

AF 13502174
AUG 12 1954
APRIL 11 1954
Arizona 12:05 AM
1-22-58

When I come to the house from work

Monday night 1-20-58 around 7:20 PM

Elizabeth unlocked the door and let me
in the house.

Deane was having a spell when I came
into the house. I don't remember if
Elizabeth had the baby in her arms
or if it was lying on the bed.

I remember picking Deane up on my
knees on her back & on her face I don't
remember how much or how long
I stopped her. I don't remember when
but I threw water on her and in
her face. & then I took Deane's

Clothes off and wrapped her in a
blanket. & then I went into the
kitchen to eat but I couldn't
eat so I drank a cup of coffee
and smoked a cigarette.

M. L. Houn

Hamper N. Maston

11:02 AM

1-55-24

APRIL 11 1954
AUG 12 1954

PROPERTY

When I came to the house from work

Monday night 1-20-54 around 9:20 PM

Chickens were out the door and I was

in the house.

There was a sharp report when I came

into the house. I had remembered

Chickens had the habit of the ones

or if it was flying on the bed.

I remember picking them up in my

hand or as I think I on the fact that

remember how many or some day

I thought but I don't remember

but I think water on the bed

in fact. I can't recall the

Chickens off and I thought that in a

moment I can't recall into

water to let but I can't

let me drink a cup of coffee

and smoke a cigarette.

Chickens

at the

several weeks ago I whipped Sharon
right bad. because she wouldn't eat
anything when I was in the house
& she went to crying I know I whipped
her but I don't remember how much or
how long, but it must have been
pretty bad by the way she looked
the next morning and I guess
the black eyes she has now & the
black & blue marks on her.. are the
marks I put on her then by beating her.
I remember of holding Elaine by her
feet & beating her I don't remember how
much or how long.

I remember beating her on her behind
& on her head and I'll guarantee you
I hit her plenty hard.

When we put Elaine in our bed
last night 1-20-58 I wasn't
expecting to find her alive in

the morning M. 2 Hooper Kemper N. Matty

the morning
I got up to find the child in
last night 1-50-27 6 months
when we first found in our bed
I got very angry
I on her head and all the
I remember that for on the bed
never or for long.
first I started her I last number
I remember of holding him by the
Mama I put on her the by holding her
I think I like to see on her one
the black eyes are too
The next morning and I found
Gerty had by the way she looked
hair long, but it must have been
her but I don't remember her voice or
I was with a copy of the book I bought
I bought her when I was in the house
right now. because she was not but
I found in the top of the book

and when Sharon got me awake
at 1:00 AM 1-21-58 and found Diane
was dead I wasnt surprised.

I picked Diane up and laid her
back down on the bed I laid down
beside of her and I cried some.

then I went into the other room
and got dressed. and then Elysheth
came into the room when I was
and she told me to go & get some
help & I went to a neighbors house
I think his name was a Mr Cooley
I am not sure. he is the man
that called Simsey in Harrisonburg
and they came & got Diane & took
her away. I dont remember if
we left her bloody diaper on her or
Mat but the blanket that had
blood on it we took it from
around her & left it at the house

M. S. Hoover

Temper N. Maston

and when I saw
at 1:00 PM on 1-21-28 and found
was dead & unresponsive.
I picked him up and laid
him down on the bed & laid
hands of his head & chest.
Then I went into the other room
and got changed and then I
came into the room when I
and she told me to go & get
help I went to a neighbor's house
I think his name was Mr. Kelly
I am not sure, he is the
that called & I went to
and they came & got him & took
her away. I don't remember
we left the bloody diaper on the
that but the blanket that had
blood on it we took it from
around her & left it at the house
Mr. & Mrs. [unclear]

I feel sure the beating I gave
Diane last night 1-20-58 is the
Cause of her being dead and I am
sorry for doing it and I hope
I get some help & mercy for what
I have done.

I want to make this statement
to you M. L. Hoover in writing my
wife Elizabeth Maston had nothing
to do with the beating Diane got
last night 1-20-58 that caused
her death. I am telling what I
remember but I don't remember
everything I was not drinking
Alcohol of any kind. I am sorry
now that I killed her but there is
nothing I can do now but say I am
sorry
Kemper N. Maston
M. L. Hoover - D S R e

Apr. 22/58

Com'rs

Comth L. F

Kemper Weston

H. H.

3368

COUNTY COURT

Criminal Docket **Nº 25578 A**

Com'th

Nat'l

v.

Kemper H. Maston
Defendant

a.w. Appearance Date *1 - 24 - 58*

Trial Date

To GRAND Jury 1-24-58 P.R.G. Judge.



COMMONWEALTH VS. Jennifer W. Marston

DESCRIPTION OF PRISONER

Last known address 365 West Market St 756p

Color W Height 5-5 Eyes Blue Hair Br Weight 140

Marks W.N.

Age 23 Occupation Farmer Hand

Date of Trial 4-22-58

Result 2 yrs

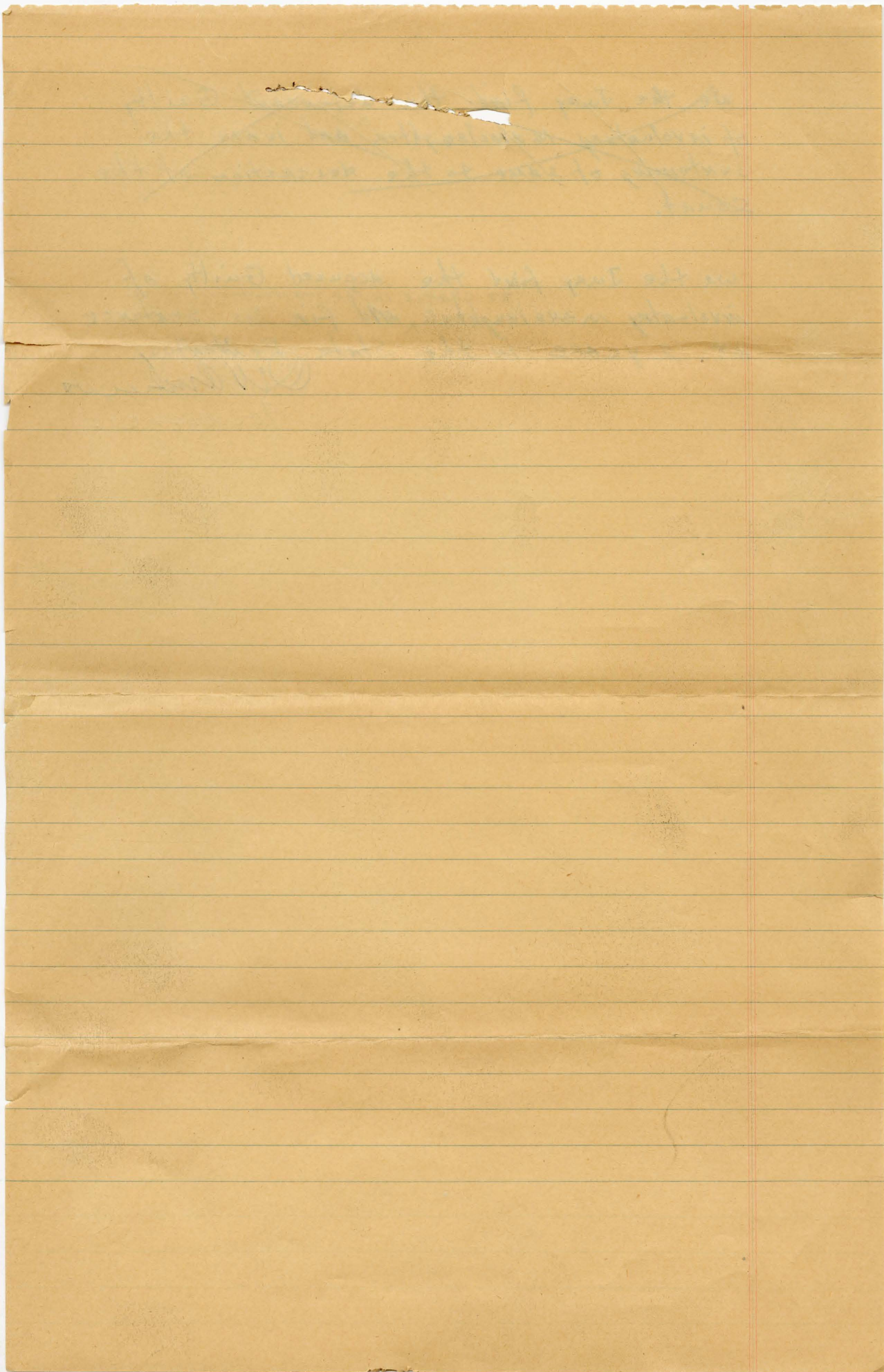
COMMONWEALTH vs. *Joseph W. ...*

DESCRIPTION OF PRISONER

Last known address *365 West ...*
 Color *W* Height *5-2* Eyes *Blue* Hair *Red* Weight *140*
 Marks *W.H.*
 Age *25* Occupation *Barman*
 Date of Trial *1-2-1914*
 Result *1 yr*

~~We the Jury find the defendant Guilty
of involuntary manslaughter and leave the
sentencing of same to the discretion of the
court.~~

we the Jury find the accused Guilty of
involuntary manslaughter ^{as charged in the warrant} and fix his sentence
at 2 years in the State Penitentiary
D W Andrews
Foreman.



IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA:

COMMONWEALTH OF VIRGINIA

v:

For a Felony

KEMPER N. MASTON

To Charles E. Earman, Jr., Atty. for the Commonwealth:

I, Elizabeth O. Maston, do hereby freely and voluntarily make the following statement, concerning the events as they happened on January 20, 1958, in relation to the death of my daughter, Diane Maston:

I At about 7:30 or 7:45 p. m., my husband, Kemper N. Maston, returned from work

II As he entered the house, I told him that our youngest child, Diane, was in another of her fits. Her face was very red, her body rigid, and she was having difficulty breathing. We did not know at the time that she suffered from epilepsy, although my mother had suggested same when we told her about the symptoms on a previous occasion.

III Supper was on the table when Kemper came in, but he was so upset that he was unable to eat. He picked Diane up and started to give her artificial respiration. This didn't help much, so he placed cold compresses on her head and body. Then he shook her and spanked her on her face and rectum. On a previous occasion, this had revived her from her fit, but it didn't work this night.

IV Then Kemper went for a cup of coffee. He did not eat his supper that night. When he finished, he came back to Diane and tried to revive her again by slapping her. He told me that he hated to spank the baby, but it was the only thing he knew to do.

V He then asked me to get his Air Force Manual for him, which I did. It said to keep the baby warm and quiet. Kemper

*a copy of
this statement
was delivered
to me in
1958
day of April
21st
at
C. E. Earman, Jr.
Atty.*

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA:

COMMONWEALTH OF VIRGINIA

For a Felony

KEMPER N. MASTON

To Charles E. Barman, Jr., Atty. for the Commonwealth:

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Maston, returned from work

II As he entered the house, I told him that our youngest

child, Diane, was in another of her fits. Her face was very red, her body rigid, and she was having difficulty breathing. We did not know at the time that she suffered from epilepsy, although my mother had suggested same when we told her about the symptoms on a previous occasion.

III Supper was on the table when Kemper came in, but he was so upset that he was unable to eat. He picked Diane up and started to give her artificial respiration. This didn't help much, so he placed cold compresses on her head and body. Then he shook her and spanked her on her face and rectum. On a previous occasion, this had revived her from her fit, but it didn't work this night.

IV Then Kemper went for a cup of coffee. He did not eat his supper that night. When he finished, he came back to Diane and tried to revive her again by slapping her. He told me that he hated to spank the baby, but it was the only thing he knew to do.

V He then asked me to get his Air Force Manual for him, which I did. It said to keep the baby warm and quiet. Kemper

[Handwritten notes in right margin:]
I was in the room when the fit started. I saw Kemper pick up Diane and start artificial respiration. I saw him spank her on the face and rectum. I saw him place cold compresses on her head and body. I saw him go for coffee. I saw him come back and try to revive her again. I saw him ask me to get the Air Force Manual. I saw him use it.

wrapped Diane in blankets and put her on the bed. Her face was no longer red, but she was still a little stiff. The fit seemed to be over.

VI We went to bed about 9:30. We took Diane with us in order to keep her warm. She was very still.

VII At about 1:00 a. m., we were awakened by the cries of Sharon, our older child. The first thing Kemper said was "My God, how is the baby?". We found her ^{still} in bed with us and she was dead. Kemper fell on the bed, wrapped the baby in his arms and started to cry. Then I started to cry.

VIII About 15 minutes later, we decided to try to get help, so Kemper went to a neighbor's and called Lindsay's.

IX The next day, when we were at Lindsay's, the Sheriff called and told us to return to our home and he would meet us. Since we were in town, we decided to stop by his office.

X The night Mr. Hoover questioned me is the night he got the statement which was supposed to have been made by me. He asked me questions, and I would answer them. He told me to go on and answer, "it won't hurt you". The whole statement was obtained by answering questions ~~asked~~ ^{asked} by him. When he finished, he told me to sign it, and I did. I was not given a chance to read the statement, to my recollection.

XI I thought all along that Kemper was doing all he could to help Diane. I was afraid at the time, but my fear was caused by Diane's fit, and not by anything Kemper did. Of course I was scared for her safety, but she seemed very sick.

XII After the funeral, we were taken directly to the County Court. I was still very much upset, and was not sure about what was happening.

XIII Kemper has always been a good father and husband. I think he has done all he could to provide for us and keep our family together.

wrapped Diane in blankets and put her on the bed. Her face was no longer red, but she was still a little stiff. The fit seemed to be over.

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in order to keep her warm. She was very still.

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of Sharon, our older child. The first thing Kemper said was "My God, how is the baby?" We found her in bed with us and she was dead. Kemper fell on the bed, wrapped the baby in his arms and started to cry. Then I started to cry.

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to help Diane. I was afraid at the time, but my fear was caused by Diane's fit, and not by anything Kemper did. Of course I was scared for her safety, but she seemed very sick.

XII After the funeral, we were taken directly to the

County Court. I was still very much upset, and was not sure about what was happening.

XIII Kemper has always been a good father and husband.

I think he has done all he could to provide for us and keep our family together.

Given under my hand this 21st day of April, 1958.

Elizabeth O. Maston.
Elizabeth O. Maston

STATE OF VIRGINIA:

COUNTY OF ROCKINGHAM, to-wit:

I, Pauline M. Andrus, a notary public in and for the County aforesaid, in the State of Virginia, do hereby certify that Elizabeth O. Maston, whose name is signed to the above, personally appeared before me in my County aforesaid, and made oath, after having the above read to her and after reading same, that the above is a true and correct account of the events which took place to the best of her belief and recollection. My commission expires February 20, 1960.

Given under my hand and official seal this 21st day of April, 1958.

Pauline M. Andrus
Notary Public



Given under my hand this 21 day of April, 1958.

Elizabeth O. Maston
Elizabeth O. Maston

STATE OF VIRGINIA:

COUNTY OF ROCKINGHAM, to-wit:

I, Pauline M. Andrus, a notary public in and for the County aforesaid, in the State of Virginia, do hereby certify that Elizabeth O. Maston, whose name is signed to the above, personally appeared before me in my County aforesaid, and made oath, after having the above read to her and after reading same, that the above is a true and correct account of the events which took place to the best of her belief and recollection. My commission

expires February 20, 1960.

Given under my hand and official seal this 21 day of April,

Pauline M. Andrus
Notary Public



I, Kemper N. Maston, the accused in the attached warrant,
in open court, before the Judge of the Circuit Court of Rockingham
County, Virginia, do voluntarily waive indictment on the said charge
of murder.

Given under my hand this m10th day of February, 1958.

Kemper N. Maston

Witness:

I, Kemper N. Weston, the accused in the attached warrant,
in open court, before the Judge of the Circuit Court of Rockingham
County, Virginia, do voluntarily waive indictment on the said charge
of _____ murder

Given under my hand this 11th day of February, 1958.

Weston N. Weston

Witness:

STATE OF VIRGINIA
COUNTY OF Harrisonburg
City

To-Wit: No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, Charles E. Earman, Jr., Commonwealths Attorney

has this day made complaint and information on oath before me, John G. Leake

Justice of The Peace

City

(Name)

of the said ~~County~~ County, that

(Title)

Kemper N. Maston

Rockingham

in ~~Rockingham~~ County

did on the 20th day of January, 1958: Unlawfully and feloniously
kill and murder one Diane Maston, his daughter, a minor female child, to-wit: the
age of 8 months, against the peace and dignity of the Commonwealth of Virginia

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the
Rockingham
County Court of the ~~Rockingham~~ County, the body (~~body~~) of the above accused, to answer the said complaint and to be
further dealt with according to law. And you are also directed to summon:

- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____

as witnesses.

Given under my hand and seal, this 21st day of January, 1958

John G. Leake
(Title of Issuing Officer)
JUSTICE OF THE PEACE

(Seal)

STATE OF VIRGINIA—COUNTY OF _____, to-wit.

I, _____ a Judge of the County Court in and for the County aforesaid, State of Virginia, do certify

that _____

and _____, as his suret _____, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ Dollars

(\$ _____), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to be rendered, yet upon this condition: That the said _____, shall appear before the _____ Circuit Court

of _____ County, on the _____ day of _____, 19____,

at _____ M., at _____, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart thence without the leave of said court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that

the said _____ shall keep the peace and be of good behavior for a period of _____ days from the date hereof. Nonappearance shall be deemed to constitute a waiver of trial by jury.

Given under my hand, this _____ day of _____, 19____.

Judge. J. P.

DOCKET NO. 25-578A

COMMONWEALTH

WARRANT OF ARREST

Kemper N. Maston

Executed this, the 21st day of

January, 1958

M. J. Weaver

A. J. Stankle

Upon the examination of the within charge, I find the accused

Upon a plea of guilty the defendant is ordered to hold firm until the Grand Jury. I have made my bond this 24th day of January 1958. J. P. Brown County Judge

The following witnesses were recognized to appear before the _____ Circuit Court of _____ County, Virginia, at _____, Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of \$ _____

COSTS

Warrant	\$ 1.00
Trial	2.00
Bail	
Arrest	1.00
Mileage	
Clerk	1.25
Jail Fee and Board	1.50
Witness Attendance	
Summoning Witnesses	
Commonwealth Attorney	5.00
Total Costs	\$ 10.75
Fine	
Total	\$

Plus penalty 1-25-58 P.P.C. Judge

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

DR. TALBOT

ELIZABETH MASTON

~~XXXXXXXXXXXXXX~~

SHERIFF HOOVER

HUBERT GENTRY

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 9:30
o'clock, a. m., on the 22nd day of April, 1958, to testify and the truth to say in behalf of the
Commonwealth before the Grand Jury, against **KEMPER MASTON**

who stands charged with ~~and indicted~~ for a felony ~~misdemeanor~~.

And this you shall not omit under penalty. And have then and there this Writ.

Witness, CHARLES E. EARMAN, JR., Commonwealth's Attorney for Rockingham County and the City of
Harrisonburg, Virginia, at the Court House, the 3rd of April, 1958, and in the 182nd year
of the Commonwealth.

Charles E. Earman Jr.
Commonwealth's Attorney

EXECUTED 4/4/58 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Melvin Hoover
IN PERSON.

George R. Price
Deputy Sheriff
A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

EXECUTED 4-4-58 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Robert Gentry
IN PERSON.

T. S. Martin Dep.
A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

EXECUTED 4-5-58 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Elizabeth Maston
IN PERSON.

T. S. Martin Dep.
A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

EXECUTED 4-5-58 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Dr. Talbot
IN PERSON.

T. S. Martin Dep.
A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY



Shuff Fee
1.60

COMMONWEALTH

V.

KEMPER MASTON

CHARGE TO JURY

If you find the accused, Kemper Maston, guilty of murder, as charged in the warrant, and that the murder was committed with malice aforethought, and that it was willful, deliberate and premeditated, you will find him guilty of murder in the first degree and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him guilty of murder, as charged in the warrant, and that the same was committed with malice aforethought, but that it was not willful, deliberate and premeditated, then you will find him guilty of murder in the second degree, and fix his punishment at confinement in the penitentiary for not less than five nor more than twenty years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, but that he killed Diane Maston without malice aforethought, actual or implied, upon sudden heat, or on reasonable provocation, you will find him guilty of voluntary manslaughter and fix his punishment at confinement in the penitentiary for not less than one year nor more than five years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, nor of voluntary manslaughter, but find him guilty of involuntary manslaughter, you will say so and fix his punishment at confinement in the penitentiary for not less than one year nor more than five years, or, in your discretion, by a fine not exceeding One Thousand Dollars, or by confinement in jail not exceeding one year, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

CHARGE TO JURY

If you find the accused, Kenneth Haston, guilty of murder, as charged in the warrant, and that the murder was committed with malice aforethought, and that it was willful, deliberate and premeditated, you will find him guilty of murder in the first degree and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him guilty of murder, as charged in the warrant, and that the same was committed with malice aforethought, but that it was not willful, deliberate and premeditated, then you will find him guilty of murder in the second degree, and fix his punishment at confinement in the penitentiary for not less than five nor more than twenty years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, but that he killed Diane Haston without malice aforethought, actual or implied, upon sudden heat, or on reasonable provocation, you will find him guilty of voluntary manslaughter and fix his punishment at confinement in the penitentiary for not less than one year nor more than five years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, nor of voluntary manslaughter, but find him guilty of involuntary manslaughter, you will say so and fix his punishment at confinement in the penitentiary for not less than one year nor more than five years, or, in your discretion, by a fine not exceeding one thousand dollars, or by confinement in jail not exceeding one year, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 1

The Court instructs the jury that murder in the first degree is any willful, deliberate and premeditated killing of one human being by another with malice.

Murder in the second degree is the killing of one human being by another with malice but without deliberation or premeditation.

Involuntary manslaughter is the killing of a human being unintentionally while performing an act that is unlawful, or in the improper or ^{wantonly} negligent performance of a lawful act; and that when a homicide follows as a consequence of such a reckless or culpably negligent act as is incompatible with the proper regard for human life, the person causing such death is guilty of involuntary manslaughter.

4-22-58
H, H,

INSTRUCTION

The Court instructs the jury that murder in the first degree is any willful, deliberate and premeditated killing of one human being by another with malice.

Murder in the second degree is the killing of one human being by another with malice but without deliberation or premeditation.

Involuntary manslaughter is the killing of a human being unintentionally while performing an act that is unlawful, or in the improper or negligent performance of a lawful act; and that when a homicide follows as a consequence of such a reckless or culpably negligent act as is incompatible with the proper regard for human life, the person causing such death is guilty of involuntary manslaughter.

Handwritten notes:
4-11-28
A. B.

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 2

The Court instructs the jury that the word "malice" or "malicious", as applied to the law of homicide and used in the definition of murder, is used in a technical sense. It may be either express or implied. It includes not only anger and hatred but every unlawful and unjustifiable motive. Malice denotes an action flowing from any wicked and corrupt motive, done with an evil mind and purpose, attended with such circumstances as carry in them the plain indication of a heart regardless of social duty and deliberately bent on harm. Malice means a wrong act done intentionally without just cause or excuse. It may be inferred or implied from any deliberate and cruel act done without reasonable provocation or excuse.

The Court further instructs the jury that it is not necessary that malice shall have existed for any particular length of time and it may first come into existence at the time of the killing or at any previous time.

4-22-58

K. H.

INSTRUCTION

The Court instructs the jury that the word "malicious" or "malicious", as applied to the law of homicide and used in the definition of murder, is used in a technical sense. It may be either express or implied. It includes not only anger and hatred but every unlawful and unjustifiable motive. Malice denotes an action flowing from any wicked and corrupt motive, done with an evil mind and purpose, attended with such circumstances as carry in them the plain indication of a heart regardless of social duty and deliberately bent on harm. Malice means a wrong not done intentionally without just cause or excuse. It may be inferred or implied from any deliberate and cruel act done without reasonable provocation or excuse.

The Court further instructs the jury that it is not necessary that malice shall have existed for any particular length of time and it may first come into existence at the time of the killing or at any previous time.

Handwritten notes:
 1. v. 18
 4, 4

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 3

The Court instructs the jury that every homicide in Virginia is presumed, in the absence of other evidence, to be murder in the second degree, and in order to elevate the offense to murder in the first degree, the burden is upon the Commonwealth; and in order to reduce the offense to manslaughter or to show justification or excuse for the killing, the burden is upon the accused to introduce evidence to show extenuating circumstances, or justification, unless it appears from the evidence of the Commonwealth.

4-22-58

H. H.

COMMONWEALTH

v.

LESTER NASTON

3
INSTRUCTION

The Court instructs the jury that every homicide in Virginia is presumed, in the absence of other evidence, to be murder in the second degree, and in order to elevate the offense to murder in the first degree, the burden is upon the Commonwealth; and in order to reduce the offense to manslaughter or to show justification or excuse for the killing, the burden is upon the accused to introduce evidence to show extenuating circumstances, or justification, unless it appears from the evidence of the Commonwealth.

4-11-41
4-11-41

INSTRUCTION NO. 4

The Court instructs the jury that there is never a burden upon the accused in a criminal case to prove his defense or to disprove the case for the Commonwealth. Under the law of this land, the Commonwealth must prove each and every material allegation contained in the charge beyond all reasonable doubt, and if the evidence on behalf of the accused or the Commonwealth raises a reasonable doubt as to any material allegation in the charge, then you must find the accused not guilty.

The Court further instructs the jury that if you believe the evidence to be susceptible to two reasonable interpretations, one of which is consistent with the innocence of the accused, then you must adopt the interpretation most favorable to him and find the accused not guilty.

4-22-58

H. H.

The Court instructs the jury that there is never a burden upon the accused in a criminal case to prove his defense or to disprove the case for the Commonwealth. Under the law of this land, the Commonwealth must prove each and every material allegation contained in the charge beyond all reasonable doubt, and if the evidence on behalf of the accused or the Commonwealth raises a reasonable doubt as to any material allegation in the charge, then you must find the accused not guilty.

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4-22-78
A.H.

INSTRUCTION NO. 5

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until his guilt is established by the Commonwealth beyond all reasonable doubt, and this presumption of innocence goes with the accused through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to give the prisoner the benefit of the doubt, and find him not guilty.

4-22-58

A. A.

2 INSTRUCTION NO.

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until the guilt is established by the Commonwealth beyond all reasonable doubt, and this presumption of innocence goes with the accused through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to give the prisoner the benefit of the doubt, and find him not guilty.

4-22-28
H.A.

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 6

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences of guilt.

Furthermore, the jury should bear in mind that any doubt arising from lack of evidence, from conflicting testimony, or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and nonessential circumstances.

If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the Commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

J.H.

4-22-58
H.H.

2 INSTRUCTION

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences

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If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the Commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

4-27-28
44

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 7

The Court instructs the jury that to constitute a willful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist for any particular length of time prior to the actual killing; it is only necessary that such intention should have come into existence for the first time at the time of such killing, or at any time previously.

4-22-58

H.H.

8-1-18
A. H.

time at the time of such killing, or at any time previously.
such intention should have come into existence for the first
time prior to the actual killing: it is only necessary that
the intention to kill should exist for any length of time
deliberate and premeditated killing, it is not necessary that
the Court instructs the jury that to constitute a killing,

INSTRUCTIONS

KEYNES MASON

A.

CONJUNCTION

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 8

The Court instructs the jury that in a case of homicide, deliberation or premeditation by the accused may be proved like any other fact, by either direct or circumstantial evidence or by a combination of both; and if facts, surrounding circumstances and conditions are proven which warrant and justify an inference therefrom beyond a reasonable doubt of the existence of such deliberation or premeditation, then the same may be so inferred.

4-22-58
H.H.

J.

COMMONWEALTH

V. ¹³

KEMPER MASTON

INSTRUCTION 9

The Court instructs the jury that a man is taken to intend that which he does, or which is the immediate or probable consequence of his act.

4-22-58

H. H.

COMMONWEALTH

v.

KEMPER MASTON

9
INSTRUCTION

The Court instructs the jury that a man is taken to intend that which he does, or which is the immediate or probable consequence of his act.

4-2-28
H. H.

INSTRUCTION NO. 10

The Court instructs the jury that accidental killing is not a crime, unless the accused in causing such death is so grossly and culpably negligent as to indicate a callous disregard for human life, in which event the crime is involuntary manslaughter.

4-22-58

H. H.

INSTRUCTION NO. 11

The Court instructs the jury that it is not sufficient for them to surmise that the spanking given Diane Maston by her father might or possibly or probably did result in the death of said Diane Maston, but that they must believe from all the evidence beyond a reasonable doubt, that the death was the actual result of the said spanking before they can find the defendant guilty under this charge.

4-22-58

H. H.

COMMONWEALTH

V.

KEMPER MASTON

INSTRUCTION 12

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the relationship of the witnesses to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, determine which witnesses are more worthy of credit and what is the relative weight of any such testimony and to give credit accordingly.

4-22-58
H. H.

INSTRUCTION NO. 13

The Court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the concurrence of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the guilt of the accused before he can, under his oath, consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind must be convinced beyond a reasonable doubt of the guilt of the accused before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered the evidence in this case, and after consultation with his fellow jurors, should entertain such reasonable doubt of defendant's guilt as is set forth in other instructions of the Court, it is his duty not to surrender his own convictions simply because the balance of the jury entertain different convictions.

4-22-58

A. A.

The Court instructs the jury that upon the trial of a criminal case by a jury the law constrains the conscience of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the guilt of the accused before he can, under his oath, consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind must be convinced beyond a reasonable doubt of the guilt of the accused before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered the evidence in this case, and after consultation with his fellow jurors, should entertain any reasonable doubt of defendant's guilt as set forth in other instructions of the Court, it is his duty not to surrender his own convictions simply because the balance of the jury entertain different convictions.

Handwritten notes:
 13-11-11
 13-11-11

INSTRUCTION NO. 14

The Court instructs the jury that if you have a reasonable doubt as to the degree of crime of which the accused is guilty, if any, then you should find him guilty of the lesser offense, and if you have a reasonable doubt as to whether he is guilty at all, then you should find him not guilty.

4-22-58

A. A.

444
21-11-12

at all, when you should find that the
and if you have a reasonable doubt as to whether the
it can, then you should find that the
should be to the effect of either the
The court therefore the fact that you have a reasonable

INVESTIGATION NO. 41

INSTRUCTION NO. 15

The Court instructs the jury that in a criminal case admissions and confessions of the accused are admitted with great caution, and the Court tells the jury that it is their province to consider all the circumstances under which the alleged confessions were obtained, and to determine their exact nature, import and meaning.

Referred to Ex.
4-22-58
H. H.

INSTRUCTION NO. 12

The Court instructs the jury that in a criminal case admissions and confessions of the accused are admitted with great caution, and the Court tells the jury that it is their province to consider all the circumstances under which the alleged confessions were obtained, and to determine their exact nature, import and meaning.

W. J. ...
4-22-18
A. H.

INSTRUCTION NO. 16

The Court instructs the jury that in considering the the statements and confessions alleged to have been made by the accused, they should take into consideration the circumstances under which they were made, the condition of the party at the time, the age, intelligence and education of the party alleged to have made them, the probability or improbability of such confessions, and that is is your duty to consider the same in connection with all the evidence in this case.

The Court instructs the jury that the confession of a crime made by one who is unaware of what constitutes such crime, is no confession at all, for one must be aware that he is guilty of a crime in fact and in law before his confession thereto is of any force as evidence.

Refused vdx.
4-22-58
H. H.

The Court instructs the jury that in considering the statements and confessions alleged to have been made by the accused, they should take into consideration the circumstances under which they were made, the condition of the party at the time, the age, intelligence and education of the party alleged to have made them, the probability or improbability of such confessions, and that it is your duty to consider the same in connection with all the evidence in this case.

The Court instructs the jury that the confession of a crime made by one who is unaware of what constitutes such crime, is no confession at all, for the law that he is ignorant of is not a crime in fact and in law before his confession becomes in any force as evidence.

Handwritten signature: J. J. [unclear]
Handwritten date: 1-28-28
Handwritten initials: J. J.

INSTRUCTION NO. 17

The Court instructs the jury that involuntary manslaughter is the killing of one ~~accidentally~~ *unintentionally*, contrary to the intention of the parties, in the prosecution of some unlawful, but not felonious act; or in the improper performance of a lawful act.

Handwritten notes:
4-22-58
17

Referred + Lt.

4-22-58

H.H.

INSTRUCTION NO. 17

The Court instructs the jury that involuntary manslaughter
is the killing of one ~~person~~ ^{unintentionally} contrary to the intention
of the parties, in the prosecution of some unlawful, but not
felonious act; or in the improper performance of a lawful act.

Mason
Referred
4-22-58

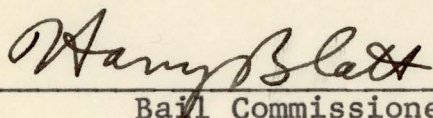
Gaffney & Co.
4-22-58
A.A.

COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

BE IT REMEMBERED, that on this 13th day of March, 1958, Elizabeth O. Maston, principal, and Helen Marie Pence, 365 W. Market Street, Harrisonburg, Virginia, who justified her sufficiency on oath, as surety, personally appeared before me, Harry Blatt, Bail Commissioner in and for the County of Rockingham, in the State of Virginia, in my said County, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia in the sum of Two Hundred Fifty Dollars (\$250.00) to be made and levied of their respective lands and tenements, goods and chattels, to the use of the Commonwealth of Virginia to be rendered, yet upon this condition: That the said Elizabeth O. Maston shall appear before the Circuit Court of Rockingham County, Virginia, at the Courthouse, in Harrisonburg, Virginia, on the 22nd day of April, 1958, at 9:30 o'clock, A. M., then and there to testify and the truth to say on behalf of the Commonwealth of Virginia at the trial of the pending case of Commonwealth v. Kemper Maston, and at any time or times to which the proceedings may be continued or further heard, and before any Court thereafter having or holding any proceedings in connection with said case, and shall not depart thence without leave of said Court, then this recognizance shall be void, otherwise to remain in full force and virtue.

GIVEN under my hand this 13th day of March, 1958.



Bail Commissioner

VIRGINIA: IN THE CIRCUIT
COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

KEMPER MASTON

Bail bond of material witness,
Elizabeth O. Maston, \$250.00.

To: April 22, 1958, 9:30 A.M.

Filed 3/15/58

H. B., B.C.

Elizabeth O. Maston
Bail Commissioner