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Record No. 4977

In the Supreme Court of Appeals of Virginia at Richmond

JAMES O. PAYNE

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ORANGE 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.

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4977

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 22nd day of January, 1959.

JAMES O. PAYNE, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Orange County

Upon the petition of James O. Payne a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Orange County on the 28th day of July, 1958, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

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* * * * *

Commonwealth of Virginia,
County of Orange, to-wit:

In the Circuit Court of the County of Orange:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Orange, and now attending the said Court at its March Term, 1958, upon their oaths present that James O. Payne, a person other than the father or mother of Barbara Ann Loyd heretofore, to-wit: on or about the 19th day of February, 1958, in the said County of Orange, Virginia, unlawfully, feloniously and illegally did seize, take and secrete a child, to-wit: the said Barbara Ann Loyd, age 12 years, from Mr. and Mrs. William Loyd, the father and mother of said child, they, the said Mr. and Mrs. William Loyd, then and there having lawful charge of said child, against the peace and dignity of the Commonwealth.

* * * * *

page 9 } INSTRUCTION NO. 1.

The Court instructs the Jury that if they shall believe beyond a reasonable doubt that the defendant illegally seized, took or secreted Barbara Ann Lloyd from the parents, Mr. and Mrs. William Lloyd, they having lawful charge of said child, then they shall find the defendant guilty and fix his punishment at confinement in the penitentiary not less than two nor more than five years or by confinement in jail not exceeding one year and a fine not exceeding $1,000.00.

C. C. B.

page 10 } INSTRUCTION NO. 2.

The Court instructs the jury that the father and mother of every legitimate unmarried minor child, if living together and being themselves respectively competent to transact their own business and not otherwise unsuitable, are the

joint natural guardians of the person of such child, with equal legal powers and equal legal rights in regard to such child.

C. C. B.

page 11 } INSTRUCTION NO. 3.

The Court instructs the Jury that the defendant, James O. Payne, had no legal right to take the child, Barbara Ann Lloyd, from the custody of Mr. and Mrs. William O. Lloyd and if the Jury believe that such custody was taken by James O. Payne then such taking was illegal.

C. C. B.

page 12 } INSTRUCTION NO. 4.

The Court instructs the Jury that reasonable doubt is such a doubt as may be reasonably and honestly entertained as to any material and substantial fact essential to prove the crime charged; reasonable doubt is what the word implies, a doubt founded on reason, a doubt which is serious and substantial. Doubts engendered by sympathy or by dislike to accept the responsibility of convicting the defendant, do not amount to a reasonable doubt. Reasonable doubt must be based on the evidence or the lack of evidence and the Jury must not go beyond the evidence to hunt up doubts nor inferences of guilt, but such doubt must arise from a candid and impartial investigation of all the evidence in the case. The law does not require proof amounting to absolute certainty, nor proof beyond all possibility of mistake. If, *ater* considering all the evidence in the case, you can say that you have an abiding conviction of the truth of the charge then you are satisfied beyond a reasonable doubt.

C. C. B.

page 13 } INSTRUCTION NO. 4a.

The Court instructs the Jury that the consent of Barbara Ann Lloyd to a seizing, taking or secreting of her would not of itself be a defense to such seizing, taking or secreting of her, in this case.

C. C. B.

page 14 } INSTRUCTION NO. 5.

The Court instructs the Jury that the law presumes the accused to be innocent of the offense with which he is charged, unless and until he is proven guilty by the Commonwealth by evidence beyond a reasonable doubt and to the exclusion of every reasonable theory or hypothesis consistent with his innocence. This presumption of innocence goes with the accused throughout the whole case and applies at every stage thereof, and is sufficient to require you to acquit the accused until it is overcome by evidence introduced by the Commonwealth which is so strong as to leave no reasonable doubt in your minds as to the guilt of the accused. Even though you may have a suspicion that the accused is guilty, or even if you may think that there is a probability that the accused is guilty, or even though you may believe that the greater weight or preponderance of the evidence is against him, that is not sufficient to justify conviction, or if there is any reasonable doubt as to any fact or element necessary to establish the guilt of the accused, the law makes it your duty to acquit him. The law places upon the Commonwealth the burden of proving beyond a reasonable doubt every essential element necessary to constitute the crime so clearly that there is no reasonable theory consistent with the evidence upon which he could be innocent, and unless the Jury has an abiding conviction of the guilt of the accused, you must find him not guilty.

C. C. B.

page 15 } INSTRUCTION NO. 6.

The Court instructs the Jury that a reasonable doubt in every criminal case is not a mere form to be disregarded by the Jury, but a substantial part of the law of this land, and before you can convict the accused in this case you must have an abiding conviction in your mind based upon the evidence, and that although you cannot go beyond the evidence to hunt up doubts, neither can you go beyond the evidence to find a fact necessary to establish the guilt of the accused, but your verdict must be based upon the evidence, and if there is a reasonable doubt of any fact necessary to establish the guilt of the accused raised by the evidence, or lack of evidence, such doubt is decisive, and the Jury must acquit the accused.

C. C. B.

page 16 } INSTRUCTION NO. 5a.

The Court instructs the Jury that the offense of illegal seizure and taking is an offense against a parent's right of custody, and the marriage of the infant emancipates the child, and that after an infant is married the parents have no right to custody, provided the marriage is a valid marriage.

The Court further instructs the Jury that when an infant is married, the marriage is at law presumed to be valid unless and until it is declared to be invalid by a Court of competent jurisdiction.

Therefore, if you believe from the evidence in this case that the parties were married, and that said marriage has not been declared invalid by a Court of competent jurisdiction, you will find the defendant not guilty.

Refused.

C. C. B.

page 17 } INSTRUCTION NO. 5b.

The Court instructs the Jury that before you can convict the accused in this case of illegal taking, you must find that there was an intent on his part to take the child for an illegal purpose, and unless you find from the evidence that there was an intent on his part to take the child for an illegal purpose, you will find the defendant not guilty.

In this regard, the Court instructs the Jury that marriage is favored at law and would in no way be considered illegal.

Refused.

C. C. B.

page 18 } INSTRUCTION NO. 5c.

The Court instructs the Jury that marriage is looked upon with favor under the Laws of Virginia, and the taking of a child for the purpose of marriage is not an illegal taking.

Therefore, if you find from the evidence in this case that James O. Payne and Barbara Ann Lloyd left Gordonsville, Virginia, for the purpose of becoming married, you will find the defendant not guilty in this case.

Refused.

C. C. B.

page 19 } INSTRUCTION NO. 5d.

The Court instructs the Jury that unless you find from the evidence that the accused, James O. Payne, did illegally seize, take and secrete a child, you will find the defendant not guilty.

The Court further instructs the Jury in this regard that "illegal" imports an unlawful purpose, and if you find from the evidence in this case that James O. Payne and Barbara Ann Lloyd left Gordonsville, Virginia, for the purpose of getting married, you will find the defendant not guilty.

Refused.

C. C. B.

page 20 } INSTRUCTION NO. 5e.

The Court instructs the Jury that although consent of the child is not a defense to the charge of illegal seizure, it nevertheless has a bearing to determine whether or not the taking was legal or illegal, and if the child consented to leave home for the purpose of marriage the taking was not illegal.

Refused.

C. C. B.

page 21 }

* * * * *

We the jury find the defendant guilty as charged and fix his punishment at 3 months in jail and 500.00 fine.

EDWARD C. HARWELL, Foreman.

Filed 5/28/58.

H. C. DeJarnette, Clerk.

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* * * * *

ORDER.

This day came the attorney for the Commonwealth, and this day came the attorney for the accused, and the accused James O. Payne appeared presonally in open court pursuant to his recognizance.

And the accused having been duly arraigned this 28th day of May, 1958 upon the indictment returned against him on the 24th day of March, 1958 by a lawfully empaneled grand jury in and for the County of Orange, Virginia, charging him with a felony, to-wit: Illegal Seizure of Child, and upon his arraignment this the said 28th day of May, 1958, the accused pleaded not guilty to said indictment.

Thereupon, a lawfully empaneled jury was duly sworn to well and truly try the issues joined between the Commonwealth of Virginia and James O. Payne, the defendant, according to the law and the evidence.

Whereupon, the jury, after having heard opening statements of counsel, and all the evidence introduced by the Commonwealth, and all the evidence introduced by the accused, instructions from the court and arguments of counsel, retired to their jury room to consider of their verdict, and later returned in open court and rendered the following verdict: "We the jury find the defendant guilty as charged and fix his punishment at three months in jail and $500.00 fine. Edward E. Harwell, Foreman."

There being no objection to the form of the verdict, the jury was discharged and the verdict ordered to be recorded.

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Whereupon, counsel for the defense moved the court to set aside the verdict of the jury as contrary to the law and the evidence; thereupon, the court, after due consideration, consented to take the matter under advisement, and the accused James O. Payne was released on his continuing bond for his appearance in this court on the 28th day of July, 1958, that being the first day of the July Term.

The accused was personally present throughout the entire proceedings.

Enter:

C. CHAMPION BOWLES, Judge.

(on back)

May 28, 1958.

* * * * *

page 24 }

* * * * *

This day again came the attorney for the Commonwealth, and this day again came the attorney for the accused and the accused James O. Payne appeared personally in open court pursuant to his recognizance.

And the court having, on the 28th day of May, 1958, continued this case to this date for argument on the motion to set aside the verdict of the jury; and the court on this 28th day of July, 1958 having heard the arguments of the attorney for the accused and of the attorney for the Commonwealth, and having fully considered the motion is of the opinion that the motion to set aside the verdict of the jury should be overruled and it is accordingly so ordered; to which action of the court in overruling the motion to set aside the verdict of the jury, counsel for the accused duly excepted.

Thereupon the court inquired of the accused if he had anything further he wished to say or knew of any reason why the sentence of the court should not be pronounced, and the accused replied in the negative.

Thereupon the court doth sentence the accused James O. Payne, for the crime of Illegal Seizure of Child, in accordance with the verdict of the jury, to serve three (3) months in jail, and pay a fine of $500.00 and the costs of this case.

And the defendant by counsel having indicated an intention to appeal the judgment of the court and to apply to the Supreme Court of Appeals of Virginia for a writ of error, upon motion of the defendant the execution of the sentence herein imposed is suspended until the first day of the September Term, 1958.

The accused was released upon his continuing bond. The accused was personally present throughout the entire proceedings.

Enter:

C. CHAMPION BOWLES, Judge.

(on back)

July 28, 1958.

* * * * *

page 25 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

Notice is hereby given of an appeal by the above named defendant, James O. Payne, from a final judgment entered by the Circuit Court of Orange County on the 28th day of July, 1958, finding the defendant guilty in accordance with the verdict of the jury, of the crime of illegal seizure of a child in violation of Section 18-47 of the Code of Virginia, and sentencing the defendant to serve three (3) months in jail and pay a fine of $500.00, and overruling the defendant's motion to set aside the verdict.

ASSIGNMENTS OF ERROR.

The defendant assigns as error the following rulings and actions of the Court:

(1) In ruling, upon defendant's motion to quash the indictment, upon his motion to strike the evidence, and upon his motion to set aside the verdict as contrary to the law and evidence, that the marriage of the parties was not a bar to prosecution of the defendant under Section 18-47.

(2) In ruling, upon defendant's motion to strike the evidence, and upon motion to set aside te verdict as contrary to the law and evidence, that there was no illegal seizure or taking within the meaning of the statute, since Barbara Ann Loyd went voluntarily with the defendant for the purpose of getting married.

(3) In ruling, upon the defendant's motion to page 26 } strike the evidence and upon the motion to set aside the verdict as contrary to the law and the evidence, that the marriage of Barbara Ann Loyd did not emancipate her from the custody of her parents and Section 18-47 is an offense only against custody.

(4) In ruling, upon defemdant's motion to strike the evidence and upon his motion to set aside the verdict as contrary to the law and evidence, that the marriage of the parties did not bar prosecution under Section 18-47 on the ground that under Section 18-53 marriage is expressly made a bar to prosecution for the offenses of seduction and rape, and the

offense charged under Section 18-47 is a lesser included offense and also barred.

(5) In ruling, upon defendant's motion to strike the evidence and upon his motion to set aside the verdict as contrary to the law and the evidence, that Barbara Ann Loyd was a "child" within the meaning of Section 18-47 even though she had reached maturity.

(6) In permitting Barbara Ann Loyd to testify against the defendant who was her husband as to what transpired prior to the marriage of the parties.

(7) In granting Commonwealth's instructions 1, 3 and 4-A over the objection of the defendant.

(8) In refusing to grant instructions 5-A, 5-B, 5-C, 5-D and 5-E offered by the accused.

JAMES O. PAYNE,
By Counsel.

* * * * *

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* * * * *

STATEMENTS OF FACTS AND CERTAIN INCIDENTS OF TRIAL.

At the trial of the case on May 28, 1958, the following witnesses for the Commonwealth and for the accused testified as follows:

MRS. SALLIE LOYD,

Mrs. Sallie Loyd, a witness for the Commonwealth, testified that she was the mother of Barbara Ann Loyd; that Barbara Ann would be 13 years old on July 9th; that Barbara Ann was born on July 9, 1945, and that she was in the sixth grade at school. The accused came to see Barbara Ann in October of 1957 and took her to the movies. The accused came to the home of the witness every Sunday from October, 1957 until February, 1958. The witness told the accused several times that Barbara Ann was 12 years of age. On February 19, 1958, the accused visited the home and stayed until 9 P. M. Barbara Ann went to bed and the witness went to bed at 9:30 P. M. The witness first learned that Barbara Ann was gone from the home at 9:45 P. M. She went to the door and

shouted for Barbara Ann. Witness did not see the accused after 9 P. M. Witness and her husband went as far as Orange looking for Barbara Ann. This happened on Wednesday and the witness never heard from Barbara Ann until Sunday. The accused called the witness by telephone three times asking her to withdraw the warrant against him. He refused to tell the witness where they were, stating that they were "way down the line." The witness also talked to her daughter and the daughter asked for the warrant to be withdrawn. Witness heard from her daughter on
page 30 } *Thurdsay,* February 27th, and the daughter asked the witness to come and sign for her to get married. The daughter returned to the home and has been with the witness since March 2nd. Witness testified that she was married at the age of 13 years of age and that Barbara Ann became a woman at the age of 9 years. She further testified that the accused had sent Barbara Ann a box of candy.

BARBARA ANN LOYD,

Barbara Ann Loyd, a witness for the Commonwealth, testified that she was 12 years of age and in the sixth grade at school. She was born on July 9, 1945. She met the accused in the hospital and the two went out on occasions together. Witness stated that her sister went with them except for two times. Witness stated that the accused kept getting after her to leave home but that she did not want to go. Accused said that they would get married and that she left her home because the accused kept getting after her. Witness testified that she and accused went to Culpeper Hotel on the evening of February 19th and spent the night at the Hotel, registering as Mr. and Mrs. James Payne. They slept in the same bed. Accused was the one that suggested that they go to the hotel. Witness told him she did not want to sleep with him and told him that two times. Next day she went to Washington, D. C. on a bus and waited in the bus terminal two or three hours. The sister of the accused met the witness. Witness testified that she slept with the accused that night registering at the hotel as Mr. and Mrs. Jones, and that they slept together the next night. Witness called her mother on February 27th, and talked with her, stating to her mother that she was all right and asking her to come up and sign for her and the accused to get married. Accused also talked with Mrs. Loyd but would not tell her where they were. Witness testified that she stated she was 18 years of age when the parties
page 31 } applied for a license to get married in Maryland. The accused also said that the witness was 18.

James O. Payne.

Witness testified that she did not know why she ran away from her parents. Accused came to see her every Sunday from October to February 19th. Witness stated she and the accused loved each other and the two decided to run off and get married. Witness stated she picked the date and wanted to marry him. Accused bought a wedding and engagement ring in Washington. Accused bought four pigs to her house, two for her mother and father and two for the witness and the accused.

JAMES O. PAYNE,

James O. Payne, the accused, testified in his own behalf, stating that he was 37 years of age and a farmer by occupation. He met Barbara Ann Loyd in a hospital through her brother, where he stayed five or six weeks. He started dating Barbara Ann Loyd during July of 1957. After the first of September he started to see her every Sunday. Witness stated he intended to marry her and that her parents did not object. He and Barbara Ann went out together three or four times alone. Witness stated that Barbara Ann discussed the marriage with her parents, and that Barbara Ann picked the date, February 19, 1958. Witness stated he called Mrs. Loyd from Washington on Sunday after they left, but that nothing was said about a warrant. He did not tell Mrs. Loyd where they were. He and Barbara Ann applied for a license on Monday. They lived as man and wife while they were waiting to get married. Witness stated that he had given Barbara Ann a box of candy as a present, a turkey for Christmas, two pigs for Mr. and Mrs. Loyd and two pigs for Barbara Ann and himself. He never said anything about moving the pigs until he was arrested. Witness stated he still loved Barbara Ann Loyd and wanted to live with her. Witness page 32 } stated that Barbara Ann was a fully developed woman. He stated that they did not register in Culpeper Hotel as Mr. and Mrs. James O. Payne. Witness testified that Barbara Ann did not say to him that she did not want to sleep with him. Witness stated that he didn't believe that Barbara Ann was only 12 years of age. He stated that he had given her money all along. The second night when they were in Washington, D. C. they slept in the car. Witness stated that when he called Mrs. Loyd she wanted to know where they were and he told her they were "down the line."

Rev. Glen L. Plott—Barbara Ann Loyd.

REGINAL LEE GREENE,

Reginal Lee Greene, a witness for the accused, testified that the reputation of the accused was generally good. Pierrie Setti, a witness for the accused, testified that the reputation of the accused was very good.

Rev. Glen L. Plott.

REV. GLEN L. PLOTT,

Rev. Glen L. Plott, a rebuttal witness for the Commonwealth, testified that the reputation of Mr. and Mrs. Loyd was good.

Barbara Ann Loyd.

BARBARA ANN LOYD,

Barbara Ann Loyd, rebuttal witness for the Commonwealth, testified that she lived with her mother and father prior to February 19, 1958, and was living with them at the time of the trial. She stated her weight was 130 pounds.

Prior to the trial of the case the accused, by counsel, moved to quash the indictment on the ground that the marriage of the parties was a bar to prosecution under section 18-47. The court denied the motion, to which ruling the accused, by counsel, noted exception. The accused also moved that, if the marriage of the parties was invalid, the case be continued until the parties could be legally married. The motion was also denied and exception was duly noted.

At the trial the court, over objection of the accused, permitted Barbara Ann Loyd to testify as to what transpired prior to the marriage of the parties on February 28, 1958, but not as to what tanspired thereafter. Accused noted exception to the action of the court in overruling
page 33 } objection to the admission of her testimony.

Upon conclusion of the Commonwealth's evidence, the accused, by counsel, moved to strike the Commonwealth's evidence on the following grounds: (1) That the marriage of the parties was a bar to prosecution under section 18-47, (2) That there was no illegal seizure, taking or secreting within the meaning of the statute, since Barbara Ann Loyd went voluntarily with the accused for the legal purpose of getting married, and (3) The marriage of the

parties emancipated the child from the custody of her parents and section 18-47 is an offense against custody. The court refused to strike the evidence for the Commonwealth and the accused duly noted exceptions.

The accused objected to Commonwealth's instructions 1, 3 and 4A, but they were granted by the court and exception was duly noted. Instructions 5-A, 5-B, 5-C, 5-D and 5-E were offered by the accused, refused by the Court and exceptions duly noted.

After the jury returned its verdict the accused moved to set aside the said verdict on the same grounds given on its motion to strike the Commonwealth's evidence, plus the following grounds: (1) That under Section 18-53 marriage is expressly made a bar to the prosecution of the offenses of seduction and rape, and since the offense charged under Section 18-48 is a lesser included offense, marriage is also a bar to prosecution therefor under the same statute, and (2) Barbara Ann Loyd was not a child within the meaning of Section 18-47 because she had reached maturity. The court on July 28, 1958, overruled the motion to set aside the verdict and sentenced the accused in accordance with the verdict, to which action the accused duly noted exception.

C. CHAMPION BOWLES, Judge.

9/23/58.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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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 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 the 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.

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§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.

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