Record No. 4023

In the
Supreme Court of Appeals of Virginia
at Richmond

NEVA JONES

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF DANVILLE

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4023

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 12th day of June, 1952.

NEVA JONES, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of the City of Danville.

Upon the petition of Neva Jones a writ of error and *supersedeas* are awarded him to a judgment rendered by the Corporation Court of the city of Danville on the 30th day of January, 1952, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas* is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

page 36 } Virginia:

Corporation Court of Danville, on Wednesday, the 23rd day of January, in the year 1952.

Comth. of Va., Plaintiff,
against
Neva Jones, #1, Defendant.

INDICTMENT FOR MURDER.

Neva Jones, who stands indicted for murder, again appeared in court in custody of the jailor of this court, and the jury sworn in this cause appeared in court according to their adjournment on yesterday, and, having heard all the evidence adduced on behalf of both parties, upon their oath do say, "We, the jury, find the defendant guilty of murder in the first degree as charged in the within indictment and fix the punishment at death in the electric chair."

Thereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that it was contrary to the law and the evidence, and without evidence to support it, and on the further grounds that the defendant's rights had been prejudiced by the Court's answer to a question of the jury. Which said motion the Court doth take time to consider, and this cause is adjourned until Monday, January 28, 1952.

Copy—Teste:

T. F. TUCKER,
Clerk.

* * * * *

page 38 } Virginia:

In the Corporation Court of Danville.

Commonwealth of Virginia
v.
Neva Jones.

1952, January 30th, filed in Clerk's Office, Corporation Court, Danville, Virginia.

Attest:

T. BRYAN TATE,
Clerk.

MOTION TO SET ASIDE JURY'S VERDICT.

Comes now the defendant, by counsel, and moves the Court to set aside the verdict of the jury rendered in this case because of prejudicial error committed by the Court in the following manner, to-wit:

That after the jury had deliberated for approximately two hours, the Court had the jury brought back into the courtroom to inquire whether the jury desired to go to supper at that time or to continue their deliberations; that the foreman of the jury left the jury box and went to the bench and, in the presence of the defendant and his counsel, stated that the jury had decided that the defendant was guilty of first degree murder but that there was a question in the minds of the jurors and they wanted to know if the defendant was given a sentence of life imprisonment, a term of ninety-nine years, or a term of years in excess of twenty years, would the defendant ever be released; that the Court told the jury that it could not give that assurance as that would be in the hands of the executive branch of the government and that the court was of the judicial branch; that one of counsel for the defendant inquired of the Court privately, and not in hearing of the jury, if it would be proper to advise the jury to the effect that persons sentenced to life imprisonment were not eligible for parole (§53-251(2), Code of Virginia, 1950, as amended); that the Court answered counsel for the defendant in the negative; that the jury then stated to the court that they preferred to deliberate further rather than go to supper; that the jury then retired to consider further the punishment of the defendant, and after deliberating approximately twenty
page 39 } or twenty-five minutes, returned a verdict of guilty of murder in the first degree and fixed his punishment at death.

There are attached hereto the affidavits of the foreman of the jury and two other jurors in support of the facts hereinabove set out, which affidavits are asked to be made a part hereof.

WHEREFORE, the defendant, by counsel, moves the Court to set aside the verdict of the jury and grant a new trial on the grounds that the Court committed, albeit inadvertently, prejudicial error in its answer to the question asked by the foreman of the jury as set out above: second, that the Court in attempting to answer the question asked by the jury committed prejudicial error in that its answer did not completely inform the jury as to the legal consequence of any verdict that they might render and served only to confuse them, resulting actually in their being misinformed and misled.

page 40 } State of Virginia
City of Danville, to-wit:

I, Roland D. Asbury, after having been duly sworn, do state as follows:

I was the foreman of the jury in the case of Commonwealth of Virginia *v.* Neva Jones, which was tried in the Corporation Court of Danville, Virginia, on January 21 through January 23, 1952; that after the jury had deliberated for approximately two hours I advised the Court, while standing before the Court with the jury seated in the jury box, that the jury wanted to know that if they gave the defendant life imprisonment or ninety-nine years, or any term not less than twenty years, could they be assured that the defendant would never get out; that the Court advised the jury that the Court could not give that assurance and that the matter would be in the hands of the Executive branch of the Government and that the Court was the Judicial branch of the Government.

ROLAND D. ASBURY

Subscribed and sworn to before me this 26th day of January, 1952.

HELEN E. BOOTH,
Notary Public

page 41 } State of Virginia,
City of Danville, to-wit:

I, A. Harrison Peatross, after being duly sworn, state as follows:

I was a member of the jury that sat in the case of Commonwealth *v.* Neva Jones, which was tried in the Corporation

Court of Danville, Virginia, from January 21 through January 23, 1952; after the jury had deliberated for about two hours we were asked to come into the courtroom by the Judge of the Court; all twelve jurors got into the jury box; the Court asked us if we would like to go to supper or continue our deliberations; Mr. Roland D. Asbury, foreman of the jury then went to the bench and told the Court that there was a question in the jury's mind that if the defendant were given life imprisonment, a term of ninety-nine years, or a term of years in excess of twenty years, could the Court give assurance that he would not get out; the Judge stated that he could not give that assurance, and that the matter was in the hands of the Executive branch of the government and this was the Judicial branch; I stated to the Court at the time that Mr. Asbury, the foreman, was at the bench that it appeared that the jury would like to go to supper; after the statements to the jury by the Court the jury expressed themselves as not wanting to go to supper; the jury then returned to the jury room and in about twenty minutes, and not over twenty-five minutes, the jury returned with a verdict carrying the death sentence; when we were in the courtroom after deliberating about two hours Mr. Asbury advised the Court that we had reached a verdict but had not agreed upon the punishment.

A. HARRISON PEATROSS

Subscribed and sworn to before me this 29th day of January, 1952.

C. R. KENDRICK
Notary Public

My Commission Expires July 19, 1955.

page 42 } State of Virginia,
City of Danville, to-wit:

I, Thomas C. Phelps, Jr., after having been duly sworn, state as follows:

I was one of the jurors who sat in the case of Commonwealth *v.* Neva Jones during the trial in the Corporation Court of Danville, Virginia, from January 21 through January 23, 1952; that after the jury had deliberated for approximately two hours the jury was asked to return to Court; that after all twelve jurors were in the jury box the Court asked

the jury whether they desired to go to supper at that time or to continue their deliberation; that the foreman of the jury then went to the bench; that while in the jury box some of the jurors discussed the question of whether they should go to supper at that time and several jurors expressed themselves as wanting to go to supper; that Mr. A. Harrison Peatross, one of the jurors, stated to the Court from the jury box that it appeared that the jury would like to go to supper and return; that while the jury were talking among themselves about going to supper the Court and Mr. Roland D. Asbury, foreman of the jury, were conversing at the bench; that I could not hear this conversation, although I then knew what this conversation concerned; that the Court told the jury that the matter was in the hands of the executive branch of the government; that it is an actual fact that I understood that the Court was telling the jury that a person sentenced to life imprisonment, or a term of ninety-nine years, or for a term over twenty years, could be paroled; that I am now advised that Section 53-251(2) of the Code of Virginia for 1950, as amended, provides, "Persons sentenced to die or to life imprisonment shall not be eligible for parole"; that at the time of the Court's statements to the jury on the occasion referred to above I did not know of the existence of this law, and, in fact, concluded from what the Court told the jury that there was no law like this in Virginia; that the jury then retired to the jury room and after about twenty minutes, and not twenty-five minutes, returned a verdict carrying the death penalty.

THOMAS C. PHELPS, JR.

Subscribed and sworn to before me this 29th day of January, 1952.

HELEN E. BOOTH,
Notary Public

My Commission Expires Apr. 4, 1954.

page 43 } Virginia:

Corporation Court of Danville, on Wednesday, the 30th day of January, in the year 1952.

Comth. of Va., Plaintiff,
against
Neva Jones, #1, Defendant.

INDICTMENT FOR MURDER.

Neva Jones, who stands convicted of murder, again appeared in court in custody of the Jailor of this Court, with his attorneys, and the said defendant, by his attorneys, having filed a written motion, which said motion is made a part of this record, to set aside the verdict of the jury in this cause entered at a prior day of this term, to-wit, January 23, 1952, wherein the defendant was found guilty of murder in the first degree and his punishment fixed at death, and the Court, having heard arguments of counsel on said motion, and having maturely considered the same, doth overrule said motion. To which said action of the Court in overruling said motion, the defendant, by counsel, excepts.

And it being demanded of the defendant, Neva Jones, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is, therefore, considered by the Court that the defendant, Neva Jones, for the offense
page 44 } aforesaid, be sentenced to death. And the Court doth fix April 30, 1952, as the date of his execution.

Copy—Teste:

T. F. TUCKER,
Clerk.

* * * * *

page 48 } The following action of the court in this cause is excepted to:

After the jury had been in their room approximately two hours or more considering their verdict the court had the jury brought back into the courtroom to inquire whether the jury desired to go to supper at that time or to continue their deliberations. Some members of the jury stated they would like to go to supper and others made no answer at all. The foreman of the jury left the jury box and went to the bench and in the presence of the Attorney for the Commonwealth, the defendant and his counsel stated that the jury had decided that the defendant was guilty of murder in the first degree but that they wanted to know if the jury gave the defendant life imprisonment, a term of ninety-nine years or any long term of years, if they would have any assurance that

the defendant would not get out. The court told the jury that it could not give that assurance; that would be in the hands of the executive branch of the government and that the court was of the judicial branch; that you and I represent the judicial branch and have nothing to do with that. One of counsel for the defendant inquired of the court privately and not in hearing of the jury if it would be proper to further advise the jury that persons sentenced to life imprisonment are not eligible for parole. The court answered counsel for the defendant in the negative. Counsel for the defendant did not formally note an objection or an exception to the court's action at that time. The jury then announced that they preferred to continue their deliberations rather than go to supper. The jury returned to their room and after deliberating approximately twenty or twenty-five minutes returned a verdict of guilty of murder in the first degree and fixed the punishment at death.

page 49 } Received: March 22, 1952.

A. M. AIKEN,
Judge.

Teste: This 22 day of March, 1952.

A. M. AIKEN,
Judge.

1952, March 22nd, filed in Clerk's Office, Corporation Court, Danville, Virginia.

Attest:

T. F. TUCKER,
Clerk.

page 50 } The following is a statement of facts in this cause:

Neva Jones, age 28, colored, was tried on January 21st, 22nd and 23rd, 1952, on an indictment for the murder of his wife, Helen Jones. The defendant killed his wife in front of the Ritz Theater for colored persons on Spring Street, in Danville, Virginia, on the night of May 21, 1951. The defendant first cut his wife in the face and then began stabbing her while chasing her around a car parked in front of the

Ritz Theater. The stabbing took place in the presence of several disinterested witnesses who described the brutal manner in which it was done. The sole defense of the defendant was that he intended to cut his wife on the face to keep her from being so attractive to men and that he then suffered a mental blackout and knew nothing about having stabbed his wife and killing her. He had suffered these blackout spells before and on at least one occasion such a spell had been witnessed by fellow workers. He received a medical discharge from the Army in 1945 because of these spells which he first suffered while overseas; and his army hospital record showed these spells to be epileptic in nature as evidenced by electroencephalograph tracings.

Received: March 22, 1952.

A. M. AIKEN,
Judge.

Teste: This 22 day of March, 1952.

A. M. AIKEN,
Judge.

1952, March 22nd, filed in Clerk's Office, Corporation Court, Danville, Virginia.

Attest:

T. F. TUCKER,
Clerk.

page 51 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

To T. F. Tucker, Clerk of said Court:

Please take notice that I will apply to the Supreme Court of Appeals for a writ of error and *supersedeas* from the judgment of this court wherein I was convicted of murder in the first degree on January 23, 1952, and sentenced to death.

I assign as errors the following:

(1) The Trial Court erred in making answer to the question of the foreman of the jury that the court could give no assurance that the defendant would never be released if he were sentenced to life imprisonment, or to a term of years as that would be in the hands of the Executive branch of the government and that the court was of the judicial branch;

(2) The Trial Court erred after it had made its answer as set out in (1) above, in refusing the request of counsel for the defendant to further inform the foreman and the jury that a person sentenced to life imprisonment is not eligible for parole;

(3) The Trial Court erred in overruling the motion of the defendant to set aside the verdict and grant a new trial on the grounds that it committed error in its action as set out in assignment of errors (1) and (2), *supra*.

NEVA JONES
By JOSEPH M. WINSTON, JR.
Z. V. JOHNSON, JR.

1952, March 10th, filed in Clerk's Office, Corporation Court, Danville, Virginia.

Attest:

T. F. TUCKER,
Clerk.

* * * * *

A Copy—Teste:

M. B. WATTS, C. C.