

U. S. Department of Justice

(MATERIAL MUST NOT BE REMOVED FROM OR ADDED TO THIS FILE)

DO NOT DESTROY
FEDERAL BUREAU

of

INVESTIGATION

Bureau File Number

44-38861

DO NOT DESTROY
PRESERVE FOR SELECT
"COMMITTEE ON ASSINATION

See also Nos.

Main file

Sub A - Original 302

Sub B - Newspaper Clippings

Sub C - Informant Memos

FILE REVIEWED
FOR ORIGINAL
DECLASSIFICATIONALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 8-22-02 BY SPICKER

CLASSIFICATION

44-760

Volume Number

2

Serials

1A3 thru 1A4

Sub File
Exhibits Only

Have 4-5-68

B

STATE OF MISSOURI
CITY OF ST LOUIS

COCT 16
JAMES RAY

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI, PLAINTIFF

V.S. _____ DEFENDANT

CASE NO.

DEFENDANTS MOTION TO VACATE AND
SET ASIDE JUDGMENT AND SENTENCE
BECAUSE OF INVASION OF FEDERAL AND
STATE CONSTITUTIONAL RIGHTS UNDER
AUTHORITY OF RULE 27.26.

JURISDICTIONAL STATEMENT.

RULE 27.26 OF THE RULES OF CRIMINAL
PROCEDURE (1952) FOR THE COURTS OF
MISSOURI PROVIDE: A PRISONER IN
CUSTODY AND UNDER SENTENCE AND
CLAIMING A RIGHT TO BE RELEASED ON
THE GROUNDS THAT SUCH SENTENCE WAS
IMPOSED IN VIOLATION OF THE CONSTITUTION
AND LAWS OF THIS STATE OF THE UNITED STATES,

PG. 1

44-760-1A3①

OR THAT THE COURT IMPOSING SUCH SENTENCE WAS WITHOUT JURISDICTION TO DO SO MAY FILE A MOTION AT ANY TIME IN THE COURT WHICH IMPOSED SUCH SENTENCE TO VACATE, SET ASIDE, OR CORRECT THE SAME.

RULE 26.02 OF THE RULES OF CRIMINAL PROCEDURE (1952) FOR THE COURTS OF MISSOURI PROVIDE:

THESE RULES ARE DRAFTED AND PROMULGATED PURSUANT TO AUTHORITY GRANTED THE SUPREME COURT BY SECTIONS 5, ARTICLE 5 OF THE CONSTITUTION OF 1945 OF THE STATE OF MISSOURI AND ARE INTENDED TO PROVIDE FOR THE JUST DETERMINATION OF EVERY CRIMINAL PROCEEDING. THEY SHALL BE CONSIDERED TO SECURE SIMPLICITY AND UNIFORMITY, IN PROCEDURE, FAIRNESS IN ADMINISTRATION AND THE ELIMINATION OF UNJUSTIFIABLE EXPENSE AND DELAY.

MOXANT IS BY NECESSITY OF CIRCUMSTANCES PRESENTING THE FOLLOWING MOTION TO VACATE AND SET ASIDE JUDGMENT AND SENTENCE, ETC. PRO SE, FOR THE REASON THAT, THE FEDERAL COURTS HAVE TWICE, RULED ON HABEAS CORPUS HEREBY THAT THE STATE IN VIEW OF TOWNSEND V. SAIN, 372 U.S. 293, 83-557, 745. SHOULD HAVE A CHANCE TO CORRECT THEIR OWN ERROR IF THEIR IS ERROR.

TWO. SOME OF THE ISSUES RISED IN THIS MOTION WERE NOT RISED IN THE ORIGINAL MOTION

FOR A NEW TRIAL AND ON THE APPEAL TO
THE MISSOURI SUPREME COURT,

COMES NOW JAMES E. RAY, PRO SE, THE
DEFENDANT IN THE BEFORE CAPTIONED CAUSE,
ALLEGING A CAPITAL FELONY, TO MAKE
AND PRESENT HIS FORMAL WRITTEN
MOTION TO VACATE AND SET ASIDE
JUDGMENT AND SENTENCE BECAUSE OF
INVASION OF FEDERAL CONSTITUTIONAL
RIGHTS AND STATE LAWS FOR THE FOLLOWING
REASONS, TO WIT:

- I. BECAUSE, THE COURT USED A FAULTY
AND ILLEGAL METHOD IN REFERENCE
TO THE SIGN STATEMENT THAT WAS
INTRODUCED OVER PETITIONER'S TIMELY
OBJECTION IN VIOLATION OF THE
FOURTEEN AMENDMENT TO THE U.S. CONSTITUTION.
- II. BECAUSE, IN VIOLATION OF MOVANT'S FEDERAL
CONSTITUTIONAL RIGHTS UNDER THE
FOURTEEN AMENDMENT AND STATE STATUTES,
THE PETITIONER WAS NOT GIVEN A SANITY HEARING.
- III. BECAUSE, IN VIOLATION OF MOVANT'S
RIGHTS UNDER MISSOURI STATUTES, THE
COURT ISSUED FAULTY OR NO INSTRUCTIONS
TO THE JURY FOR THE SAID JURY TO
RULE ON CONCERNING MENTAL DURESS
OR COERCION. P. 13

IV. BECAUSE, PERJURY TESTIMONY WAS INTRODUCED IN MOVANT'S TRIAL IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

V. BECAUSE, THE MOVANT WAS WITHOUT THE ADVICE AND ASSISTANCE OF COUNSEL AT VARIOUS STAGES OF THE TRIAL AND APPEAL VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PRAYER

WHEREFORE, IN ALL OF THE FOREGOING PREMISES, AND FOR ALL THE FOREGOING REASONS, MOVANT PRAYS THAT THIS HONORABLE COURT SHALL NOTIFY THE CIRCUIT ATTORNEY OF THE CITY OF ST. LOUIS IN THE PREMISES HEREOF; SHALL THEN ASSIGN COMPETENT COUNSEL FOR THE PROSECUTION HEREOF ON BEHALF OF THE MOVANT.

RESPECTFULLY SUBMITTED BY
JAMES E. RAY PRO SE,
MOVANT-DEFENDANT.

P.G.H.

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
DIVISION NO.

STATE OF MISSOURI, PLAINTIFF
VS.
DEFENDANT

CAUSE NO.

SUGGESTIONS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS MOTION TO VACATE AND SET ASIDE
JUDGEMENT AND SENTENCE

POINT ONE

MOVANT'S MOST RESPECTFULLY INVITES THE
ATTENTION OF THE COURT TO THE FACT
THAT ITS DECISION STANDS UPON ITS FACE
IN CONFLICT WITH THE DECISIONS OF THE
SUPREME COURT OF THE UNITED STATES, IN
BLACKBURN V. ALABAMA, 361 U.S. 199, 208, 80
S. CT. 274, 280; AND BROWN V. MISSISSIPPI,
297 U.S. 278, 56 S. CT. 461, 80 L. ED. 682,
IN REGARDS TO THE PROCEDURAL RULE THAT
THE COURT APPLIED IN DETERMINING IF THE
STATEMENT WOULD BE SUBMITTED TO THE
JURY PAGE

JURY AS LAWFULL EVIDENCE, THE COURT APPLIED THE RULE THAT ALL THE EVIDENCE REGARDING THE STATEMENT MUST BE SUMITED AT THE HEARING ITSELF OUTSIDE THE PRESENCE OF THE JURY, ALL EVIDENCE INTRODUCED LATER IN THE TRIAL WOULD BE VOID.

THIS IS IN DIRECT CONFLICT WITH BLACKBURN V. ALABAMA, SUPRA, WHICH HOLDS; ... SINCE CHAMBERS V. FLORIDA, 309 U.S. 227, 60 S. CT. 472, 80 L. ED. 716, THIS COURT HAS RECOGNISED THAT COERCION CAN BE MENTAL AS WELL AS PHYSICAL, A PROLONGED INTERROGATION OF AN ACCUSED WHO IS IGNORANT OF HIS RIGHTS AND WHO HAS BEEN CUT OFF FROM THE MORAL SUPPORT OF FRIENDS AND RELATIVES IS NOT INFREQUENTLY AN EFFECTIVE TECHNIQUE OF TERROR. THUS THE RANGE OF INQUIRY IN THIS TYPE OF CASE MUST BE BROAD, AND THIS COURT HAS INSISTED THAT THE JUDGMENT IN EACH CASE BE BASED ON A CONSIDERATION OF THE TOTALITY OF THE

RENDER D THE CONVICTION AND SENTENCE WHOLLY VOID. WE ARE NOT CONCERNED WITH A MERE QUESTION OF STATE PRACTICE, OR WHETHER COUNSEL ASSIGNED TO PETITIONERS WERE COMPETENT OR MISTAKENLY ASSUMED THAT THEIR FIRST OBJECTIONS WERE SUFFICIENT. JUST AS IN BROWN, THE EVIDENCE HERE CLEARLY ESTABLISHES THAT THE CONFESSION MOST PROBABLY WAS NOT THE PRODUCT OF ANY MEANINGFUL ACT OF VOLITION;..... UNDER THIS STATE PROCEDURAL RULE THE FOLLOWING EVIDENCE WAS NOT TAKEN INTO CONSIDERATION BY THE TRIAL COURT, SINCE IT WAS BROUGHT OUT AFTER THE AFORE MENTION HEARING.

1. THAT THE STATEMENT WAS NOT GIVEN UNTIL ABOUT 28 HOURS AFTER HIS ARREST, IN VIOLATION OF RULE 21.14
2. HE WAS SUFFERING FROM A HEAD WOUND THAT REQUIRED SIX STICHES TO CLOSE.
3. HE HAD BEE QUESTIONED INTERMITTENTLY DAY AND NIGHT IN PAIN AND LACK OF FOOD. HE SPENT CONSIDERABLE TIME IN SHOW UPS.
4. HE WAS NOT BROUGHT BEFORE A MAGISTRATE UNTIL NINE DAYS AFTER ARREST, IN VIOLATION OF RULE 21.11
5. THE SIGNING OF THE STATEMENT WAS MADE IN THE PRESENCE OF MR. KOSTER "WHO LATER PROSCOTED THE CASE"

PP. 2.

WHO BRING A LAWYER MOST OF BEEN
AWARE OF RULES 21.14 AND 21.11,
FINALLY THIS CASE IS NOT UNLIKE
RECK & PATE, 81 S. CT. 1541 AT PGS. 1542:

"HE HAD BEEN QUESTIONED INTERMITTENTLY,
AS MUCH AS SIX HOURS AT A TIME SOMETIMES
BY SEVERAL OFFICERS, HE HAD BEEN
INTERROGATED A TOTAL OF SOME TWENTY
HOURS. . . . HE ALSO SPENT CONSIDERABLE
TIME ON PUBLIC DISPLAY IN "SHOWUPS" . . .
IN ADDITION RECK WAS WEAKENED BY
ILLNESS, PAIN AND LACK OF FOOD. . . .
FINALLY UNLIKE TURNER, RECK MUST BE
REGARDED AS CASE OF AT LEAST
BORDERLINE MENTAL RETARDATION. . . .
AT THIS POINT PETITIONER WOULD
RESPECTFULLY SUGGEST THAT THE BURDEN OF
PROVING A PURPORTED CONFESSION IS
VOLUNTARILY MADE, RESTS ENTIRELY UPON
THE STATE. HOWEVER THE RULE MOST
FLAGRANTLY IGNORED IN THIS CASE
BY THE COURTS OF MISSOURI, IS THAT WHICH

FURTHER IN REGARDS TO STATE
PROCEDURE THE UNITED STATES
SUPREME COURT IN ROGERS V. RICHMOND,
365 U.S. 534 (1961) RULED THAT
SINCE THE STATE COURT HAD APPLIED
AN ERRONEOUS STANDARD TO JUDGE
THE ADMISSIBILITY OF A CONFESSION,
THE DEFENDANT SHOULD HAVE THE
OPPORTUNITY TO HAVE ALL ISSUES
WHICH MAY BE DETERMINATIVE OF
HIS GUILT TRIED BY A STATE JUDGE
OR A STATE JURY UNDER APPROPRIATE
STATE PROCEDURES WHICH CONFORM
TO THE REQUIREMENTS OF THE
FOURTEENTH AMENDMENT."
AT 547-548.

POINT 2. ON THE QUESTION OF A SANITY HEARING
AS WAS REQUESTED BY MOVANT'S LAWYER,
DURING THE TRIAL AND IN MOTION FOR A NEW TRIAL,
MISSOURI STATE, § 52.010 STATES- DEFINITION
OF MENTAL DISEASE OR DEFECT THE TERM
MENTAL DISEASE OR DEFECT INCLUDE CONGENITAL
AND TRAUMATIC MENTAL CONDITIONS AS WELL
AS DISEASE.

§ 52.020- WHEN EVER THERE IS
REASONABLE CAUSE TO BELIEVE THAT THE
ACCUSED HAS A MENTAL DISEASE OR DEFECT
EXCLUDING FITNESS TO PROCEED, THE COURT,
SHALL APPOINT ONE OR MORE PHYSICIANS
TO EXAMINE THE ACCUSED AND REPORT
UPON THE MATTER THE ORDER SHALL
SPECIFY THE TIME, PLACE, AND CONDITIONS
UNDER WHICH THE EXAMINATION
SHALL BE CONDUCTED, AND MAY
INCLUDE PROVISIONS FOR THE INTERVIEW OF
WITNESSES OR OTHER PHYSICIANS AND FOR
A COMMITMENT OF THE ACCUSED TO A HOSPITAL
OR OTHER SUITABLE FACILITY FOR SUCH TIME
AND UNDER SUCH CONDITIONS AS THE COURT
DEEMS NECESSARY FOR THE PURPOSE.

TURNING TO THE FEDERAL VIEW AS
INTERPRETED IN PATSY ROBINSON- 382 U.S. 875
(1965). MR. JUSTICE CLARK DELIVERED THE 7703.
~~MAJORITY~~ MAJORITY OPINION STATED, IN 1959
PRESIDENT ROBINSON WAS CONVICTED OF THE
MURDER OF HIS CON- LAW WIFE,

... BEING AN INDIGENT WHO WAS DEFENDED
BY COURT APPOINTED COUNSEL, ... HIS COUNSEL
CLAIMED THAT HE WAS INSANE AT THE TIME OF
THE SHOOTING AND RAISED THE ISSUE OF
HIS INCOMPETENCE TO STAND TRIAL. ...
... (IN THE INSTANT CASE ALSO COUNSEL FOR
THE DEFENDANT SAID IN HIS MOTION FOR A
NEW TRIAL MOTION NO. 15- QUOTE: "COUNSEL
FOR DEFENDANT DISCOVERED AND CALLED
TO THE COURT'S ATTENTION DURING THE TRIAL,
THAT DEFENDANT, BY HIS ACTIONS, GAVE EVERY
INDICATION OF BEING INSANE AND NOT
RESPONSIBLE FOR HIS ACTIONS. A MIS-TRIAL
SHOULD HAVE BEEN DECLARED AND A
PSYCHIATRIC EXAMINATION SHOULD HAVE
BEEN ORDERED FOR DEFENDANT, TO
DETERMINE THE ISSUE OF HIS SANITY. (UNQUOTE).
++++ WE GRANTED CERTIORARI TO RESOLVE
THE DIFFICULT QUESTIONS OF STATE-
FEDERAL RELATIONS POSED BY THESE
HOLDINGS. 382 U.S. 890 (1965) WE HAVE
CONCLUDED THAT ROBINSON WAS
CONSTITUTIONALLY ENTITLED TO A HEARING
ON THE ISSUE OF HIS COMPETENCE. ...
... THE STATE CONCEDES THAT THE CONVICTION
OF AN ACCUSED PERSON WHILE HE IS LEGALLY
INCOMPETENT VIOLATES DUE PROCESS,
BISHOP v. UNITED STATES, 383 U.S. 961 (1966),
AND THAT STATE PROCEDURES MUST BE
ADEQUATE TO PROTECT THIS RIGHT. ... PL 12

JUSTICE HARLAN JOINED BY JUSTICE BLACK REASONED THAT SINCE ROBINSON'S COUNSEL COMPLETED THAT ROBINSON WAS INSANE AT THE TIME OF THE CRIME BUT NOT AT THE TRIAL THE CONVICTION SHOULD STAND. JUSTICE HARLAN SAID, "... THE CONCLUSIVE FACTOR IS THAT ROBINSON'S COUNSEL, LAWYERS, THE TWO MEN WHO APPARENTLY HAD THE CLOSEST CONTACT WITH THE DEFENDANT DURING THE PROCEEDING, NEVER SUGGESTED HE WAS INCOMPETENT TO STAND TRIAL AND NEVER MOVED TO HAVE HIM EXAMINED ON INCOMPETENCY GROUNDS DURING TRIAL; THIS WAS NOT SO DURING THE TRIAL IN THE INSTANT CASE.

ON,
POINT 3

ON EXAMINATION OF THE INSTRUCTIONS THAT WERE GIVEN IN THIS CASE, THERE WAS NO INSTRUCTION GIVEN IN RELATION TO THE SIGNED STATEMENT WHICH IS A REVERSEABLE ERROW ACCORDING TO THE MISSOURI SUPREME COURT IN THE TWO BELOW LISTED CASES.

1. THE MISSOURI SUPREME COURT STATED, INSTRUCTIONS ARE GIVEN FOR THE PURPOSE OF HYPOTHESIZ THE BASIC FACTUAL ISSUES FOR THE JURY. IN OUR VIEW THIS OMISSION WAS NOT CURED BY ADDING THE GENERALITY THAT "YOU HAVE A RIGHT TO CONSIDER ALL THE CIRCUMSTANCES" AS WAS DONE HERE. STATE V. GOACHER. 376 S. W. 2d. 97 PAGE 105.

2. IN STATE V. WILLIAMS, BANC, MO, 369 S.W. 2d. 408, A MOST RECENT CASE, THE JUDGMENT WAS REVERSED SOLELY BECAUSE OF THE OMISSION OF ALL REFERENCE TO THE ISSUES OF MENTAL DURESS AND COERCION IN A VERY SIMILAR INSTRUCTION, AND IN A CASE WHERE THAT WAS A BASIC ISSUE. THERE ALSO THE INSTRUCTION REFERRED TO "HOPE OF LENIENCY OR REWARD" AND IT INCLUDED THE PHRASE "WITHOUT . . . ANY

FOOT 4

THREAT OR DOING ANY VIOLENCE!"
THE PRESENT INSTRUCTION DOES NOT
REFER TO THREATS. THE COURT SAID ~~THE~~ THERE
369 S.W.2D LOC. CIT 420: WHILE, AS STATED,
THE EVIDENCE ON SOME OF THESE
MATTERS WAS CONFLICTING, THE ISSUE
WAS FOR THE JURY AND THE ISSUE OF
MENTAL DURESS AND COERCION HAD TO
BE DECIDED IN ORDER TO DETERMINE WHETHER
THE CONFESSION WERE OR WERE NOT
VOLUNTARILY GIVEN. NO SUCH ISSUE WAS
PRESENTED TO THE JURY BY INSTRUCTION 7
OR ANY OTHER INSTRUCTION. IN OMITTING
TO PRESENT THE ISSUE OF MENTAL DURESS
AND COERCION FOR DETERMINATION BY THE
JURY, THE INSTRUCTION WAS CLEARLY
ERRONEOUS AND SHOULD NOT HAVE BEEN
GIVEN. WE FIND NO MERIT IN THE OTHER
CONTENTIONS."

ON
PAGE 4

SINCE THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN MOONEY V. HOLLOMAN 294 U.S. 103, AND IN PYLE V. KANSAS, 317 U.S. 213, AND ALBERTA V. TEXAS, 355 U.S. 28, IT IS WELL ESTABLISHED THAT A CONVICTION OBTAINED BY USE OF FALSE TESTIMONY BY REPRESENTATIVES OF THE STATE MUST FALL UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

IN NAPOE V. ILLINOIS, NO. 583- OCTOBER TERM-1958, IN A DECISION RENDERED ON JUNE 15, 1959, THE SUPREME COURT OF THE UNITED STATES HELD:

THE PRINCIPLE THAT A STATE MAY KNOWINGLY USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINTED CONVICTION IN ANY CONCEIPT OF ORDERED LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS. THE JURY'S ESTIMATE OF THE TRUTHFULNESS AND RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINATIVE OF GUILT OR INNOCENCE, AND IT IS UPON SUCH SUBTLE FACTORS AS THE POSSIBLE INTEREST OF THE WITNESS IN TESTIFYING FALSELY THAT A DEFENDANT'S LIFE OR LIBERTY MAY DEPEND.

82.16

IT IS ESTABLISHED BY THE RECORD THAT WHEN THE PETITIONER SOUGHT TO ESTABLISH THE FACT THAT WHEN HE WAS RECEIVED AT THE MUNICIPAL JAIL HE WAS STILL SUFFERING FROM THE EFFECTS OF POLICE BRUTALITY WHICH LED TO HIS "SIGNING OF THE CONFESSION" THE COURT ALLOWED THE JAIL WARDEN TO TESTIFY IN PLACE OF THE RESIDENT PHYSICIAN REGARDING THE RESULTS OF SEVERAL TESTS THAT THE DOCTOR HAD RUN. THE TESTIMONY OF THE JAIL WARDEN (MR. BOEGER) TO THE EFFECT THAT HIS MEDICAL RECORDS SHOWED THAT THE PETITIONER HAD ONLY BEEN DIAGNOSED AS HAVING, AND HAD ONLY BEEN TREATED FOR A VENEREAL DISEASE AS A RESULT OF HIS EXAMINATION BY THE JAIL PHYSICIAN, WHICH TESTIMONY, SO GIVEN BY AN AGENT OF THE STATE AND SO RECEIVED BY THE COURT AND SO GIVEN BY THE COURT TO THE JURY, AT THE SOLICITATION OF THE STATE, WAS FALSE WHEN GIVEN, AND WAS KNOWN TO BE FALSE WHEN GIVEN, BY THE AGENTS OF THE STATE. PETITIONER URGES THAT THE TESTIMONY OF WARDEN BOEGER (TR. 190, 191) WAS HEARSAY IN THAT HE WAS NOT A QUALIFIED MEDICAL EXPERT, BUT THAT IN THE PRESENT CASE, HE WAS PERMITTED TO TESTIFY AS ONE. THE TESTIMONY OFFERED BY WARDEN BOEGER,

2317

WHO WAS QUESTIONED BY A. R. KOSTER (THE
ASST. CIRCUIT ATTORNEY)

Q: WELL, READ WHAT IS ON THE CARD
WILL YOU?

A: I MAY SAY AT THE VERY OUTSET, TO KEEP
YOUR RECORD STRAIGHT, THAT THE BOY
WAS RECEIVED AT THE INSTITUTION ON
OCTOBER 19TH, AND THE FOLLOWING DAY
WAS HIS FIRST VISIT TO OUR DOCTOR, WHICH
WAS ON THE 20TH, - IT IS MARKED HERE
WITH THE STAMP, OCTOBER 20TH, 1959;
EXAMINATION NEGATIVE, AND IT IS SIGNED
RIGHT ALONGSIDE THAT BY DR. S'DOWD, THAT
IS THE FIRST TIME TO THE DOCTOR. NEXT
~~IT IS THE FIRST TIME THE DOCTOR ON NOVEMBER~~
~~STATED THE FIRST STAMPED BUT NOT IN~~
~~VERY SMALL LETTERS, THAT MEANS CLINIC~~
~~CASE. Q: PARDON ME? A: THAT IS A CLINICAL~~
~~CASE. Q: VENEREAL DISEASE? A: VENEREAL CLINIC~~
~~Q: IS THAT?~~

WITNESS HIMSELF, BUT RESTS FOR IT
CREDIBILITY UPON THE COMPETENCY AND
VERACITY OF ANOTHER; RECOGNISING THAT
SUCH TESTIMONY IS, EXCEPT IN CERTAIN
WELL DEFINED CASES, HELD TO BE
III INCOMPETENT TO ESTABLISH ANY
SPECIFIC FACT IN ITS NATURE SUSCEPTIBLE
OF BEING PROVED BY WITNESSES WHO
SPEAK FROM THEIR OWN KNOWLEDGE.

ON POINT 5.5.
THAT MOUNT WAS WITHOUT THE
ASSISTANCE OF COUNSEL IN A CRIMINAL
OFFENCE FOR THE FOLLOWING PROCEEDING
ARRAIGNMENT, PRELIMINARY HEARING, AND
HIS APPEAL TO THE MISSOURI COURT
WHILE THE UNITED STATES SUP. CT HAS
NOT RULED ON WHETHER ^{THE} DEFENDANT MUST
HAVE COUNSEL AT ALL STAGES OF COURT
APPEARANCES IT HAS HELD IN POINTER —
V. TEXAS, 399 U.S. 815.

"IN ALL CRIMINAL PROSECUTIONS, THE
ACCUSED SHALL ENJOY THE RIGHT... TO BE
CONFRONTED WITH THE WITNESSES AGAINST HIM... AND
TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

IT IS SUGGESTED THAT ON 2 AND DEPENDANT
UPON, THE SUBMISSION OF THE ISSUES HERE
PROPOSED TO BE RAISED HAS BEEN ADJUDICATE,
AND UNLESS SUCH ADJUDICATION BE
FAVORABLE TO MOVANT, THESE ISSUES AND
THE RECORD OF THE ADJUDICATION THEREON
ARE ESSENTIAL TO THE SUBMISSION OF A
PROPER RECORD FOR APPEAL, IF THERE IS
TO BE AN ADEQUATE APPELLATE
REVIEW WITHIN THE MEANING AND THE
SPIRIT OF THE AUTHORITIES HEREIN
CITED. THE RULE THAT CONSTITUTIONAL
QUESTIONS SHALL BE RAISED AS EARLY
IN THE PROCEEDING AS IS PROPER, AND
THE RULE THAT WHAT IS NOT BRIEFED
ON AN APPEAL IS DEEMED TO BE WAIVED,
SHALL EFFECTIVELY OPERATE TO
FORECLOSE MOVANT'S RIGHTS ON THE
APPEAL HEREIN, UNLESS THIS HONORABLE
COURT ABIDES BY ITS OBLIGATION TO
"ENFORCE THE CONSTITUTION OF THE
UNITED STATES." (SMITH V. O'GRADY
312, U.S. 329 334, 61 S Ct 572, 574,
85 L. ED. 857.)

AN MOVANT RESPECTFULLY URGES ALL
THESE THINGS.

RESPECTFULLY SUBMITTED BY:
NOTORIZED BY:

JAMES RAY Pg. 20

LAST
PAGE

6-8-66
~~12-1-66~~
~~6-8-66~~

June 6-66
James Ray
1817 PARK AVE.
ST. LOUIS, MO.

Dear Sir,

I lost my visiting pass to
see my Brother. I appreciate
it if you had the reason.

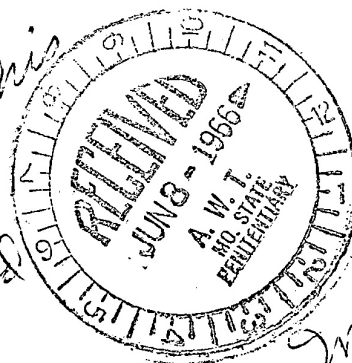
Yours Truly
James Ray

My Brother's name + No. is:

James Ray
00416J

~~On list~~

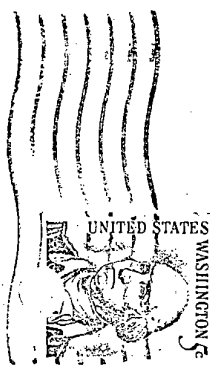
6-8-66
(R) Pass Mail this
date. Notation
made on card



To: Inmate's
File

44-760-1A30

ASSOCIATE ATTORNEY
ALLIANCE WH. 74
BOX 900
JEFFERSON CITY, MO.



JOHN ROY
1819 PARK AVE.
SILVER SPRING, MD.

30-7-26-68
Long Long -ms?
44-160

STATE OF MISSOURI
CITY OF ST LOUIS

COCT 16
JAMES RAY

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI, PLAINTIFF

V.S. _____ DEFENDANT CASE NO.

DEFENDANTS MOTION TO VACATE AND
SET ASIDE JUDGMENT AND SENTENCE
BECAUSE OF INVASION OF FEDERAL AND
STATE CONSTITUTIONAL RIGHTS UNDER
AUTHORITY OF RULE 27.26.

JURISDICTIONAL STATEMENT.

RULE 27.26 OF THE RULES OF CRIMINAL
PROCEDURE (1952) FOR THE COURTS OF
MISSOURI PROVIDE: A PRISONER IN
CUSTODY AND UNDER SENTENCE AND
CLAIMING A RIGHT TO BE RELEASED ON
THE GROUNDS THAT SUCH SENTENCE WAS
IMPOSED IN VIOLATION OF THE CONSTITUTION
AND LAWS OF THIS STATE OF THE UNITED STATES,

OR THAT THE COURT IMPOSING SUCH SENTENCE WAS WITHOUT JURISDICTION TO DO SO MAY FILE A MOTION AT ANY TIME IN THE COURT WHICH IMPOSED SUCH SENTENCE TO VACATE, SET ASIDE, OR CORRECT THE SAME.

RULE 26.02 OF THE RULES OF CRIMINAL PROCEDURE (1952) FOR THE COURTS OF MISSOURI PROVIDE:

THESE RULES ARE DRAFTED AND PROMULGATED PURSUANT TO AUTHORITY GRANTED THE SUPREME COURT BY SECTION 5, ARTICLE 5 OF THE CONSTITUTION OF 1945 OF THE STATE OF MISSOURI AND ARE INTENDED TO PROVIDE FOR THE JUST DETERMINATION OF EVERY CRIMINAL PROCEEDING. THEY SHALL BE CONSIDERED TO SECURE SIMPLICITY AND UNIFORMITY, IN PROCEDURE, FAIRNESS IN ADMINISTRATION AND THE ELIMINATION OF UNJUSTIFIABLE EXPENSE AND DELAY.

MOXANT IS BY NECESSITY OF CIRCUMSTANCES PRESENTING THE FOLLOWING MOTION TO VACATE AND SET ASIDE JUDGMENT AND SENTENCE, ETC. PRO SE, FOR THE REASON THAT, THE FEDERAL COURTS HAVE TWICE, RULED ON HABEAS CORPUS HEREING THAT THE STATE IN VIEW OF TOWNSEND V. SAIN, 372 U.S. 293, 83-507, 745, SHOULD HAVE A CHANCE TO CORRECT THEIR OWN ERROR IF THEIR IS ERROR.

TWO. SOME OF THE ISSUES RISED IN THIS MOTION WERE NOT RISED IN THE ORIGINAL MOTION

FOR A NEW TRIAL AND ON THE APPEAL TO
THE MISSOURI SUPREME COURT,

COMES NOW JAMES E. RAY, PRO SE, THE
DEFENDANT IN THE BEFORE CAPTIONED CAUSE,
ALLEGING A CAPITAL FELONY, TO MAKE
AND PRESENT HIS FORMAL WRITTEN
MOTION TO VACATE AND SET ASIDE
JUDGMENT AND SENTENCE BECAUSE OF
INVASION OF FEDERAL CONSTITUTIONAL
RIGHTS AND STATE LAWS FOR THE FOLLOWING
REASONS, TO WIT:

- I. BECAUSE, THE COURT USED A FAULTY
AND ILLEGAL METHOD IN REFERENCE
TO THE SIGN STATEMENT THAT WAS
INTRODUCED OVER PETITIONER'S TIMELY
OBJECTION IN VIOLATION OF THE
FOURTEEN AMENDMENT TO THE U.S. CONSTITUTION
- II BECAUSE, IN VIOLATION OF MOVANT'S FEDERAL
CONSTITUTIONAL RIGHTS UNDER THE
FOURTEEN AMENDMENT AND STATE STATUTES
THE PETITIONER WAS NOT GIVEN A SANITY HEARING
- III BECAUSE, IN VIOLATION OF MOVANT'S
RIGHTS UNDER MISSOURI STATUTES, THE
COURT ISSUED FAULTY OR NO INSTRUCTIONS
TO THE JURY FOR THE SAID JURY TO
RULE ON CONCERNING MENTAL DURESS
OR COERCION. P613

IV. BECAUSE, PERJURY TESTIMONY WAS INTRODUCED IN MOVANT'S TRIAL IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

V. BECAUSE, THE MOVANT WAS WITHOUT THE ADVICE AND ASSISTANCE OF COUNSEL AT VARIOUS STAGES OF HIS TRIAL AND APPEAL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PRAYER

WHEREFORE, IN ALL OF THE FOREGOING PREMISES, AND FOR ALL THE FOREGOING REASONS, MOVANT PRAYS THAT THIS HONORABLE COURT SHALL NOTIFY THE CIRCUIT ATTORNEY OF THE CITY OF ST. LOUIS IN THE PREMISES HEREOF; SHALL THEN ASSIGN COMPETENT COUNSEL FOR THE PROSECUTION HEREOF ON BEHALF OF THE MOVANT.

RESPECTFULLY SUBMITTED BY
JAMES E. RAY PRO SE,
MOVANT-DEFENDANT.

P.G.H.

STATE OF MISSOURI }
CITY OF ST. LOUIS } SS

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
DIVISION NO.

STATE OF MISSOURI, PLAINTIFF
VS. CAUSE NO.
DEFENDANT

SUGGESTIONS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS MOTION TO VACATE AND SET ASIDE
JUDGEMENT AND SENTENCE

POINT ONE

MOVANT'S MOST RESPECTFULLY INVITES THE
ATTENTION OF THE COURT TO THE FACT
THAT ITS DECISION STANDS UPON ITS FACE
IN CONFLICT WITH THE DECISIONS OF THE
SUPREME COURT OF THE UNITED STATES, IN
BLACKBURN V. ALABAMA, 361 U.S. 199, 208, 80
S. CT. 274, 280; AND BROWN V. MISSISSIPPI,
297 U.S. 278, 56 S. CT. 461, 80 L. ED. 682,
IN REGARDS TO THE PROCEDURAL RULE THAT
THE COURT APPLIED IN DETERMINING IF THE
STATEMENT WOULD BE SUBMITTED TO THE

50 PR 5

JURY AS LAWFUL EVIDENCE. THE COURT APPLIED THE RULE THAT ALL THE EVIDENCE REGARDING THE STATEMENT MUST BE SUMITED AT THE HEARING ITSELF OUTSIDE THE PRESENCE OF THE JURY, ALL EVIDENCE INTRODUCED LATER IN THE TRIAL WOULD BE VOID.

THIS IS IN DIRECT CONFLICT WITH BLACKBURN V. ALABAMA, SUPRA, WHICH HOLDS; ...SINCE CHAMBERS V. FLORIDA, 309 U.S. 227, 60 S. CT. 472, 80 L. ED. 716, THIS COURT HAS RECOGNISED THAT COERCION CAN BE MENTAL AS WELL AS PHYSICAL, A PROLONGED INTERROGATION OF AN ACCUSED WHO IS IGNORANT OF HIS RIGHTS AND WHO HAS BEEN CUT OFF FROM THE MORAL SUPPORT OF FRIENDS AND RELATIVES IS NOT INFREQUENTLY AN EFFECTIVE TECHNIQUE OF TERROR. THUS THE RANGE OF INQUIRY IN THIS TYPE OF CASE MUST BE BROAD, AND THIS COURT HAS INSISTED THAT THE JUDGMENT IN EACH CASE BE BASED ON A CONSIDERATION OF THE TOTALITY OF THE

RENDER D THE CONVICTION AND SENTENCE WHOLLY VOID. ... WE ARE NOT CONCERNED WITH A MERE QUESTION OF STATE PRACTICE, OR WHETHER CONSUAL ASSIGNED TO PETITIONERS WERE COMPETENT OR MISTAKENLY ASSUMED THAT THEIR FIRST OBJECTIONS WERE SUFFICIENT. JUST AS IN BROWN, THE EVIDENCE HERE CLEARLY ESTABLISHES THAT THE CONFESSION MOST PROBABLY WAS NOT THE PRODUCT OF ANY MEANINGFUL ACT OF VOLITION; ...

UNDER THIS STATE PROCEDURAL RULE THE FOLLOWING EVIDENCE WAS NOT TAKEN INTO CONSIDERATION BY THE TRIAL COURT, SINCE IT WAS BROUGHT OUT AFTER THE AFORE MENTION HEARING.

1. THAT THE STATEMENT WAS NOT GIVEN UNTIL ABOUT 28 HOURS AFTER HIS ARREST, IN VIOLATION OF RULE 21.14
2. HE WAS SUFFERING FROM A HEAD WOUND THAT REQUIRED SIX STICHES TO CLOSE.
3. HE HAD BEE QUESTIONED INTERMITTENTLY DAY AND NIGHT IN PAIN AND LACK OF FOOD. HE SPENT CONSIDERABLE TIME IN SHOW UPS.
4. HE WAS NOT BROUGHT BEFORE A MAGISTRATE UNTIL NINE DAYS AFTER ARREST, IN VIOLATION OF RULE 21.11
5. THE SIGNING OF THE STATEMENT WAS MADE IN THE PRESENCE OF MR. KOSTER "WHO LATER PROSCOTED THE CASE"

P. 8.

WHO BRING A LAWYER MOST OF BEEN
AWARE OF RULES 21.14 AND 21.11,
FINALLY THIS CASE IS NOT UNLIKE
RECK V. PATE, 81 S. CT. 1541 AT PGS. 1541.

"HE HAD BEEN QUESTIONED INTERMITTENTLY,
AS MUCH AS SIX HOURS AT A TIME SOMETIMES
BY SEVERAL OFFICERS, HE HAD BEEN
INTERROGATED A TOTAL OF SOME TWENTY
HOURS. . . . HE ALSO SPENT CONSIDERABLE
TIME ON PUBLIC DISPLAY IN "SHOWUPS" . . .
IN ADDITION RECK WAS WEAKENED BY
ILLNESS, PAIN AND LACK OF FOOD. . . .
FINALLY UNLIKE TURNER, RECK MUST BE
REGARDED AS CASE OF AT LEAST
BORDERLINE MENTAL RETARDATION. . . .
AT THIS POINT PETITIONER WOULD
RESPECTFULLY SUGGEST THAT THE BURDEN OF
PROVING A PURPORTED CONFESSION IS
VOLUNTARILY MADE, RESTS ENTIRELY UPON
THE STATE. HOWEVER THE RULE MOST
FLAGRANTLY IGNORED IN THIS CASE
BY THE COURTS OF MISSOURI, IS THAT WHICH

FURTHER IN REGARDS TO STATE
PROCEDURE THE UNITED STATES
SUPREME COURT IN ROGERS V. RICHMOND,
365 U.S. 534 (1961) ... RULED THAT
SINCE THE STATE COURT HAD APPLIED
AN ERRONEOUS STANDARD TO JUDGE
THE ADMISSIBILITY OF A CONFESSION,
THE "DEFENDANT SHOULD HAVE THE
OPPORTUNITY TO HAVE ALL ISSUES
WHICH MAY BE DETERMINATIVE OF
HIS GUILT TRIED BY A STATE JUDGE
OR A STATE JURY UNDER APPROPRIATE
STATE PROCEDURES WHICH CONFORM
TO THE REQUIREMENTS OF THE
FOURTEENTH AMENDMENT."
AT 547-548.

POINT 2. ON THE QUESTION OF A SANITY HEARING
AS WAS REQUESTED BY MOVANT'S LAWYER,
DURING THE TRIAL AND IN MOTION FOR A NEW TRIAL,
MISSOURI STATE, § 52.010 STATES: DEFINITION
OF MENTAL DISEASE OR DEFECT THE TERMS
MENTAL DISEASE OR DEFECT INCLUDE CONGENITAL
AND TRAUMATIC MENTAL CONDITIONS AS WELL
AS DISEASE.

§ 52.020- WHENEVER THERE IS
REASONABLE CAUSE TO BELIEVE THAT THE
ACCUSED HAS A MENTAL DISEASE OR DEFECT
EXCLUDING FITNESS TO PROCEED, THE COURT,
SHALL APPOINT ONE OR MORE PHYSICIANS
TO EXAMINE THE ACCUSED AND REPORT
UPON THE MATTER. THE ORDER SHALL
SPECIFY THE TIME, PLACE, AND CONDITIONS
UNDER WHICH THE EXAMINATION
SHALL BE CONDUCTED, AND MAY
INCLUDE PROVISIONS FOR THE INTERVIEW OF
WITNESSES OR OTHER PHYSICIANS AND FOR
A COMMITMENT OF THIS ACCUSED TO A HOSPITAL
OR OTHER SUITABLE FACILITY FOR SUCH TIME
AND UNDER SUCH CONDITIONS AS THE COURT
DEEMS NECESSARY FOR THE PURPOSE. . . .

TURNING TO THE FEDERAL VIEW AS
INTERPRETED IN PATKY ROBINSON- 382 U.S. 875
(1965). MR. JUSTICE CLARK DELIVERED THE 1965
MAJORITY OPINION STATED, IN 1959
RESPONDENT ROBINSON WAS CONVICTED OF THE
MURDER OF HIS CON-TEMPORARY WIFE, . . .

... BEING AN INDIGENT DEFENDANT DEFENDED BY COURT APPOINTED COUNSEL, ... HIS COUNSEL CLAIMED THAT HE WAS INSANE AT THE TIME OF THE SHOOTING AND RAISED THE ISSUE OF HIS INCOMPETENCE TO STAND TRIAL. ...

... (IN THE INSTANT CASE ALSO COUNSEL FOR THE DEFENDANT SAID IN HIS MOTION FOR A NEW TRIAL MOTION NO. 15- QUOTE: "COUNSEL FOR DEFENDANT DISCOVERED AND CALLED TO THE COURT'S ATTENTION DURING THE TRIAL, THAT DEFENDANT, BY HIS ACTIONS, GAVE EVERY INDICATION OF BEING INSANE AND NOT RESPONSIBLE FOR HIS ACTIONS. A MIS-TRIAL SHOULD HAVE BEEN DECLARED AND A PSYCHIATRIC EXAMINATION SHOULD HAVE BEEN ORDERED FOR DEFENDANT, TO DETERMINE THE ISSUE OF HIS SANITY. UNQUOTE.)

++++ WE GRANTED CERTIORARI TO RESOLVE THE DIFFICULT QUESTIONS OF STATE-FEDERAL RELATIONS POSED BY THESE HOLDINGS. 382 U.S. 890 (1965) WE HAVE CONCLUDED THAT ROBINSON WAS CONSTITUTIONALLY ENTITLED TO A HEARING ON THE ISSUE OF HIS COMPETENCE. ...

... THE STATE CONCEDES THAT THE CONVICTION OF AN ACCUSED PERSON WHILE HE IS LEGALLY INCOMPETENT VIOLATES DUE PROCESS, BISHOP V. UNITED STATES, 350 U.S. 961 (1956), AND THAT STATE PROCEDURES MUST BE ADEQUATE TO PROTECT THE RIGHT... 2. 13

JUSTICE HARLAN JOINED BY JUSTICE
BLACK REASONED THAT SINCE ROBINSON'S
COUNSEL COMPLETED THAT ROBINSON
WAS INSANE AT THE TIME OF THE
CRIME BUT NOT AT THE TRIAL THE
CONVICTION SHOULD STAND. JUSTICE
HARLAN SAID, "... THE CONCLUSIVE
FACTOR IS THAT ROBINSON'S OWN
LAWYERS, THE TWO MEN WHO APPARENTLY
HAD THE CLOSEST CONTACT WITH
THE DEFENDANT DURING THE
PROCEEDING, NEVER SUGGESTED HE
WAS INCOMPETENT TO STAND TRIAL
AND NEVER MOVED TO HAVE HIM
EXAMINED ON INCOMPETENCY GROUNDS
DURING TRIAL; ... THIS WAS NOT SO
DURING THE TRIAL IN THE INSTANT CASE.

ON,
POINT 3

ON EXAMINATION OF THE INSTRUCTIONS THAT WERE GIVEN IN THIS CASE, THERE WAS NO INSTRUCTION GIVEN IN RELATION TO THE SIGNED STATEMENT WHICH IS A REVERSEABLE ERROW ACCORDING TO THE MISSOURI SUPREME COURT IN THE TWO BELOW LISTED CASES.

... 1. THE MISSOURI SUPREME COURT STATED, INSTRUCTIONS ARE GIVEN FOR THE PURPOSE OF HYPOTHESIZ THE BASIC FACTUAL ISSUES FOR THE JURY. IN OUR VIEW THIS OMISSION WAS NOT CURED BY ADDING THE GENERALITY THAT "YOU HAVE A RIGHT TO CONSIDER ALL THE CIRCUMSTANCES" AS WAS DONE HERE. STATE V. GOACHER, 376 S. W. 2d 97 PAGE 105.

2. IN STATE V. WILLIAMS, BANC, MO, 369 S. W. 2d 408, A MOST RECENT CASE, THE JUDGMENT WAS REVERSED SOLELY BECAUSE OF THE OMISSION OF ALL REFERENCE TO THE ISSUES OF MENTAL DURESS AND COERCION IN A VERY SIMILAR INSTRUCTION, AND IN A CASE WHERE THAT WAS A BASIC ISSUE. THERE ALSO THE INSTRUCTION REFERRED TO "HOPE OF LENIENCY OR REWARD" AND IT INCLUDED THE PHRASE "WITHOUT . . . ANY

THREAT OR DOING ANY VIOLENCE!"
THE PRESENT INSTRUCTION DOES NOT
REFER TO THREATS. THE COURT SAID ~~THE~~ THERE
369 S.W.2d LOC. CIT 420: WHILE, AS STATED,
THE EVIDENCE ON SOME OF THESE
MATTERS WAS CONFLICTING, THE ISSUE
WAS FOR THE JURY AND THE ISSUE OF
MENTAL DURESS AND COERCION HAD TO
BE DECIDED IN ORDER TO DETERMINE WHETHER
THE CONFESSION WERE OR WERE NOT
VOLUNTARILY GIVEN. NO SUCH ISSUE WAS
PRESENTED TO THE JURY BY INSTRUCTION 7
OR ANY OTHER INSTRUCTION. IN OMITTING
TO PRESENT THE ISSUE OF MENTAL DURESS
AND COERCION FOR DETERMINATION BY THE
JURY, THE INSTRUCTION WAS CLEARLY
ERRONEOUS AND SHOULD NOT HAVE BEEN
GIVEN. WE FIND NO MERIT IN THE OTHER
CONTENTIONS."

ON
PAGE 4

SINCE THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN MOONEY V. HOLLOMAN 294 U.S. 103, AND IN PYLE V. KANSAS, 317 U.S. 213, AND ALBERTA V. TEXAS, 355 U.S. 28, IT IS WELL ESTABLISHED THAT A CONVICTION OBTAINED BY USE OF FALSE TESTIMONY BY REPRESENTATIVES OF THE STATE MUST FALL UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

IN NAPOE V. ILLINOIS, NO. 583- OCTOBER TERM- 1958, IN A DECISION RENDERED ON JUNE 15, 1959, THE SUPREME COURT OF THE UNITED STATES HELD:

THE PRINCIPLE THAT A STATE MAY KNOWINGLY USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINTED CONVICTION IN ANY CONCEPT OF ORDERED LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS. THE JURY'S ESTIMATE OF THE TRUTHFULNESS AND RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINATIVE OF GUILT OR INNOCENCE, AND IT IS UPON SUCH SUBTLE FACTORS AS THE POSSIBLE INTEREST OF THE WITNESS IN TESTIFYING FALSELY THAT A DEFENDANT'S LIFE OR LIBERTY MAY DEPEND.

17.16

IT IS ESTABLISHED BY THE RECORD THAT WHEN THE PETITIONER SOUGHT TO ESTABLISH THE FACT THAT WHEN HE WAS RECEIVED AT THE MUNICIPAL JAIL HE WAS STILL SUFFERING FROM THE EFFECTS OF POLICE BRUTALITY WHICH LED TO HIS "SIGNING OF THE CONFESSION" THE COURT ALLOWED THE JAIL WARDEN TO TESTIFY IN PLACE OF THE RESIDENT PHYSICIAN REGARDING THE RESULTS OF SEVERAL TESTS THAT THE DOCTOR HAD RUN. THE TESTIMONY OF THE JAIL WARDEN (MR. BOEGER) TO THE EFFECT THAT HIS MEDICAL RECORDS SHOWED THAT THE PETITIONER HAD ONLY BEEN DIAGNOSED AS HAVING, AND HAD ONLY BEEN TREATED FOR A VENEREAL DISEASE AS A RESULT OF HIS EXAMINATION BY THE JAIL PHYSICIAN, WHICH TESTIMONY, SO GIVEN BY AN AGENT OF THE STATE AND SO RECEIVED BY THE COURT AND SO GIVEN BY THE COURT TO THE JURY, AT THE SOLICITATION OF THE STATE, WAS FALSE WHEN GIVEN, AND WAS KNOWN TO BE FALSE WHEN GIVEN, BY THE AGENTS OF THE STATE. PETITIONER URGES THAT THE TESTIMONY OF WARDEN BOEGER (TR. 190, 191) WAS HEARSAY IN THAT HE WAS NOT A QUALIFIED MEDICAL EXPERT, BUT THAT IN THE PRESENT CASE, HE WAS PERMITTED TO TESTIFY AS ONE. THE TESTIMONY OFFERED BY WARDEN BOEGER,

2317

WHO WAS QUESTIONED BY A. J. HOSTER (THE
ASST. CIRCUIT ATTORNEY)

Q: WELL, READ WHAT IS ON THE CARD
WILL YOU?

A: I MAY SAY AT THE VERY OUTSET, TO KEEP
YOUR RECORD STRAIGHT, THAT THE BOY
WAS RECEIVED AT THE INSTITUTION ON
OCTOBER 19TH, AND THE FOLLOWING DAY
WAS HIS FIRST VISIT TO OUR DOCTOR, WHICH
WAS ON THE 20TH, - IT IS MARKED HERE
WITH THE STAMP, OCTOBER 20TH, 1959.

EXAMINATION NEGATIVE, AND IT IS SIGNED
RIGHT ALONGSIDE THAT BY DR. S'DOWD, THAT
IS THE FIRST TIME TO THE DOCTOR. NEXT

~~IT IS THE FIRST TIME THE DOCTOR ON NOVEMBER~~

~~ST. THE FIRST TIME STARTED OUT WITH A~~

~~VERY SADDEN LETTERS, THAT MEANS CLINIC~~

~~CASE. Q: PARDON ME? A: THAT IS A CLINICAL~~

~~CASE Q: UENEPERED DISPOSED? A: UENEPERED CLINIC~~

~~Q: UENEPERED?~~

WITNESS HIMSELF, BUT RESTS FOR ITS CREDIBILITY UPON THE COMPETENCY AND VERACITY OF ANOTHER; RECOGNISING THAT SUCH TESTIMONY IS, EXCEPT IN CERTAIN WELL DEFINED CASES, HELD TO BE IN INCOMPETENT TO ESTABLISH ANY SPECIFIC FACT IN ITS NATURE SUSCEPTIBLE OF BEING PROVED BY WITNESSES WHO SPEAK FROM THEIR OWN KNOWLEDGE.

ON POINT 5.5.

THAT MOUNT WAS WITHOUT THE ASSISTANCE OF COUNSEL IN A CRIMINAL OFFENCE FOR THE FOLLOWING PROCEEDINGS: ARRAIGNMENT, PRELIMINARY HEARING, AND HIS APPEAL TO THE MISSOURI COURT WHILE THE UNITED STATES SUP. CT HAS NOT RULED ON WHETHER ^{THE} DEFENDANT MUST HAVE COUNSEL AT ALL STAGES OF COURT APPEARANCES IT HAS HELD IN *POINTER - V. TEXAS*, 399 U.S. 815.

"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT... TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM... AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

PG 19

IT IS SUGGESTED THAT ON A AND DEPENDANT
UPON, THE SUBMISSION OF THE ISSUES HERE
PROPOSED TO BE RAISED HAS BEEN ADJUDICATE,

AND UNLESS SUCH ADJUDICATION BE
FAVORABLE TO MOVANT, THESE ISSUES AND
THE RECORD OF THE ADJUDICATION THEREON
ARE ESSENTIAL TO THE SUBMISSION OF A
PROPER RECORD FOR APPEAL, IF THERE IS
TO BE AN ADEQUATE APPELLATE
REVIEW WITHIN THE MEANING AND THE
SPIRIT OF THE AUTHORITIES HEREIN
CITED. THE RULE THAT CONSTITUTIONAL
QUESTIONS SHALL BE RAISED AS EARLY
IN THE PROCEEDING AS IS PROPER, AND
THE RULE THAT WHAT IS NOT BRIEFED
ON AN APPEAL IS DEEMED TO BE WAIVED,
SHALL EFFECTIVELY OPERATE TO
FORECLOSE MOVANT'S RIGHTS ON THE
APPEAL HEREIN, UNLESS THIS HONORABLE
COURT ABIDES BY ITS OBLIGATION TO
"ENFORCE THE CONSTITUTION OF THE
UNITED STATES." (SMITH V. O'GRADY
312, U.S. 329 334, 61 S. CT. 572, 574,
85 L. ED. 859.)

AN MOVANT RESPECTFULLY URGES ALL
THESE THINGS.

RESPECTFULLY SUBMITTED BY:

NOTORIZED BY:

JAMES RAY PG. 20

LAST
PAGE

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI - PLAINTIFF
VS.

CASE NO. 1427-H

JAMES E. RAY, PRO SE, DEFENDANT

DEFENDANT'S MOTION TO APPEAL AS A POOR PERSON
FROM THE TRIAL COURTS OVERRULING OF HIS MOTION
UNDER AUTHORITY OF RULE 27.26 AND TO HAVE THE PAPERS
AND THE RECORD OF TRIAL COURTS CONCLUSION IN THIS
ACTION MADE A-PART OF THE TRANSCRIPT OF RECORD
ON THE APPEAL IN CASE NO. 1427-H.

COMES NOW JAMES E. RAY, PRO, SE DEFENDANT IN THE
ABOVE CAPTIONED CAUSE WHICH IS A CRIMINAL CAUSE
INVOLVING A CAPITAL CRIME, HAVING BEEN NOTIFIED BY
THE HONORABLE JOHN C. CASEY, JUDGE OF THIS COURT,
THAT A MOTION TO VACATE THE JUDGEMENT AND SENTENCE
HEREIN UNDER THE AUTHORITY OF RULE 27.26 OF THE RULES
OF CRIMINAL PROCEDURE, HAS BY THIS COURT BEEN DENIED.
TO MAKE HIS MOTION THAT HE BE ALLOWED TO
APPEAL FROM THE DENIAL OF HIS MOTION, AND
THAT THIS HONORABLE COURT SHALL MAKE DEFENDANT'S
MOTION IN THE FOREGOING PREMISES A PART OF THE
RECORD OF THE CASE ABOVE CAPTIONED.

MOUANT. RESPECTFULLY SUGGESTS THAT THE AUTHORITY
FOR GRANTING OF THE MOTION BY THIS COURT IS VESTED
IN THIS COURT BY RULE 28.05 AND RULE 36.02 OF THE
RULES OF CRIMINAL PROCEDURE.

RESPECTFULLY SUBMITTED BY

James E. Ray

STATE OF MISSOURI |
SS.

AFFIDAVIT

I, JAMES E. RAY, BEING DULY SWORN, UPON MY OATH, DO
DEPOSE AND SAY THE FOLLOWING:

1. I AM THE SAME JAMES E. RAY, DESIGNATED AS THE
PETITIONER IN THE ACCOMPANYING AND ATTACHED PETITION
FOR MOTION TO APPEAL, AND I DO VERILY BELIEVE THAT I HAVE
A JUST AND SUBSISTING CAUSE OF ACTION THEREIN AND
THAT UNLESS I AM PERMITTED TO FILE AND PROCEED
THEREUPON IN FORMA PAUPERIS, GRAVE INJUSTICE SHALL
RESULT.

2. I AM A CITIZEN OF THE UNITED STATES, OF LAWFUL AGE.

3. I DO NOT OWN ANY MONEY, STOCKS, BONDS, REAL-ESTATE,
OR ANY OTHER PROPERTY WHICH IS OF SUFFICIENT VALUE
TO PAY OR TO SECURE THE PAYMENT OF THE FILING FEES
OR COST OF PROCEEDING IN SAID CAUSE.

STATE of MISSOURI)
COUNTY of COLE) SS

JAMES E. RAY, AFFIANT.

SUBSCRIBED AND SWORN TO, BEFORE ME A NOTARY PUBLIC
IN AND FOR THE STATE AND COUNTY AFORESAID, AND
DONE IN MY OFFICE UNDER MY HAND AND MY SEAL
ON THIS AUG 15 1966

1966

My Comm. Expires Oct. 10, 1969

NOTARY PUBLIC

NOV-7-66

Dear warden;

I am writing you concerning my possible release from B. Basement, I have been down here eight months now, minus six weeks in Fulton, one of the doctors there told me that I had probably had a physical and nervous breakdown, I think if I would of had a doctor's diagnosis when I first started having the trouble in April of 1965 it's possible I would never have been in this predicament, However that is no fault of the present administration as they had not assumed authority here yet. I think in view of these things along with the fact that 4 years prior to the attempt escape I had only one minor report on me, plus the first time in 5 years I had been checked into the hospital it would not be unreasonable to let me out of the Basement at this time. I think I have been down here longer than the average person who attempted to escape and wasn't tried right, also Dr Enloe has been giving me some medicine and I feel a lot better than when I come down here. Thanks for my consideration.

James Ray 00416 - B.B. Cell-9,

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI - PLAINTIFF
VS.

CASE NO. 1427-H

JAMES E. RAY, PRO SE, DEFENDANT

COPIES 6

DEFENDANT'S MOTION TO APPEAL AS A POOR PERSON
FROM THE TRIAL COURTS OVERRULING OF HIS MOTION
UNDER AUTHORITY OF RULE 27.26 AND TO HAVE THE PAPERS
AND THE RECORD OF TRIAL COURTS CONCLUSION IN THIS
ACTION MADE A-PART OF THE TRANSCRIPT OF RECORD
ON THE APPEAL IN CASE NO. 1427-H.

CLASSIFICATION'S COPY

COMES NOW JAMES E. RAY, PRO, SE DEFENDANT IN THE
ABOVE CAPTIONED CAUSE WHICH IS A CRIMINAL CAUSE
INVOLVING A CAPITAL CRIME, HAVING BEEN NOTIFIED BY
THE HONORABLE JOHN C. CASEY, JUDGE OF THIS COURT,
THAT A MOTION TO VACATE THE JUDGEMENT AND SENTENCE
HEREIN UNDER THE AUTHORITY OF RULE 27.26 OF THE RULES
OF CRIMINAL PROCEDURE, HAS BY THIS COURT BEEN DENIED.
TO MAKE HIS MOTION THAT HE BE ALLOWED TO
APPEAL FROM THE DENIAL OF HIS MOTION, AND
THAT THIS HONORABLE COURT SHALL MAKE DEFENDANT'S
MOTION IN THE FOREGOING PREMISES A PART OF THE
RECORD OF THE CASE ABOVE CAPTIONED.