: BENJAMIN CARVER

Direct Examination by
Mr. Chichester

The witness stated his employment and read the following discipline record of the infant defendant into the record:

October 12, 1971 - Copying the work of another student.

October 13, 1971 - Smoking at school; trespassing on private property and sassing the owner of said private property.

October 15, 1971 - Abuse of science equipment; disruption of the class; and rudeness toward the teacher.

October 22, 1971 - Copying another student's work (second offense).

October 27, 1971 - Whispering to another student while in detention hall.

November 1, 1971 - Did not bring his English book to class; was sent out for his English book and was later found wandering around the school.

November 3, 1971 - Defendant chased another student down the hall of the Junior High School, followed said student into a room and struck said student.

November 5, 1971 - Defendant failed to carry disciplinary letters sent by principal to mother of said defendant.

November 17, 1971- Defendant engaged in a fight in the lunch room and used objectional language in public.

December 1, 1971 - Defendant was insulate toward a teacher. (sic)

December 7, 1971 - Defendant failed to go directly to his class; defendant had cigarettes on his person; defendant fighting in hallway after school.

December 8, 1971 - Defendant was disrespectful toward a teacher.

February 1, 1972 - Defendant reported to science class without a book.

February 7, 1972 - Defendant skipped school on February 3rd and 4th, 1972.

February 9, 1972 - Defendant failed to report to detention hall on February 8.

February 14, 1972- Defendant failed to return to his scheduled class after visiting the clinic, but went to the lunchroom instead.

February 24, 1972- Defendant cut classes on February 21st and 22nd; defendant leaving school grounds February 24th without permission, and ignored instructions of the assistant principal to return to said assistant principal's office; defendant became hysterical and used disrespectful language toward the assistant principal.

The witness also testified that the defendant was absent a total of 37 days from the beginning of the school year until March 1, 1972. During that time he was sent to detention hall on 27 occasions, and that he was suspended for a total of 14 days. He stated that for the above-mentioned reasons, the defendant was incorrigible and beyond the control of the school authorities.

Cross-Examination by
Mr. Surovell

The witness admitted that a substantial portion of the period of absence was attributable to suspension from school by school authorities. The witness further admitted that some of the absence was attributable to a period of time when the infant defendant was incarcerated in the Stafford County Jail under the Order of the Judge of the Juvenile and Domestic Relations Court for the County of Stafford.

The Commonwealth called Mr. Alvin Chaplin, Chief Probation Officer for the Juvenile and Domestic Relations Court. The witness was sworn.

Testimony of: ALVIN CHAPLIN

Direct Examination
by Mr. Chichester

The witness stated his employment and that the infant defendant was under his supervision at the present time and had been so since approximately September of 1970. This witness' testimony generally reviewed the infant defendant's case history from the point that the child had been committed to the State Department of Welfare and Institutions by the Juvenile and Domestic Relations Court for the County of Stafford in 1970 to the present date.

The witness stated that the infant defendant was sent to a foster home in Roanoke by the State Department of Welfare and Institutions; that the defendant had run away from the foster home in Roanoke and that he had been recovered in Ohio.

After the defendant's recovery in Ohio, the State Department of Welfare and Institutions released the defendant from State care and placed him under the supervision of the Stafford County Juvenile and Domestic Relations Court. At that point, approximately September of 1971, the defendant re-entered the Public Schools of the County of Stafford. The witness further stated that since his release from the State Department of Welfare and Institutions that he was directly responsible for the child's supervision and "aftercare". The above information, including information regarding the defendant's running away to Ohio, was based on the defendant's record of which Mr. Chaplin, as probation officer, is custodian.

The foregoing testimony of this witness was objected to, by Mr. Surovell, upon the grounds that it was not relevant to the instant Petition, much of it was hearsay, and that none of it was appropriate to entertain until after the Court determined whether the child was innocent or not innocent of the Petition in question. The objection was made in a timely fashion at the beginning of Mr. Chaplin's testimony reviewing the case history of the Defendant, and was renewed at least once during the testimony of Mr. Chaplin. The objection was overruled by the Court upon the grounds that the Court was entitled to know the child's history if it were to determine whether the child was in fact incorrigible.

Mr. Chaplin's testimony went on to reveal that as Probation Officer he had had one meeting with the school principal and the mother of the defendant in which the difficulties of the defendant were discussed. One meeting in particular involved the witness, the school psychologist, the minister of the father and the minister of the mother, the defendant's two sisters, and the parents of the defendant. At that meeting on November 22, 1971, the defendant promised to be good, but thereafter, according to the witness, the defendant continued to act up. Also, the parents of the defendant promised to seek counseling for their problems, which had adversely affected the defendant. The witness testified that the parents did not keep that promise.

The witness further testified that at a meeting in December of 1971, the defendant confessed to the witness that he would

prefer to be returned to the foster home in Roanoke rather than stay at his own home with his parents. At that time the witness advised the defendant that the foster home in Roanoke had been closed down. The defendant at that meeting once again promised to be good according to the testimony of Mr. Chaplin.

The Probation Officer also testified under direct examination that the defendant had been involved on two occasions with the operation of a motor vehicle in Stafford County without a driver's permit. Mr. Chaplin testified that this information came from the defendant's mother and that Mr. Chaplin, as Probation Officer, had gone out to look for the defendant on this occasion. Further, the Probation Officer testified that on one occasion the defendant had admitted that he had stolen some alcoholic beverages from the place of his employment and had become inebriated. Further, the Probation Officer testified that since he could not be with the probationer at each moment of the day, he needed the help and co-operation of the parents of the defendant.

The foregoing testimony was entertained over the strenuous objection of Mr. Surovell on the grounds that it was hearsay and not relevant to the Petition before the Court, nor was it proper to entertain such testimony until after a finding had been reached on the instant Petition. The Court overruled the objections for the grounds previously stated.

The Probation Officer further testified of his own personal knowledge on direct examination that the defendant was, at the present time, employed at an establishment called "Cobb's Restaurant", doing kitchen work.

Lastly, the Probation Officer testified that the defendant had also run away from home on several occasions. He testified that this information came from the mother of the defendant, and from the fact that he himself had gone looking for the child on one occasion. Mr. Surovell objected to the testimony relating to the run away incidents on the grounds that it was hearsay, irrelevant, and not proper unless directly related to the instant Petition. The objection was overruled upon the grounds previously stated.

Cross-Examination
by Mr. Surovell

The witness admitted that ten days of the twenty-seven days of absences were for school suspension, and the witness admitted that the additional ten days of absences were caused by the time the defendant was incarcerated in the Stafford County Jail on Order of the Judge of the Juvenile and Domestic Relations Court. The witness further admitted on cross-examination that the incidences of running away, driving without a permit, and being intoxicated, sometimes were not of his personal knowledge, but rather that this knowledge came from information of the mother of the defendant who was present in the Court.

The Commonwealth then called Kenneth Johnson, the school psychologist. The witness was sworn.

Testimony of: KENNETH JOHNSON

Direct-Examination
by Mr. Chichester

The witness testified that he had attended the November 22nd, 1971 meeting mentioned by Mr. Chaplin with the defendant and the defendant's parents, during which meeting he observed hostility between the parents as if two armed camps had been drawn up. In addition, he testified that he observed hostility between the daughters and their father. Mr. Johnson also testified that the defendant would be much better off in a highly structured environment since obviously the structured environment of the public school was not enough. Mr. Johnson was then asked by Judge Coleman if the defendant was mentally retarded. Mr. Johnson replied that the defendant was not mentally retarded. Judge Coleman then asked Mr. Johnson what he felt the specific trouble was in this particular case. Mr. Johnson replied that the boy manifested behavioral difficulties as a result of chronic family disturbances. This witness also testified to the fact that the defendant was having a good deal of disciplinary difficulties in school.

Cross-Examination
by Mr. Surovell

The witness admitted that some children, through no fault of their own, do not do well in school, and that this child was

one of them. He also stated that in his opinion the child would benefit from a highly structured environment and the structured environment of the public school was not enough.

Argument for the Commonwealth
by Mr. Chichester

Mr. Chichester argued that seventeen (17) referrals over a five months' period was a great number for school authorities to handle. If each child were as grave a disciplinary problem as the defendant, our school system would be in a state of chaos. He contended that it was clear from the evidence that the school authorities could not control the defendant.

He stated that it is clear from the defendant's background that his parents could not control the defendant, but were in fact a major part of his problem. He argued that the defendant's high number of absences from school, his tendancy to run away from home, and his petty crimes reflect a lack of structured environment at home that the defendant needs. He stated that it is clear from the evidence that sending the defendant back home or back to school had not worked in the past, and was not likely to work in the future.

Mr. Chichester also argued that Mr. Ken Johnson, the school psychologist, had put his finger on the problem. He

stated that Mr. Johnson had testified that the defendant needed a highly structured environment that would be provided if the defendant were placed in the custody of the State Department of Welfare and Institutions. He contended that this type of environment would not be provided by sending the defendant back home and back to school since it had not in the past and would not in the future. He also argued that the defendant needed strong guidance now or he would be in worse trouble later in his life.

Argument for the Defense
by Mr. Surovell

Mr. Surovell moved the Court to dismiss the Petition on various grounds.

Mr. Surovell argued that there had been no showing of incorrigibility, and thus, the Petition should be dismissed. In support thereof, Mr. Surovell argued that the provisions of Section 16.1-158 (1) (g) made it clear that incorrigibility for which a child might be held accountable was limited to incorrigibility toward a parent or other "lawful custodian". Further, Mr. Surovell argued that the school behavioral problems do not come within the meaning of the context of the particular section in question because school authorities are not "lawful custodians"; they merely stand in loco parentis during the period a child is in school. Further, the laws of the Commonwealth contemplate what remedies the school authorities have in order to discipline a child for behavioral problems

in school, and there is not included in those options commitment to the State Department of Welfare and Institutions unless the behavior happens to fall within the provisions of Section 16.1-158 (1) (g), (h) or (i).

Further, Mr. Surovell argued that the testimony of truancy could not be used to establish incorrigibility because truancy had not been charged.

Mr. Surovell suggested to the Court that the evidence which had been presented indicated that the child was having difficulty in school. The evidence further indicated that the child had been gainfully employed for a significant period of time and that short of his difficulties in school, he was not otherwise a problem to the community. Thus, counsel argued that it would be appropriate for the Court to recommend to the Stafford County School Board release of the child from his compulsory school attendance obligations pursuant to the provisions of Section 22.1-275.4:1, 1950 Code of Virginia, as amended.

It was further argued that the foregoing disposition was consonant with the child's best interests and a "local solution" consonant with the dictates and requirements of Section 16.1-178 (4) and Section 16.1-140, 1950 Code of Virginia, as amended. It was argued in connection with this recommended disposition that it was preferable to committing the child to the State Department of Welfare and Institutions which would very likely lead to placement in a State Correctional School

Institution where irreparable harm might occur to the child by association with older children who had committed various law violations including misdemeanors and felonies.

The Court's Ruling

The Honorable S. Bernard Coleman ruled verbally from the bench that it was an unhappy dilemma before him; however, in light of the fact that the defendant was already on probation and that he had committed various offenses in the community, including intoxication and driving without a permit, and that the school authorities could not handle the defendant because of his behavior, that he was going to commit him to the State Department of Welfare and Institutions.

STAFFORD COUNTY JUVENILE &
DOMESTIC RELATIONS COURT

NAME: Donald Ray Gilbert DOB: 11/11/56
ADDRESS: Rt. 2, Box 211-E CASE NO: 4646
Stafford, Virginia WORKER: Chaplin
DATE: Marsch 14, 1972

A D D E N D U M

PRESENT PROBLEM:

Donald Ray has been charged with being defiant, incorrigible, and beyond the control of the school authorities.

PREVIOUS PROBLEMS:

March 11, 1970 - Appeared before the Court on a charge of habits and practices detrimental to the health and welfare of himself and others (runaway). He was placed on probation.

May 6, 1970 - Appeared before the Court on a charge of violation of his probation to wit: ran away from home. He was committed to SDWI.

HOME AND ENVIRONMENT:

See previous reports.

INVESTIGATOR'S COMMENTS:

I began working with Donald Ray after his release from the foster home in which the State had placed him. (See correspondence in file between Roanoke Child Care Bureau and myself)

Prior to his release I had talked with Mr. & Mrs. Gilbert who had assured me he would be returning to a normalized family situation.

Unfortunately for Donald Ray, he did not return to a normalized family situation. Mr. Gilbert, whom this Court is well familiar with, did not change his attitude nor ways, and never had any intention of doing so.

It should be noted at this point that the younger Gilbert son, Jimmy, is presently with the State at Pincecrest Center and doing very well. There are no immediate plans to return Jimmy home contrary to what Mr. Gilbert believes. He has attempted to thwart

the efforts of the boy's caseworker and the superintendent of Pinecrest through Carol Minor and Otis Brown. He has been rebuffed. Mr. Gilbert thoroughly believes that Jimmy's fate hangs on whatever Donald Ray or the other children in the family do; and has repeatedly counseled his entire family not to let Chaplin know anything that goes on within or around the family. "We don't want to hurt Jimmy's chances of coming home" is a typical remark from Mr. Gilbert.

Donald Ray was in school a very short time before he began acting out. Followisng is a partial list of offenses for which he was called into the office:

10/15/71 - letter sent home to parents via Donald re:
a. 10/13 - smoking at school and copying papers, tresspassing on private property, sassed owner of property
10/22/71 - Caught copying classwork 2nd time. Detention Hall 4 days
10/27/71 - Whispering in Detention Hall - no action taken
11/1/71 - Would not bring book to class and disturbing classmates - sent out to get book and told to return to class. He did not return to class and was caught walking in the halls.
11/3/71 - Fighting and using harsh language in class. He followed the Merrill boy down the hall, into a classroom and punched him making Merrill cry. Detention Hall 2 days per week during month of November.
11/ 5/71 - Mr. Cimino, teacher, talked with Mrs. Gilbert and found out Donald had not turned over school's letters or reported any incidents to his parents.
11/17/71 - Fighting in lunch room and using objectionable language. Suspended from school for 3 days.
11/22/71 - Meeting with Mr. Carver, Mrs. Gilbert, Donald Ray, and myself.
12/2/71 - Insolence toward teacher. Detention Hall 2 days.
12/6/71 - Scuffle with Phillip Lavinos- Additional detention hall.
12/8/71 - Disrespect to teacher - suspended for one day.

Following is Donald's absentee report to date, all absences unexcused:

Oct. - 2 days	(1 and 14th)
Nov. - 5 days	(4,5,16, 29 and 30th)
Dec. - 2 days	(9 and 20th)
Jan. - 2 days	(19 and 25th)
Feb. - 5 days	(3,14,16,17,18th)

Total 16 days

Following id Donald's suspension record:

Nov. 18th - 3 days

Suspension record, cont'd.

Dec. 9th - 1 day
Feb. 25th - 10 days

Total 14 days

While Donald was cutting classes he was doing one thing or another. He ran away from home with Bruce Chittum, a high school boy. On another occassion he ran away with both Bruce and Tommy Chittum. He began smoking which Mr. Gilbert yielded to even though he does not approve. Nothing was done to Donald by Mr. Gilbert because he didn't want to upset the boy. His attitude toward his sisters was offensive to the point they wished he had never come home.

Through all of this I continued to try to work with Donald and his family. I agreed to his working and he obtained a job at Cobb's Restaurant. He now had money and wanted to spend it as he saw fit, and began frequenting a local pool hall.

In a further attempt to iron out the situation I agreed to a meeting with Donald Ray, his parents, his two older sisters, each of the parent's preachers, and I invited Ken Johnson, school psychologist. We met for four and a half (4½) hours. Donald, at first, did very little talking. As time went on and his sisters made accusations' against him he began to open up. He admitted he wanted to return to his foster home in Roanoke. We told him this was impossible since the home was closed. The upshot of the meeting was that Donald Ray would begin behaving himself, he would spend at least one to two hours per day at supervised study (he was flunking most of his courses), he would continue to hold his job, and would be counseled with the rest of the family by the two iminister s. Mr. Gilbert also agreed tp relax restrictions on his daughters, assume responsibility with his wife for Donald's discipline, and acc ept counseling.

Neither Mr. Gilbert nor Donald Ray lived up to any part of the agreement. Mr. Gilbert continued tp believe his wife had to accept sole responsibility for Donald's actions, he continues to this day to treat his 16 and 18 year old daughters like little girls of 8 and 10. Example: When Donald ran away in February Mr. Gilbert was annoyed and ordered the entire family to bed at 7:00 p.m. When the 18 year old questioned his order he became furious and ordered her to bed or else. No family counseling has been done because Mr. Gilbert, I feel, doesn't believe that his wife's minister is a true minister, nor a true Christian.

Donald Ray has continued to act out. He came home one night from' work in a drunken condition. He told his father a lie as to where he got it. He told me a different lie. He finally admitted to stealing beer from Cobb's. On another occassion he took the family car and drove about the County. He does not have a license. Mr. Gilbert did give him a spanking kfor this. Soon thereafter he cut school again with the Chittum boy and took his father's Volkswagon, which needed a brake job badly, and went joyriding in the County. He was successful in eluding the Sheriff's department. Upon his return to school he was talked to by myself and Mr. Carver, ass't principal. He was surly and uncooperative, and all he would say was "I want to go back to Roanoke".

Donald Ray ran away from home again, this time with Earl Shelton Huffman. He had run away with Earl in 1970 and came to Court. There have been no problems with Earl until Donald came back to Stafford. He looked for his father that evening and found him at church. Mr. Gilbert returned the Huffman boy to his parents and took Ray home. He was suspended from school for cutting school and the petition was initiated.

Mr. Gilbert believes all of these actions are the fault of the school and myself. He has made disparaging remarks about the ass't principal, the guidance counselor, and myself. He will not talk with Mr. Carver who is responsible for discipline. He has tried to circumvent me by going to Mr. Tignor. He belittles his wife and insists she needs to see a psychiatrist. In my opinion, as well as school officials, she has a great deal of common sense and a genuine desire to see her children raised properly. She can be reasoned with and will cooperate with the school and the Court. Mr. Gilbert is the opposite. He will pay you lipservice and do just the opposite. All of his children speak poorly of him but it will not convince the man he is doing wrong. When you ask him why it has been necessary for the State to take all of his sons, and can't he see the errors he is making, his reply is that it is Mrs. Gilbert's fault. His older daughter states to his face she has gone out and gotten herself pregnant at 16 just to escape him and the house and he still replies it is her mother's fault.

Since this Court action has been iniated, Mr. Gilbert has taken Donald Ray to a psychiatrist in Springfield, Dr. Karl Meuller, to try to help the boy. In my opinion as soon as the threat of court is over with, he will withdraw the boy. He paid a social call at my home to discuss buying Donald a horse because he thought this is waht Donald wanted and it would help to straighten him out. He has called me to chat in the evenings. These are all attempts to soften me up prior to going to trial. As the situation now stands, Donald will not survive in that home.

A.N. Chaplin

A. N. Chaplin
Chief Probation Officer

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JUVENILE AND DOMESTIC RELATIONS COURT
STAFFORD COUNTY
FIELD INVESTIGATION REPORT

NAME:	Donald Raymond Gilbert	FILE NO:	4646
DOB:	November 11, 1956 (age 13)	DATE:	3-9-70
ADDRESS:	Route 2, Box 211E Stafford, Virginia	WORKER:	PETERSON

I. REASON FOR REFERRAL TO COURT

Donald is presently in Court charged with having habits and practices that are detrimental to the health and welfare of himself and others.

This charge stemmed from the fact that Donald Gilbert and Earl Shelton ran away from home and stayed away overnight. Donald allegedly has been leading the Shelton boy into trouble and has allegedly threatened to kill police officers with a knife and steal an automobile on the next attempt to run away.

II. PREVIOUS COURT HISTORY

None

III. FAMILY

Mother - Mildred P. Gilbert, age 41. Mrs. Gilbert has a third grade education and has stated that she can barely read or write. At the present time, she is not employed, but stays at home to care for her five-year old daughter. She stated that she has been employed in the past at the Turwood Nursing Home in Annandale, Virginia as a nurses' aid. Mrs. Gilbert is a very cooperative person, but so slow to answer questions that she seems to have to concentrate very hard to make even the simplest response. This is her first marriage.

Father - David Earl Gilbert, Sr., age 49. Mr. Gilbert is employed as a maintenance man at the Sleepy Hollow Nursing Home in Springfield, Virginia. Mr. Gilbert was first married in 1946 but was soon divorced by his wife. Officials at

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the Dumfries Elementary School have stated to the previous probation officer that the reason for the divorce was the way Mr. Gilbert treated his wife. In 1948, Mr. Gilbert married his present wife, Mildred. Mr. Gilbert has a high school diploma and one year of college (although this is not verified).

Mr. Gilbert has appeared in this Court on 10-27-66 on a warrant charging him with being mentally incompetent and requesting committment to a State hospital. The petition was denied. Again on 6-4-69, Mr. Gilbert appeared in this Court charged with assault and battery on his son. This charge was dismissed. On 12-17-69, Mr. Gilbert was again in Court charged with assaulting and battering his children. He was found guilty and placed under a thirty-day suspended sentence.

Siblings - The Gilberts have twelve children, only eight of whom are now living at home. Charles Gilbert, age 21, lives and works as an electrician for the school board in Dumfries, Virginia. Betty Jean Dickson, age 20, is married and living in Stafford County with her husband. Ann Dickson, age 19, is married and living in Stafford County with her husband. David Gilbert, Jr., age 18, lives at home and works as a sheet rock hanger for a local contractor. Brenda Gilbert, age 15, attends Stafford Junior High School. Virginia Gilbert, age 14, attends Stafford Junior High School. Donald Gilbert, age 13, attends Stafford Elementary School. Hannah Gilbert, age 11, attends Stafford Elementary School. James Gilbert, age 10, has been committed to the State Department of Welfare and Institutions by this Court in 10-69. Nancy Gilbert, age 7, attends Stafford Elementary School. Mary Gilbert, age 6, attends Stafford Elementary School. Becky Gilbert, age 5, who now remains at home.

David Gilbert, Jr. appeared in this Court on 7-13-66 charged with the unauthorized use of an automobile. He was placed on probation. Again on 10-24-66, David was charged with running away from home and was committed to the State Department of Welfare and Institutions. He was sent to the Forrestry Camp at Natural Bridge, Virginia. On 10-27-67, David was released and placed in the home of his aunt in

Louisiana. He has since returned home.

Home - The Gilberts live in a large, wood frame house behind Stafford Elementary School. Mr. Gilbert owns the home and the land (although this is not verified). The five-bedroom home was sparsley furnished with worn furniture, but was very neat and clean. The yard is devoid of any grass and has a littered appearance with junk automobiles sitting on cinder blocks.

IV. SCHOOL

Donald is in the sixth grade at Stafford Elementary School. His last grading period, he stated that he received an F in math and English, D in science and reading, and a C in history. He made C's and D's in the fifth grade and failed the fourth grade. He tests below average in almost every subject on the standardized tests administered by the school. His IQ was tested at 86 in 1966. Past teachers' comments indicate that he has been defiant and often uncontrollable in the classroom. At Stafford Elementary School, he works in the cafeteria washing dishes.

V. HEALTH

Mrs. Gilbert stated that Donald was in good health and school records verify this. He was hospitalized at age 2 1/2 months due to pneumonia. He has been in the hospital on two other occasions for a severely cut head and a cut foot both received while playing.

VI. CHURCH

The family claims the Baptist faith but does not attend church. Mr. Gilbert, however, allegedly has bible reading sessions in the home.

VII. HOBBIES AND INTERESTS

Donald stated that he likes football and basketball. His favorite subject in school is history. He stated that he also liked motorcycles and wanted to be a motorcycle policeman in Washington, D. C.

Donald stated that he got along well at home and his mother verified this statement. Mrs. Gilbert Claims that Donald has never been a problem to them. He did run away about three years ago at the urging of his older brother, David, but both boys were picked up sleeping in the emergency room at the Mary Washington Hospital.

Respectfully submitted,

William Peterson
Probation Officer

WP: mm

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