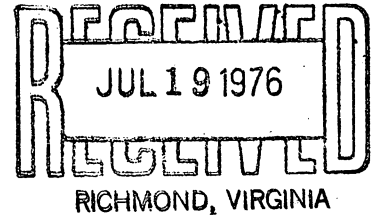


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

ROBERT LEWIS WARLITNER

Plaintiff in Error

v.

COMMONWEALTH OF VIRGINIA

Defendant in Error

Record No. 760163

SUPPLEMENTAL JOINT APPENDIX

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ROUTE 2 — BOX 333
BROADWAY, VIRGINIA 22815

TR 168.

1. A. Yes sir.
2. Q. And what number of parking spaces can you see from
3. these windows?
4. A. The different windows, Mr. DePoy, you can see - some
5. you can see two or three cars, some you can just see
6. one. But you can go from window to window and cover
7. just about a nine car space.
8. Q. Just about a nine car space?
9. A. Yes sir.
10. Q. All right, sir. Now, Officer, did you have an occasion
11. to come into the possession of some personal property
12. belonging to the defendant?
13. A. Yes sir, I did.
14. Q. And how did that come about?
15. A. You mean the deceased.
16. Q. Yes, the deceased.
17. A. Yes sir, this was on Monday morning, March 3, 1975.
18. Q. All right, where did you get this property.
19. A. From Lavada - I believe I'm pronouncing that correctly,
20. this is the deceased's sister, Lavada Armentrout,
21. Keezletown.
22. Q. Now, what all did you receive from her?
23. A. At that time, Mr. DePoy, I just took an inventory of
24. what was picked up at the hospital. She showed me and

1. I made a listing of what she showed me there at that
2. time.

3. Q. All right, were there any knives or any other weapons
4. contained in that?

5. A. Mr. DePoy, there were nine keys on a ring and a small,
6. what I would call a pen knife.

7. Q. Any other knives or weapons?

8. A. No sir.

9. Q. Of any type.

10. A. No sir.

11. Q. Officer, I hand you this little plastic envelope which
12. we'll mark for identification as Commonwealth Exhibit
13. #11 . .

14. COURT: Commonwealth Exhibit #11 for
15. identification.

16. A. This is the knife that I saw there that morning.

17. Q. Did you take that into your possession?

18. A. I did not at that time, I was looking for a big knife,
19. Mr. DePoy, I did not. And I told her to hold on to it
20. that I'd probably be calling back later to pick it up.

21. Q. Did you later go back and pick it up?

22. A. Yes sir, I did.

23. Q. Now, is this the only knife that was in the inventory?

24. A. Yes sir, this was the only knife.

1. MR. DEPOY: Your Honor, at this time we'd
2. like to offer this as Common-
3. wealth's Exhibit #11.

4. COURT: It will be received in evidence
5. as Commonwealth Exhibit #11.

6. Q. All right now, Officer, have you had an occasion to -
7. I know you took the pictures of the East Market Street
8. area, have you also had occasion to pace off the dis-
9. tance say from the doorway of Tal's Grill to the door-
10. way of the apartment, to 45 East Market Street?

11. A. Yes sir.

12. Q. When did you do that?

13. A. I did that last night.

14. Q. And what distance did you measure.

15. A. It varies in the length of the steps, as near as I
16. could tell, it was approximately 55 feet there.

17. Q. All right, now, Officer, getting back to the time that
18. you talked to the defendant at the police station.
19. Prior to talking with him, did you advise him of any-
20. thing.

21. A. Yes sir. We have what we call a Bureau of Police
22. Miranda Warning Sheet that has the certain rights
23. spelled out for you there. And I had this sheet here,
24. and it's dated 9:05 P.M. I filled out Robert Lee War-

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TR 171.

1. litner, and my name, H. B. Myers, Police Department,
2. Harrisonburg, and at that time it was felonious shoot-
3. ing, and I read this to him, everything that was on
4. here, plus what I had filled out. I asked him if he
5. understood it and he said that he did. I said if he
6. understood it he should sign the word "yes" at the end
7. there and sign his name. And this he did, he said he
8. understood.

9. COURT: There has been no motion, do
10. you wish to voir dire the wit-
11. ness on the admissibility of
12. the statement, Mr. Julias?

13. MR. JULIAS: No sir.

14. COURT: There being no objection, is
15. the statement being offered in
16. evidence?

17. MR. DEPOY: Well, Your Honor, the typed
18. portion is notes or the summary
19. of the Officer's notes, so I'll
20. just have him testify to those.

21. COURT: And you don't wish to voir dire
22. the witness on the admissibility,
23. Mr. Julias?

24. MR. JULIAS: No sir.

1. Q. All right, Officer, I believe that on the back of the
2. statement you've just referred to, there is approxi-
3. mately three-quarters of a page of typed notes.

4. A. Yes sir, I have a carbon copy of the same thing here.

5. Q. All right, Officer, whose notes are these?

6. A. These are my notes.

7. Q. And what are they taken from?

8. A. They were taken from notes that I had handwritten
9. less than an hour after he gave an oral statement.

10. Q. So this is not a verbatim statement?

11. A. No sir.

12. Q. All right.

13. A. It's just a summary of what he told me.

14. Q. Now, Officer, would you just read that statement that
15. you took down there, the notes that you took down.

16. MR. JULIAS: I'm going to have to object to
17. the reading of it, because it's
18. not direct from the defendant,
19. Your Honor. It's just a synop-
20. sis, and I assume that it's
21. relatively accurate, but we
22. have no guarantee that it's
23. exactly verbatim and I think
24. it's extremely relevant that

1. each question be posed.
2. COURT: Did I understand you correctly,
3. Mr. Myers, that you made these
4. notes contemporaneously with
5. your interview with the defen-
6. dant?
7. A. Yes sir.
8. COURT: And do I also understand that
9. these notes will assist you in
10. refreshing your recollection as
11. to what the defendant told you?
12. A. That is correct.
13. COURT: Then you may use your notes for
14. the purpose of refreshing your
15. recollection.
16. MR. JULIAS: May I ask him a question along
17. that line, Your Honor.
18. COURT: Yes, you may voir dire the wit-
19. ness.
20. MR. JULIAS: Mr. Myers, this is a synopsis
21. of your interrogation and ques-
22. tioning of the defendant, is it
23. not?
24. A. If you break that word down . .

1. MR. JULIAS: It's a summary, excuse me.

2. A. A summary, this is what I said.

3. MR. JULIAS: In other words, you didn't take
4. verbatim notes?

5. A. No sir, I did not.

6. MR. JULIAS: Consequently, we feel this
7. should be interrogated respect-
8. ively as to what Mr. DePoy wished
9. to ask him, Your Honor.

10. COURT: Well, the question was, what
11. did the defendant tell you.

12. MR. JULIAS: And he told him to read it.

13. COURT: The question was, what did the
14. defendant tell you. The witness
15. is responding to that question
16. and he having testified that
17. he made these notes contemporan-
18. eously with the interview and
19. the notes will assist him in re-
20. freshing his recollection. He
21. may refer to the notes in respon-
22. ding to the questions.

23. Q. Officer, what did he tell you in regard to this inci-
24. dent there at that time.

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BROADWAY, VIRGINIA 22815

1. A. Robert Lewis Warlitner stated that - well, prior to
2. taking this, even before starting to talk to him, I
3. read the sheet to him and I had a tape recorder setting
4. up in the back of the desk there, and he said, "I
5. don't want this taped." And he said, "I won't say
6. anything until you cut that tape off." I said, "Mr.
7. Warlitner, the tape is not on." I took the cartridge
8. out of it and I handed it to him. I'll show you this
9. room is not tapped or taped in any way, there's no
10. recording being made of this. He said, "O.K., I'll
11. talk to you." And he said it was a long story. About
12. eighteen months ago he took a beating from Preston
13. Meadows and an assault warrant was issued for Meadows
14. at that time. Someway and somehow without his know-
15. ledge, this warrant was dismissed. And he said since
16. that time he's been harassed everytime that him and
17. Meadows got together.
18. COURT: I didn't hear you.
19. MR. DEPOY: Harassed.
20. COURT: Go ahead.
21. A. He was harassed mostly over the wife, Sue Meadows
22. Warlitner, this harassment being caused by Meadows
23. having to pay Warlitner's wife \$15.00 weekly for support.
24. Q. Did he indicate for that much.

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BROADWAY, VIRGINIA 22815

TR 176.

1. A. He just said \$15.00 over a child, over denial of a
2. child, this was what the harassment was over.
3. Q. Would you refer to your note there and read it speci-
4. fically.
5. A. This harassment was mostly over his wife, Sue Meadows
6. Warlitner. Meadows having to pay Sue Meadows Warlitner
7. \$15.00 a week for support of a child that he denied
8. being his child.
9. Q. O.K. What else did he say.
10. A. He said that on this night in question he was up at
11. his friend's place, Louise Martin's apartment, on East
12. Market. This was near Tal's Grill. Louise Martin made
13. a request for two packs of cigarettes, so Warlitner said
14. he went down to obtain the cigarettes for Louise. As
15. he started to the apartment door, Warlitner said he
16. picked up a small revolver that he usually carried
17. when he went in beer joints. He said he left the apart-
18. ment, walked down to Tal's Grill, noticed Preston Mead-
19. ows sitting in a booth at Tal's Grill. He spoke to
20. Meadows, obtained the cigarettes and came back out the
21. door. Just outside the door Preston approached him
22. saying something about the \$15.00 he had to pay weekly.
23. The conversation went back and forth. Meadows said,
24. "I'm going to cut your throat," and started to reach

1. in his front pocket. Warlitner said then he pulled
2. his revolver out and shot him. Meadows fell to the
3. sidewalk. And after he landed on the sidewalk, Meadows
4. said, "You're a better man than I thought." So, War-
5. litner didn't know where the bullet hit Meadows. At
6. this point Warlitner said a number of times, I don't
7. know which one of us said it, "Suppose this man dies."
8. And Warlitner said at least twice, "I hope he dies,
9. if he doesn't I'll have to do this all over again."
10. At this point, Mr. DePoy, I made a request to tape the
11. statement that he just - the words I just went over.
12. Warlitner stated that he did not want this statement
13. recorded, that he would not give a statement, he wanted
14. to talk to a lawyer. When he said lawyer, Mr. DePoy,
15. everything ceased right there.

16. Q. Answer any questions for the defense.


17. COURT: Do you want the document the
18. witness used to refresh his re-
19. collection to be marked for
20. identification?

21. MR. JULIAS: No sir, it wasn't offered as an
22. exhibit.

23. COURT: I just wanted to know whether
24. you wanted it marked for identi-

CERTIFICATE

In Accordance with Rule 5:49 of the Rules of the Supreme Court of Virginia, I hereby certify that I have this 16th day of July, 1976, filed twenty-five copies of the SUPPLEMENTAL JOINT APPENDIX in the Clerk's Office of the Supreme Court of Virginia and have delivered three (3) copies of the SUPPLEMENTAL JOINT APPENDIX to Wilburn C. Dibling, Jr., Assistant Attorney General of Virginia, Office of the Attorney General, Criminal Division, 900 Fidelity Building, 830 East Main Street, Richmond, Virginia, 23219.


Franklin R. Blatt