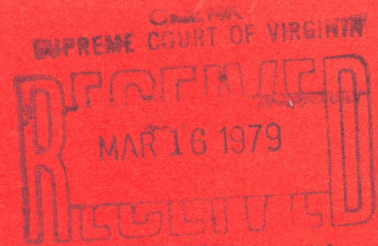


220VA188



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IN THE

**Supreme Court of Virginia**

AT RICHMOND

---

RECORD NO. 781259

---

ROY HARRISON

.....Appellant

v.

COMMONWEALTH OF VIRGINIA

.....Appellee

---

JOINT APPENDIX

---

Jay J. Levit  
LEVIT & MANN  
2120 Central National Bank Bldg  
Richmond, Virginia

Counsel for Appellant

Jerry P. Slonaker  
ASSISTANT ATTORNEY GENERAL  
Supreme Court Building  
Richmond, Virginia

Counsel for Appellee



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VIRGINIA

In the Circuit Court of the County of Henrico

JANUARY 3, 1978

The grand jury charges that:

On or about September 5, 1977, in the County of Henrico, Roy Harrison did rob one Otis R. Ellis of approximately \$315.00 in United States currency and coin,

against the peace and dignity of the Commonwealth of Virginia. Virginia Code Section 18.2-58

R. C. Wells

Witnesses sworn and sent  
by the Court to the Grand  
Jury to give evidence.

*Carolyn S. Moring, Dep. Clerk*  
A TRUE BILL

*F. Clayton Jones*  
*Presented January 3, 1978*

FOREMAN



In the Circuit Court of the County of **Henrico**

JANUARY 3, 1978

The grand jury charges that:

On or about September 5, 1977, in the County of Henrico, Roy Harrison willfully, deliberately and with premeditation kill and capital murder Otis R. Ellis in the commission of a robbery while armed with a deadly weapon,

against the peace and dignity of the Commonwealth of Virginia. Virginia Code Section 18.2-31(d)

R. C. Wells

Witnesses sworn and sent  
by the Court to the Grand  
Jury to give evidence.

*Carolyn S. Moring, Dep. Clerk*  
A TRUE BILL

*F. Chester Jones*  
*Presented January 3, 1978*



ORDER - CASES NO. 77F525, 77F526 and 77F527

This day came again the attorney for the Commonwealth, and Roy Harrison, age 26, born February 27, 1952, who stands indicted for three felonies, to-wit: using or in Case No. 77F525, /attempting to use or display a firearm in a threatening manner in the commission of a felony, to-wit: robbery (Virginia Code Section 18.2-53.1), in Case No. 77F526, robbery (Virginia Code Section 18.2-58), and in Case No. 77F527, murder in the commission of a robbery (Virginia Code Section 18.2-31(d) was led to the bar in the custody of the jailer of this Court, and came also Jay J. Levit, his attorney.

By agreement of the attorney for the Commonwealth and the attorney for the accused, with the consent of the accused, these three cases were tried together.

Whereupon the accused was arraigned and after private consultation with and being advised by his counsel, pleaded not guilty to each indictment, which pleas were tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, *in each case* *the accused* *waived* *trial* *by a jury* *and with the* *concurrence* *of the attorney* *for the Commonwealth* *and of the Court* *here entered* of record, the Court proceeded to hear and determine the cases without the intervention of a jury, as provided by law, and the Commonwealth's evidence having been heard, counsel for the accused moved to strike the Commonwealth's evidence in Case No. 77F525, and also in Case No. 77F527, for the reasons stated to the record, which motions were overruled, and to which rulings of the Court counsel for the accused excepted, and having heard all of the evidence, the Court adjourned these cases to March 22, 1978, at 9:30 a.m.

The Court certifies that at all times during the trial of these cases this day the accused was present in person and his attorney was likewise present in person and represented him capably.



And the accused is returned to the custody of the jailer of this Court until March 22, 1978 at 9:30 o'clock a.m., to which times these cases are adjourned.

*OK  
6/20/78*

cam

A COPY TESTE:  
MARGARET B. BAKER, CLERK  
*Margaret B. Baker*  
CLERK



ORDER - CASES NO. 77F525, 77F526, and 77F527

Pursuant to adjournment on March 21, 1978, came again the attorney for the Commonwealth and the accused in person and Jay J. Levit, his attorney.

And having heard the argument of counsel, the Court finds the accused not guilty, in Case No. 77F525, of using or attempting to use or display a firearm in a threatening manner in the commission of a felony, to-wit: robbery (Virginia Code Section 18.2-53.1); in Case No. 77F526, ~~the Court finds the defendant~~ guilty of robbery (Virginia Code Section 18.2-58); and in Case No. 77F527, ~~the Court finds the defendant~~ guilty of murder in the <sup>at least</sup> commission of a robbery as a principle of the second degree (Virginia Code Section 18.2-31(d)), as charged in each indictment.

Counsel for the defendant moved the Court to set aside the verdict in Case No. 77F526 and also in Case No. 77F527 for the reasons stated to the record, which motions were overruled, and to which rulings of the Court the defendant by counsel excepted.

The Court, on its own motion and also on the motion of the defendant by counsel, directs the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, on the 26th day of April, 1978, and sentencing is set for the 2nd day of May, 1978, at 9:00 o'clock a.m., to which time these cases are continued.

The Court certifies that at all times during the trial of these cases the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

And the defendant is remanded to jail.

Entered March 22, 1978

cam

OK  
Ecom  
A COPY TESTE:  
MARGARET B. BAKER, CLERK

Margaret B. Baker  
CLERK



ORDER - CASES NO. 77F526 and 77F527

This day came again the attorney for the Commonwealth, and Roy Harrison, age 26, born February 27, 1952, who stands convicted of two felonies, to-wit: robbery (Virginia Code Section 18.2-58) in Case No. 77F526, and murder as a principal of the second degree (Virginia Code Section 18.2-31(d)) in Case No. 77F527, as charged in the indictments, was again led to the bar in the custody of the jailer of this Court, and came also Jay J. Levit, his attorney.

And the Probation Officer of this Court, to whom these cases have been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the accused.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in these cases.

Whereupon the Court taking into consideration all of the evidence in these cases, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced in Case No. 77F526 to confinement in the Penitentiary of the Commonwealth of Virginia for the term of forty (40) years, of which term the Court suspends the execution of twenty (20) years upon the condition that he keep the peace and be of good behavior for life, and in Case No. 77F527 to confinement in the Penitentiary of the Commonwealth of Virginia for the term of forty (40) years, of which term the Court suspends the execution of twenty (20) years upon the condition that he keep the peace and be of good behavior for life. It is further Ordered that the



defendant pay and the Commonwealth of Virginia do recover its costs in the amount of \$202.00 by it about its prosecution in these matters expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit for the time spent in jail awaiting trial from September 6, 1977 to the present.

The Court certifies that at all times during the trial of these cases the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

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

*OK*  
*Edw.*

*Entered May 2, 1978*

A COPY TESTE:  
MARGARET B. BAKER, CLERK

*Margaret B. Baker*  
CLERK



Having maturely considered the defendant's "Motion To Set Aside Verdict" received and filed by the Clerk on May 4, 1978, and the subsequent reply from the Attorney for the Commonwealth, and having considered its notes of the trial leading to the findings of guilty as set forth in its orders of March 21, and 22, 1978, ~~and the~~ <sup>and the</sup> ~~verdict pronounced in~~ <sup>also</sup> its order of May 2, 1978, the Court denies the defendant's "Motion To Set Aside Verdict" as being previously adequately ruled upon and as now being <sup>also</sup> without merit, to which ruling of the Court the objection and exception of the defendant is noted.

The Clerk is directed to mail a certified abstract of this Order to H. Albert Nance, Jr., Assistant Attorney for the Commonwealth, and to Jay J. Levit, counsel for the defendant.

ENTER: 5 / 23 / 78

Edmund C. Henley, Jr.  
Chief Judge

A COPY TESTE:  
MARGARET B. BAKER, CLERK

Margaret B. Baker  
CLERK

A COPY TESTE:  
MARGARET B. BAKER, CLERK

Brenda C. Jarmon  
Deputy Clerk

Entered May 23, 1978



MOTION TO SET ASIDE VERDICT

Defendant, by counsel, pursuant to Rule 3A:22(b) of the Rules of the Supreme Court of Virginia, hereby moves the Court to set aside its verdict rendered on March 22, 1978 by the Honorable Edmund W. Hening, Jr., which found the defendant guilty of robbery and murder as a principle in the second degree. Judgment was entered, thereon on May 2, 1978 by the Honorable Edmund W. Hening, Jr.

This motion is based upon 2 cases which have come to counsel's attention subsequent to the time judgment was entered on May 2, 1978. These cases are State of North Carolina v. Albert Lewis Carey, Jr., 285 N.C. 509, 206 S.E. 2d 222 (1974), and in particular, Harris v. Oklahoma, 97 S.Ct. 2912 (1977). Copies of these decisions are attached hereto.

Based upon the foregoing decisions, and in particular that in the U. S. Supreme Court, defendant's conviction for robbery should be set aside. All other objections made on behalf of defendant are hereby preserved.

ROY HARRISON, Defendant

BY: 

Counsel

Jay J. Levit  
Levit & Mann  
2120 Cen. Natl. Bank Bldg.  
Richmond, Virginia 23219

*Filed May 4, 1978*

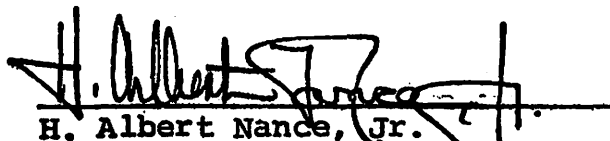


COMMONWEALTHS' REPLY TO DEFENDANTS  
MOTION TO SET ASIDE

This day comes the Commonwealth, by its Attorney,  
and asks the Court to deny the motion by defendant to set  
aside this Court's verdict of March 22, 1978.

The verdict in aforesaid cases was rendered pursuant  
to a complete fair and impartial trial by the Laws of the  
Commonwealth of Virginia. The cases cited by defendant are  
not applicable to the case at bar and the defendants motion  
is without merit.

COMMONWEALTH OF VIRGINIA

  
H. Albert Nance, Jr.

H. Albert Nance, Jr.  
Assistant Commonwealth's Attorney  
County of Henrico, Virginia  
P. O. Box 27082  
Richmond, Virginia 23273

RECEIVED

MAY 23 1978

CLERK'S OFFICE  
HENRICO CIRCUIT COURT



DEFENDANT'S RESPONSE TO COMMONWEALTH'S REPLY  
TO DEFENDANT'S MOTION TO SET ASIDE

The Commonwealth simply states the "the cases cited by defendant are not applicable to the case at bar". Copies of these two decisions, one a U. S. Supreme Court decision, have been furnished to the Court. On their face, the facts in these cases are strikingly similar, if not virtually identical to the case at bar. The Commonwealth's statement is incomprehensible, but the Constitutional mandate stated by the Supreme Court is clear. The robbery conviction should be set aside, or the Double Jeopardy Clause of the Constitution's Fifth Amendment will have been violated. The cases cited ( and furnished ) are quite clear and speak for themselves. The robbery and murder charges stem from the same set of circumstances, and the murder conviction could not have been had without conviction of the lesser crime, robbery. A subsequent conviction of robbery is unconstitutional, and so is a simultaneous conviction.

ROY HARRISON, Defendant

BY: \_\_\_\_\_

Counsel

Jay J. Levit  
Levit & Mann  
2120 Cen. Natl. Bank Bldg.  
Richmond, Virginia 23219

May 25 1978  
RECEIVED & FILED IN OFFICE

TESTE  
Brenda C. Garrison  
Deputy Clerk



NOTICE OF APPEAL

Now comes defendant, Roy Harrison, by counsel, and states that he is aggrieved of the decision of the Circuit Court of Henrico County, wherein he was found guilty of murder and robbery and sentenced on May 2, 1978 to a term of forty (40) years with twenty (20) years suspended on each charge and desires to note his appeal of such decision on each charge.

A transcript and other incidents of the case is to be hereafter filed.

ROY HARRISON

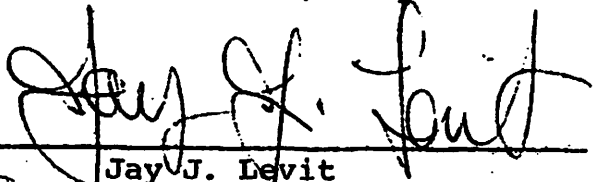
BY: 

Counsel

Jay J. Levit  
2120 Cen. Natl. Bank Bldg.  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that on May 31, 1978, I mailed a true copy of the foregoing Notice of Appeal to Bert Nance, Esq., Assistant Commonwealth's Attorney for Henrico County, Virginia, Henrico Circuit Court Building, P. O. Box 27032, Richmond, Virginia 23273..

  
Jay J. Levit

*Filed June 1, 1978*



NOTICE OF DELIVERY  
OF TRANSCRIPT TO CLERK

Please take notice that on June 30, 1978, the transcript of the criminal trial proceedings held in the captioned matter was delivered by appellant's counsel to the Clerk.

ROY HARRISON

BY: \_\_\_\_\_

  
Counsel

Jay J. Levit  
2120 Cen. Natl. Bank Bldg.  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that on June 30, 1978, I hand-delivered a true copy of the foregoing Notice to Bert Nance, Esq., Assistant Commonwealth's Attorney for Henrico County, Virginia, Henrico Circuit Court Building, P. O. Box 27032, Richmond, Virginia 23273.

  
Jay J. Levit

*Filed June 30, 1978*