

8/31/1931 Send Copies to District
8/31/31 Keep in file 1000
1273 850

STATE OF MARYLAND 3300

vs.

HERMAN WEBB DUKER
and
DALE LAMBERT

6/17/1931 Ont
Proc 10/13/31
to 10/27/31

Indictment

(TRUE BILL)

Foreman.

Filed

10/17/31

10/27/31
Gentry Index 10

Sup. Review
11/3/31
by the court

WITNESSES:

- Lieut. Holzer
- Sgt. O'Grady
- Sgt. O'Dea
- Off. Ward
- Off. Twele
- Pauline Webster
- Verna Tierney
- Dr. Boyce

11/2/31
Levinson
Ward of Day

MURDER

O. K.

6/17/31
11/3/31
10/13/31 Alex. Fratturo
an P. G. 10/27/31
10/27/31
10/27/31
Sup. Review
by the court

Box 281
H/3/22/75

6/17/1931
W. H. Miller
E. H. Miller
D. H. Miller

Lambert

State of Maryland,

City of Baltimore, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that HERMAN WEBB DUKER and DALE LAMBERT late of said City, on the twentieth day of April our Lord nineteen hundred and ty-one

~~felon~~
aforethought did kill and murder John W. Anderson,

contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Herman L. Landon

The State's Attorney for the City of Baltimore.

In the Criminal Court of Baltimore

JANUARY

TERM, 19³¹

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present HERMAN WEBB DUKER and DALE LAMBERT

charged with feloniously, wilfully and of deliberately premeditated

malice aforethought killing and murdering John W. Anderson

..... in said City of Baltimore, and State of Maryland,
on or about the 20th day of April, 19³¹

WITNESSES:

..... Foreman.

Lieut. Holzer, Northern District

Sgt. O'Grady, Detective Headquarters

Sgt. O'Dea, " "

Off. Edw. Ward, Southwestern District

Off. Edward Twele " "

Pauline Webster, 1722 N. Durham Street

Verna Tierney, 1615 N. Bradford Street

Dr. Frederick Boyce, Union Memorial Hospital,

Pate Bar No

129

1273

STATE OF MARYLAND

vs.

HERMAN WEBB DUKER

and

DALE LAMBERT

Presentment

PRESENTED

APR 24 1981

George S. Bush
Foreman

MURDER

STATE OF MARYLAND,

:

IN THE

vs.

:

CRIMINAL COURT

:

HERMAN W. DUKER.

:

OF BALTIMORE CITY.

oOo

MR. CLERK:-

Please summon the following witnesses to testify on behalf of the defendant, and make the writ returnable Tuesday, October 27, 1931, at 10 o'clock A. M.:-

✓ Mr. Herman S. Duker,	1808 Eutaw Place.
✓ Mrs. Helene Webb Duker,	1808 Eutaw Place.
✓ Mr. Hugh S. Duker,	4000 St. Paul Street.
✓ Dr. D. Corbin Streett,	712 Park Avenue.
✓ Dr. John R. Oliver,	Johns Hopkins Medical School Library; or Latrobe Apartments; or Alumni Memorial Dormitory, Johns Hopkins University.
✓ Dr. G. E. Partridge,	Maryland Penitentiary; or 16 W. Pennsylvania Avenue, Towson, Maryland.
✓ Dr. Ralph P. Truitt,	1014 St. Paul Street; or Tudor Arms Apartments.

OCT 26 1931

Hilbert W. Davis

Lawrence H. Hill

- Attorneys for Defendant -

IN THE CRIMINAL COURT OF
BALTIMORE CITY.

1273

1931

STATE OF MARYLAND,

VS.

HERMAN W. DUKER

ORDER FOR WITNESSES

OCT 26 1931

NILES, BARTON, MORROW & YOST
ATTORNEYS AT LAW
BALTIMORE, MD.

CRIMINAL COURT OF BALTIMORE

JANUARY TERM, 1931.

THE STATE OF MARYLAND

To the Sheriff of Baltimore City, Greeting:

We command you that you take the body of

and *him* immediately have before the Court here to answer a presentment for

Murder!

WITNESS the Hon. Samuel K. Dennis, Chief Judge of the Supreme Bench of Baltimore City, the 12th day of Jan., 1931.

Issued the

24

day of

April

1931.

EDWARD GROSS,

Clerk Criminal Court of Baltimore.

1273

STATE OF MARYLAND.

vs.

Herman Hebb Duker
.....
of State Attorneys Office CAPIAS.

TAKE BAIL IN \$

JUDGE.

New Est

New Est

CEPI.....

Joseph C. Meyers

SHERIFF

JUN 17 1931

FILED.....

CRIMINAL COURT OF BALTIMORE

JANUARY TERM, 1931.

THE STATE OF MARYLAND

To the Sheriff of Baltimore City, Greeting:

We command you that you take the body of

and *him* *Dale Lambert* immediately have before the Court here to answer a presentment for
Murder

WITNESS the Hon. Samuel K. Dennis, Chief Judge of the Supreme Bench of Baltimore City, the 12th day of Jan., 1931.

Issued the

24

day of

April

1931.

EDWARD GROSS,

Clerk Criminal Court of Baltimore.

1273

STATE OF MARYLAND.

vs.

Dale Lambert

W. State Attorney Office

CAPIAS.

TAKE BAIL IN \$ _____

JUDGE.

In Jail

CEPI.....

Joseph C. Deegan

SHERIFF

FILED.....

JUN 17 1931

CRIMINAL COURT OF BALTIMORE

MAY TERM, 1931.

THE STATE OF MARYLAND

To the Sheriff of Baltimore City, Greeting:

We command you that you take the body of

Herman Webb Duker

and *him* immediately have before the Court here to answer a presentment for

Murder

WITNESS the Hon. Samuel K. Dennis, Chief Judge of the Supreme Bench of Baltimore City, the 11th day of May, 1931.

Issued the

31st

day of

August.

1931.

EDWARD GROSS,

Clerk Criminal Court of Baltimore.

1273

STATE OF MARYLAND.

vs.

Herman Webb Diker
Second
CAPIAS.

TAKE BAIL IN \$ _____

JUDGE.

8/31/31

CEPI. In Jail

Joseph P. Peggan SHERIFF

FILED. AUG. 31. 1931

SUMMON the following additional witnesses for STATE VS.

Herman W. Dutker
+ Dale H. Lambert,

✓ Mrs. Anna Carolyn Anderson

2042 Braddish av.

1273
1991

OCT 9 - 1957

To EDWARD GROSS, Esq.,
Clerk Criminal Court

E. J. Hamme Asst State's Attorney.

SUMMON the following additional witnesses for STATE VS.

1/27

~~Dr. Maldeis - 104 W. Madison - Duken & Lambert
A. W. Dove - Homewood Apts. - N. Charles St
Michael Montecanello - 2400 Lanetta Ave
Mrs. Charles E. Westermelt - 505 Blumhury Road
Catoonsville.~~

~~Lieut. Jones. S. W. D.
Sgt. Edward H. Burns. S. W. D.~~

To EDWARD GROSS, Esq.,
Clerk Criminal Court

E. J. Hammer

OCT 21 1931

State's Attorney.

SUMMON the following additional witnesses for STATE VS.

Luker et al

Dr. Standish *Mc Cleary - 1609 Linden ave*

OCT 22 1931

To EDWARD GROSS, Esq.,
Clerk Criminal Court

Herbert R. O'Connell State's Attorney.

No. 1273 Docket 1931

STATE OF MARYLAND

VS.

Criminal Court of Baltimore

Sept Term, 1931

Dale Lambert

INDICTED for

Enter my appearance for Defendant and summon for defense the

MR. CLERK:

Witnesses whose names are endorsed hereon.

William J. Gayley

Attorney.

FILED OCT 26 1931

WITNESS

Fred Lambert

Carl "

Alberta "

Wm "

Arthur "

Gertrude "

656

Gutman
ave

Gus Welch

2807 Sunset Drive

Edwin Deitz

531 S. Fulton Ave

Mrs Herbert Fulton

2807 Greenmond

Dr. J. Iron Spear

928 N Charles St.

No. 1273 Docket 1931

STATE OF MARYLAND
vs.

Criminal Court of Baltimore



Hermon W. Daker

May Term, 1931

INDICTED for

murder

MR. CLERK:

Enter ~~my~~ ^{our} appearance for Defendant and summon for defense the

Witness whose names are endorsed hereon.

FILED AUG 29 1931

Ernest Hiles

Walter W. Gann

Attorney.

WITNESS

AUG 29 1893

Witness before me and my colleagues

Mr. Clerk

INDICTED for

Murder

against and appearance for Defendant and summons for defense the

W. J. ...
...

Witness

Criminal Court of Baltimore

Term, 1893

STATE OF MARYLAND

County of ...

1893

Criminal Court of Baltimore

1273

Murder

Bail

10	Mr. Maldeis	✓	ml				104 W. Madison St.
20	A. W. Dove		sd				Homewood Apts. N. Charles St.
16	Michael Montecanello		sd				2400 Lauretta Ave.
	Mrs. Charles E. Westervelt	X	X				505 Blunsbury Rd. Catonsville
12	Lieut Jones		sd				S. W. D.
12	Sgt. Edward H. Burns		sd				"
11	Mr. Standish McLeary		sd				1609 Linden Ave.
			27				

Returnable

OK

to testify for State vs. Herman Webb Duker et al

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY:

to testify for

Returnable

OCT 22 1931

Bail

Criminal Court of Baltimore



EDWARD CROSS, Clerk

1931

FORM NO. 2

Criminal Court of Baltimore

1273

Bail

Edwin Bagwell

Wesley Whitely

Louis Barrett

David H. Seaman

Morris Nicholl

ml				
ml				
X				
X				
ml				
27				

747 E. 30th St.

518 E 30th St.

% Glen. Martin Co. Middle River

" " " " "

% Monden Clothes Balto & Bay

Returnable

Oct.

27

to testify for

State vs. Herman Duke et al

TO THE SHERIFF OF BALTIMORE CITY.

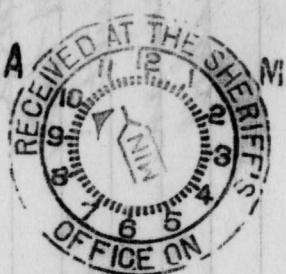
EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY

to testify for

Returnable

OCT 26 1931



1931
OCT
26

Criminal Court of Baltimore

EDWARD CROSS, Clerk

NOV 1931

Ball

1273

~~Bail~~

Criminal Court of Baltimore

Murder

20 W^m. Chenoweth

90				

3115 Keswick Road.

Returnable

Oct. 27

to testify for State Herman Webb Dukes et al.

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY.

to testify for

State James M. Wells Charles Cook

Returnable

Oct. 23

OCT 26 1931



EDWARD CROSS, Clerk

Criminal Court of Baltimore

Mr. James M. Wells

Mr. Charles Cook

Mr. James M. Wells

1273

Bail

Criminal Court of Baltimore

Murder

21 Dr. Frederick Boyce

19

Union Memorial Hospital.

18 Mrs Anna Carolyn Curran

18

2042 Braddish Ave

Returnable

Oct 27

to testify for

State Vs. Herman Webb Duker et al.

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

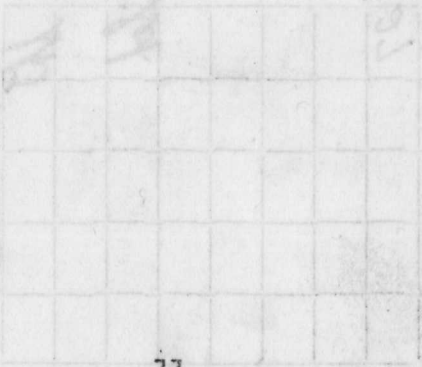
TO THE SHERIFF OF BALTIMORE CITY.

to testify for *State vs. Johnson & Smith*

Returnable

Oct 22

OCT 22 1931



EDWARD CROSS, Clerk

Criminal Court of Baltimore

Murder

Fredrick Baker

Bail

1273

Criminal Court of Baltimore

1273

Bail

20 Sgt. Lushy.
 21 Nelson Brown ✓
 St^m Adams

SP				
SP				
X				
27				

S. D.

307 E 23rd St.
 Lutherville Ind.
 also 90 Towson Nurseries Ind.

Returnable

Oct

to testify for State v's. Nerman St Luke et al.

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY.

Returnable

to testify for

OCT 24 1931



Criminal Court of Baltimore

EDWARD CROSS, Clerk

1273

Criminal Court of Baltimore

Murder

~~Bail~~

4 Dr. G. E. Partridge!

<i>mk</i>					
X					
<i>sd</i>					
<i>sl</i>					

4 Dr. Ralph P. Truitt
20

{ Maryland Penitentiary;
or 16 W. Pennsylvania Ave.,
Towson, Maryland
{ 1014 St. Paul St.;
or Tudor Arms Apartment.

Returnable

Oct 27

to testify for Herman W. Duker.
TO THE SHERIFF OF BALTIMORE CITY.

TO THE SHERIFF OF BALTIMORE CITY

to testify for *Johnston W. Walker*

Deputy

97

OCT 26 1931

John W. Partridge
John W. Partridge

Criminal Court of Baltimore



EDWARD CROSS, CLERK

1273

Criminal Court of Baltimore

Murder

Bail

11 Mr. Herman S. Duker

11	11				
11	11				
21	11				
10	11				
3	11				
4	11				

1808 Eustaw St.

"

11 Mrs. Helen Webb Duker

4000 St. Paul St.

21 Mr. Hugh S. Duker

712 Park Ave.

10 Dr. W. Corbin Streett

3 Dr. John R. Oliver

{ Johns Hopkins Medical School Library;
 or Latrobe Apartments;
 or Alumni Memorial Dormitory
 Johns Hopkins University }

4

Returnable

Oct. 27

to testify for Herman W. Duker.

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY

to comply for Johnson M. ...

...

11-9007

OCT 26 1931

[Faint handwritten notes]

Criminal Court of Baltimore

Murder



97.00
1361

EDWARD CROSS, CLERK

Criminal Court of Baltimore

1273

Bail

W Fred Lambert

W Carl "

W Victoria "

W M "

W Arthur "

W Esthude "

W Sus. Kelch

<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
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<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
<i>[Handwritten]</i>				
27				

656 Subman Ave

2807 Sunset Drive

Returnable

to testify for Dale Lambert et al
TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY.

to testify for

Returnable

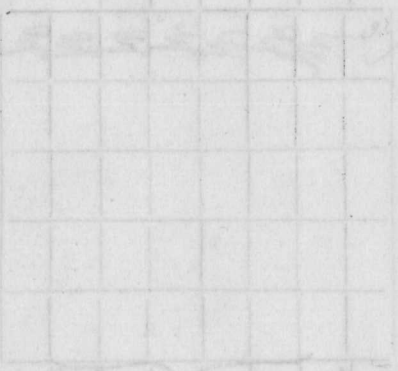
OCT 26 1931

Ball



1931
OCT
26

Criminal Court of Baltimore



EDWARD CROSS, Clerk

3807

Edw. Cross

Form 50-1

Criminal Court of Baltimore

1273

12 Bail

Edwin Deitz

Mrs. Herbert A. Fulston

10 Mr. J. Irvin Spear

<i>ml</i>				
<i>ml</i>				
<i>mc</i>				

531 S. Fulton Ave.

2807 Greenmount Ave

928 N. Charles St

Returnable

Oct 27

to testify for *Hale Lambert et al*

TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY:

to testify for

John J. ...

Retrospective

OCT 26 1931



FEB 29 1932

John J. ...

EDWARD CROSS, CLERK

Criminal Court of Baltimore

Ball

1533

Form 10-1-31

1273

Bail

Criminal Court of Baltimore

Murder.

20	Lieut.	Holzer	↓	SD				
9	Sgt.	O'Grady	✓	M				
3	"	O'Dea		M				
12	Off.	Edw. Ward		M				
12	"	Edward Twede	✓	M				
4	Pauline Webster		✓	M				
6	Verna Tierney			SD				
	Returnable		Oct 27					

N. D.
 Det. Hdq.
 " "
 S. W. D.
 " "
 1722 N. Durham St. or Jail
 1615 N. Bradford St.

to testify for *State vs. Herman Webb Duke et al.*
 TO THE SHERIFF OF BALTIMORE CITY.

EDWARD GROSS, Clerk

TO THE SHERIFF OF BALTIMORE CITY

to testify for

Returnable

OCT 22 1931

1931

FORM 403-10

Criminal Court of Baltimore



EDWARD CROSS, Clerk

[Faint handwritten notes and a grid table are visible in the background. The grid is approximately 10 columns wide and 10 rows high. Some illegible handwriting is scattered throughout the page.]

State of Maryland, Baltimore City, to wit:

To the Warden of Baltimore City Jail.—Greeting.

YOU ARE HEREBY COMMANDED to receive from any officer the body of

PAULINE WEBSTER

who is hereby committed to your

custody as a witness in the case of State, vs.

DALE LAMBERT ET AL

charged with MURDER

in default of security in the sum of

one thousand

Dollars

for *her* appearance before the Criminal Court of Baltimore on the _____ day of _____ 189

and to attend Court from day to day thereafter, until duly discharged by law.

and *her* the said PAULINE WEBSTER

safe keep in your Jail and custody

until *she* shall be thence delivered according to law. Hereof fail not at your peril.

WITNESS, the subscriber, _____ Judge of the Supreme Bench of Baltimore City, who hath hereto set his

hand and seal this *second*

day of *July*, 1931

XIX

[SEAL]

Judge of the Supreme Bench of Baltimore City.

No.

1273

1931

PAULINE WEBSTER

COMMITTED TO TESTIFY

STATE

vs.

DALE LAMBERT ETAL

Charge **MURDER**

10/27/1931 Released
Evan Grows
Release

Paid 118 days \$59.00

1273
1931

11/3/1931

Dale Lambert,

The sentence of the Court is that you be confined in th
Maryland Penitentiary for the term of your natural life.

Joseph N. Newman

11/3/1931

Herman Webb Duker,

The Sentence of the Court is that you be taken hence
by the Sheriff and delivered to the Warden of the Maryland Peni-
tentiary, in whose custody you are to remain until such time as
the Governor by his warrant shall designate, ~~at~~ which time, and
at the place which under the Law has been provided, you shall be
hanged by the neck until you are dead.

Joseph N. Newman

1273
1931



1273
11/3/1931

1273
1991

State
vs

Herman Webb Ducker

The Sentence of the Court is that you be taken hence
Dale Lambert

11/2/91

Ducker's Examination

Filed Nov 3/1991

at the place which under the Law has been provided, you shall be
the Governor by his warrant shall designate, at which time, and
penitentiary in whose custody you are to remain until such time as
by the Sheriff and delivered to the Warden of the Maryland Peni-

HABEAS CORPUS AD TESTIFICANDUM.

Indictment No. 1273, Docket 1931

P @ PG # 1465

The State of Maryland

TO THE SUPERINTENDENT OF THE MARYLAND INSTITUTION FOR MEN, Greeting:

You are hereby commanded, that you have the body of HERMAN DUKER

_____ detained
under your custody, as it is said, by whatsoever name he may be called in the same, before the Criminal
Court of Baltimore, Part 8, Room 406, Court House, Baltimore, Maryland, at 10 o'clock
A. M., TUESDAY DEC 5 to testify in the
case of State of Maryland vs. HERMAN DUKER

then and there to be tried and immediately after the said HERMAN DUKER
_____ shall have
given his testimony before the said Court to return him to said prison, and have you then and there this
writ.

Witness the hand of the Judge and the Seal of the Criminal Court of Baltimore, this 29
day of NOV A. D., 19 67.

Curely Soard
Judge.

THE OFFICE OF HABEAS CORPUS AD TESTIFICANDUM SERVED ON

Frederick T. Fitzhugh

Leah

at *11:15* A.M. ON THE *29th* DAY OF *Nov* 19*67* AT *1:15* O'CLOCK

IN THE PRESENCE OF *Joseph* ~~JOSEPH~~ *WILLIAMS*

Frank J. Fitz 12/6/67
SHERIFF P 201

D G C C A 1482

TO THE SUPERINTENDENT OF THE MARYLAND INSTITUTION FOR MEN, GREENBELT:

You are hereby commanded, that you have the body of AERMAN DUKER

detained

under your custody, as it is said, by whatsoever name he may be called in the same, before the Criminal

Court of Baltimore, Maryland, at 10 o'clock

NOV 30 1 09 PM '67
BALTIMORE CITY, MD.

A. M. TORRILL DEC 2
AERMAN DUKER
AERMAN DUKER

RECEIVED
CRIMINAL COURT
BALTIMORE, MD.

Dec 1 10 20 AM '67
LAWRENCE R. MOONEY
CLERK

NOV 21 1967

Charles J. ...
Judge

SUMMON the following additional witnesses for STATE VS.

Herman W. Duke & Dale Lambert

Sgt. Lusby - K.S.

Wilson Brown

307 E. 23rd St.

Wm. Adams - summon
& also go

him @ Lutherville, Md.
Towson nurseries
Towson, Md.

OCT 24 1931 OCT 21 1931

To EDWARD GROSS, Esq.,
Clerk Criminal Court

E. Hammer Asst.

State's Attorney.

SUMMON the following additional witnesses for STATE VS.

1273

~~Wm. Chenoweth - 3115 Jesuick Road
Dulles + Lambert~~

OCT 26 1931

To EDWARD GROSS, Esq.,
Clerk Criminal Court

~~E. J. Hammer~~

State's Attorney.

SUMMON the following additional witnesses for STATE VS.

OCT 26 1931

1/21

Duker & Lambert # 1273

Edwin Bagwell - 747 E. 30th St.

Gerard Whitley - 518 E. 30th St.

Louis Barnett } 910 Glen Martin Co. Middle River

Dan. H. Sieman } 910 Wonder Clothes - Balto. & Gay St.

Morris Michael

E. J. Hammer Asst.

To EDWARD GROSS, Esq.,
Clerk Criminal Court

State's Attorney.

THE STATE OF MARYLAND

vs.

HERMAN WEBB DUKER

:
:
:
:

IN THE
CRIMINAL COURT PART I
OF
BALTIMORE CITY.

No. 1273

: : : : : : : :

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Defendant, HERMAN WEBB DUKER,
by EMORY H. NILES and HILARY W. GANS, his attorneys,
moves that the judgment and sentence heretofore rendered
against him in this Court be stricken out, for the fol-
lowing reasons, appearing upon the face of the record:

(1) THAT, under Section 403 of Article
27 of the Code of Public General Laws of Maryland, after
a verdict of "Guilty of Murder in the First Degree", the
Defendant shall (in the sound discretion of the Court) be
sentenced to life imprisonment or death; that, as appears
from its written opinions, the Court abused the sound
discretion vested in it in arbitrarily sentencing the De-
fendant to death on the Court's private opinion or pre-
diction, contrary to the evidence in the case, that the
Defendant would be a danger and menace to the lives of the
Penitentiary guards and inmates, due to his emotional under-
development and psychopathic personality.

(2) THAT, although the Court in its
opinions expressly declared that the Defendant ought to
be sentenced to life imprisonment because of his abnormal

development and consequent partial moral responsibility, yet nevertheless the Court sentenced the Defendant to be hanged because of the Court's private opinion (unsupported by the evidence in the case) of the inadequacy of the Institutions of this State to properly care for the Defendant.

(3) THAT the Court committed an abuse of the sound discretion vested in it in ignoring the following uncontradicted and pertinent facts, to wit:

That the Defendant, although twenty-two (22) years of age, has the emotional development of a child;

That the crime was committed under great emotional strain;

That the Defendant pleaded guilty and gave an honest and full statement concerning the crime;

That the Defendant, although legally sane, is medically insane,

and arbitrarily and unjustly using the Defendant's unfortunate and involuntary maladjustments as the sole reason for the imposition of the death sentence rather than life imprisonment.

(4) THAT the Court, in sentencing to death the Defendant, whom the Court found to be medically of abnormal psychology and irresponsible to such an extent as to be characterized by the Court as being as little able to conform his conduct to social standards as he would be to walk in the air, violated Article "25" of the Declaration of Rights of the Constitution of Maryland, which forbids the imposition of cruel and unusual punishment.

(5) THAT, as will appear upon the face of the record, from the uncontradicted testimony of all of the expert witnesses who testified in relation to the mental condition of the Defendant, and as will appear from the opinions of the Court filed herein, the Defendant is mentally diseased and unbalanced, and not fully responsible for his acts; that said condition has existed over a long period of time and that the Court committed an abuse of the sound discretion vested in it in sentencing to death a man of diseased and unbalanced mind, admittedly abnormal and lacking the power to control his actions.

(6) THAT the Court committed an abuse of the sound discretion vested in it in deciding without evidence or testimony that a man of the Defendant's type could not be restrained adequately and effectively in the Maryland Penitentiary, and in disregarding ample and complete testimony of competent medical witnesses of highest standing and of responsible administrative officials to the contrary, notwithstanding the express statement contained in the Court's opinions relative to mental health and mental disease, as follows:-

"In this field lawyers and judges are merely laymen, and it would be as presumptuous for the Court to offer its opinion as superior to that of competent medical men as it would be for the doctors to attempt to instruct the lawyers upon the law of Contingent Remainders or like abstruse questions of law".

(7) THAT the Court committed an abuse of the sound discretion vested in it in disregarding the positive testimony of expert witnesses who categorically contradicted the interpretation made by the Court of their

testimony at the first hearing of this cause, and in disregarding additional testimony of other experts and officials.

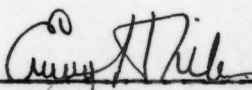
(8) THAT the Court committed an abuse of the sound discretion vested in it and prejudicial error in preparing a written opinion, multigraphed in advance in many copies for distribution, containing the Court's decision, before hearing argument upon the case and without allowing the Defendant an opportunity to say whatever he might have to say why sentence should not be imposed.

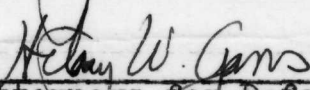
(9) THAT the verdict and the sentence were against the weight of the evidence.

(10) THAT the punishment imposed by the Court is excessive under the circumstances of this case.

(11) THAT the indictment is insufficient under the evidence in this case to support a verdict of "Murder in the First Degree".

(12) AND for other reasons to be shown at the hearing.





Attorneys for Defendant.

January 6, 1932

Verdict Overruled

Joseph N. Korman

1273/1931

IN THE
CRIMINAL COURT PART I
OF BALTIMORE CITY.

STATE OF MARYLAND

VS.

HERMAN WEBB DUKER

MOTION TO STRIKE OUT
JUDGMENT & SENTENCE.

Mr. Clerk:-

Please file.

Caray Stiles

Henry W. Gans

Attorneys for Defendant.

DEC 31 1931

BRUNE, PARKER, CAREY & GANS
ATTORNEYS AT LAW
BALTIMORE, MARYLAND

STATE OF MARYLAND : IN THE CRIMINAL COURT
vs. : : OF
HERMAN WEBB DUKER : BALTIMORE CITY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of Hilary W. Gans, attorney for Herman Webb Duker, respectfully represents:

1. That as is shown by the records of this Court the said Herman Webb Duker was committed to the Maryland Penetentiary to be there imprisoned for life.

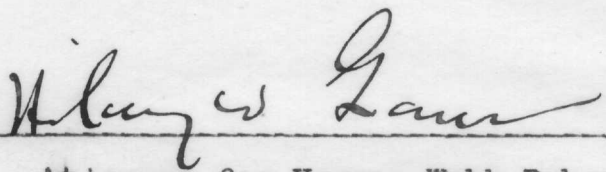
2. That the petitioner proposes to file an application with the Parole Commissioner on behalf of the said Herman Webb Duker for a reduction of sentence if the diagnosis hereafter mentioned shall disclose that he is no longer suffering from a certain ailment with which he was afflicted at the time of the crime for which he was sentenced.

3. That your petitioner is informed that for the purpose of making said diagnosis and ascertaining whether the said Herman Webb Duker is now free from said affliction, it is necessary that an electro-encephalogram be made by Dr. Ruth Lidz and Dr. Dorothy E. Donley; that the only machine in the City of Baltimore on which

said electro-encephalogram can be made is located at Phipps Clinic, Johns Hopkins Hospital; that said diagnosis and electro-encephalogram will take approximately one hour and a half.

WHEREFORE your petitioner prays that this Court issue its Order directed to the Warden of the Maryland Penetentiary, directing that the said Herman Webb Duker be transported under guard to the Wolfe Street entrance of the Phipps Clinic, Johns Hopkins Hospital, on Tuesday, April 25th, at 3:20 p.m., and that Dr. Ruth Lidz and Dr. Dorothy Donley be permitted to make an electro-encephalogram of the said Herman Webb Duker.

AND As in duty bound, etc.



Attorney for Herman Webb Duker

STATE OF MARYLAND : IN THE CRIMINAL COURT
vs. : OF
HERMAN WEBB DUKER : BALTIMORE CITY

O R D E R

Upon the foregoing Petition, it is this 19th
day of April, 1944, by the Criminal Court of
Baltimore City -

O R D E R E D That the Warden of the Maryland Penetentiary be and he is hereby directed and ordered to transport Herman Webb Duker, now an inmate of said penitentiary, under guard, to the Wolfe Street entrance of the Phipps Clinic, Johns Hopkins Hospital, Baltimore, Maryland, at 3:20 o'clock, p.m., Tuesday, April 25, 1944, and to then and there permit Dr. Ruth Lidz and Dr. Dorothy Donley to examine the said Herman Webb Duker and make an electro-encephalogram, and to thereafter return the said Herman Webb Duker to the Maryland Penetentiary.

J. Mover Sayler
Judge

#1273 / 1931.

1273/1931

IN THE CRIMINAL COURT
OF BALTIMORE CITY

STATE OF MARYLAND

vs.

HERMAN WEBB DUKER

Petition
and Order thereon

Mr. Clerk:

Please file, etc.

Wiley W. Lane

Attorney for
Herman Webb Duker

BROWN & BRUNE
ATTORNEYS AT LAW
BALTIMORE, MARYLAND

APR 19 1944

THE STATE OF MARYLAND : IN THE
 : CRIMINAL COURT
 vs. : PART 1
 HERMAN WEBB DUKER : OF BALTIMORE CITY.

oOo

MR. CLERK:-

Please enter an appeal in the above entitled cause to the Court of Appeals of Maryland on behalf of the defendant Herman Webb Duker from the Order of this Court, dated January 6, 1932, overruling motion of the defendant Herman Webb Duker, made December 31, 1931, to strike out the verdict and sentence herein, and refusing to strike out verdict and sentence herein.

Hilary W. Gans

Ernest H. Miles

Attorneys for Defendant.

STATE OF MARYLAND
CITY OF BALTIMORE, To wit:-

I HEREBY CERTIFY That on this *6th* day of January, 1932, before me, the subscriber, a Notary Public of the State and City aforesaid, personally appeared *Ernest H. Miles*, attorney for the defendant Herman Webb Duker in the above entitled cause, and made oath in due form of law that the appeal taken in this cause is not made for purposes of delay.

WITNESS my hand and Notarial Seal.

Angela Kelley

- Notary Public -



1273/1931

IN THE CRIMINAL COURT PART 1
OF BALTIMORE CITY

THE STATE OF MARYLAND

VS.

HERMAN WEBB DUKER

ORDER OF APPEAL.

Mr. Clerk:

Please File.

Hilary W. Gans
Amey H. Niles
Attys for Defendant

NILES, BARTON, MORROW & YOST
ATTORNEYS AT LAW
BALTIMORE, MD.

Filed Jan 6/1932

STATE OF MARYLAND : IN THE CRIMINAL COURT
 :
 vs. : OF
 :
 HERMAN WEBB DUKER : BALTIMORE CITY
 : ::::::::::

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Hilary W. Gans, attorney for Herman Webb Duker, respectfully represents:

1. That, as is shown by the records of this Court, the said Herman Webb Duker was committed to the Maryland Penetentiary to be there imprisoned for life.

2. That the Petitioner on or about the 19th day of April, 1944, petitioned this Honorable Court for permission to have the said Herman Webb Duker examined at the Johns Hopkins Hospital by Dr. Ruth Lidz and Dr. Dorothy E. Donley in order to make an electro-encephalogram, and that the said Herman Webb Duker be taken to the Johns Hopkins Hospital at a certain time on Tuesday, April 25th, 1944; that your Petitioner alleges that the said Henry Webb Duker was taken to the Johns Hopkins Hospital, in accordance with said Petition and Order thereon, but was unable to be examined on that day due to the sudden and violent illness of the technician, who was to operate the machine in connection with said examination.

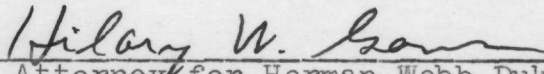
3. That your Petitioner is informed that the said technician has now been dismissed from quarantine and

is again available to operate the machine upon which the electro-encephalogram is made.

4. That your Petitioner desires that the said Herman Webb Duker shall again be permitted to be taken by the warden of the Maryland Penetentiary under guard to the Wolfe Street entrance of the Phipps Clinic, Johns Hopkins Hospital, Baltimore, Maryland, at 3.20 P.M. on Friday, May 12th, 1944, and that Dr. Ruth Lidz and Dr. Dorothy Donley be permitted to make an electro-encephalogram of the said Herman Webb Duker at said time and place.

WHEREFORE your Petitioner prays that this Court issue its Order directed to the Warden of the Maryland Penetentiary, directing that the said Herman Webb Duker be transported, under guard, to the Wolfe Street entrance of the Phipps Clinic, Johns Hopkins Hospital, on Friday, May 12th, 1944, at 3.20 P.M., and that Dr. Ruth Lidz and Dr. Dorothy Donley be permitted to make an electro-encephalogram of the said Herman Webb Duker.

AND as in duty bound, etc.



Attorney for Herman Webb Duker

STATE OF MARYLAND : IN THE CRIMINAL COURT
vs. : OF
HERMAN WEBB DUKER : BALTIMORE CITY

: : : : :

O R D E R

Upon the foregoing Petition, it is this 9th day of May, 1944, by the Criminal Court of Baltimore City -

O R D E R E D That the Warden of the Maryland Penetentiary be and he is hereby directed and ordered to transport Herman Webb Duker, now an inmate of said penitentiary, under guard, to the Wolfe Street entrance of the Phipps Clinic, Johns Hopkins Hospital, Baltimore, Maryland, at 3.20 o'clock, P. M., Friday, May 12th, 1944, and to then and there permit Dr. Ruth Lidz and Dr. Dorothy Donley to examine the said Herman Webb Duker and make an electroencephalogram, and to thereafter return the said Herman Webb Duker to the Maryland Penetentiary.

J. Allen Sawyer
Judge

1273/1981 ✓

IN THE CRIMINAL COURT
OF BALTIMORE CITY

STATE OF MARYLAND

vs.

HENRY WEBB DUKER

Petition and Order

Mr. Clerk:

Please file, etc.,

Hilary W. Gans

MAY 9 - 1944

BROWN & BRUNE
ATTORNEYS AT LAW
BALTIMORE, MARYLAND

COURT OF APPEALS OF MARYLAND

No. 26 April Term-----Term 19 32.

Herman Webb Duker

vs.

State of Maryland.

Appeal from the Criminal Court of Baltimore City.
Filed March 3rd, 1932.
April 6, 1932. Motion to dismiss appeal filed.
May 12, 1932. Motion to dismiss appeal overruled, and order affirmed with costs to the appellee.
Opinion filed. Op.. Per Curiam
To be reported.

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$	
Brief	\$	39.00
Appearance Fee	\$	10.00
Clerk's Costs	\$	<u>1.30</u>
		\$50.30

Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$	26.00
Appearance Fee	\$	10.00
Clerk's Costs	\$	<u>1.75</u>
		<u>\$37.75</u>
		\$88.05

STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this Thirteenth-----
day of June----- A. D., 19 32.

James A. Young Clerk
of the Court of Appeals of Maryland.



1273/1931

State

85

Stewart Irwin Dukes

"Mandate"

JUN 14 1932

STATE OF MARYLAND

vs.

HERMAN W. DUKER, et al.

IN THE

CRIMINAL COURT PART I

OF BALTIMORE CITY

MEMORANDUM

The supplemental hearings in this case grew out of a request from His Excellency, the Governor, which followed an application to him for executive clemency. Their purpose was to afford an opportunity to the defense to clear up certain alleged misconceptions of the evidence on my part.

The additional testimony taken covered a wide range -- probably far wider than the Governor had anticipated. But my disposition was to allow the defense every possible degree of latitude.

Beyond saying that I have considered it carefully, I shall not comment upon any of the testimony. I think it became apparent during the supplemental hearings that the case has now boiled down to a very simple issue. That issue is not even a difference of opinion, properly so called. It is just a difference of prediction. I have said, in my formal opinion heretofore filed, that under existing laws and institutions, I predicted evil and dangerous consequences if the defendant should be confined in the penitentiary for life. As a judicial officer, concerned with the protection of society, I was unwilling to take the responsibility for so confining him. Certain expert witnesses and certain administrative officers of the State have now made a different prediction.

Upon the whole record, I am compelled to adhere to my original conclusion.

Mr. Clerk, you will be kind enough to transmit the papers covering the supplemental hearings to His Excellency, the Governor of Maryland.

Joseph N. Newman
Judge

now boiled down to a very simple issue. That issue is not even

came apparent during the supplemental hearings that the case has

shall not comment upon any of the testimony. I think it be-

Beyond saying that I have considered it carefully, I

Latitude

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The additional testimony taken covered a wide range --

leged misconceptions of the evidence on my part.

to afford an opportunity to the defense to clear up certain at-

direction to him for executive clemency. Their purpose was

1273
1931

State vs

Herrens New Dated

1931

Filed Dec 28/1931

STATE OF MARYLAND

VS.

HERMAN DUKER

:
:
:
:

IN THE

CRIMINAL COURT OF

BALTIMORE

ORDERED, this ^{7th} day of October, Nineteen hundred and thirty-two, that the two volumes of the transcript of the record in the above entitled case which were sent to His Excellency, Governor Albert C. Ritchie at the hearing for commutation of sentence and by him returned to the Clerk of the Criminal Court, be withdrawn from the files in said case and delivered to Deputy State's Attorney J. Bernard Wells, for the further use of this Court.

Joseph N. Welman
Presiding Judge
In above entitled case.

OCT 7-1932

Two volumes as above
delivered to His Hon. Judge
Welman
10/7/32
J. Bernard Wells

use of this Court.

and delivered to Deputy State's Attorney J. Bernard Wells; for the further

the Clerk of the Criminal Court, be withdrawn from the files in said case

Richie at the hearing for commutation of sentence and by him returned to

approved case which were sent to His Excellency, Governor Albert C.

two, that the two volumes of the transcript of the record in the

ORDERED, this day of October, Nineteen hundred and

1273
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Stau
W

Stewart W. Dulke

✓
A

Filed Oct 7. 1932



Criminal Court of Baltimore.

EDWARD GROSS, Clerk

March 3rd 1932

Received of the Clerk of the Criminal
Court of Baltimore City record of
proceedings in case of State of Maryland
vs Herman Hebb Duker and Dale
Lambert

James A. Johnson
Clerk of the Court of
appeals of Maryland

1273

1931

Steele

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Stewart H. Duke

June 3. 1932

June 14th 1932.

Hon. Albert C. Ritchie,
Executive Offices,
Annapolis, Maryland.

My dear Governor,

This is to advise you that the Mandate of the Court of Appeals of Maryland was sent us today affirming the original sentence of the Criminal Court of Baltimore in the case of State of Maryland Vs Herman Webb Duker, the record covering which case you now have at your Office.

With my kind regards I am,

Yours respectfully

EDWARD GROSS, CLERK

1273

1931

State

vs

Stemman vs Dulles

L. W. June 14. 1932

January 11th 1932.

Hon. Albert C. Ritchie,
Executive Office,
Annapolis, Md.

Dear Governor,

I beg to advise you that on January 6th 1932
there was an Appeal filed to the Court of Appeals of Maryland
in the case of State of Maryland Vs Herman Webb Duker.

With kind personal regards I am,

Respectfully yours

Clerk.

1273

1931

State

vs

Herman W. Dabke

Filed Jan 11/1932

December 30th 1931.

Hon. Albert C. Ritchie,
Executive Offices,
Annapolis, Maryland.

My dear Governor:

Enclosed please find Record of the Supplemental
Hearing in the case of State of Maryland Vs. Herman W. Duker, et al

Will you kindly acknowledge receipt of this record
and return the Testimony to our office for our files, after you have
finished with it.

With my kind personal regards I am,

Respectfully yours,

Clerk.

1273

1931

Stuen

vs

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Lidie Du 30/1931

ALBERT C. RITCHIE
GOVERNOR



EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND

November 7, 1931

Mr. Edward Gross,
Clerk of the Criminal Court,
Court House,
Baltimore, Maryland.

Dear Mr. Gross:-

Governor Ritchie directs me to acknowledge receipt of your letter of November 6th, enclosing Docket Entries and Judgment in the case of State of Maryland vs. Herman Webb Duker.

Very truly yours,

Raymond M. Lauer
Raymond M. Lauer.

NOV 9 1931

1273

1931

State

vs

Sherman vs. Duplex

Very truly yours,

Webb Baker,

In the case of State of Maryland vs. Herman
Duplex, enclosing check for \$100.00 and Judgment
Judge receipt of your letter of November
Governor Nichols directs me to return

Dear Mr. Gross:-

Baltimore, Maryland.

Court House,

Clerk of the Criminal Court,

Mr. Edward Gross,

Filed Nov 9/1931

Post Office Department

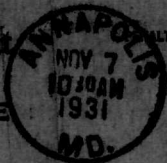
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REGISTERED ARTICLE

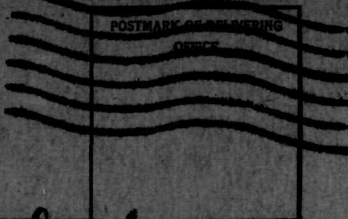
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Rev. 3-24

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State **Baltimore, Md.**

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Albert C. Ritchie

(Signature or name of addressee)

Edward F. Ryan

(Signature of addressee's agent)

Date of delivery

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U. S. GOVERNMENT PRINTING OFFICE

c 5-5116



EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND

Dec. 31, 1931.

Mr. Edward Gross, Clerk,
Criminal Court of Baltimore,
Baltimore,
Md.

Dear Mr. Gross:

I beg to acknowledge receipt of your favor of Dec. 30th, to Governor Ritchie, transmitting record of the Supplemental Hearing and Testimony (Volumes I and II) in the case of State of Maryland Vs. Herman W. Duker, et al.

When the Governor has finished with the textimony, we will be glad to return it to you, as requested.

Wishing you the compliments of the Season,
I am,

Very truly yours,

DAVID C. WINEBRENNER, 3d,
Secretary of State.

By *May S. Cooper*

H:T

1273

1931

State

vs

Sterman vs Duster

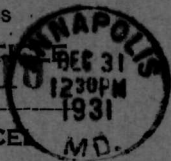
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TO AVOID PAYMENT OF
POSTAGE, \$300.

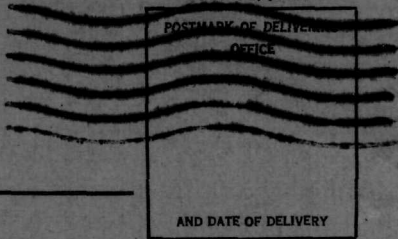
REGISTERED ARTICLE



No. _____

INSURED PARCEL

No. _____



Return to _____

Edw. Gross

(NAME OF SENDER)

Street and Number,
or Post Office Box, _____

Criminal Court

BALTIMORE,

MARYLAND.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Am. J. C. Ritchie

(Signature or name of addressee)

J. S. Spencer

(Signature of addressee's agent)

DEC 31 1931
Date of delivery _____, 19____

Form 3811

U. S. GOVERNMENT PRINTING OFFICE

c 5-6116

ALBERT C. RITCHIE
GOVERNOR



EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND

September 16, 1932

Hon. Edward Gross,
Clerk of the Criminal Court,
Court House,
Baltimore, Maryland.

Dear Mr. Gross:

Some time ago you sent me the transcripts
of testimony in the cases of State vs. Herman Webb
Duker and Dale Lambert. I have finished with these
now, and am returning them to you.

Very truly yours,

Albert C. Ritchie
Governor.

R-S

1273
1931

State

85

Stewart W. Dukes

Very truly yours,

now, and am returning them to you.

Baker and Dale Lambert. I have finished with these
of testimony in the cases of State vs. Herman Webb

Some time ago you sent me the transcripts

Dear Mr. Gross:

Baltimore, Maryland.

Court House,

Clerk of the Criminal Court,

Hon. Edward Gross,

Filed Sept 16. 1932

STATE OF MARYLAND

IN THE CRIMINAL COURT

VS

OF

HERMAN WEBB DUKER

BALTIMORE
INDICTMENT NO. 1273-DOCKET 1931.

A N S W E R

: : : : : : : : : : : : : : : :

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The State of Maryland, by HERBERT R. O'CONNOR, the State's Attorney for the City of Baltimore, in answer to the Motion addressed to this Honorable Court by the Defendant, HERMAN WEBB DUKER, through EMORY H. NILES and HILARY W. GANS, his Attorneys, to strike out the verdict and judgment heretofore rendered, respectfully denies the allegations contained in said Motion to the effect that the Court abused its discretion in the sentence imposed upon the said Defendant, HERMAN WEBB DUKER and further answering the allegations contained in the said Motion, states:

That the judgment of the Court was not the product of the Court's private opinion unsupported by the evidence in the case as contended by the Defendant, but on the contrary, was amply and adequately supported by the evidence in the case;

That the allegations made in the said Motion with regard to the mental development and condition of the Defendant, HERMAN WEBB DUKER are not such as to warrant and justify excusing the Defendant from the full responsibility for his acts.

That there is nothing apparent on the face of the record to justify the allegation contained in the Defendant's Motion that

the Court ignored certain alleged facts and used as the sole reason for the imposition of the death sentence certain other alleged facts.

That the sentence in this case was warranted by the evidence adduced and therefore, is not in violation of Article 25, of the Declaration of Rights of the Constitution of Maryland forbidding "Cruel and unusual Punishment" and for the further reason that legal execution upon a judgment of Court based upon the evidence in the case cannot be so characterized when it is in accordance with the form provided by law;

That the defendant, according to the evidence in the case, including the testimony of the witnesses produced by the Defense, is in the eyes of the law fully responsible for his acts and amenable on conviction to such punishment as is provided by law;

That the Court did not decide, without evidence, that the Defendant could not be restrained adequately and effectively in the Maryland Penitentiary, but on the contrary, the evidence in the case showed that the Defendant was of a class characterized as of the most dangerous tendencies;

That the Court did not abuse its discretion in its interpretation and weight given to the conflicting testimony of the several witnesses who appeared before it as to what testimony was given at a prior hearing;

In answer to the allegation contained in the Eighth Paragraph of the said Motion, the State respectfully avers that subsequent to October 27, 1931, (the date on which the plea of guilty was entered by the Defendant and testimony taken with respect thereto), the Court informed counsel for the respective traversers, Herman Webb Duker and Dale Lambert, jointly indicted, and counsel for the State, that the Court had reduced to writing tentative impressions and conclusions formed after hearing and considering the testimony in the case, but unqualifiedly announced that argument, without limitation of time, would be permitted before the imposition of sentence, whereupon a date was fixed

for the hearing of said arguments and that thereafter full argument was made by counsel for all parties in the case prior to the imposition of sentence; that counsel for the State denies that the Defendant was not allowed an opportunity to say whatever he might have to say why sentence should not be imposed and further represents that the said Defendant, Herman Webb Duker, offered himself as a witness on October 27, 1931, after entering a plea of guilty to the Indictment charging Murder in the First Degree; that during the hearing which was being held to determine the question of sentence he was afforded an opportunity to say anything he might wish to say in connection with the question of sentence.

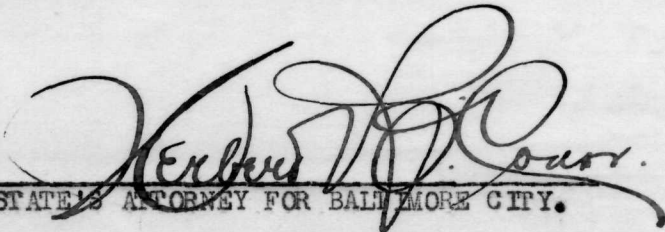
That the verdict and sentence are not against the weight of the evidence as the Defendant submitted under a plea of guilty in the case and all the evidence offered supported that plea and fully warranted the judgment of the Court on the verdict which had been rendered under said plea.

That the sentence of the Court was not excessive under all the circumstances since it was established that the offense was deliberate, premeditated and malicious and was perpetrated in an attempt to commit robbery; and under the Maryland Statute is made Murder in the First Degree;

That the indictment in this case follows the Statutory form prescribed by our Code and is sufficient to support a verdict of Murder in the First Degree.

Answering generally the allegations of the said Motion the State contends that the offense charged in the said Indictment was committed by the said Herman Webb Duker who at the time of the perpetration of the said crime had the reason and capacity sufficient to distinguish between right and wrong and to enable him to understand the nature and consequences of his acts as applied to himself, all of which will appear from the record of this case.

Having fully answered the allegations contained in the
said Motion, the State of Maryland respectfully prays that the
said Motion be over-ruled.


STATE'S ATTORNEY FOR BALTIMORE CITY.

1273/1931

IN THE CRIMINAL COURT
OF
BALTIMORE
INDICTMENT NO. 1273-1931.

STATE OF MARYLAND

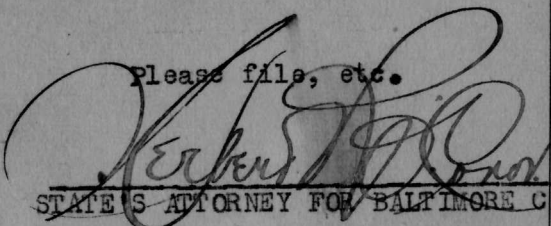
VS.

HERMAN WEBB DUKER

A N S W E R

MR. CLERK:

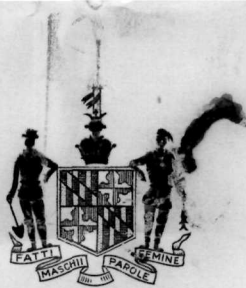
Please file, etc.


STATE'S ATTORNEY FOR BALTIMORE CITY.

FILED

JAN 6-1932

ALBERT C. RITCHIE
GOVERNOR



EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND

September 19, 1932.

Clerk of the Criminal Court for
Baltimore City,
Court House,
Baltimore, Md.

Dear Sir:-

Enclosed herewith please find copy
of the Commutation of Sentence Certificate
issued in the case of HERMAN WEBB DUKER (w).

The original certificate issued in this
case has been forwarded to Warden Patrick J.
Brady of the Maryland Penitentiary.

Very truly yours,

David C. Winebrenner, 3d.,
Secretary of State.

W.

SEP 21 1932

Copy.

EXECUTIVE DEPARTMENT
ANNAPOLIS---MARYLAND

COMMUTATION OF SENTENCE OF HERMAN WEBB DUKER (w).

To Warden Patrick J. Brady, Greetings:

WHEREAS, a certain HERMAN WEBB DUKER (white) was convicted at the January term 1931 of the Criminal Court for Baltimore City of Murder in the first degree and was sentenced by said Court to Death.

AND WHEREAS, for the reasons given in the statement by me attached hereto I have concluded that this sentence should be commuted.

NOW, THEREFORE, I, ALBERT C. RITCHIE, GOVERNOR OF THE STATE OF MARYLAND, by virtue of the authority confided in me by the Constitution and Laws of this State, do hereby commute the death sentence of the said HERMAN WEBB DUKER (white) to life imprisonment in the Maryland Penitentiary.

The Great Seal of the State of
Maryland.

GIVEN under my hand and the
Great Seal of the State of
Maryland, at the City of
Annapolis, this Nineteenth day
of September, in the year of
our Lord, One Thousand Nine
Hundred and Thirty-two.

ALBERT C. RITCHIE,
By the Governor:

DAVID C. WINEBRENNER, 3d.,
Secretary of State.

STATEMENT BY GOVERNOR ALBERT C. RITCHIE

COMMUTING THE SENTENCE OF HERMAN W. DUKER TO LIFE IMPRISONMENT.

The law in Maryland, as in all, or certainly in practically all other States, is that a man is sane if he knows the difference between right and wrong, and appreciates the consequences of his acts.

In this case the Court (Judge Joseph N. Ulman), in conformity with the testimony of both State and defense, found that Duker is afflicted with a definite mental ailment or disorder, known as psychopathic personality, which had reduced his mental and moral responsibility and control, but that he is sane according to the legal standard. Being legally sane, Duker on the facts was found guilty of murder in the first degree. For that crime the law provides alternative punishments, - hanging, or imprisonment in the Penitentiary for life, as the Court, in its discretion, may decide is proper.

In this situation, I can understand how the Court, in the exercise of its discretion, might take the view that while Duker is legally sane, yet his mental disorder should be considered in mitigation of punishment, and so sentence him to life imprisonment instead of hanging.

I can also understand how the Court, in the exercise of its discretion, might take the view that inasmuch as Duker's mental disorder does not amount to insanity, it should not be considered in mitigation of punishment, and that Duker should be sentenced to hang.

What I cannot understand is how the Court could first decide - as it did - that Duker's mental disorder should be considered in mitigation of punishment, and that he should not be hanged; and then sentence him to be hanged anyhow, not for his crime, but because the Penitentiary is the only place to which he could be committed, and because of the Court's prediction that in the Penitentiary Duker would be a dangerous prisoner.

It seems to me that if Duker is to be hanged, this should be because, all things considered, including his mental condition, hanging is the just punishment for his crime. I do not think he should be hanged because of anybody's prediction as to the kind of prisoner he might be.

Yet the mere prediction of the Court that in the Penitentiary Duker would be a dangerous prisoner,- a prediction, by the way, strongly combatted by competent witnesses,- completely overcame the profound conviction of the Court that Duker, because of his mental disorder, should not be hanged,- that it would in fact be a "tragedy" to hang him,- and this prediction was the Court's reason for sentencing Duker to death.

FACTS

On the morning of April 20, 1931, at about eleven o'clock, in Baltimore City, Herman W. Duker, with his companion Dale Lambert, attempted to hold up and rob John W. Anderson, the driver of a milk wagon, who was on the sidewalk delivering milk.

What happened is described as follows in the agreed statement of Facts which appears in the Record for the Court of Appeals:

"Lambert, going to the pavement, asked Anderson for a bottle of milk, while Duker stood in the road. Lambert's coat was blown open, and Anderson saw a pistol strapped to Lambert's belt. Realizing that he was being held up, he picked up a milk bottle and attempted to strike Lambert with it. He then reached over and seized Lambert's pistol, pointing it towards Lambert's abdomen. Thereupon Duker, thinking that Lambert was about to be shot, pulled out a pistol and shot Anderson, aiming at his legs, so as to cripple him. Anderson died later in the day from the wound thus inflicted."

THE VERDICT

At the trial before the Criminal Court of Baltimore City, both Duker and Lambert pleaded "Guilty". Testimony was then offered, covering the facts of the case, in order to enable the Court to fix the degree of guilt. In the language of Judge Ulman, this testimony "was so conclusive, that the Court unhesitatingly fixed the degree of the crime as murder in the first degree". Counsel

for the defense acquiesced in this finding, and a verdict of first degree murder was entered against both Duker and Lambert.

THE SENTENCE

It is provided by Article 27 Section 403 of the Annotated Code of Maryland that "every person convicted of murder in the first degree, his or her aiders, abettors and counsellors, shall suffer death, or undergo a confinement in the penitentiary of the State for the period of their natural life, in the discretion of the Court before whom such person may be tried."

Thereupon the Court proceeded to hear additional testimony in order to determine which of the alternative sentences it would impose upon Duker and Lambert, that is to say, death or life imprisonment.

LAMBERT GETS LIFE

The Court found Lambert sane, "of border line intelligence", not particularly dangerous to society and likely to become amenable to prison discipline. He was sentenced to life imprisonment.

DUKER IS A CASE OF PSYCHOPATHIC PERSONALITY

With respect to Duker, the Court found that he is a case of "psychopathic personality". This ailment is thus described by the witnesses: It is a definite, abnormal mental condition, well known to the medical profession, and recognized as a distinct mental dis-

order. It appears in the official classification approved by the American Psychiatric Association and the American Medical Association, and is accepted in all governmental and official classifications of mental disorders. The psychopathic personality manifests itself differently and in different degrees in different persons.

The psychopath may, as in the present case, be a person who understands the difference between right and wrong, and who is sane according to the legal definition of sanity, as laid down by the Court of Appeals in *Spencer vs. State*, 69 Md. 28. The testimony shows, however, that the psychopath is mentally and emotionally unbalanced and unstable. He lacks the power of control. He may know the consequences of his acts, but is not able to consider those consequences, or their results to him or to others, as a normal person would do. He cannot control his impulses, regardless of what that may mean to him or to society.

Six psychiatrists testified for Duker. They were Dr. Ralph P. Truitt; Dr. John R. Oliver, formerly Chief Medical Officer of the Supreme Bench; Dr. George E. Partridge, Director of Psychiatric Research for the Maryland Penal Institutions; Dr. M. S. Guttmacher, present Chief Medical Officer of the Supreme Bench, who examined Duker at Judge Ulman's request; Dr. Frank L. Christian, Superintendent of the Elmira Reformatory, and, at the second hearing, Dr. Ross McC. Chapman, Superintendent of the Sheppard and Enoch Pratt Hospital.

Two psychiatrists testified for the State, Dr. G. Lane Taneyhill and Dr. Andrew C. Gillis.

In addition, the Court had before it the reports of certain competent physicians and psychiatrists who had occasion to examine Duker before the Anderson crime occurred.

These witnesses all agreed that Duker is a psychopathic personality, and some of them pointed out in him certain characteristic symptoms of his malady in addition to those general symptoms described above,- immaturity, sexual irregularities, and so on. All agreed that morally and mentally Duker is not fully responsible for his acts.

Judge Ulman adopted this view. He found Duker to be a psychopath. No other conclusion was possible under the evidence. As Judge Ulman said, "every witness in this case agreed that Duker has not the normal emotional and moral impulses and controls - and every witness concluded that he is 'not fully responsible' for his actions".

More persuasive, to my mind, than the physicians who actually testified, are certain medical reports made on Duker before the Anderson crime occurred.

Some of these reports are in the printed Record, and others were filed as Exhibits. Some are long and remarkably minute and exhaustive in their study of Duker and his parents and relatives. I have examined all these reports with the greatest care.

To begin with, Duker's life has been a record of badness, ~~crudelty~~, perversion and delinquency. Nothing seemed effective to deter him from the repetition of his practices. There is no need to be specific as to their character.

When Duker was thirteen years old, the family physician suggested an examination at Phipps Clinic, but this was not had.

In 1925, when sixteen years old, Duker ran away from home. He wound up in the Hampton Farms Reformatory of New York City, where in April, 1927, he was sentenced to six months for petty larceny. He was paroled, and returned to Baltimore. Shortly afterwards he was arrested for robbing apartment houses, and in January, 1928, was committed to the Maryland Training School for Boys. He was then eighteen years old.

At this time Dr. John R. Oliver, then Chief Medical Officer of the Supreme Bench, made a written report to Judge George Solter upon Duker. Dr. Oliver went thoroughly into Duker's family environment and history, and pronounced him sane from a legal standpoint, but "rebellious", "anti-social", "emotionally unstable", acting "on the spur of the moment, without any adequate understanding or realization of the consequences of his actions".

Dr. George E. Partridge, who testified in this case, was then Psycho-Pathologist at the above institution, and in May, 1928, he made a report upon Duker, in which he concluded that "we should place him under the class of psychopathic personality".

Subsequently, Dr. Partridge wrote an article entitled "Psychopathic Personalities among Boys in a Training School for Delinquents". It was published in the American Journal of Psychiatry, July, 1928, Vol. VIII No. 1 page 161. This article discusses the psychopathic personality at considerable length. It is a detailed study of fifty "especially problematic" boys, of whom twelve were psychopathic. One of these was Duker, and as to him Dr. Partridge concludes: "We should regard him as a psychopath of the chronic delinquent type, with some sexual psychopathy and with marked tendency towards the runaway reaction."

Mr. Harold E. Donnell, who was then the Superintendent of the Maryland Training School for Boys, wanted Duker sent for treatment to the Sheppard and Enoch Pratt Hospital, a psychiatric institution; but arrangements for this were not made, and about that time Duker ran away, and went to New York, continuing there his abnormal and delinquent career.

In June, 1928, Duker was committed to the New York State Reformatory at Elmira, and Dr. John R. Harding, (now deceased), psychiatrist of that institution, pronounced him "a psychopathic personality". Dr. Lichtenstein, the court psychiatrist, had already reported him as "emotionally unstable and a constitutional psychopath". The Department of Research at Elmira recorded Duker as "weak willed, a psychopath with a contempt for authority and a disregard

Duker's hanging as "a confession of social and legal failure". He called it a "tragedy".

Why, then, did Judge Ulman sentence Duker to be hanged?

WHY DUKER WAS SENTENCED TO BE HANGED

Consider the situation.

Being legally sane, the law of the State, under the undisputed facts, required Duker to be found guilty of murder in the first degree, and he was. But the law of the State does not require a person found guilty of murder in the first degree to be hanged.

On the contrary, the law says that such a person shall either be hanged, or, in the discretion of the Court, sentenced to life imprisonment. The law provides these two alternative punishments for first degree murder, and the Judge is completely free to impose either sentence he thinks the circumstances call for.

In fact, the Court's discretion to decide between life imprisonment and death is so absolute that Judge Ulman's decision could not be reviewed by the Court of Appeals. It was for this reason that the Court of Appeals declined to interfere, when Duker's attorneys appealed to that tribunal to set aside the sentence of death on the ground that it involved an abuse of the lower court's discretion.

Moreover, one thoroughly accepted ground for imposing the lesser rather than the severer sentence, when alternative punishments are provided, is the mental condition of the prisoner. When this does not amount to insanity, as it did not in this case, it is proper for the Court to convict the prisoner of murder in the first degree. But when it comes to imposing the punishment, then it is perfectly usual and sound for the Court to consider a lowered, abnormal or unstable mentality in mitigation of sentence, and as calling for the lesser punishment.

This was fully recognized by Judge Ulman himself, both expressly in his opinion, and by the fact that he received the evidence as to Duker's mental condition.

Now in the present instance we have a twenty-three year old boy, concededly the victim of a definite, accepted mental disorder. His case was well known to the medical profession, and had actually been written up, almost three years before the Anderson crime, in the leading American psychiatric publication. He was legally sane, but actually, because of this mental disorder, his emotional control was so lowered and restricted, his impulses so beyond regulation, that the witnesses for the State as well as for the defense, agreed he was only partially responsible for what he did.

Judge Ulman did not think such a boy should be hanged, and said so emphatically. Why then did he sentence him to be hanged? No legal rules, no rigors or technicalities of the law required it.

Why did Judge Ulman not exercise his discretion, and sentence Duker to life confinement, which was the disposition he thought and said ought to be made of him?

The reason given by Judge Ulman was that Maryland has no State institution to which a person suffering from Duker's mental ailment, and convicted of Duker's crime, can be committed by the Court; and if there were such an institution Duker could not be confined in it for life, "which (Judge Ulman said) is what should be done with him," because "in the eyes of the law he is not insane." Not being legally insane, Duker could not be committed to one of the State hospitals for the insane. The only place to which he could be sent is the Maryland Penitentiary; but Judge Ulman was unwilling to send him there, because, he said, Duker might be a rebellious prisoner, not amenable to prison discipline, and "a serious threat against the lives of the other prisoners and of the guards in that institution."

So the Judge sentenced Duker to be hanged.

Let us examine these reasons for the death sentence.

DUKER SHOULD NOT BE HANGED BECAUSE MARYLAND HAS NO STATE INSTITUTION FOR SUCH PSYCHOPATHIC PERSONALITIES. NO STATE HAS ONE.

It is, of course, true that there is in Maryland no special State institution for psychopathic cases, such as this case; and even if there were, Duker, being legally sane, could not be confined

in it by the Court, unless the Maryland law were changed so as to permit the compulsory confinement of such psychopaths.

Judge Ulman's characterization of this situation as "a confession of social and legal failure", which leaves "no workable alternative" to "the tragedy" of hanging Duker, has caused in some quarters criticism of this State's legal and institutional systems which is totally unjustified.

There is not one State in the whole country which maintains a State institution for psychopathic prisoners of Duker's status, or whose laws permit the compulsory commitment or confinement of psychopaths of his type. Dr. George H. Preston, the Maryland State Director of Mental Hygiene, Dr. Ross McC. Chapman, Superintendent of the Sheppard and Enoch Pratt Hospital, and Mr. Harold E. Donnell, the Superintendent of Prisons, have separately investigated this question for me, and each advises me that this is the fact.

Judge Ulman, in his opinion, stated that "if the laws of Maryland were like the laws of Massachusetts, Duker might have been confined for life in a place of detention for defective delinquents immediately upon the diagnosis of his case by Dr. Partridge in 1928. Then John W. Anderson would be alive; Lambert would not be a prisoner for life; and Duker would not have to be hanged".

With great respect, the learned Judge is mistaken. He confuses in this case a defective delinquent with a psychopathic personality of normal intelligence. These are two perfectly distinct classes of mental disorder.

I am advised by the authorities at Bridgewater, (which is the Massachusetts State institution Judge Ulman had in mind), that they do not take "psychopathic personality cases as a group, but only as they appear among our defective delinquents and in our hospitals for the insane". In other words, Bridgewater is an institution to which psychopaths are only committed if they also happen to be defective delinquents or insane.

Duker is not insane. He is not a defective delinquent. He is not feeble-minded or of low grade mentality. He is a psychopath, as Judge Ulman describes so clearly in his opinion.

Were Duker a resident of Massachusetts, he could not be committed to Bridgewater, and no State in the country maintains an institution, such as the Court had in mind, to which he could be committed.

Indeed, only a very few States maintain institutions for defective delinquents, - Dr. Preston only finds two, - and a very few other States are undertaking to segregate such prisoners in their penal institutions. But it is hardly necessary to go into this, because, as Dr. Chapman advises me, "Duker would not be eligible for commitment to such an institution, on account of the fact that he is not defective."

The plain fact is that psychopaths when found guilty of crime are in this country sent to the penal institutions. Mr. Donnell estimates that there are about 130 white and about 56 colored psychopaths in the Maryland Penitentiary now.

Perhaps with the advance of the science of penology, the States will in the future have State institutions for such cases. Whether this should be or not, is a question which admits of considerable diversity of opinion. But in this case the important thing is that there are no such State institutions now.

If, as Judge Ulman finds, Duker's psychopathic personality is such as to make his hanging a great wrong, then I cannot bring myself to think that this great wrong should be done because there is no Maryland State institution in which a case like his can be legally confined and treated. If Duker is to be hanged, I think this should be because, all things considered, hanging is the just punishment for his crime, and not because the State does not maintain some particular kind of institution. And it seems to me clear beyond question that Duker should not be hanged because this State does not maintain an institution in which he could be legally confined, when no other State in the country maintains one.

DUKER SHOULD NOT BE HANGED ON THE PREDICTION
THAT HE WILL BE A DANGEROUS PRISONER.

But, Judge Ulman says, the only alternative is to sentence Duker to the Penitentiary, and there he would prove a rebellious and dangerous prisoner, a potential leader of riots, a menace to the lives of guards and other inmates, and so he must be hanged.

This is tantamount to saying that if in fact Duker could not be prevented from instigating riots in the Penitentiary, if he would be in rebellion against authority there, and a serious threat against the lives of guards and prisoners, then, in the language of the Court, "in order to protect society and to prevent further probable homicides", it would be necessary for the State to kill him, somewhat as an individual may kill in his own defense.

To my mind, this question does not arise in the present case, because surely the probability of such dangers ought first to be at least reasonably clear. What is the testimony?

When the case was first heard by Judge Ulman, Dr. Partridge, Dr. Christian, Dr. Guttmacher and Dr. Truitt made statements upon which the Judge based his apprehensions in this regard.

When the plea for commutation was made before me the first time, and when it was urged by Duker's attorneys that Judge Ulman had misinterpreted the testimony of these witnesses, I suggested that the Court be asked to reopen the case in order to clear up any misunderstanding which might exist.

This was done, and on the rehearing Doctors Partridge, Guttmacher and Truitt, and Dr. Christian by letter, all gave testimony which, to my mind at least, cleared up substantially, if not entirely, any idea which might have been drawn from their earlier testimony that Duker would be a dangerous and menacing prisoner,

or that he could not be readily restrained in prison. Dr. Chapman testified that he thought Duker stood a good chance of becoming a conformist prisoner. Mr. Donnell and Colonel Stuart S. Janney, the Director of Welfare, expressed the same beliefs.

Subsequently, the Judge submitted a memorandum, which expressed his final conclusion in these words:

"I think it became apparent during the supplemental hearings that the case has now boiled down to a very simple issue. That issue is not even a difference of opinion, properly so called. It is just a difference of prediction. I have said, in my formal opinion heretofore filed, that, under existing laws and institutions, I predicted evil and dangerous consequences if the defendant should be confined in the penitentiary for life. As a judicial officer, concerned with the protection of society, I was unwilling to take the responsibility of so confining him. Certain expert witnesses and certain administrative officers of the State have now made a different prediction. Upon the whole record, I am compelled to adhere to my original conclusion."

Thus the Court confirmed its former sentence that Duker be hanged.

I have previously said that I do not think Duker should be hanged because this State does not maintain a State institution for his confinement such as no other State maintains. Neither do I

think he should be hanged because of the Court's prediction that he will be a dangerous prisoner.

In the first place, the witnesses on whose testimony this prediction was based disclaimed having intended to convey such idea. The point had not been understood by any of them in the beginning, and as soon as it was understood all testified that they had not meant that Duker in the Penitentiary would be a menace, and a threat to the lives of others.

Dr. Partridge, who is thoroughly familiar with the prisoners in the Maryland Penitentiary,- he has made 1400 examinations of them,- testified that many are more dangerous than Duker. Mr. Donnell advises me that he believes there are at least twenty men in the Penitentiary of more dangerous psychopathic tendencies.

When, therefore, the Court finally decided that Duker must be hanged because of the Court's prediction of "evil and dangerous consequences if he should be confined in the Penitentiary for life", there was, as I read the Record, no evidence before the Court, certainly there was no substantial evidence, on which this prediction could be justified.

But even if there had been, it was at most a mere prediction. The Court himself said the witnesses made different predictions. Who can say that the Court's prediction will prove true? Who can say that the contrary prediction, made by competent witnesses, will not prove true? What we actually know is that Duker has been in the

Penitentiary for ten months, and during that time has not caused the slightest trouble or concern of any kind. Furthermore his previous prison or correctional history contains nothing to indicate that in such a setting he has ever been a serious trouble maker. Maybe in the Penitentiary Duker will ultimately give trouble. Maybe he will not. In any case, I do not think he should be hanged on anybody's prediction about it. To my mind, that is not at all the proper test. If Duker is to hang, I think, as I have said before, this should be because hanging, all things considered, including his mentality, is the just punishment for his crime.

With great respect to the learned Judge who imposed the sentence of death, I do not consider that the reasons given for that sentence justify it.

DUKER'S SENTENCE WILL BE COMMUTED TO LIFE IMPRISONMENT

The case reverts, therefore, to the findings of the Court upon the testimony of the witnesses for both State and defense,- confirmed by the medical reports made before the crime,- which I have previously set forth at length.

There is no need to undertake to draw the line between uncontrollable impulses which are due to the mental disorder of psychopathic personality and those which are not. I can only decide this case upon the Record before me, and on this Record there is complete agreement between the Court and all the witnesses and medical

reports that there is a definite, recognized mental ailment known as psychopathic personality, that Duker is a victim of this ailment, and that because of it he is not fully responsible, mentally and morally, for what he does.

The literature of the subject, which I have read at considerable length, and the actual practice of the courts, recognize that reduced mental and moral responsibility, short of insanity, while not a justification for reducing the degree of guilt, (that is, first degree murder will still be first degree murder), may be complete justification for mitigating the punishment, and for giving the lesser instead of the severer sentence, where, as in the present case, the court has the discretion to decide between alternative sentences.

Judge Ulman makes it abundantly clear that, because of these very considerations, he would not have sentenced Duker to be hanged, but would have sentenced him to life confinement, except for the reasons which have been discussed.

As already explained, I do not consider these reasons adequate to justify hanging, and, therefore, I will exercise my executive discretion and do what the Judge wanted to do in the exercise of his judicial discretion, but did not do for reasons he deemed sufficient, but which I cannot accept.

I will commute Duker's sentence to imprisonment in the Maryland Penitentiary for life.

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