

No. 18-217

In the Supreme Court of the United States

—————
RANDALL MATHENA, WARDEN, PETITIONER

v.

LEE BOYD MALVO

—————

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT*

—————

JOINT APPENDIX

—————

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**PETITION FOR CERTIORARI FILED AUGUST 16, 2018
CERTIORARI GRANTED MARCH 18, 2019**

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**U.S. District Court
Eastern District of Virginia-(Norfolk)
CIVIL DOCKET FOR CASE #:
2:13-cv-00375-RAJ-LRL**

Lee Boyd Malvo

v.

Randall Mathena

Date Filed	#	Docket Text
06/25/2013	1	PETITION for Writ of Habeas Corpus (Filing fee \$ 5, Rec. No. 0423-1806685), filed by Lee Boyd Malvo. (Attachments: # 1 Civil Cover Sheet)(eps) [Transferred from Virginia Western on 7/8/2013.] (Entered: 06/25/2013)
07/05/2013	2	Order transferring case to Eastern District of Virginia. Signed by District Judge Glen E. Conrad on 07/05/2013. (kab) [Transferred from Virginia Western on 7/8/2013.] (Entered: 07/05/2013)
07/08/2013	3	Case transferred in from District of Virginia Western; Case Number 2:13-cv-00034. Original file and docket sheet received. (Entered: 07/08/2013)
07/10/2013	4	ORDER – the Respondent is DIRECTED to file within 30 days from the date of this Order an answer to the Petition conforming to the requirements of Rule 5 of the Rules Governing Section 2254 Cases

in the United States District Courts, together with the attachments specified in Rule 5. Respondent shall advise whether the Petitioner's claim is timely. Petitioner may, if he desires, file a response to Respondent's answer within 21 days after receipt of the answer. Respondent is requested to cause the state court records and transcripts of Petitioner's original trial and related proceedings and the state court's habeas corpus transcripts and records, if any, applicable to the grounds alleged in the petition, to be forwarded to this Court for examination within 30 days of the date of this Order. Signed by Magistrate Judge Lawrence R. Leonard on 07/10/2013. Copies mailed 7/11/2013. (tjoh,) (Entered: 07/10/2013)

- 07/19/2013 5 MOTION for Extension of Time to File Response/Reply as to 4 Order,, by Randall Mathena. (Jeffrey, Donald) (Entered: 07/19/2013)
- 07/22/2013 6 ORDER granting 5 Motion for Extension of Time to File Response/Reply. Response due by 10/9/2013. Reply due by 10/30/2013. Signed by Magistrate Judge Lawrence R. Leonard on 7/22/2013. (Leonard, Lawrence) (Entered: 07/22/2013)

- 10/09/2013 7 MOTION to Dismiss by Randall Mathena. (Jeffrey, Donald) (Entered: 10/09/2013)
- 10/09/2013 8 *Rule 5 Answer* ANSWER to Complaint by Randall Mathena.(Jeffrey, Donald) (Entered: 10/09/2013)
- 10/09/2013 9 Brief in Support to 7 MOTION to Dismiss, 8 Answer to Complaint filed by Randall Mathena. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Jeffrey, Donald) (Entered: 10/09/2013)
- 10/21/2013 State Court Records received from Court of Appeals of Virginia. (mcgr,) (Entered: 10/25/2013)
- 10/24/2013 10 Waiver of re 7 MOTION to Dismiss, 9 Brief in Support, 8 Answer to Complaint *waiver of oral argument* by Randall Mathena (Jeffrey, Donald) (Entered: 10/24/2013)
- 10/30/2013 11 NOTICE by Randall Mathena re 7 MOTION to Dismiss, 9 Brief in Support, 8 Answer to Complaint *Notice of Decision in Johnson v. Ponton* (Attachments: # 1 Exhibit 1)(Jeffrey Donald) (Entered: 10/30/2013)
- 11/27/2013 State Court Records received from Chesapeake Circuit Court. (mcgr,) (Entered: 11/29/2013)
- 12/13/2013 12 ORDER. Petitioner is ORDERED to respond to the Respondents' 7 Motion to Dismiss by Monday, January 6, 2013. The Clerk is DIRECTED

to forward copies of this Order to all counsel of record. Signed by Magistrate Judge Lawrence R. Leonard on 12/13/2013. Copies mailed 12/16/2013. (jmey,) (Entered: 12/16/2013)

- 01/03/2014 13 RESPONSE in Opposition re 7 MOTION to Dismiss filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 01/03/2014)
- 01/03/2014 14 Reply to 11 NOTICE filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 01/03/2014)
- 01/10/2014 15 MOTION to Stay re 14 Reply, 13 Response in Opposition to Motion, 12 Order, *and Abeyance or Extension of Time* by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 01/10/2014)
- 01/21/2014 16 ORDER. 15 Motion is DENIED IN PART and GRANTED IN PART. The Respondent's Motion for a Stay and Abeyance is DENIED. The Respondent's Motion for an Extension of Time is GRANTED, and the Respondent shall file a reply to 13 RESPONSE in Opposition and 14 Reply by January 31, 2014. The Clerk is DIRECTED to forward a copy of this Order to all counsel of record. Signed by Magistrate Judge Lawrence R. Leonard on 1/17/2014. Copies mailed 1/21/2014. (jmey,) (Entered: 01/21/2014)

- 01/31/2014 17 Response to 14 Reply, 13 Response in Opposition to Motion filed by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 01/31/2014)
- 03/24/2014 18 NOTICE by Randall Mathena re 9 Brief in Support of *Supplemental Authority* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Jeffrey, Donald) (Entered: 03/24/2014)
- 04/03/2014 19 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo. Objections to R&R due by 4/21/2014. Signed by Magistrate Judge Lawrence R. Leonard on 4/2/2014. Copies mailed 4/3/2014. (jmey,) (Entered: 04/03/2014)
- 04/17/2014 20 Objection to 19 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 04/17/2014)
- 04/18/2014 21 OBJECTION to 19 Report and Recommendations by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 04/18/2014)
- 06/04/2014 22 MOTION to Stay re 19 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo by Randall Mathena. (Jeffrey, Donald) (Entered: 06/04/2014)

- 06/13/2014 23 ORDER re 22 Motion to Stay; that the Court declines to exercise its discretion to stay this case as doing so could unnecessarily delay the resolution of Petitioner's habeas petitions. Signed by District Judge Raymond A. Jackson and filed on 6/13/2014. (rsim,) (Entered: 06/13/2014)
- 06/20/2014 24 ORDER ADOPTING 19 REPORT AND RECOMMENDATIONS; granting 7 Motion to Dismiss in its entirety as the Court's own opinion. The objections by the Petitioner and the Respondent are OVERRULED. The Respondent's Motion to Dismiss, ECF No. 7, is GRANTED. It is, therefore, ORDERED that the petition, ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE as time-barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of the Respondent. Signed by District Judge Raymond A. Jackson and filed on 6/20/2014. (rsim,) (Entered: 06/20/2014)
- 06/20/2014 25 CLERK'S JUDGMENT on decision of the court that the Court fully accepts the findings and recommendations of the Magistrate Judge, and accordingly, hereby ADOPTS and APPROVES the Report and Recommendation, ECF No. 19, in its entirety as the Court's own opinion.

The objections by the Petitioner and the Respondent are OVERRULED. Therefore, the Respondent's Motion to Dismiss, ECF No. 7, is GRANTED. It is, therefore, ORDERED that the petition, ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE as time-barred by the statute of limitations. Judgment is entered in favor of the Respondent. Signed by the Clerk; dated and filed on 6/20/2014. (rsim,) (Entered: 06/20/2014)

- 07/02/2014 26 NOTICE by Lee Boyd Malvo
Notice of Appeal (Arif, Michael)
(Entered: 07/02/2014)
- 07/16/2014 27 NOTICE OF APPEAL by Lee
Boyd Malvo. (Arif, Michael)
(Entered: 07/16/2014)
- 07/17/2014 28 Transmission of Notice of Appeal to
US Court of Appeals re 27 Notice of
Appeal (All case opening forms, plus
the transcript guidelines, may be
obtained from the Fourth Circuit's
website at www.ca4.uscourts.gov)
(jmey,) (Entered: 07/17/2014)
- 07/17/2014 Assembled INITIAL Electronic
Record Transmitted to 4CCA re
27 Notice of Appeal. (jmey,)
(Entered: 07/17/2014)
- 07/18/2014 29 USCA Case Number 14-7069 - RJ
Warren, Case Manager for 27 Notice
of Appeal filed by Lee Boyd Malvo.
(jmey,) (Entered: 07/21/2014)

- 07/29/2014 30 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. Upon consideration of the consent motion to stay proceedings, which the court construes as a motion for abeyance, the court grants the motion. The case is placed in abeyance pending a decision in Johnson v. Ponton, No. 13-7824. (14-7069) (jmey,) (Entered: 07/30/2014)
- 11/17/2014 31 NOTICE of Decision in *Jones v. Commonwealth* by Randall Mathena re 9 Brief in Support, 8 Answer to Complaint (Attachments: # 1 Exhibit A)(Jeffrey, Donald) (Entered: 11/17/2014)
- 03/09/2015 32 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. The court consolidates Case No. 14-7069 and Case No. 14-7070. (14-7069 L) (jmey,) (Entered: 03/11/2015)
- 03/19/2015 33 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. The court grants leave to proceed in forma pauperis. (14-7069 (L)) (jmey,) (Entered: 03/20/2015)
- 04/13/2015 34 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. The court appoints Craig S. Cooley and Michael S. Arif for the limited purpose of obtaining reimbursement of expenses under the Criminal Justice Act for required copies of the briefs

and joint appendix. (14-7069 (L))
(jmey,) (Entered: 04/14/2015)

- 05/15/2015 35 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. The case is placed in abeyance pending a decision by the Supreme Court in *Montgomery v. Louisiana*, No. 14-280. (14-7069) (jmey,) (Entered: 05/18/2015)
- 05/20/2016 36 ORDER of USCA as to 27 Notice of Appeal filed by Lee Boyd Malvo. Motion to Remand the appeals to the district court is granted and these appeals are remanded to the district court for further consideration in light of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). (jmey,) (Entered: 05/23/2016)
- 05/20/2016 37 USCA JUDGMENT as to 27 Notice of Appeal filed by Lee Boyd Malvo. These cases are remanded to the district court for further proceedings. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 31. (14-7069) (jmey,) (Entered: 05/23/2016)
- 06/13/2016 38 USCA Mandate re 27 Notice of Appeal. The judgment entered May 20, 2016 takes effect today. (14-7069) (jmey,) (Entered: 06/14/2016)

- 06/30/2016 39 MOTION To Set Briefing Schedule by Randall Mathena. (Jeffrey, Donald) (Entered: 06/30/2016)
- 07/05/2016 40 ORDER. It is ORDERED that the parties shall file their briefs no later than August 15, 2016. They may file a responsive brief no later than September 1, 2016. Signed by District Judge Raymond A. Jackson on 7/5/2016. Copies mailed 7/6/2016. (jmey,) (Entered: 07/06/2016)
- 08/15/2016 41 PETITIONER'S BRIEF by Lee Boyd Malvo. (Cooley, Craig) (Entered: 08/15/2016)
- 08/15/2016 42 Supplemental MOTION to Dismiss by Randall Mathena. (Jeffrey Donald) (Entered: 08/15/2016)
- 08/15/2016 43 *Supplemental* ANSWER to Complaint *Rule 5 Answer* by Randall Mathena.(Jeffrey, Donald) (Entered: 08/15/2016)
- 08/15/2016 44 Brief in Support to 43 Answer to Complaint, 42 Supplemental MOTION to Dismiss *Supplemental Brief in Support* filed by Randall Mathena. (Attachments: # 1 Exhibit 1 (redacted), # 2 Exhibit 2 (redacted))(Jeffrey, Donald) (Entered: 08/15/2016)

- 08/25/2016 45 Response to 44 Brief in Support of *Moton* [sic] to Dismiss and Rule 5 Answer filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 08/25/2016)
- 09/01/2016 46 Reply to 45 Response, 41 Appellant's Brief filed by Randall Mathena. (Jeffrey, Donald) (Entered: 09/01/2016)
- 11/02/2016 47 NOTICE by Randall Mathena of decision in Clem (Attachments: # 1 Exhibit A)(Jeffrey, Donald) (Entered: 11/02/2016)
- 01/04/2017 48 ORDER. The Parties are ORDERED to file supplemental briefing on the issue of "exhaustion of state remedies." The Parties are further ORDERED to explain their positions on the "stay-and-abeyance" procedure mentioned by Respondent (ECF No. 44 at 3, n.5 (2:13-cv-375)) and discussed in Rhines v. Weber, 544 U.S. 269, 275-279 (2005), in the event that the Court decides that Petitioner must file a motion to vacate in Virginia state court in order to exhaust his state court remedies. The Parties shall file their responses to this order within THIRTY (30) DAYS of the date of this Order. The Court DIRECTS the Clerk to send a copy of this Order to the Parties. Signed by District Judge Raymond A. Jackson on 1/4/2017.

Copies mailed 1/4/2017.(jmey,)
(Entered: 01/04/2017)

- 01/31/2017 49 Brief in Support to 48 Order,, *Supplemental Brief on the Issue of Exhaustion of State Remedies* filed by Lee Boyd Malvo. (Cooley, Craig)
(Entered: 01/31/2017)
- 02/02/2017 50 MOTION for Extension of Time to File Response/Reply by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald)
(Entered: 02/02/2017)
- 02/03/2017 51 ORDER granting 50 Motion for Extension of Time to File Response/Reply to February 10, 2017. Signed by District Judge Raymond A. Jackson on February 3, 2017.
(Entered: 02/03/2017)
- 02/10/2017 52 Response *Supplemental Response* filed by Randall Mathena. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Jeffrey, Donald)
(Entered: 02/10/2017)
- 03/08/2017 53 NOTICE by Randall Mathena (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 03/08/2017)
- 03/22/2017 Set Hearing as to 42 Supplemental MOTION to Dismiss :. Motion Hearing set for 4/5/2017 at 11:30 AM in Norfolk Courtroom 4 before District Judge Raymond A. Jackson. (ptom,)
(Entered: 03/22/2017)

- 04/03/2017 54 NOTICE by Randall Mathena (Jeffrey, Donald) (Entered: 04/03/2017)
- 04/05/2017 55 Motion Hearing before District Judge Raymond A. Jackson held on 4/5/2017 re 42 Supplemental MOTION to Dismiss filed by Randall Mathena. Attorney Craig Cooley appeared on behalf of the Petitioner. Attorney Donald Jeffrey, III appeared on behalf of the Respondent. Matter came on for Hearing re: defendants #42(2:13cv375) & #36(2:13cv376) Supplemental Motions to Dismiss. Comments of the Court. Argument of counsel heard. Court takes matter under advisement and will issue an opinion. Court adjourned. (Court Reporter Janet Collins, OCR.)(ptom,)
(Entered: 04/05/2017)
- 05/10/2017 56 NOTICE by Randall Mathena *re cert petition in Jones II* (Jeffrey, Donald)
(Entered: 05/10/2017)
- 05/10/2017 57 NOTICE by Randall Mathena *re corrected certificate* (Jeffrey, Donald)
(Entered: 05/10/2017)
- 05/26/2017 58 MEMORANDUM OPINION AND ORDER. The Court finds that Petitioner is entitled to relief. Accordingly, Respondents motion to dismiss is DENIED and Petitioners § 2254 motions are both GRANTED. The sentences Petitioner received in

Chesapeake Circuit Court for the two capital murder convictions are hereby VACATED and his case (2:13cv375) is REMANDED to Chesapeake Circuit Court for disposition on those two convictions in accordance with Miller and Montgomery. The sentences Petitioner received in Spotsylvania County Circuit Court for the capital murder conviction and the attempted capital murder conviction are hereby VACATED and his case (2:13cv376) is REMANDED to Spotsylvania County Circuit Court for the disposition of those two convictions in accordance with Miller and Montgomery. The Court DIRECTS the Clerk to send a copy of this Order to the parties. Signed by District Judge Raymond A. Jackson on 5/26/2017. Copies mailed 5/26/2017 (jmey,) (Entered: 05/26/2017)

- 05/26/2017 59 CLERK'S JUDGMENT. Signed by Clerk on 5/26/2017. (jmey,) (Entered: 05/26/2017)
- 06/09/2017 60 NOTICE OF APPEAL by Randall Mathena. Filing fee \$ 505, receipt number 0422-5564102. (Jeffrey, Donald) (Entered: 06/09/2017)
- 06/09/2017 61 MOTION to Stay *Pending Appeal* by Randall Mathena. (Jeffrey, Donald) (Entered: 06/09/2017)

- 06/09/2017 62 Brief in Support to 61 MOTION to Stay *Pending Appeal* filed by Randall Mathena. (Jeffrey, Donald) (Entered: 06/09/2017)
- 06/12/2017 63 Transmission of Notice of Appeal to US Court of Appeals re 60 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (jmey,) (Entered: 06/12/2017)
- 06/12/2017 Assembled INITIAL Electronic Record Transmitted to 4CCA re 60 Notice of Appeal. (jmey,) (Entered: 06/12/2017)
- 06/12/2017 65 USCA Case Number 17-6746 - RJ Warren, Case Manager for 60 Notice of Appeal filed by Randall Mathena. (jmey,) (Entered: 06/16/2017)
- 06/14/2017 64 RESPONSE to Motion re 61 MOTION to Stay *Pending Appeal* filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 06/14/2017)
- 06/14/2017 66 ORDER of USCA as to 60 Notice of Appeal filed by Randall Mathena. The Court consolidates Case No. 17-6746(L) and Case No. 17-6758. (17-6746(L)) (jmey,) (Entered: 06/16/2017)
- 06/23/2017 67 MOTION To Decide on Written Pleadings re 61 MOTION to Stay

Pending Appeal by Randall Mathena.
(Jeffrey, Donald) (Entered: 06/23/2017)

- 06/23/2017 68 ORDER granting 61 Motion to Stay during respondent's appeal of this Court's judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (Entered: 06/23/2017)
- 06/23/2017 69 ORDER granting 67 Motion to Decide Motion to Stay on the pleadings. Signed by District Judge Raymond A. Jackson on June 23, 2017. (Jackson, Raymond) (Entered: 06/23/2017)
- 08/24/2017 70 TRANSCRIPT of SUPPLEMENTAL MOTIONS TO DISMISS proceedings for dates of 4/5/2017, before Judge Raymond A. Jackson, re 34 USCA Order, 66 USCA Order, 28 Transmission of Notice of Appeal to 4CCA, 60 Notice of Appeal, 65 USCA Case Number, 63 Transmission of Notice of Appeal to 4CCA, 41 Appellant's Brief, 29 USCA Case Number, 36 USCA Order, Assembled INITIAL Electronic Record Transmitted to 4CCA, 33 USCA Order, 30 USCA Order, 32 USCA Order, 37 USCA Judgment, 27 Notice of Appeal, 38 USCA Mandate, Assembled INITIAL Electronic Record Transmitted to 4CCA, 35 USCA Order Court Reporter/Transcriber Janet Collins, Telephone number 757-222-7072. **NOTICE**

RE REDACTION OF TRANSCRIPTS:

The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov *Does this satisfy all appellate orders for this reporter?* y Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/25/2017. Redacted Transcript Deadline set for 10/24/2017. Release of Transcript Restriction set for 11/22/2017. (collins, janet) (Entered: 08/24/2017)

- 10/12/2017 71 ORDER of USCA as to 60 Notice of Appeal filed by Randall Mathena. The court appoints Craig Stover Cooley to represents [sic] Lee Boyd Malvo. (17 -6746) (jmey,) (Entered: 10/13/2017)
- 06/21/2018 72 Opinion of USCA (Copy) re 60 Notice of Appeal. (jmey,) (Entered: 06/21/2018)

- 06/21/2018 73 USCA JUDGMENT as to 60 Notice of Appeal filed by Randall Mathena. In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41. (17-6746) (jmey,) (Entered: 06/21/2018)
- 07/03/2018 74 Appeal Remark re 60 Notice of Appeal : Stay of Mandate. The mandate is stayed pending further order of this court. (17-6746 L) (jmey,) (Entered: 07/03/2018)
- 07/16/2018 75 ORDER of USCA as to 60 Notice of Appeal filed by Randall Mathena. The court denies the motion to stay mandate. (17-6746 L) (jmey,) (Entered: 07/18/2018)
- 07/24/2018 76 USCA Mandate re 60 Notice of Appeal. The judgment of this court, entered June 21, 2018, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (17-6746 L) (jmey,) (Entered: 07/24/2018)
- 08/21/2018 77 Appeal Remark re 60 Notice of Appeal : Supreme Court Remark. The petition for a writ of certioari [sic] in the above entitled case was filed on August 16, 2018 and [sic] places on the docket August 20, 2017 [sic] as

No. 18-217. (17-6746 L) (jmey,)
(Entered: 08/21/2018)

03/18/2019 78 Appeal Remark re 60 Notice of
Appeal : Supreme Court Remark.
The petition for a writ of certiorari
is granted. (17-6746 L) (jmey,)
(Entered: 03/19/2019)

**U.S. District Court
Eastern District of Virginia – (Norfolk)
CIVIL DOCKET FOR CASE #:
2:13-cv-00376-RAJ-LRL**

Lee Boyd Malvo

v.

Randall Mathena

Date Filed	#	Docket Text
06/25/2013	1	PETITION for Writ of Habeas Corpus (Filing fee \$ 5, Rec. #0423–1806702), filed by Lee Boyd Malvo. (Attachments: # 1 Civil Cover Sheet)(eps) [Transferred from Virginia Western on 7/8/2013.] (Entered: 06/25/2013)
07/05/2013	2	Order transferring case to District of Eastern District of Virginia. Signed by District Judge Glen E. Conrad on 07/05/2013. (kab) [Transferred from Virginia Western on 7/8/2013.] (Entered: 07/05/2013)
07/08/2013	3	Case transferred in from District of Virginia Western; Case Number 2:13-cv-00035. Original file and docket sheet received. (Entered: 07/08/2013)
09/18/2013	4	ORDER. The Respondent is DIRECTED to file within thirty (30) days from the date of this Order an answer to 1 PETITION for Writ of Habeas Corpus. The Petitioner may, if he so desires, file a response to Respondent's answer within twenty –

one (21) days after the receipt of the answer. The Clerk is DIRECTED to mail a copy of this Order to counsel for the Petitioner, the Respondent, and the Attorney General of Virginia. Signed by Magistrate Judge Lawrence R. Leonard on 09/18/2013. (jmey,) (Entered: 09/19/2013)

- 09/19/2013 COURT CERTIFICATE OF SERVICE re 4 Order. Copies mailed via USPS First Class mail, postage prepaid to: Randall Mathena, Chief Warden, Red Onion State Prison, 10800 H. Jack Rose Highway, P.O. Box 970, Pound, VA 24279 and Office of the Attorney General, Public Safety & Economic Dev. Div., 900 East Main Street, Richmond, VA 23219 on 09/19/2013. (jmey,) (Entered: 09/19/2013)
- 10/18/2013 5 MOTION to Dismiss by Randall Mathena. (Jeffrey, Donald) (Entered: 10/18/2013)
- 10/18/2013 6 *Rule 5 Answer* RESPONSE to Petition for Writ of Habeas Corpus by Randall Mathena.(Jeffrey, Donald) (Entered: 10/18/2013)
- 10/18/2013 7 Brief in Support to 6 Response to Habeas Petition, 5 MOTION to Dismiss filed by Randall Mathena. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Jeffrey, Donald) (Entered: 10/18/2013)

- 10/24/2013 8 Waiver of re 7 Brief in Support, 6 Response to Habeas Petition, 5 MOTION to Dismiss *waiver of oral argument* by Randall Mathena (Jeffrey, Donald) (Entered: 10/24/2013)
- 12/13/2013 9 ORDER. Petitioner is ORDERED to respond to the Respondents' 5 MOTION to Dismiss by Monday, January 6, 2014. The Clerk is DIRECTED to forward copies of this Order to all counsel of record. Signed by Magistrate Judge Lawrence R. Leonard on 12/13/2013. Copies mailed 12/16/2013.(jmey,) (Entered: 12/16/2013)
- 01/16/2014 Telephone Conference set for 1/16/2014 at 03:00 PM in Chambers before Magistrate Judge Lawrence R. Leonard. (lwoo) (Entered: 01/16/2014)
- 01/16/2014 11 Minute Entry for proceedings held before Magistrate Judge Lawrence R. Leonard: Telephone Conference held on 1/16/2014. Matter came on for telephone conference. Present by telephone were Craig Cooley on behalf of the petitioner and Donald Jeffrey on behalf of the respondent. The court notes that on December 13 an order was entered directing the petitioner to file a response to the respondents motion to dismiss. That response has not yet been received by the Court. Mr. Cooley indicated that he did not realize he was to file that response in the second case and requested

additional time to do so. The Court granted that extension. The Court directed that the petitioner file a responsive brief to the motion to dismiss by January 24, 2014 and the respondent may file a reply brief by January 31, 2014 if he chooses to do so. The Court will enter a short order. Telephone conference adjourned. (Court Reporter Jody Stewart, OCR.)(cdod,) (Entered: 01/21/2014)

- 01/21/2014 10 ORDER. On January 16, 2014, the undersigned held a telephone conference with counsel, Mr. Craig Cooley for the Petitioner, and Mr. Donald Jeffrey for the Respondent. During the telephone conference, counsel for the Petitioner requested leave to file a late response, which the Court GRANTED. The Petitioner shall file a responsive brief to the Respondent's Motion to Dismiss by January 24, 2014. The Clerk is DIRECTED to forward a copy of this order to all counsel of record. Signed by Magistrate Judge Lawrence R. Leonard on 1/17/2014. Copies mailed 1/21/2014.(jmey,) (Entered: 01/21/2014)
- 01/23/2014 12 RESPONSE in Opposition re 5 MOTION to Dismiss filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 01/23/2014)

- 01/23/2014 13 RESPONSE to Motion re 5 MOTION to Dismiss filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 01/23/2014)
- 01/31/2014 14 Response to 13 Response to Motion, 12 Response in Opposition to Motion filed by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 01/31/2014)
- 03/24/2014 15 NOTICE by Randall Mathena re 7 Brief in Support (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Jeffrey, Donald) (Entered: 03/24/2014)
- 04/03/2014 16 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo. Objections to R&R due by 4/21/2014. Signed by Magistrate Judge Lawrence R. Leonard on 4/2/2014. Copies mailed 4/3/2014.(jmey,) (Entered: 04/03/2014)
- 04/17/2014 17 Objection to 16 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 04/17/2014)
- 04/18/2014 18 OBJECTION to 16 Report and Recommendations by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 04/18/2014)
- 06/04/2014 19 MOTION to Stay re 16 REPORT AND RECOMMENDATIONS re 1 Petition for Writ of Habeas Corpus filed by Lee Boyd Malvo by Randall

Mathena. (Jeffrey, Donald)
(Entered: 06/04/2014)

06/13/2014 20 ORDER re 19 Motion to Stay; that the Court declines to exercise its discretion to stay this case as doing so could unnecessarily delay the resolution of Petitioner's habeas petitions. Signed by District Judge Raymond A. Jackson and filed on 6/13/2014. (rsim,) (Entered: 06/13/2014)

06/23/2014 21 ORDER. After review, the Court fully accepts the findings and recommendations of the Magistrate Judge, and accordingly, hereby ADOPTS and APPROVES 16 Report and Recommendation in its entirety as the Court's own opinion. The objections by the Petitioner and the Respondent are OVERRULED. Therefore, the Respondent's 5 Motion to Dismiss is GRANTED. It is, therefore, ORDERED that the 1 Petition for Writ of Habeas Corpus is DENIED and DISMISSED WITH PREJUDICE as time – barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of the Respondent. The Clerk is DIRECTED to forward a copy of this Order to counsel of record for the Petitioner and Respondent. Signed by District Judge Raymond A. Jackson on 6/23/2014. Copies mailed 6/23/2014. (jmey,) (Entered: 06/23/2014)

- 06/23/2014 22 CLERK'S JUDGMENT. Signed by Clerk on 6/23/2014. (jmey,) (Entered: 06/23/2014)
- 07/02/2014 23 NOTICE by Lee Boyd Malvo *Notice of Appeal* (Arif, Michael) (Entered: 07/02/2014)
- 07/16/2014 24 NOTICE OF APPEAL by Lee Boyd Malvo. (Arif, Michael) (Entered: 07/16/2014)
- 07/17/2014 25 Transmission of Notice of Appeal to US Court of Appeals re 24 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (jmey,) (Entered: 07/17/2014)
- 07/17/2014 Assembled INITIAL Electronic Record Transmitted to 4CCA re 24 Notice of Appeal. (jmey,) (Entered: 07/17/2014)
- 07/18/2014 26 USCA Case Number 14-7070-RJ Warren, Case Manager for 24 Notice of Appeal filed by Lee Boyd Malvo. (jmey,) (Entered: 07/21/2014)
- 07/29/2014 27 ORDER of USCA as to 24 Notice of Appeal filed by Lee Boyd Malvo. Upon consideration of the consent motion to stay proceedings, which the court construes as a motion for abeyance, the court grants the motion. The case is placed in abeyance pending a decision in *Johnson v. Ponton*,

- No. 13-7824. (14-7070) (jmey,)
(Entered: 07/30/2014)
- 11/17/2014 28 NOTICE by Randall Mathena re 7
Brief in Support, 6 Response to Ha-
beas Petition *Supplemental Authority*
(Attachments: # 1 Exhibit A)(Jeffrey,
Donald) (Entered: 11/17/2014)
- 03/09/2015 29 ORDER of USCA as to 24 Notice of
Appeal filed by Lee Boyd Malvo. The
court consolidates Case No. 14-7069
and Case No. 14-7070. (14-7070)
(jmey,) (Entered: 03/11/2015)
- 05/20/2016 30 ORDER of USCA as to 24 Notice of
Appeal filed by Lee Boyd Malvo. Mo-
tion to Remand the appeals to the
district court is granted and these
appeals are remanded to the district
court for further consideration in
light of *Montgomery v. Louisiana*,
136 S. Ct. 718 (2016). (14-7070)
(jmey,) (Entered: 05/23/2016)
- 05/20/2016 31 USCA JUDGMENT as to 24 Notice
of Appeal filed by Lee Boyd Malvo.
These cases are remanded to the dis-
trict court for further proceedings.
This judgment shall take effect upon
issuance of this court's mandate in
accordance with Fed. R. App. P. 41.
(14-7070) (jmey,) (Entered: 05/23/2016)
- 06/13/2016 32 USCA Mandate re 24 Notice of Ap-
peal. The judgment entered May 20,
2016 takes effect today. (14-7070)
(jmey,) (Entered: 06/14/2016)

- 06/30/2016 33 MOTION To Set Briefing Schedule by Randall Mathena. (Jeffrey, Donald) (Entered: 06/30/2016)
- 07/05/2016 34 ORDER. It is ORDERED that the parties shall file their briefs no later than August 15, 2016. They may file a responsive brief no later than September 1, 2016. Signed by District Judge Raymond A. Jackson on 7/5/2016. Copies mailed 7/6/2016. (jmey,) (Entered: 07/06/2016)
- 08/15/2016 35 PETITIONER'S BRIEF by Lee Boyd Malvo. (Cooley, Craig) (Entered: 08/15/2016)
- 08/15/2016 36 Supplemental MOTION to Dismiss by Randall Mathena. (Jeffrey, Donald) (Entered: 08/15/2016)
- 08/15/2016 37 *Supplemental Rule 5 Answer* RESPONSE to Petition for Writ of Habeas Corpus by Randall Mathena.(Jeffrey, Donald) (Entered: 08/15/2016)
- 08/15/2016 38 Brief in Support to 36 Supplemental MOTION to Dismiss, 37 Response to Habeas Petition *Supplemental Brief In Support* filed by Randall Mathena. (Attachments: # 1 Exhibit 1 (redacted), # 2 Exhibit 2 (redacted))(Jeffrey, Donald) (Entered: 08/15/2016)
- 08/25/2016 39 Response to 38 Brief in Support, *Motion to Dismiss and Rule 5 Answer*

- filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 08/25/2016)
- 09/01/2016 40 Reply to 35 Appellant's Brief, 39 Response filed by Randall Mathena. (Jeffrey, Donald) (Entered: 09/01/2016)
- 11/02/2016 41 NOTICE by Randall Mathena of *decision in Clem* (Attachments: # 1 Exhibit A)(Jeffrey, Donald) (Entered: 11/02/2016)
- 01/04/2017 42 ORDER. The Parties are ORDERED to file supplemental briefing on the issue of "exhaustion of state remedies." The Parties are further ORDERED to explain their positions on the "stay – and – abeyance" procedure mentioned by Respondent (ECF No. 44 at 3, n.5 (2:13-cv-375))and discussed in *Rhines v. Weber*, 544 U.S. 269, 275–279 (2005), in the event that the Court decides that Petitioner must file a motion to vacate in Virginia state court in order to exhaust his state court remedies. The Parties shall file their responses to this order within THIRTY (30) DAYS of the date of this Order. The Court DIRECTS the Clerk to send a copy of this Order to the Parties. Signed by District Judge Raymond A. Jackson on 1/4/2017. Copies mailed 1/4/2017.(jmey,) (Entered: 01/04/2017)
- 01/31/2017 43 Brief in Support to 42 Order,,
Supplemental Brief on the Issue of

Exhaustion of State Remedies filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 01/31/2017)

- 02/02/2017 44 MOTION for Extension of Time to File Response/Reply by Randall Mathena. (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 02/02/2017)
- 02/03/2017 45 ORDER granting 44 Motion for Extension of Time to File Response/Reply to February 10, 2017. Signed by District Judge Raymond A. Jackson on February 3, 2017. (Entered: 02/03/2017)
- 02/10/2017 46 Response *Supplemental Response* filed by Randall Mathena. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Jeffrey, Donald) (Entered: 02/10/2017)
- 03/08/2017 47 NOTICE by Randall Mathena (Attachments: # 1 Exhibit 1)(Jeffrey, Donald) (Entered: 03/08/2017)
- 03/22/2017 Set Hearing as to 36 Supplemental MOTION to Dismiss :. Motion Hearing set for 4/5/2017 at 11:30 AM in Norfolk Courtroom 4 before District Judge Raymond A. Jackson. (ptom,) (Entered: 03/22/2017)
- 04/05/2017 48 Motion Hearing before District Judge Raymond A. Jackson held on 4/5/2017 re 36 Supplemental MOTION to Dismiss filed by Randall Mathena. Attorney Craig Cooley appeared on behalf of the Petitioner. Attorney Donald Jeffrey, III appeared on behalf of the

Respondent. Matter came on for Hearing re: defendants #42(2:13cv375) & #36(2:13cv376) Supplemental Motions to Dismiss. Comments of the Court. Argument of counsel heard. Court takes matter under advisement and will issue an opinion. Court adjourned. (Court Reporter Janet Collins, OCR.)(ptom,) (Entered: 04/05/2017)

- 05/10/2017 49 NOTICE by Randall Mathena *re cert petition in Jones II* (Jeffrey, Donald) (Entered: 05/10/2017)
- 05/10/2017 50 NOTICE by Randall Mathena *re corrected certificate* (Jeffrey, Donald) (Entered: 05/10/2017)
- 05/26/2017 51 MEMORANDUM OPINION AND ORDER. The Court finds that Petitioner is entitled to relief. Accordingly, Respondents motion to dismiss is DENIED and Petitioners § 2254 motions are both GRANTED. The sentences Petitioner received in Chesapeake Circuit Court for the two capital murder convictions are hereby VACATED and his case (2:13cv375) is REMANDED to Chesapeake Circuit Court for disposition on those two convictions in accordance with Miller and Montgomery. The sentences Petitioner received in Spotsylvania County Circuit Court for the capital murder conviction and the attempted capital murder conviction are hereby

- VACATED and his case (2:13cv376) is REMANDED to Spotsylvania County Circuit Court for the disposition of those two convictions in accordance with Miller and Montgomery. Signed by District Judge Raymond A. Jackson on 5/26/2017. Copies mailed 5/26/2017. (jmey,) (Entered: 05/26/2017)
- 05/26/2017 52 CLERK'S JUDGMENT. Signed by Clerk on 5/26/2017. (jmey,) (Entered: 05/26/2017)
- 06/09/2017 53 NOTICE OF APPEAL by Randall Mathena. Filing fee \$ 505, receipt number 0422-5564121. (Jeffrey, Donald) (Entered: 06/09/2017)
- 06/09/2017 54 MOTION to Stay *Pending Appeal* by Randall Mathena. (Jeffrey, Donald) (Entered: 06/09/2017)
- 06/09/2017 55 Brief in Support to 54 MOTION to Stay *Pending Appeal* filed by Randall Mathena. (Jeffrey, Donald) (Entered: 06/09/2017)
- 06/12/2017 56 Transmission of Notice of Appeal to US Court of Appeals re 53 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (jmey,) (Entered: 06/12/2017)

- 06/12/2017 Assembled INITIAL Electronic Record Transmitted to 4CCA re 53 Notice of Appeal. (jmey,) (Entered: 06/12/2017)
- 06/14/2017 57 RESPONSE to Motion re 54 MOTION to Stay *Pending Appeal* filed by Lee Boyd Malvo. (Cooley, Craig) (Entered: 06/14/2017)
- 06/14/2017 58 USCA Case Number 17-6758 – RJ Warren, Case Manager for 53 Notice of Appeal filed by Randall Mathena. (jmey,) (Entered: 06/16/2017)
- 06/14/2017 59 ORDER of USCA as to 53 Notice of Appeal filed by Randall Mathena. The court consolidates Case No. 17-6746(L) and Case No. 17-6758. (17-6746(L)) (jmey,) (Entered: 06/16/2017)
- 06/23/2017 60 MOTION To Decide on Written Pleadings re 55 Brief in Support, 54 MOTION to Stay *Pending Appeal* by Randall Mathena. (Jeffrey, Donald) (Entered: 06/23/2017)
- 06/23/2017 61 ORDER granting 54 Motion to Stay the judgment of this Court during respondent's appeal of the judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (Entered: 06/23/2017)
- 06/21/2018 62 Opinion of USCA (Copy) re 53 Notice of Appeal. (17-6746 L) (jmey,) (Entered: 06/21/2018)

- 06/21/2018 63 USCA JUDGMENT as to 53 Notice of Appeal filed by Randall Mathena. In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41. (17-6758 L) (jmey,) (Entered: 06/21/2018)
- 07/03/2018 64 Appeal Remark re 53 Notice of Appeal : The mandate is stayed pending further order of this court. (17-6758 L) (jmey,) (Entered: 07/03/2018)
- 07/16/2018 65 ORDER of USCA as to 53 Notice of Appeal filed by Randall Mathena. The court denies the motion to stay mandate. (17-6746 L) (jmey,) (Entered: 07/24/2018)
- 07/24/2018 66 USCA Mandate re 53 Notice of Appeal. The judgment of this court, entered June 21, 2018, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (17-6746 L) (jmey,) (Entered: 07/24/2018)
- 08/21/2018 67 Appeal Remark re 53 Notice of Appeal : Supreme Court Remark. The petition for a writ of certioari [sic] in the above entitled case was filed on August 16, 2018 and places [sic] on the docket August 20, 2017 [sic] as

No. 18-217. (17-6746 L) (jmey,)
(Entered: 08/21/2018)

03/18/2019 68 Appeal Remark re 53 Notice of Appeal : Supreme Court Remark. The petition for a writ of certiorari is granted. (17-6746 L) (jmey,)
(Entered: 03/19/2019)

General Docket
United States Court of Appeals
for the Fourth Circuit
Court of Appeals Docket #: 17-6746
LEE BOYD MALVO

Petitioner - Appellee

v.

RANDALL MATHENA, Chief Warden,
Red Onion State Prison

Respondent - Appellant

- 06/12/2017 1 Habeas corpus appeal docketed. Originating case number: 2:13-cv-00375-RAJ-LRL. Date notice of appeal filed: 06/09/2017. Case manager: RWarren. [17-6746] RW [Entered: 06/12/2017 03:22 PM]
- 06/12/2017 2 DOCKETING NOTICE issued Re: [1] Habeas Case Initial forms due within 14 days. Originating case number: 2:13-cv-00375-RAJ-LRL. [17-6746] RW [Entered: 06/12/2017 04:36 PM]
- 06/13/2017 3 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Matthew R. McGuire for Randall Mathena. [1000100186] [17-6746] Matthew McGuire [Entered: 06/13/2017 04:26 PM]
- 06/14/2017 4 ORDER filed [1000100436] consolidating case 17-6758 with 17-6746(L).

- Copies to all parties. [17-6746, 17-6758] RW [Entered: 06/14/2017 09:33 AM]
- 06/14/2017 5 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Matthew R. McGuire for Randall Mathena. [1000100697] [17-6758] Matthew McGuire [Entered: 06/14/2017 01:23 PM]
- 06/14/2017 6 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Trevor S. Cox for Randall Mathena in 17-6758, 17-6746. [1000100908] [17-6758, 17-6746] Trevor Cox [Entered: 06/14/2017 04:07 PM]
- 06/22/2017 7 DOCKETING STATEMENT by Appellant Randall Mathena. [17-6746] Matthew McGuire [Entered: 06/22/2017 04:14 PM]
- 06/22/2017 8 DISCLOSURE OF CORPORATE AFFILIATIONS (Local Rule 26.1) by Appellant Randall Mathena in 17-6746, 17-6758 Was any question on Disclosure Form answered yes? No [1000105757] [17-6746, 17-6758] Matthew McGuire [Entered: 06/22/2017 04:16 PM]
- 06/22/2017 9 TRANSCRIPT ORDER ACKNOWLEDGMENT filed for Janet A. Collins. Identify by proceeding and date all transcript ordered from this court reporter: Supplemental Motion Hearing 04/05/2017. Names of all parties

ordering transcript from this reporter: Randall Mathena.. Originating case number: 2:13-cv-00375-RAJ-LRL. Transcript due from Janet A. Collins, Official Court Reporter on 08/28/2017. [17-6746, 17-6758] RW [Entered: 06/22/2017 04:19 PM]

- 06/26/2017 10 DISTRICT COURT UPDATE. ORDER granting [61] Motion to Stay during respondent's appeal of this Court's judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (No document attached) [17-6746, 17-6758] AD [Entered: 06/26/2017 08:45 AM]
- 06/26/2017 11 DISTRICT COURT UPDATE. ORDER granting [54] Motion to Stay the judgment of this Court during respondent's appeal of the judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (No document attached) [17-6746, 17-6758] AD [Entered: 06/26/2017 08:46 AM]
- 07/05/2017 12 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Craig S. Cooley for Lee Boyd Malvo in 17-6746, 17-6758. [1000112471] [17-6746, 17-6758] Craig Cooley [Entered: 07/05/2017 03:08 PM]

08/24/2017 13 DISTRICT COURT UPDATE.
TRANSCRIPT of SUPPLEMENTAL
MOTIONS TO DISMISS proceedings
for dates of 4/5/2017, before Judge
Raymond A. Jackson, re [34] USCA
Order, [66] USCA Order, [28] Trans-
mission of Notice of Appeal to 4CCA,
[60] Notice of Appeal, [65] USCA
Case Number, [63] Transmission of
Notice of Appeal to 4CCA, [41] Appel-
lant's Brief, [29] USCA Case Number,
[36] USCA Order, Assembled INI-
TIAL Electronic Record Transmitted
to 4CCA, [33] USCA Order, [30]
USCA Order, [32] USCA Order, [37]
USCA Judgment, [27] Notice of Ap-
peal, [38] USCA Mandate, Assembled
INITIAL Electronic Record Trans-
mitted to 4CCA, [35] USCA Order
Court Reporter/Transcriber Janet
Collins, Telephone number 757-222-
7072. NOTICE RE REDACTION OF
TRANSCRIPTS: The parties have
thirty(30) calendar days to file with
the Court a Notice of Intent to Re-
quest Redaction of this transcript. If
no such Notice is filed, the transcript
will be made remotely electronically
available to the public without redac-
tion after 90 calendar days. The pol-
icy is located on our website at
www.vaed.uscourts.gov Does this sat-
isfy all appellate orders for this re-
porter? y Transcript may be viewed
at the court public terminal or

- purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/25/2017. Redacted Transcript Deadline set for 10/24/2017. Release of Transcript Restriction set for 11/22/2017. [17-6746, 17-6758] AD [Entered: 08/24/2017 02:23 PM]
- 08/24/2017 14 BRIEFING ORDER filed. Opening Brief and Appendix due 10/03/2017. Response Brief due 11/02/2017. [17-6746, 17-6758] RW [Entered: 08/24/2017 02:28 PM]
- 10/03/2017 15 BRIEF by Appellant Randall Mathena in 17-6746, 17-6758 in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: hand delivery. [1000167387] [17-6746, 17-6758] Matthew McGuire [Entered: 10/03/2017 04:10 PM]
- 10/03/2017 16 Joint FULL ELECTRONIC APPENDIX and full paper appendix by Appellant Randall Mathena in 17-6746, 17-6758. Method of Filing Paper Copies: hand delivery. Date paper copies mailed dispatched or delivered to court: 10/04/2017. [1000167429] [17-6746, 17-6758] Matthew McGuire [Entered: 10/03/2017 04:37 PM]

- 10/03/2017 17 OPENING BRIEF (PAPER) file-stamped, on behalf of Randall Mathena in 17-6746, 17-6758. Number of pages: [68]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 10/06/2017. Received by clerk date: 10/04/2017. [1000169147] [17-6746, 17-6758] RW [Entered: 10/06/2017 09:10 AM]
- 10/03/2017 18 APPENDIX (PAPER) file-stamped, on behalf of Randall Mathena in 17-6746, 17-6758. Total number of volumes (including any sealed): 3. Total number of pages in all volumes: 1941. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/ Other exhibit? No. Number of Copies: 4. Entered on Docket Date: 10/06/2017. Received by clerk date: 10/04/2017. [1000169386] [17-6746, 17-6758] RW [Entered: 10/06/2017 12:03 PM]
- 10/12/2017 19 ORDER filed [1000171919] appointing Craig Stover Cooley as counsel for Lee Boyd Malvo in 17-6746. Nunc pro Tunc Date: 06/09/2017. Representation Type: CJA-HA. Copies to all parties. [17-6746, 17-6758] – [Edited 10/20/2017 by RW] RW [Entered: 10/12/2017 09:12 AM]
- 10/20/2017 20 CASE TENTATIVELY CALENDAR-ED for oral argument during the 1/23/18 – 1/26/18 argument

session. Additional copies due:
10/25/2017. Notify Clerk's Office
of any scheduling conflict by:
10/30/2017. [17-6746, 17-6758] JLC
[Entered: 10/20/2017 05:19 PM]

- 10/24/2017 21 NOTICE RE: CONFLICT WITH
PROPOSED ARGUMENT DATES
by Appellant Randall Mathena in 17-
6746. Argument Session: 01/18 Days
you are available: 1/23; 1/24; 1/25;
1/26 Other scheduling information:
Also arguing Case No. 17-6743,
Blount v. Clarke in same session [17-
6746, 17-6758] Matthew McGuire
[Entered: 10/24/2017 04:56 PM]
- 10/30/2017 22 NOTICE RE: CONFLICT WITH
PROPOSED ARGUMENT DATES
by Appellee Lee Boyd Malvo in 17-
6746, 17-6758. Argument Session:
01/18 Days you are available: 1/23;
1/24; 1/25(PM); 1/26 Other schedul-
ing information: I have State Court
cases on January 25 in the morning
but can reschedule those if necessary
to accommodate this Court and
the Assistant Attorney General
[17-6746, 17-6758] Craig Cooley
[Entered: 10/30/2017 10:58 AM]
- 11/01/2017 23 BRIEF by Appellee Lee Boyd Malvo
in 17-6758, 17-6746 in electronic
and paper format. Type of Brief:
RESPONSE. Method of Filing
Paper Copies: hand delivery. Date
Paper Copies Mailed, Dispatched,

- or Delivered to Court: 11/01/2017.
[1000184615] [17-6758,
17-6746] Craig Cooley
[Entered: 11/01/2017 09:50 AM]
- 11/01/2017 24 RESPONSE BRIEF (PAPER) file-
stamped, on behalf of Lee Boyd
Malvo in 17-6746, 17-6758. Number
of pages: [65]. Sufficient: YES.
Number of Copies: [4]. Entered on
Docket Date: 11/02/2017. Received
by clerk date: 11/02/2017.
[1000185806] [17-6746, 17-6758]
RW [Entered: 11/02/2017 12:26 PM]
- 11/08/2017 25 AMICUS CURIAE BRIEF by Holly
M. Landry, Amicus Curiae in elec-
tronic and paper format. Method of
Filing Paper Copies: mail. Date
Paper Copies Mailed, Dispatched,
or Delivered to Court: 11/09/2017.
[1000189563] [17-6746, 17-6758]
Danielle Spinelli [Entered:
11/08/2017 05:56 PM]
- 11/08/2017 26 AMICUS CURIAE BRIEF (PAPER)
file-stamped, on behalf of Holly
Landry in 17-6746, 17-6758. Number
of pages: [28]. Number of Copies: [4].
Entered on Docket Date: 11/13/2017.
Received by clerk date: 11/13/2017.
[1000191024] [17-6746, 17-6758] RW
[Entered: 11/13/2017 01:08 PM]
- 11/15/2017 27 BRIEF by Appellant Randall
Mathena in 17-6746, 17-6758 in
electronic and paper format. Type of

- Brief: REPLY. Method of Filing Paper
Copies: hand delivery. Date Paper
Copies Mailed, Dispatched, or
Delivered to Court: 11/16/2017.
[1000193329] [17-6746, 17-6758]
Matthew McGuire [Entered:
11/15/2017 04:29 PM]
- 11/16/2017 28 REPLY BRIEF (PAPER) file-
stamped, on behalf of Randall
Mathena in 17-6746, 17-6758. Num-
ber of pages: [29]. Sufficient: YES.
Number of Copies: [4]. Entered on
Docket Date: 11/20/2017. Received
by clerk date: 11/16/2017.
[1000195552] [17-6746, 17-6758]
TF [Entered: 11/20/2017 03:43 PM]
- 12/04/2017 29 CASE CALENDARED for oral argu-
ment. Date: 01/23/2018. Registration
Time: 8:45 – 9:00. Daily Arguments
Begin: 9:30. Oral argument
acknowledgment form due within
5 days. [17-6746, 17-6758] JLC
[Entered: 12/04/2017 04:26 PM]
- 12/05/2017 30 ORAL ARGUMENT ACKNOWLEDG-
MENT by Appellant Randall
Mathena in 17-6746, 17-6758. Coun-
sel arguing: Matthew R. McGuire
Opening argument time: 15 Rebuttal
argument time: 5 [1000203637] [17-
6746, 17-6758] Matthew McGuire
[Entered: 12/05/2017 01:43 PM]
- 12/06/2017 31 ORAL ARGUMENT ACKNOWLEDG-
MENT by Appellee Lee Boyd

- Malvo, Amicus Supporting Appellee Holly Landry and Appellant Randall Mathena in 17-6746, 17-6758. Counsel arguing: Craig S. Cooley Opening argument time: 8:45-9:00 Answering argument time: 8:45-9:00 Rebuttal argument time: 8:45-9:00 [1000204135] [17-6746, 17-6758] Craig Cooley [Entered: 12/06/2017 10:10 AM]
- 01/16/2018 32 SUPPLEMENTAL AUTHORITIES (FRAP 28(j)) by Appellant Randall Mathena in 17-6746, 17-6758. [1000224463]. [17-6746, 17-6758] Matthew McGuire [Entered: 01/16/2018 03:08 PM]
- 01/23/2018 33 ORAL ARGUMENT heard before the Honorable Paul V. Niemeyer, Robert B. King and Albert Diaz. Attorneys arguing case: Matthew Robert McGuire for Appellant Randall Mathena and Mr. Craig Stover Cooley, Esq. for Appellee Lee Boyd Malvo in 17-6746, 17-6758. Courtroom Deputy: Emily Borneisen. [1000228350] [17-6746, 17-6758] EB [Entered: 01/23/2018 12:45 PM]
- 06/21/2018 34 PUBLISHED AUTHORED OPINION filed. Originating case numbers: 2:13-cv-00375-RAJ-LRL and 2:13-cv-00376-RAJ-LRL. [1000316313]. [17-6746, 17-6758] Annotation added to opinion reflecting Supreme Court

- history--[Edited 04/11/2019 by EB]
RW [Entered: 06/21/2018 08:21 AM]
- 06/21/2018 35 JUDGMENT ORDER filed. Decision: Affirmed. Originating case numbers: 2:13-cv-00375-RAJ-LRL and 2:13-cv-00376-RAJ-LRL. Entered on Docket Date: 06/21/2018. [1000316317] Copies to all parties and the district court. [17-6746, 17-6758] RW [Entered: 06/21/2018 08:23 AM]
- 06/29/2018 36 MOTION by Appellant Randall Mathena in 17-6746, 17-6758 to stay mandate. Date and method of service: 06/29/2018 ecf. [1000321548] [17-6746, 17-6758] Matthew McGuire [Entered: 06/29/2018 10:09 AM]
- 07/03/2018 37 Mandate stayed pending ruling on motion to stay the mandate. [17-6746, 17-6758] RW [Entered: 07/03/2018 08:54 AM]
- 07/03/2018 38 NOTICE ISSUED to Mr. Craig Stover Cooley, Esq. for Lee Boyd Malvo in 17-6746 requesting response to Motion to stay mandate [36]. response due: 07/06/2018. [1000322944]. [17-6746, 17-6758] RW [Entered: 07/03/2018 08:56 AM]
- 07/06/2018 39 RESPONSE/ANSWER by Lee Boyd Malvo in 17-6746, 17-6758 to notice requesting response [38] [17-6746, 17-6758] Craig Cooley [Entered: 07/06/2018 10:50 AM]

- 07/16/2018 40 COURT ORDER filed [1000329894] denying motion to stay mandate [36]. Copies to all parties. [17-6746, 17-6758] RW [Entered: 07/16/2018 12:54 PM]
- 07/24/2018 41 Mandate issued. Referencing: [35] Judgment order, [34] published authored Opinion. Originating case number: 2:13-cv-00375-RAJ-LRL. [17-6746, 17-6758] RW [Entered: 07/24/2018 09:17 AM]
- 08/21/2018 42 SUPREME COURT REMARK—petition for writ of certiorari filed. 08/16/2018. 18-217. [17-6746, 17-6758] SJC [Entered: 08/21/2018 02:33 PM]
- 03/18/2019 43 SUPREME COURT REMARK—petition for writ of certiorari granted. 03/18/2019 [17-6746, 17-6758] EB [Entered: 03/18/2019 03:43 PM]
-

General Docket
United States Court of Appeals
for the Fourth Circuit
Court of Appeals Docket #: 17-6758

LEE BOYD MALVO

Petitioner - Appellee

v.

RANDALL MATHENA,
Chief Warden, Red Onion State Prison

Respondent - Appellant

- 06/14/2017 1 Habeas corpus appeal docketed. Originating case number: 2:13-cv-00376-RAJ-LRL. Date notice of appeal filed: 06/09/2017. Case manager: RWarren. [17-6758] RW [Entered: 06/14/2017 09:30 AM]
- 06/14/2017 2 DOCKETING NOTICE issued Re: [1] Habeas Case Initial forms due within 14 days. Originating case number: 2:13-cv-00376-RAJ-LRL. [17-6758] RW [Entered: 06/14/2017 09:31 AM]
- 06/14/2017 3 ORDER filed [1000100436] consolidating case 17-6758 with 17-6746(L). Copies to all parties. [17-6746, 17-6758] RW [Entered: 06/14/2017 09:33 AM]
- 06/14/2017 4 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Matthew R. McGuire for Randall Mathena.

[1000100697] [17-6758] Matthew McGuire [Entered: 06/14/2017 01:23 PM]

- 06/14/2017 5 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Trevor S. Cox for Randall Mathena in 17-6758, 17-6746.[1000100908] [17-6758, 17-6746] Trevor Cox [Entered: 06/14/2017 04:07 PM]
- 06/22/2017 6 DISCLOSURE OF CORPORATE AFFILIATIONS (Local Rule 26.1) by Appellant Randall Mathena in 17-6746, 17-6758. Was any question on Disclosure Form answered yes? No [1000105757] [17-6746, 17-6758] Matthew McGuire [Entered: 06/22/2017 04:16 PM]
- 06/22/2017 7 TRANSCRIPT ORDER ACKNOWLEDGMENT filed for Janet A. Collins. Identify by proceeding and date all transcript ordered from this court reporter: Supplemental Motion Hearing 04/05/2017. Names of all parties ordering transcript from this reporter: Randall Mathena.. Originating case number: 2:13-cv-00375-RAJ-LRL. Transcript due from Janet A. Collins, Official Court Reporter on 08/28/2017. [17-6746, 17-6758] RW [Entered: 06/22/2017 04:19 PM]
- 06/26/2017 8 DISTRICT COURT UPDATE. ORDER granting [61] Motion to Stay during respondent's appeal of this

Court's judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (No document attached) [17-6746, 17-6758] AD [Entered: 06/26/2017 08:45 AM]

- 06/26/2017 9 DISTRICT COURT UPDATE. ORDER granting [54] Motion to Stay the judgment of this Court during respondent's appeal of the judgment to the United States Court of Appeals for the Fourth Circuit. Signed by District Judge Raymond A. Jackson on June 23, 2017. (No document attached) [17-6746, 17-6758] AD [Entered: 06/26/2017 08:46 AM]
- 07/05/2017 10 APPEARANCE OF COUNSEL (Local Rule 46(c)) by Craig S. Cooley for Lee Boyd Malvo in 17-6746, 17-6758.[1000112471] [17-6746, 17-6758] Craig Cooley [Entered: 07/05/2017 03:08 PM]
- 08/24/2017 11 DISTRICT COURT UPDATE. TRANSCRIPT of SUPPLEMENTAL MOTIONS TO DISMISS proceedings for dates of 4/5/2017, before Judge Raymond A. Jackson, re [34] USCA Order, [66] USCA Order, [28] Transmission of Notice of Appeal to 4CCA, [60] Notice of Appeal, [65] USCA Case Number, [63] Transmission of Notice of Appeal to 4CCA, [41] Appellant's Brief, [29] USCA Case

Number, [36] USCA Order, Assembled INITIAL Electronic Record Transmitted to 4CCA, [33] USCA Order, [30] USCA Order, [32] USCA Order, [37] USCA Judgment, [27] Notice of Appeal, [38] USCA Mandate, Assembled INITIAL Electronic Record Transmitted to 4CCA, [35] USCA Order Court Reporter/Transcriber Janet Collins, Telephone number 757-222-7072. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Does this satisfy all appellate orders for this reporter? y Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/25/2017. Redacted Transcript Deadline set for 10/24/2017. Release of Transcript Restriction set for 11/22/2017. [17-6746, 17-6758] AD [Entered: 08/24/2017 02:23 PM]

- 08/24/2017 12 BRIEFING ORDER filed. Opening Brief and Appendix due 10/03/2017. Response Brief due 11/02/2017. [17-6746, 17-6758] RW [Entered: 08/24/2017 02:28 PM]
- 10/03/2017 13 BRIEF by Appellant Randall Mathena in 17-6746, 17-6758 in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: hand delivery. [1000167387] [17-6746, 17-6758] Matthew McGuire [Entered: 10/03/2017 04:10 PM]
- 10/03/2017 14 Joint FULL ELECTRONIC APPENDIX and full paper appendix by Appellant Randall Mathena in 17-6746, 17-6758. Method of Filing Paper Copies: hand delivery. Date paper copies mailed dispatched or delivered to court: 10/04/2017. [1000167429] [17-6746, 17-6758] Matthew McGuire [Entered: 10/03/2017 04:37 PM]
- 10/03/2017 15 OPENING BRIEF (PAPER) file-stamped, on behalf of Randall Mathena in 17-6746, 17-6758. Number of pages: [68]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 10/06/2017. Received by clerk date: 10/04/2017. [1000169147] [17-6746, 17-6758] RW [Entered: 10/06/2017 09:10 AM]

- 10/03/2017 16 APPENDIX (PAPER) file-stamped, on behalf of Randall Mathena in 17-6746, 17-6758. Total number of volumes (including any sealed): 3. Total number of pages in all volumes: 1941. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of Copies: 4. Entered on Docket Date: 10/06/2017 Received by clerk date: 10/04/2017. [1000169386] [17-6746, 17-6758] RW [Entered: 10/06/2017 12:03 PM]
- 10/12/2017 17 ORDER filed [1000171919] appointing Craig Stover Cooley as counsel for Lee Boyd Malvo in 17-6746. Nunc pro Tunc Date: 06/09/2017. Representation Type: CJA-HA. Copies to all parties. [17-6746, 17-6758]–[Edited 10/20/2017 by RW] RW [Entered: 10/12/2017 09:12 AM]
- 10/20/2017 18 CASE TENTATIVELY CALENDARDED for oral argument during the 1/23/18 – 1/26/18 argument session. Additional copies due: 10/25/2017. Notify Clerk’s Office of any scheduling conflict by: 10/30/2017. [17-6746, 17-6758] JLC [Entered: 10/20/2017 05:19 PM]
- 10/24/2017 19 NOTICE RE: CONFLICT WITH PROPOSED ARGUMENT DATES by Appellant Randall Mathena in 17-6746. Argument Session: 01/18 Days

you are available: 1/23; 1/24; 1/25;
1/26 Other scheduling information:
Also arguing Case No. 17-6743,
Blount v. Clarke in same session [17-
6746, 17-6758] Matthew McGuire
[Entered: 10/24/2017 04:56 PM]

- 10/30/2017 20 NOTICE RE: CONFLICT WITH
PROPOSED ARGUMENT DATES
by Appellee Lee Boyd Malvo in 17-
6746, 17-6758. Argument Session:
01/18 Days you are available: 1/23;
1/24; 1/25(PM); 1/26 Other schedul-
ing information: I have State Court
cases on January 25 in the morning
but can reschedule those if necessary
to accommodate this Court and the
Assistant Attorney General [17-6746,
17-6758] Craig Cooley [Entered:
10/30/2017 10:58 AM]
- 11/01/2017 21 BRIEF by Appellee Lee Boyd Malvo
in 17-6758, 17-6746 in electronic and
paper format. Type of Brief: RE-
SPONSE. Method of Filing Paper
Copies: hand delivery. Date Paper
Copies Mailed, Dispatched, or Deliv-
ered to Court: 11/01/2017.
[1000184615] [17-6758, 17-6746]
Craig Cooley [Entered: 11/01/2017
09:50 AM]
- 11/01/2017 22 RESPONSE BRIEF (PAPER) file-
stamped, on behalf of Lee Boyd
Malvo in 17-6746, 17-6758. Number
of pages: [65]. Sufficient: YES. Num-
ber of Copies: [4]. Entered on Docket

Date: 11/02/2017. Received by clerk date: 11/02/2017. [1000185806] [17-6746, 17-6758] RW [Entered: 11/02/2017 12:26 PM]

- 11/08/2017 23 AMICUS CURIAE BRIEF by Holly M. Landry, Amicus Curiae in electronic and paper format. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 11/09/2017. [1000189563] [17-6746, 17-6758] Danielle Spinelli [Entered: 11/08/2017 05:56 PM]
- 11/08/2017 24 AMICUS CURIAE BRIEF (PAPER) file-stamped, on behalf of Holly Landry in 17-6746, 17-6758. Number of pages: [28]. Number of Copies: [4]. Entered on Docket Date: 11/13/2017. Received by clerk date: 11/13/2017. [1000191024] [17-6746, 17-6758] RW [Entered: 11/13/2017 01:08 PM]
- 11/15/2017 25 BRIEF by Appellant Randall Mathena in 17-6746, 17-6758 in electronic and paper format. Type of Brief: REPLY. Method of Filing Paper Copies: hand delivery. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 11/16/2017. [1000193329] [17-6746, 17-6758] Matthew McGuire [Entered: 11/15/2017 04:29 PM]
- 11/16/2017 26 REPLY BRIEF (PAPER) file-stamped, on behalf of Randall

Mathena in 17-6746, 17-6758. Number of pages: [29]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 11/20/2017. Received by clerk date: 11/16/2017. [1000195552] [17-6746, 17-6758] TF [Entered: 11/20/2017 03:43 PM]

- 12/04/2017 27 CASE CALENDARED for oral argument. Date: 01/23/2018. Registration Time: 8:45 – 9:00. Daily Arguments Begin: 9:30. Oral argument acknowledgment form due within 5 days. [17-6746, 17-6758] JLC [Entered: 12/04/2017 04:26 PM]
- 12/05/2017 28 ORAL ARGUMENT ACKNOWLEDGMENT by Appellant Randall Mathena in 17-6746, 17-6758. Counsel arguing: Matthew R. McGuire Opening argument time: 15 Rebuttal argument time: 5 [1000203637] [17-6746, 17-6758] Matthew McGuire [Entered: 12/05/2017 01:43 PM]
- 12/06/2017 29 ORAL ARGUMENT ACKNOWLEDGMENT by Appellee Lee Boyd Malvo, Amicus Supporting Appellee Holly Landry and Appellant Randall Mathena in 17-6746, 17-6758. Counsel arguing: Craig S. Cooley Opening argument time: 8:45-9:00 Answering argument time: 8:45-9:00 Rebuttal argument time: 8:45-9:00 [1000204135] [17-6746, 17-6758] Craig Cooley [Entered: 12/06/2017 10:10 AM]

- 01/16/2018 30 SUPPLEMENTAL AUTHORITIES (FRAP 28(j)) by Appellant Randall Mathena in 17-6746, 17-6758. [1000224463]. [17-6746, 17-6758] Matthew McGuire [Entered: 01/16/2018 03:08 PM]
- 01/23/2018 31 ORAL ARGUMENT heard before the Honorable Paul V. Niemeyer, Robert B. King and Albert Diaz. Attorneys arguing case: Matthew Robert McGuire for Appellant Randall Mathena and Mr. Craig Stover Cooley, Esq. for Appellee Lee Boyd Malvo in 17-6746, 17-6758. Courtroom Deputy: Emily Borneisen. [1000228350] [17-6746, 17-6758] EB [Entered: 01/23/2018 12:45 PM]
- 06/21/2018 32 PUBLISHED AUTHORED OPINION filed. Originating case numbers: 2:13-cv-00375-RAJ-LRL and 2:13-cv-00376-RAJ-LRL. [1000316313]. [17-6746, 17-6758] Annotation added to opinion reflecting Supreme Court history—[Edited 04/11/2019 by EB] RW [Entered: 06/21/2018 08:21 AM]
- 06/21/2018 33 JUDGMENT ORDER filed. Decision: Affirmed. Originating case numbers: 2:13-cv-00375-RAJ-LRL and 2:13-cv-00376-RAJ-LRL. Entered on Docket Date: 06/21/2018. [1000316317] Copies to all parties and the district court. [17-6746, 17-6758] RW [Entered: 06/21/2018 08:23 AM]

- 06/29/2018 34 MOTION by Appellant Randall Mathena in 17-6746, 17-6758 to stay mandate. Date and method of service: 06/29/2018 ecf. [1000321548] [17-6746, 17-6758] Matthew McGuire [Entered: 06/29/2018 10:09 AM]
- 07/03/2018 35 Mandate stayed pending ruling on motion to stay the mandate. [17-6746, 17-6758] RW [Entered: 07/03/2018 08:54 AM]
- 07/03/2018 36 NOTICE ISSUED to Mr. Craig Stover Cooley, Esq. for Lee Boyd Malvo in 17-6746 requesting response to Motion to stay mandate [34]. Response due: 07/06/2018.[1000322944]. [17-6746, 17-6758] RW [Entered: 07/03/2018 08:56 AM]
- 07/06/2018 37 RESPONSE/ANSWER by Lee Boyd Malvo in 17-6746, 17-6758 to notice requesting response [36] [17-6746, 17-6758] Craig Cooley [Entered: 07/06/2018 10:50 AM]
- 07/16/2018 38 COURT ORDER filed [1000329894] denying motion to stay mandate [34]. Copies to all parties. [17-6746, 17-6758] RW [Entered: 07/16/2018 12:54 PM]
- 07/24/2016 39 Mandate issued. Referencing: [33] Judgment order, [32] published authored Opinion. Originating case number: 2:13-cv-00375-RAJ-LRL.

[17-6746, 17-6758] RW [Entered:
07/24/2018 09:17 AM]

- 08/21/2018 40 SUPREME COURT REMARK—
petition for writ of certiorari filed.
08/16/2018. 18-217. [17-6746, 17-
6758] SJC [Entered: 08/21/2018
02:33 PM]
- 03/18/2019 41 SUPREME COURT REMARK—
petition for writ of certiorari granted.
03/18/2019 [17-6746, 17-6758] EB
[Entered: 03/18/2019 03:43 PM]
-

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF CHESAPEAKE

-----)	
COMMONWEALTH OF	)	<u>TRIAL</u>
VIRGINIA,	)	INDICTMENT NOS.
-vs-	)	03-3089, 03-3090
LEE BOYD MALVO,	)	03-3091
a/k/a John Lee Malvo,)	
Defendant.)	
-----)	

VOLUME I

Before: The Honorable Jane M. Roush
Designate Judge of the aforesaid Court.

Date: December 22, 2003

Place: Chesapeake, Virginia

The defendant appearing in person.

Reported by:

Lu Ann G. Smith, Court Reporter

* * *

[4] THE COURT: Good morning. I appreciate the degree to which you agreed on the instructions and verdict forms.

I thought we would finish the testimony today and take up the disputed instructions; is that acceptable?

MR. COOLEY: Yes, Your Honor.

THE COURT: Is there anything we need to discuss before the jury is brought back?

MR. COOLEY: Probably one thing, Your Honor. I would expect to offer our Exhibit Number 40. That is a photograph of Mr. Malvo at the time that he was within a few months of him being taken into the home of Mr. Muhammad. It shows him -- it is that photograph, Your Honor.

It was refused at the merits' phase, and it is part of his history, and we wanted to be able to introduce it at the penalty phase. That is the only additional photograph we plan to introduce relating to Lee or photographs of Lee, but I --

THE COURT: We are at a completely different stage of the proceeding now, for example, with the 911 tape not being admissible at the guilt [5] phase, but it is admissible at the sentencing stage.

Does the Commonwealth object to the photograph?

MR. HORAN: No, Your Honor.

MR. COOLEY: I would like to tell the Court. We have three witnesses. We anticipate not much more than an hour of additional testimony from these three witnesses, and we anticipate resting at that point.

MR. HORAN: Your Honor, I would suggest to the Court that we get this out of the way before these witnesses take the stand, those witnesses that can add nothing to this proceeding. The first of these is

Leslie Malvo. He testified at great length at the guilt or innocence phase. It is obvious he had not seen this defendant in the eight years before this case started. He had not seen him since he was about 10 years old. In the years between the time he was 5 and the time he was 10, I think the testimony was he saw him 3 times. He sat on the witness stand and sobbed and cried for 20 minutes about the precious son he had not seen in 8 years, and I would submit to the Court that there is absolutely nothing he can add to that testimony. He has said everything he could possibly say about it other than his giving his [6] opinions as to what should be done now, and this jury should not be subjected to that kind of testimony. It is not proper testimony.

Unless there is a proffer of what he is going to add that is new, I would submit to the Court the Commonwealth should not be placed in the position of objecting to all of these questions concerning things he has already testified to. I object to him being put on without some proffer of what is new with his testimony.

It is the same with Mr. Archer, Reverend Archer, from Bellingham, Washington, who testified extensively in the case-in-chief. It is -- again, it should be a proffer of what he is going to say that is new. He is not allowed to repeat the exact same testimony. No defendant has a right to put the same material on twice, and that is what they are trying to do, and we think there ought to be a proffer.

THE COURT: Mr. Cooley?

MR. WALSH: I will respond to Mr. Horan, Your Honor.

We are at a different stage now. It is the information and history of this young man's background. Mr. Malvo's testimony was limited to the child he was during the trial. He will tell the Court [7] and jury today that Lee wanted to be a pilot and the things he did with his son concerning that. He will also talk about taking him to movies and spending time with him, the bond he had with this child which is history.

THE COURT: What I would urge you to do is I would not want to have a repeat of Winsom Maxwell's testimony from last Friday, for example. Try to get to new ground, things that were not admissible during the guilt phase. I don't think I will limit you any more than that. The fact of the matter is that a great deal of mitigation evidence came in during your case-in-chief in the guilt phase, and this is not the opportunity to repeat all of that so what these witnesses can bring to the table that is new.

MR. WALSH: That is what we plan, Your Honor. It is the penalty stage and the information will be broader, things of that nature and we will direct him that way.

THE COURT: If we get into a repeat and Mr. Horan objects, I'm going to sustain the objection just as I did with Ms. Maxwell.

MR. WALSH: We understand, and it is the only parent he has.

[8] THE COURT: I understand.

MR. COOLEY: If I can add for the record, I don't know of a prohibition, and certainly not within the statute that this is a separate and distinct proceeding in which the sole focus is on his history in terms of defense evidence mitigation, his history and background, and while I can certainly understand that the Court would not want to allow us to put on every witness to repeat what they had previously said, since that is a focus of this, I don't know of any prohibition to evidence that would be some parts repetitious.

We understand the Court's ruling, but if you would note our exception.

THE COURT: I will take it up as it comes up. It is a rare case that had as much mitigation evidence in the guilt phase. Because of the insanity defense, it was by and large a -- what normally is mitigation evidence, we heard over the last three weeks so I would urge you to use some restraint and discretion, and we will take it up as the evidence comes in.

MR. COOLEY: Thank you very much.

As I indicated, the three witnesses will take less than an hour, and I would trust that the [9] Court would assume there will not be much repetition.

THE COURT: I would think that an hour's worth of mitigation will not strain the patience of the Court.

Let's bring back the jury.

* * *

[61] THE COURT: Welcome back, members of the jury.

You have now heard all of the evidence you are going to hear in the case. This is when I read the instructions of law to you on the issue of sentencing. I would ask that you pay close attention to the instructions, but do not concern yourselves if you miss a word here or there because you will be able to have the complete set of written instructions back in the jury room with you. In fact, we will make a set for each of you of the instructions.

You have convicted the defendant of an offense which may be punished by death; to wit, capital murder of Linda Franklin in the commission of or attempt to commit an act of terrorism. You must decide whether the defendant shall be sentenced to death or to imprisonment for life or to imprisonment for life and a fine of a specific amount but not more than \$100,000.00. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following aggravating [62] circumstance:

One, that after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or, two, that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both of these circumstances, then you may fix the punishment of the defendant at death. But if you nevertheless believe from all of the evidence, including the evidence in mitigation that the death penalty is not justified, then you shall fix the punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount but not more than \$100,000.00.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of these circumstances, then you may fix the punishment of the defendant at death, but if you nevertheless believe from all of the evidence including evidence in mitigation that the death [63] penalty is not justified, then you shall fix the punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount, but not more than \$100,000.00.

If the Commonwealth has failed to prove beyond a reasonable doubt at least one of these circumstances, then you shall fix the punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount, but not more than \$100,000.00.

Any decision you make regarding punishment must be unanimous.

You have convicted the defendant of an offense which may be punished by death; to wit, capital murder (killing of more than one person within a three-year period.) You must decide whether the defendant shall be sentenced to death or to imprisonment for life or to imprisonment for life and a fine of a specific amount but not more than \$100,000.00. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following aggravating circumstances:

[64] One, that after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or, two, that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both of these circumstances, then you may fix the punishment of the defendant at death. But if you nevertheless believe from all of the evidence, including the evidence in mitigation that the death penalty is not justified, then you shall fix the punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount but not more than \$100,000.00.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of these circumstances, then you may fix the punishment of the defendant at death, but if you nevertheless believe from all of the evidence including evidence in mitigation that the death penalty is not justified, then you shall fix the [65] punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount, but not more than \$100,000.00.

If the Commonwealth has failed to prove beyond a reasonable doubt at least one of these circumstances, then you shall fix the punishment of the defendant at:

One, imprisonment for life; or,

Two, imprisonment for life and a fine of a specific amount, but not more than \$100,000.00.

Any decision you make regarding punishment must be unanimous.

The words “imprisonment for life” mean imprisonment for life without possibility of parole.

“Depravity of mind” is defined as a degree of moral turpitude and psychical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation.

If you find that the Commonwealth has proved beyond a reasonable doubt the existence of an aggravating circumstance, in determining the appropriate

punishment, you shall consider any mitigation evidence presented of circumstances which do not justify or excuse the offense but which in [66] fairness or mercy may extenuate or reduce the degree of moral culpability and punishment.

Before you may fix the penalty in this case at life imprisonment or death, you are required to consider any evidence that has been presented in mitigation. Mitigation circumstances may include, but are not limited to, any fact relating to the defendant's age, character, education, environment, mental condition, life and background or any aspect of the crime itself which might be considered extenuating or tend to reduce his moral culpability.

You must consider -- you must consider a mitigating circumstance if you find there is evidence to support it. The weight which you accord a particular mitigating circumstance is a matter for your judgment; however, you may not refuse to consider any evidence which has been presented in mitigation.

There is nothing in the law of Virginia that requires you to impose a sentence of death. Even if you find that the Commonwealth has proved the aggravating circumstances of vileness and/or future dangerousness beyond a reasonable doubt, you are not required to impose a sentence of death.

That concludes the instructions.

* * *

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF CHESAPEAKE

-----)	
COMMONWEALTH OF	)	<u>TRIAL</u>
VIRGINIA,	)	INDICTMENT NOS.
-vs-	)	03-3089, 03-3090
LEE BOYD MALVO,	)	03-3091
a/k/a John Lee Malvo,)	
Defendant.)	
-----)	

VOLUME I

Before: The Honorable Jane M. Roush
Designate Judge of the aforesaid Court.

Date: December 23, 2003

Place: Chesapeake, Virginia

The defendant appearing in person.

Reported by:

Lu Ann G. Smith, Court Reporter

* * *

[5] Mr. Foreperson, have the members of the jury
reached their verdict?

THE FOREMAN: Yes.

THE COURT: Are the verdicts unanimous?

THE FOREMAN: Yes, Your Honor.

THE CLERK: We, the jury, on the issue joined, having found the defendant guilty of capital murder of Linda Franklin in the commission of or attempted commission of an act of terrorism having found unanimously and beyond a reasonable doubt after consideration of his history and background that there is a probability that he would commit criminal acts of violence that constitute a continuing serious threat [6] to society and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind; and having considered all of the evidence in aggravation and mitigation of the offense, fix his punishment at imprisonment for life and a fine of \$100,000.00.

On Count 2:

We, the jury, on the issue joined, having found the defendant guilty of capital murder (killing of more than one person in a three-year period) having found unanimously and beyond a reasonable doubt after consideration of his history and background that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society, and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind; and having considered all the evidence in aggravation and mitigation of the offense, fix his punishment at imprisonment for life and a fine of \$100,000.00.

THE COURT: Are there any motions relating to the jury's verdict before I discharge the [7] jury?

There are none.

I want to thank you for your service on this -- as jurors on this case. It was an extraordinary requirement on your time and a very difficult and very emotional case. You have given a great deal of care to your deliberations.

I am going to discharge you now and excuse you and ask, if you will, remain back in the jury room for a few moments after I set up a few more things with the attorneys here, and I will come back and talk to you privately. If you will wait for a couple of minutes, you may return to the jury room.

(At 4:16 p.m., the jurors were dismissed.)

THE COURT: Counsel, approach the bench, please, just counsel at this point.

(The following proceedings were held at the bench by the Court and counsel out of the hearing of the defendant:)

THE COURT: I am confused about whether I [8] need to do a sentencing hearing now or wait.

Do you want a presentence investigation and subsequent hearing?

MR. COOLEY: The only reason it would be a benefit is if DOC uses the presentence report to determine where to place him properly, and for that

reason, I think -- I don't want to make everybody come back, but I think that would be preferable.

THE COURT: The Court has requested that I set it on a Wednesday which is the most convenient for them, Wednesday, two months from now?

MR. COOLEY: The 10th of March?

THE COURT: I will do it on the record then.

(The following proceedings were held in open court:)

THE COURT: I'm going to order a presentence investigation and set this matter for a final sentencing hearing. The circuit court here in Chesapeake asks that I set it on a Wednesday, the most convenient date. Would Wednesday, March 10th be acceptable?

MR. COOLEY: Yes, Your Honor.

[9] MR. HORAN: Yes, Your Honor.

THE COURT: We will set the sentencing hearing on Wednesday, March 10th in Chesapeake at 10:00 a.m.

Is there anything further we need to take up?

Court is adjourned.

* * *

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

-----)	
COMMONWEALTH OF	)	<u>SENTENCING</u>
VIRGINIA,	)	INDICTMENT NOS.
)	
-vs-	)	03-3089, 03-3090
LEE BOYD MALVO,	)	03-3091
a/k/a John Lee Malvo,)	
)	
Defendant.)	
-----)	

VOLUME I

Before: The Honorable Jane M. Roush
Designate Judge of the aforesaid Court.

Date: March 10, 2004

Place: Chesapeake, Virginia

The defendant appearing in person.

Reported by:

Lu Ann G. Smith, Court Reporter

* * *

[3] (The defendant entered the courtroom.)

THE COURT: Let the record reflect that the defendant, Lee Boyd Malvo, is present in person, represented by his attorneys, Mr. Cooley and Mr. Arif. Also here are Mr. Walsh and Mr. Petrovich and Mr. Strayer.

Representing the Commonwealth are Mr. Horan and Mr. Morrogh.

Where is Barbara Novak who prepared the presentence investigation? There she is. Also here is Ms. Barbara Novak, the probation and parole officer who prepared the presentence investigation.

Mr. Arif and Mr. Cooley, have you had an opportunity to go over the presentence investigation with Mr. Malvo?

MR. COOLEY: Yes, Your Honor.

THE COURT: Are there any corrections, deletions or additions?

MR. COOLEY: Just some minor ones, Your Honor.

Page 2, on the right side, about a third of the way down: "Current arrest date." I believe that the official arrest as to these counts would have been November 7, 2002, rather than October 14, which [4] is the offense date.

THE COURT: I will make that correction, November 7th.

Does the Commonwealth agree with that?

MR. HORAN: I agree, Your Honor.

MR. COOLEY: This would be, again, very minor. Page 5-D, the third paragraph down, middle of that, there is a reference of -- Mr. Williams relieved groceries at \$150.00, and that should say \$50.00.

Finally, on Page 6 of the presentence, in the first paragraph, top, under "Education," it says: "He is currently working to obtain his GED." He is working to obtain his high school diploma and doing that by correspondence, and we assisted him with that as opposed to his GED.

Those are our only corrections.

I might note, we received, I believe, a total of three supplements to the original presentence that were made up in part of the Commonwealth's version, and a number of victim impact statements were sent with the first addendum, the second, and now we received one this morning. To the extent that those are out of time, we would waive any objection to that and have no objection.

THE COURT: It sounds like to me that you [5] might have received one more supplement than I. I don't believe I have ever seen the Commonwealth's version of the offense.

Ms. Novak, do you have that?

MR. COOLEY: I can offer up ours.

THE COURT: Sure.

MR. COOLEY: Mr. Arif has one as well as I.

THE COURT: I know I have not seen this.

I will make it part of the record in the case.

MR. COOLEY: So that we can all be sure, we have received victim impact statements from members of the families of Ms. Linda Franklin, Mr. Dean Meyers, Ms. Claudine Parker, Ms. Claudine Ballenger, Mr. Conrad Johnson, Mr. Premkumar Walekar, Ms. Kellie Adams, Ms. Keeyna Cooke, Mr. James Buchanan, Ms. Sarah Ramos and Pascal Chariot. So we believe we have all of them. If there are others, we are happy to receive them and go over them with Mr. Malvo.

THE COURT: I have read all of the victims' impact statements from all of the family members.

MR. COOLEY: Those are the only corrections and additions that we have.

[6] THE COURT: Does the Commonwealth have any additions, corrections or deletions to the presentence report?

MR. HORAN: No, Your Honor.

THE COURT: Does either party wish to cross-examine Ms. Novak who prepared the report?

MR. HORAN: Not the Commonwealth, Your Honor.

MR. COOLEY: No, Your Honor.

THE COURT: The presentence report will be made a part of the evidence in the case.

Does the Commonwealth have any evidence?

MR. HORAN: No, Your Honor.

THE COURT: Does the defense have any evidence?

MR. COOLEY: No, Your Honor.

THE COURT: I will hear your argument.

MR. HORAN: Your Honor, I would waive opening with the Court's permission.

THE COURT: Mr. Cooley?

MR. COOLEY: Judge, just very briefly, we have several things to comment to the Court.

One is, and we did not have an opportunity to do this at the time of the verdict, but on all counts, we would like to commend the clerks' [7] offices from both jurisdictions, from Chesapeake and Fairfax for the work they did throughout the trial, pretrial and posttrial and certainly during the trial, and I want to commend the sheriff's office here that I think did an extraordinary job, very, very professional from the beginning to the end in the handling of this trial and the particular difficulties that seem to attach to this type of trial so we are very appreciative from the defense side, and the Commonwealth may want to add to these comments as well, but I'm sure all of us are appreciative of the high quality of professionalism that was shown both inside the courtroom and outside the courtroom by the folks who handled the trial.

As to the situation before the Court, Judge, we have received and gone over with Lee the victim impact statements. We are very mindful of the pain the

families are in and very appreciative of their comments. We understand these were not easy for them to write or read and endure, and we do appreciate what they have submitted. We, from our perspective, see this as an additional tragedy that I don't believe anyone who could have observed the evidence on both sides of this case and believed that Lee Malvo would have been a participant of any kind in these events [8] except for the influence and invention of John Muhammad, but nonetheless, he was involved in the situations before the Court, and Lee knows that he has much to face and much to pay for. We have challenged Lee, and I might commend his jail. I think they have done as much as we in challenging him to live within the constraints of incarceration as positively as he can to try to move forward and do good things for people and to begin a process of repayment. He knows he cannot undo the damage, but he also knows that he can choose which way to live during his incarceration. I think he is committed to try to do it in a way that is positive so we wanted the Court to know that.

I also wanted to ask the Court to consider putting in its order that Lee be placed in a facility where he could get ongoing mental-health assessment treatment and therapy. We think he is in need of that, and he has asked for that at different times. Obviously, these circumstances are something that is not an unreasonable perception of what would be in his and his community -- whether that's the prison facility or otherwise -- best for everyone for him to have that opportunity, so we ask the Court to consider putting in its

order that. We understand the Court cannot order the Department of Corrections to do [9] anything except receive him, but we ask that the Court make that request within the order.

THE COURT: I'm not sure how much mental-health therapy is available in the prison system in Virginia for somebody with a life sentence.

MR. COOLEY: There is not a great deal. I believe that the facility down in Marion may have some ability. They have a combination of hospital and mental. The former Southwestern State Hospital may have been available. I think that is -- ultimately, the Department of Corrections has to determine what level of security, and I think that is a high-level security facility, but all we ask is for the Court to consider making that request to the Department of Corrections. We understand there aren't a lot of alternatives here for the Court so with that said, we appreciate the Court's consideration throughout these proceedings.

I will tell the Court that on advice of counsel, Lee intends to waive allocution.

THE COURT: Mr. Horan.

MR. HORAN: Very briefly, Your Honor. The jury of 12 in this case among other things in their findings and in their verdict and the language used found unanimously and beyond a reasonable doubt [10] that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, and it involved depravity of mind. They also found

unanimously and beyond a reasonable doubt after consideration of his history and background that there was a probability he would commit criminal acts of violence that would constitute a continuing serious threat to society. Those findings by the jury are amply supported by the evidence in this case. Those findings point out the absolute egregiousness of this defendant's behavior, and we ask the Court now to impose the sentence upon him.

THE COURT: Mr. Malvo, please, stand.

Do you understand you have a right to address the Court?

THE DEFENDANT: Yes, ma'am.

THE COURT: You have chosen to give up that right after consulting with your attorneys?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you ready to be sentenced today?

THE DEFENDANT: Yes, ma'am.

THE COURT: Count 1: I sentence you to a term of life imprisonment, plus a \$100,000.00 fine.

Count 2, I sentence you to a term of life [11] imprisonment, plus a \$100,000.00 fine.

Count 3, I sentence you to a term of imprisonment of 3 years.

I have no expectation that you will be able to pay the fines; however, I understand that the jury's intent was to send a message of how strongly they felt about these offenses. What I will do is enter judgment in favor of the Commonwealth of Virginia against you, \$100,000.00 on each count, Count 1 and Count 2, so if you came into some funds, the Commonwealth of Virginia would have the rights as the lien creditor, judgment creditor to perhaps recoup the costs of the defense in this case.

As a convicted felon, a sample of your blood will be taken at the jail for the purposes of a DNA test.

You have the right to appeal the decision of this Court. If you want to appeal, you must note your appeal within 30 days. If you cannot afford an attorney to represent you in your appeal, I will appoint an attorney to represent you. Unless you tell me otherwise, I will appoint your trial counsel, Mr. Cooley and Mr. Arif, to continue to represent you in any appeal you might file.

Are there any questions about the [12] sentence?
Anything I omitted?

MR. COOLEY: No, Your Honor.

THE COURT: Mr. Malvo, you are remanded to the custody of the sheriff.

Court is adjourned.

(The proceedings [sic] was concluded.)

* * *
