

3062

195 Va 1107

Record No. 4223

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM MOSES MARTIN

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.

H. G. TURNER, 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) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five 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. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; 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) With the consent of the Chief Justice or the Court, 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. 4223

VIRGINIA :

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Wednesday the 9th day of September, 1953.

WILLIAM MOSES MARTIN, Plaintiff in Error,
against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of Danville.

Upon the petition of William Moses Martin, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of Danville on the 28th day of February, 1953. in a prosecution by the Commonwealth against the said William Moses Martin, 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 7 } Commonwealth of Virginia,
 City of Danville, to-wit:

IN THE CORPORATION COURT OF DANVILLE.

The Jurors of the Commonwealth of Virginia, in and for the body of the City of Danville, and now attending said Court at its January term, in the year 1953, upon their oaths present that William Moses Martin on the 22nd day of November in the year 1952, in said City, within one mile of the Corporate Limits of said City.

First Count: feloniously did compel a certain female, to-wit, Helen Watlington, to reside with him for the purposes of prostitution, against the peace and dignity of the Commonwealth,

Second Count: and the jurors aforesaid, upon their oaths aforesaid, do further present that the said William Moses Martin, on the 22nd day of November, 1952, in the city aforesaid, feloniously did place in his dwelling house, a certain female, to-wit, Helen Watlington for the purpose of causing her to cohabit with male persons, and did attempt to receive money or other things of value therefor, against the peace and dignity of the Commonwealth.

This indictment is found upon the evidence of O. Lumpkin, James Millner, Clifton Miller, Robert Foust, Helen Watlington, Officer Boswell, witnesses sworn in Court and sent to the Grand Jury.

(on back)

INDICTMENT FOR PANDERING.

Commonwealth of Virginia

v.

William Moses Martin #2

A TRUE BILL.

B. A. POLLOCK, Foreman.

1953 Jan Co. (21st) Plea not guilty; jury sworn; verdict 1 yr. in Pen; mot by def. to set aside verdict as contrary to law & evid. & without evid, to support it.

1953 Jan Co. (28th) Cont'd to Feb. 21, 1953.

1953. Feb. Co. (21st) Arguments heard on motion to set verdict aside.

1953 Feb Co. (28th) Motion to have verdict of jury set aside overruled & excepted; def intimates appeal;

Feb 28th Cont'd. Motion for bond sustained; \$2000.00 bond with Havert Thomas, surety entered into.

We, the Jury, find the defendant guilty as charged in Count two (2) of the within indictment of attempting to receive money or other things of value for causing the said Helen Watlington to cohabit with male persons, and fix his punishment at one (1) year in the penitentiary.

HENRY V. ADAMS, Foreman.

* * * * *

page 13 }

INSTRUCTION NO. 2.

The Court instructs the Jury that if you do not believe from the evidence beyond a reasonable doubt that the defendant feloniously did compel Helen Watlington to reside with him for the purposes of prostitution, but do believe from the evidence beyond a reasonable doubt that the defendant did feloniously place in his dwelling house, Helen Watlington for the purpose of causing her to cohabit with male persons, and did attempt to receive money or other things of value therefor, then you should find the defendant guilty as charged in the second count of the indictment and fix his punishment at confinement in the penitentiary for not less than one nor more than 5 years, or in your discretion confinement in jail not to exceed 12 mo's.

Given.

A. M. A.

* * * * *

page 30 } Virginia:—

Corporation Court of Danville, on Saturday the 23th day of February, in the year 1953.

* * * * *

This day came again the defendant, who stands convicted of attempting to receive money or other things of value for causing the said Helen Watlington to cohabit with male persons, in person, and by his attorney, pursuant to his recognition, and the Court having maturely considered the defendant's motion to set aside the verdict of the jury entered at a prior term of this Court, to-wit, January 21, 1953, wherein the jury found the defendant guilty of attempting to receive money or other things of value for causing the said Helen Watlington to cohabit with male persons and fixed his punishment at 1 year in the penitentiary, doth overrule the same, and defendant, by counsel, excepts.

And it being demanded of him 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 said William Moses Martin, for the offense aforesaid, be imprisoned in the Penitentiary of this State for one (1) year, the period by the jurors in their verdict ascertained.

And the said defendant intimating to the Court his intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas*, the Court doth suspend the execution of the judgment and sentence in this cause until the 4th day May, 1953.

Whereupon, the said William Moses Martin, by counsel, moved the Court to allow him bail, which said motion, upon consideration by the Court, is sustained, and the defendant is allowed bail in the sum of \$2000.00 conditioned on page 31 } sufficient security.

Whereupon, the said William Moses Martin, with Havert Thomas, his surety, were duly recognized according to law, in the sum of Two Thousand Dollars (\$2000.00) each, for his appearance here before this Court on the 4th day of May, 1953, at 10:00 o'clock, a. m., and at such time or times thereafter as may be prescribed by the Court to answer for the offense with which he stands convicted, and not to depart thence without leave of said Court.

page 32 }

* * * * *

Filed in Clerk's Office, Corporation Court, Danville, Virginia. April 23rd, 1953.

Attest:

T. F. TUCKER, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To T. F. Tucker, Esq., Clerk of the Corporation Court of Danville:

Notice is hereby given that William Moses Martin appeals in this case and will apply for a writ of error and *supersedeas*.

ASSIGNMENTS OF ERROR.

The following are assigned as error by the said Court:

1. The Court's refusal to quash the second count of the indictment for failure of said count to allege an attempt to commit the crime of pandering.

2. The Court's refusal to quash the second count of the indictment for failure to allege any crime with sufficient certainty to properly inform the defendant so that his defense might be prepared.

3. The Court's granting of "Instruction No. 2" for the Commonwealth over the defendant's objection, the same being contrary to the evidence and not in conformity with the indictment.

4. The Court's refusal to strike the evidence of the Commonwealth as to the second count of the indictment.

5. The Court's refusal to set aside the verdict of the jury as contrary to the evidence and because the indictment upon which said verdict was rendered failed to state a crime.

WILLIAM MOSES MARTIN.
By CARTER & BENDALL, Counsel.
By JOHN W. CARTER,
533 Main Street,
Danville, Virginia.

* * * * *

page 34 }

* * * * *

WRITTEN STATEMENT OF FACTS.

It is hereby agreed between the undersigned counsel for the defendant and the Attorney for the Commonwealth that the following narrative in substance is the pertinent testimony presented by the Commonwealth against William Moses Martin, there being no court reporter present at the trial of the case, the same being hereby respectfully tendered to the Honorable A. M. Aiken, Judge of the Corporation Court of Danville, Virginia, on behalf of William Moses Martin with the said defendant's prayer for certification, due and timely service being accepted by the undersigned Attorney for the Commonwealth on behalf of the Commonwealth of Virginia.

NARRATIVE STATEMENT.

By evidence presented by the Commonwealth, Helen Watlington, a young colored woman, occupied with the defendant, William Moses Martin, an elderly colored man, a room on Newton Street in the City of Danville, for a period of about thirty-six hours, from one Friday afternoon until the evening of the following day. Three young colored men testified that William Moses Martin had, upon the Saturday after Helen Watlington came to his house solicited them to have *secual* intercourse with Helen Watlington upon the payment of money to Martin. These three witnesses further said that Martin had invited them into his room and had shown them Helen Watlington lying in bed nude.

Of the witnesses who testified as to the solicitation none contended that he had accepted Martin's offer; page 35 } however, one witness said that he had gone to get the necessary money at the time the arrest was made. There was no testimony, however, that Helen Watlington had had intercourse with anyone other than the defendant Martin or that she was a prostitute. There was no testimony that Helen Watlington would willingly have had intercourse with another man or that Martin would have used force to make Helen Watlington submit to intercourse with another man.

A written document, prepared by the police officers of the City of Danville at the time of Martin's arrest, and introduced as an exhibit, was signed by Helen Watlington, wherein it is stated that Helen Watlington had intercourse with other men while at Martin's room and that Martin had told her he received money from those men for their use of her body. When Helen Watlington was examined as to the particulars of the said written statement, she denied having had intercourse with anyone other than Martin or that Martin had received money from anyone for the use of her body.

WILLIAM MOSES MARTIN.
By CARTER & BENDALL.
By JOHN W. CARTER,
Counsel for the Defendant.
EUGENE O. LINK,
Attorney for the Commonwealth of Virginia.

* * * * *

page 36 }

* * * * *

Filed in Clerk's Office, Corporation Court, Danville, Virginia. April 28th, 1953.

Attest:

T. F. TUCKER, Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and <i>Supersedeas</i> Awarded	1
Record	2
Indictment	2
Instruction #2	3
Judgment—February 28, 1953	4
Notice of Appeal and Assignments of Error	5
Written Statement of Facts.	6
Narrative Statement of Facts	6