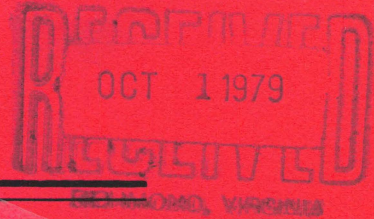


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 790371

WILLIAM RAY SMITH

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

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Attorney at Law
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Counsel for Appellant

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Richmond, Virginia 23219

Counsel for Appellee

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Virginia, County of Tazewell, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY.

November 8, 1977
(Date)

THE GRAND JURY CHARGES THAT:

On or about the 28th day of August, 1977,
in the County of Tazewell, WILLIAM RAY SMITH, did feloniously kill
and murder Patricia Dale McGlothlin,
Virginia Code 18.2-32

against the peace and dignity of the Commonwealth of Virginia.

Upon information of C. C. Vencille, C. M. Tatum, S. C. Barnette
..... and Mary Smith, Wanda Keene, and Grant VanDyke

Witnesses, called on by the Grand Jury, sworn in Court, and sent to the Grand Jury to give evidence.

2 having been duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. MULLINS:

6 Q Carol, I'm going to be asking you some
7 questions and I want you to speak up so you can be heard
8 by everyone. So if you will just look at the Judge when
9 you answer, everyone can hear you. Okay. What is your
10 name, please?

11 A Carol Dye.

12 Q Are you related to Bobby Dye?

13 A I am his wife.

14 Q Where do you live now, Carol?

15 A Jewell Ridge.

16 Q And where did you live last August, 1977?

17 A Tabor's Trailer Court.

18 Q Is that in Richlands?

19 A Yes, in the Brickyard.

20 Q Now, speak up if you can and answer to the
21 Judge. Do you recall - - Do you know Willie Smith?

22 A No. Just when Bobby picked him up at the
23 King Kone. That's the first time I've ever met him and
24 the last time I ever seen him.

25 Q Tell about this experience when Bobby picked

2 him up and what happened.

3 A He asked Bobby to take him to Doran to a
4 trailer court. Okay, so he got in the car. Bobby took him
5 down there. We drove to the trailer court about twice
6 and we circled around it and he stopped at a trailer to
7 pick up two garbage bags of dope. He told Bobby he would
8 give him a hundred and fifty dollars to deliver it. I
9 told Bobby no, that he wasn't going to. So we stopped and
10 the man wasn't there. He was real nervous, you know, and
11 got real upset. So I was pregnant at the time, so I told
12 Bobby, I said, let's take him back to the King Kone and
13 you take me home. So we drove back to the King Kone and
14 you know where the steel bridge is at down there; as we
15 was crossing there, he said, "I've got it in for someone."
16 I said, "Who?", and he wouldn't say. So I told Bobby,
17 take him to the King Kone and let him out and let's go.
18 Instead of coming around this way to the King Kone, we
19 went in this way and we let him out and he went toward
20 the back and Bobby pulled out and we went home and I never
21 did see him no more after that.

22 Q What kind of car were you in?

23 A A blue and white Falcon.

24 MR. MULLINS: You may ask.

25 CROSS EXAMINATION

2

has had some difficulty since yesterday.

3

THE COURT: Stuart, would you just tell me your name

4

now, just as loud as you can say it?

5

WITNESS: Stuart Cole, sir.

6

THE COURT: That is as loud as you can speak?

7

MR. MULLINS: Your Honor, can we see you in chambers
just a second, please?

8

The Court and counsel withdrew to the Court's
chambers.

10

11

The Court and counsel returned to the Courtroom.

12

THE COURT: Stuart, when you are asked any question,
tend to talk to me; that way the jurors and both sides
will be able to hear you.

13

14

15

Q State your name, please.

16

A Stuart Cole.

17

Q Stuart, do you recall being in jail in
Tazewell last September of 1977?

18

19

A Yes, sir.

20

Q Did you get to know William Ray Smith while
you were in jail?

21

22

A Yes, sir.

23

Q Did you have a conversation with William Ray
Smith about why he was in jail?

24

25

A Yes, sir.

2 Q What did he say was the reason he was in
3 jail?

4 A He told me he was in jail for stealing a
5 car. That's about all he knew at that time.

6 Q Did you later have a discussion with him
7 about murder?

8 A Yes, sir.

9 Q Did he indicate what happened in that
10 charge?

11 A He said he thought he had killed a girl,
12 but he couldn't remember.

13 Q Stuart, you do remember making a statement
14 to the police officer, do you not?

15 A Yes, sir.

16 Q Were you asked to make that statement, or
17 did you voluntarily make it?

18 A I voluntarily made it, sir.

19 Q At the time you talked to the police officer,
20 I will ask you if you made this statement: I remember
21 that William Smith said that he had been with Patricia
22 and that he had killed the girl. Did you make that state-
23 ment to the police officer?

24 A Yes, sir.

25 Q Is that what William Ray Smith said?

2

A Yes, sir.

3

MR. MULLINS: That's all.

4

CROSS EXAMINATION

5

BY MR. DUDLEY:

6

Q Mr. Cole, where do you live now?

7

A General Delivery, Cedar Bluff.

8

Q How long have you lived there?

9

A Three years.

10

Q When did you get out of jail?

11

A September 10th, 1977.

12

Q Just a few days after you talked to the

13

defendant, is that right?

14

A Yes, sir.

15

Q When did you go forward with this evidence

16

that you had that you have presented here today? When

17

did you tell the police officer about it?

18

A A few months after I come back from

19

California.

20

Q How many months?

21

A About six months after I came back from

22

California.

23

Q And you kept this quiet some six months, is

24

that correct?

25

A Yes, sir.

2 BY MR. MULLINS:

3 Q State your name, please, sir.

4 A Franklin E. Sams.

5 Q How are you employed, Mr. Sams?

6 A Special Agent for the United States Secret
7 Service.8 Q Were you so employed in August and September
9 of last year?

10 A Yes, sir, I was.

11 Q Have you been employed in that capacity
12 since then?

13 A Yes, sir, I have.

14 Q Did you have an occasion to be in Tazewell
15 County on an official assignment during the year 1977 and
16 '78?

17 A Yes, sir.

18 Q Did you have occasion during 1978 to have
19 a conversation with the defendant, William Smith?

20 A Yes, sir, on April 6th, 1978.

21 Q Would you relate to the jury your occasion
22 and the circumstances for having a discussion with Mr.
23 Smith?24 A I had developed Mr. Smith as a suspect in a
25 government matter that was under investigation and in the

2 presence of his attorney, Mr. Caldwell, I interviewed him
3 here in this building. In accordance with our practices,
4 I advised him of my authority and following that I gave him
5 the advisement of rights as we normally do it. And at that
6 point I began to give him a more extensive explanation of why
7 I was conducting the interview.

8 Q At that time, during this discussion, did
9 you mention the name of Patricia McGlothlin?

10 A Yes. I had told him that he and she were
11 considered of interest in the inquiry and that was given
12 at that point.

13 Q Did the defendant have an occasion to make
14 any statement or comment to you?

15 A Yes. While I was explaining to him the
reason for the interview, he made a brief comment and that
comment was, "If I make any admissions on this, then I
18 give them a motive for her murder."

19 MR. MULLINS: You may ask.

20 CROSS EXAMINATION

21 BY MR. CALDWELL:

22 Q You state that both Patricia McGlothlin
23 and the defendant were suspects?

24 A Yes, sir, they were.

25 Q Did Mr. Smith cooperate with you at this

COMMONWEALTH OF VIRGINIA

PLAINTIFF

VS X FELONY, TO-WIT: MURDER

WILLIAM RAY SMITH

DEFENDANT

On the 7th day of December, 1978, came the Attorney for the Commonwealth, and the defendant, William Ray Smith, in person and by counsel; upon motion to set aside the verdict of the jury as being contrary to the law and the evidence, and was argued by counsel.

It appearing to the Court that the jury verdict in this case is supported by the law and the evidence, it is hereby adjudged, ordered and decreed that the jury verdict in this case rendered on the 4th day of August, 1978, is hereby ratified and confirmed.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of twenty-five years, the period ascertained by the jury as aforesaid, and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended, amounting to \$

It is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorneys were likewise personally present and capably represented the defendant.

And the prisoner is remanded to jail to await transfer to the penitentiary.

Requested:

Attorney for the Commonwealth

Seen:

Attorney for the Defendant

Attorney for the Defendant

ASSIGNMENT OF ERROR

Appellant, William Ray Smith, avers that the Circuit Court of Tazewell County, Virginia, erred in the following particulars:

The trial court erred in refusing to grant appellant's motion for a mistrial based upon the fact that in this case there was no substantial evidence of premeditation offered by the Commonwealth upon which a conviction of first degree murder could be sustained.