

3003

194-676

Record No. 4063

In the
Supreme Court of Appeals of Virginia
at Richmond

DEWEY W. FOWLKES

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF NOTTOWAY COUNTY

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.

H. G. TURNER, Clerk.

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

194VA676

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.

CLERK
SUPREME COURT OF APPEALS

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RICHMOND, VIRGINIA

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record 4063

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Wednesday the 8th day of October, 1952.

DEWEY W. FOWLKES, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Nottoway County.

Upon the petition of Dewey W. Fowlkes a writ of error and *supersedeas* are awarded him to a judgment rendered by the Circuit Court of Nottoway County on the 7th day of March, 1952, in a prosecution by the Commonwealth against the said Dewey W. Fowlkes, for a misdemeanor; 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.

* * * * *

page 2 } Virginia:

In the Circuit Court of Nottoway County, the 7th day of March, 1952.

* * * * *

APPEAL.

This day came the Attorney for the Commonwealth and the accused, Dewey W. Fowlkes, who personally appeared in court in obedience to his recognizance to answer the warrant charging that the said Dewey W. Fowlkes in said county "did on the 2nd day of February, 1952, unlawfully operate a motor vehicle on the State Highway while under the influence of intoxicants."

Whereupon, the defendant being arraigned for said offense, and after consulting with his attorney, W. E. Neblett, pleaded "Not Guilty" to the said charge.

And with the consent of the accused given in person and with the concurrence of the Commonwealth's Attorney and of the Court, now entered of record, trial by jury was waived; and the Court proceeded to hear and determine this case without the intervention of a jury.

And at the conclusion of the introduction of the testimony on behalf of the Commonwealth, counsel for the defendant moved the Court to strike all the evidence on behalf of the Commonwealth and dismiss the charge against the defendant on the ground that the evidence was insufficient to sustain the charge as alleged in the warrant, which motion the Court overruled; and to which ruling of the Court, counsel for the defendant objected and excepted.

There being no further testimony presented and the Court having fully heard the evidence and argument of counsel, does find the said Dewey W. Fowlkes guilty; and fix his punishment at sixty days in jail, fifteen days of which is to be served and the balance of forty-five days is to be suspended for a period of three years from the date of this order.

And thereupon, the said defendant, by counsel, moved the Court to set the said judgment aside as being contrary to the law and the evidence and grant him a new trial, which motion the court does overrule; to which action of the Court the said defendant duly excepted.

page 3 } And thereupon the said defendant, by counsel, moved the Court to suspend the execution of said sentence as he intended to appeal his case to the Supreme

Court of Appeals of Virginia for a writ of error and *superse-
deas*, which motion the Court does grant; and the execution
of the sentence is hereby suspended for a period of sixty days
from this date or until the Court of Appeals has disposed of
the same either by denial of a writ of error or otherwise.

* * * * *

Enter March 7, 1952.

J. G. JEFFERSON, JR.
Judge.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

Dewey W. Fowlkes, the petitioner by Counsel, hereby gives
notice of his appeal from the judgment entered in the above
captioned criminal proceeding on the 7th day of March, 1952,
and lists the following:

ASSIGNMENT OF ERROR.

1. That the verdict and sentence of the Court is contrary
to the law and the evidence and wholly without evidence to
support it.

DEWEY W. FOWLKES
By W. E. NEBLETT
Counsel for petitioner.

* * * * *

Filed in Clerk's Office April 28, 1952.

HODGES S. BOSWELL, Clerk
By GRAYCE D. FITZGERALD, D. C.

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APPEAL.

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A narrative account of all evidence adduced in the case of
Dewey W. Fowlkes tried in the Circuit Court of Nottoway
County, Virginia, on the 7th day of March, 1952, as follows:

After being duly sworn, G. L. Harvey, a State Trooper, testified: That on Sunday, February 3, 1952, at 3:50 P. M. on that day, he was traveling west on Main Street in the Town of Blackstone, Virginia, and that some person who was coming in the direction from the scene of the accident reported to him that an accident had occurred about a mile south of Blackstone on State Highway No. 40 and that he immediately went to the scene of the accident taking only a few minutes, possibly five minutes, to arrive at the scene; he observed a vehicle turned up side down on the right side of the highway and off the lane of traffic which had skidded about thirty feet; and the defendant, Dewey W. Fowlkes, was there together with a white man and a colored woman; the defendant's lip was slightly mashed, he could smell the odor of alcohol, he staggered slightly and all three appeared to be under the influence of intoxicants, and in his opinion Fowlkes was under the influence of alcohol.

The State Trooper asked the defendant how the accident occurred, were they together and who was operating the vehicle. The defendant replied he was the operator, the woman was on the seat with him, the man was in the back and soon after passing the intersection of Route 46, he met two vehicles approaching from the opposite direction, the rear vehicle, in attempting to pass the front vehicle, cut sharply to the left and in his lane of traffic; that he put his brakes on, turned sharply to the right to avoid the accident page 7 } and ran up a bank about three feet high which caused his car to turn over. The white man was asked no questions and made no statement. The defendant further stated that he had had a couple of beers early in the afternoon.

The witness testified further that he did not know of his own knowledge what time the accident occurred nor could he say what the defendant's condition was at that time.

* * * * *

Filed in Clerk's Office April 28, 1952.

HODGES S. BOSWELL, Clerk
By GRAYCE D. FITZGERALD, D. C.

A Copy—Teste:

H. G. TURNER, C. C.