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Supreme Court of Appeals
Richmond, Va.

Record No. 5153

In the Supreme Court of Appeals of Virginia at Richmond

JAMES NELSON MARSHALL

v.

COMMONWEALTH OF VIRGINIA AND CITY OF NORFOLK

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

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. 5153

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1960.

JAMES NELSON MARSHALL, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA AND CITY OF NORFOLK, Defendants in Error.

From the Corporation Court of the City of Norfolk

Upon the petition of James Nelson Marshall a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk on the 6th day of October, 1959, in a prosecution by the Commonwealth of Virginia and City of Norfolk against the said petitioner for misdemeanors; 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

* * * * *

page 10 }

* * * * *

In the Corporation Court of the City of Norfolk, on the 6th day of October, 1959.

* * * * *

This day came the defendant and the Attorney for the defendant and the Attorney for the Commonwealth, and thereupon the defendant plead not guilty to the said warrants and the whole matter of law and fact in each case was heard and determined by the Court. Whereupon it is considered by the Court that the judgments of the Police Court of the City of Norfolk revoking the suspended sentences heretofore granted by said Court on the 4th day of August, 1958 be and the same are hereby affirmed, and it is ordered that the said defendant be confined in the City Jail for the term of Thirty Days on each of the said four warrants and be required to pay the costs of his prosecution. Thereupon the defendant, by counsel, duly excepted to the foregoing judgment and moved the Court for time in which to apply for a writ of error to said judgment, which motion having been heard by the Court is sustained, and it is ordered that the execution of said judgment be postponed until the 7th day of December, 1959, or until the Supreme Court of Appeals of Virginia shall deny writ of error if prior thereto, and the Court doth fix the amount of bond at $500.00. Thereupon the said James Nelson Marshall, with William P. Bell, surety, acknowledged a bond in the penalty of $500.00, conditioned according to law.

* * * * *

page 12 }

* * * * *

Filed 11/2/59.

IRA B. WHITE, D. C.

ASSIGNMENTS OF ERROR.

1. The Court erred in entering the final judgment revoking the suspended jail sentence which had been entered on August 4, 1959 in the Police Court of the City of Norfolk, Virginia.

2. The Court erred in permitting Officer S. A. Lakata to testify concerning an alleged sale of a stolen adding machine when a jury had acquitted the defendant on the alleged offense involving the stolen adding machine on May 26, 1959.

3. The Court erred in overruling the motion of the defendant to dismiss the charge against the defendant after the Commonwealth had rested.

4. The Court erred in permitting the Commonwealth's Attorney to re-open the case after the Commonwealth had rested its case.

5. The Court erred in permitting Officer S. A. Lakata over objection of counsel for the defendant to testify where the adding machine allegedly stolen came from.

6. The Court erred in permitting Officer S. A. Lakata to testify whether or not the adding machine had been
page 13 } taken from Lewis Business Machine Company.

7. The Court erred in permitting Officer S. A. Lakata to testify that the adding machine at the hearing on October 6, 1959 was the adding machine which the defendant referred to in his statement of March 8, 1959.

8. The Court erred in refusing to dismiss the charge against the defendant when the sole evidence of the Commonwealth pertained to the statement given by the defendant on March 8, 1959 pertaining to sale of an alleged stolen adding machine, which statement was introduced into evidence at a trial before a jury on May 26, 1959 and the jury found the defendant innocent of all charges.

JAMES NELSON MARSHALL
By HOWARD I. LEGUM
Of Counsel.

* * * * *

page 2 }

* * * * *

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled cause in

said Court on October 6th, 1959, before the Honorable H. Lawrence Bullock, Judge of said Court.

Appearances: Mr. H. Warrington Sharp, Assistant Commonwealth's Attorney.

Messrs. Fine, Fine, Legum, Weinberg & Schwan (by Mr. Legum), Attorneys for the defendant.

page 3 } (The reporter was sworn).

Mr. Sharp: If Your Honor please, this involves the revocation of four 30 day sentences imposed in Police Court of the City of Norfolk on August 4, 1958, which were conditioned upon his good behavior for a period of one year.

The Commonwealth's position is that during the one year this defendant violated the terms of probation and for that reason the four 30 day sentences should be revoked.

The Court: What do you mean by the sentences should be revoked?

Mr. Sharp: The probation should be revoked. One of the sentences was for violation of the City Code, Section 29-13.

The Court: What are the details of the violation?

Mr. Sharp: This defendant was dealing in stolen property.

Mr. Legum: May it please Your Honor, this defendant was indicted for receiving stolen good, grand larceny, and accessory after the fact, and on May 26th before a jury in this Court, the jury returned a verdict of not guilty.

page 4 } I have a certified copy of the order of that date.

The day after the trial the Commonwealth's Attorney saw fit to have a rule issued as to why probation should not be revoked.

We take the position, the jury having found him not guilty, it cannot be used as a basis to revoke the suspended sentence.

The Court: You may proceed.

S. A. LAKATA,

called as a witness on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Sharp:

Q. You are Mr. S. A. Lakata of the Norfolk

page 5 } Police Division?

A. Yes, sir.

S. A. Lakata.

Q. Were you in the Police Court on August 4th, 1958?
A. Yes, sir, I was.
Q. Did you see the defendant, James Nelson Marshall, in the Police Court on that date?
A. Yes, sir.
Q. Were you in a case in which he was a defendant before that Court?
A. Yes, sir, along with four other officers.
Q. In the disposition of that case, what sentences were given this defendant?
A. He was fined $100.00 and 30 days on each of four charges, and the jail sentence was suspended for twelve months.
Q. Does that make a total of 120 days?
A. Yes, sir.
Q. What violations were each of those 30 day sentences given for?
A. Three for violation of Section 4-58 of the City Code, and one for violation of Section 29-13 of the City Code.
Q. After that date did you have occasion to interview this defendant concerning the stolen machine?
A. Yes, sir.

Mr. Legum: We object to any evidence relating
page 6 } to the alleged offense on the grounds that the defendant was acquitted on the charges, which would be a case of double jeopardy.

I have a case here which I would like to read Your Honor, 132 S. E. 613.

The Court: Let me ask a question first. What is the issue to be determined by me today?

Mr. Legum: According to the Commonwealth's Attorney, he is trying to show that this man committed a crime.

The Court: What am I to determine?

Mr. Legum: Whether the suspended sentences should be revoked.

The Court: Isn't it reduced to the identical point then as to whether the police justice abused his authority when he revoked the suspended sentences? Isn't that the solitary thing, whether the police justice abused his discretion?

Mr. Legum: That is a phase of it. Your Honor doesn't know what the evidence was in the Police Court because there was no court reporter present and there is no transcript of the evidence.

page 7 } The Court: The Court, in the exercise of its discretion as to whether it will or will not revoke

probation, is not bound by strict rules of evidence.

It is true they should not arbitrarily revoke it, but it is within their discretoin as to whether it will be revoked.

Whether the police justice has abused that discretion is the sole question before me today.

Mr. Legum: Let me give you a little of this case for what it may be worth. This is a South Carolina case, 132 S. E. 613. It held as follows:

"Order requiring defendant to serve balance of suspended sentence on ground that he had violated it by possessing liquor held improper in view of acquittals on such charge."

That case is exactly like this case. The Commonwealth's Attorney is trying to ask this police officer about a trial in May of this year concerning alleged violation, in which case the jury found there was no violation.

page 8 } They are trying to do indirectly what they can not do directly, the jury having found the man not guilty. We ask Your Honor to exclude such evidence. We don't think it is proper to try the case twice.

The Court: The issue is different in that case. The Commonwealth has the burden of proving the case to the jury beyond a reasonable doubt, and in this case they have got to prove that the police justice has not abused his authority.

Mr. Legum: We take the position as in the South Carolina case that it is not admissible, the jury having found the defendant not guilty.

The Court: I disagree with you and will overrule your objection.

Mr. Legum: I note an exception.

By Mr. Sharp:

Q. Mr. Lakata, did you have occasion to interview the defendant, James Nelson Marshall, concerning the sale of an adding machine?

A. Yes, sir.

Q. Did he make any statement to you?

A. Yes, sir.

page 9 } Q. Was that a statement reduced to writing?

A. Yes, sir.

Q. Was that statement signed by the defendant?

A. Yes, sir.

Q. Is this the adding machine (indicating), concerning which the statement was made?

S. A. Lakata.

A. Yes, sir.

Mr. Legum: It is understood my objection runs continuously throughout this.
The Court: Yes, that is understood.

By the Court:
Q. Was this statement the Commonwealth's Attorney is talking about made after these convictions in the Police Court?
A. Yes, sir.

By Mr. Sharp:
Q. Will you read the statement, please?
A. Yes, sir.

(The statement was read as follows):

"March 8th, 1959 3/15 P. M. Page 1 to 3

"J. N. M.

"This is a statement of James Nelson Marshall page 10 } taken in the Detective Bureau, Police Hdqs., Norfolk, Va. March 8th, Sunday, 1959, to Dets. S. A. Lakata—J. Elder—A. Sodler—reference 1 Clay Adding Machine Serial Number 218523-A Property of Lewis Business Machines Co., Norfolk, Va.

"Q. What is your name?
"A. James Nelson Marshall.
"Q. Where do you live?
"A. 1438 West 27th St.
"Q. How old are you?
"A. 32.
"Q. Are you married?
"A. Yes, sir.
"Q. Where do you work, and how long?
"A. Norfolk Western R. R. about 8 yrs.
"Q. Mr. Marshall (James) I want you to tell us if you will, the action or acts you took part in if any, about the selling of this adding machine Ser. #218523-A, make Clay adding machine.
"A. Well I had worked that day on the R. R. about 4:30 P. M. that was Feb. 11th, 1959. I went up to the store, I deal

S. A. Lakata.

Cut Rate at 38th & Parker Ave. Lloyd, Sr. and Roger came in and I went over and spoke to them. Roger got
page 11 } telling me about going back to New York that night and was running short of cash. He said he had an adding machine out in his car that he wants to sell, and wanted to know if I knew anyone who could use it or wanted to buy it.

"Well, Mr. Dugan walked in and I suggested it to him and he said he didn't have any money to buy it with, so Eva and Johnny Rotowicz walked in and they had been telling me about opening a store in North Carolina, so I told Roger that they might need one to go in business. He didn't know them, so he asked me to talk to them and see if they wanted to buy it.

"So I did, I asked Eva if she wanted to buy an adding machine. I told her about the boys, Rogers, hard luck story and that he had to go back that night and needed some funds to get back to New York.

"Roger gave me the keys to his car and I took her out to the car and showed it to her in the car. It was in a pasteboard box on the floor in the back of the car. She said she would like to have it. Then I told her that she was
page 12 } getting a bargain, because it looked brand new. I told her it may be stolen or "hot." She left then and was gone about 40 minutes. While she was gone, I told Roger that she had to go and get some money and she would be right back. We waited there until she returned.

"She came back and said all she could get was $45.00. I told Roger and he said that was alright. So she gave me the $45.00 and I took her and Johnny out to the car. Johnny took the adding machine out of Roger's car and put it in the trunk of his own car. I went back in and threw the money on the table in front of Lloyd and Roger and they gave me $15.00 and said, "There is your part for selling it.

"Q. Have Lloyd Marshall or Roger Kahn ever asked you previous to this to try to sell anything for them?

"A. No.

"Q. Is there anything else you would like to add to this statement?

"A. That's about all there is.

"Q. Is this a true statement to the best of your knowledge and belief?

"A. Yes, sir, it sure is.

page 13 } "Q. Was it given without any threats or promises from any member of the Norfolk Police?

S. A. Lakata.

"A. Yes, it was voluntarily.

"JAMES NELSON MARSHALL.

"Witness:

"J. M. Elder
"S. A. Lakata"

Mr. Sharp: If Your Honor please, the statement and the adding machine are already in evidence in the other case, but I offer them as exhibits in these proceedings.

The Court: I will mark it C-1, the statement, Mr. Knight, and I will mark the adding machine Exhibit C-2.

Mr. Sharp: You may examine.

CROSS EXAMINATION.

By Mr. Legum:

Q. Mr. Lakata, you testified on May 26th, 1959, before Judge Bullock and a jury on various charges against Mr. Marshall, did you not?

A. Yes, sir.

page 14 } Q. You read the statement which Mr. Marshall gave you to the jury on that occasion, did you not?

A. Yes.

Q. And the jury returned a verdict of not guilty on all charges, did they not?

A. Yes, sir.

Mr. Legum: I offer a certified copy of the order.

The Court: I mark this Defendant's Exhibit #1, Mr. Knight.

By Mr. Legum:

Q. This is a rule to show cause why the suspended sentence of August, 1958 should not be revoked?

A. Yes, sir.

Mr. Legum: No further questions.

Mr. Sharp: You may come down. We rest, Your Honor.

Mr. Legum: We would like to move Your Honor to dismiss the rule against this man.

All that the evidence shows is that this man gave a state-

ment to the detectives, and this detective read such statement before the jury, and after hearing all of the evi-
page 15 } dence they found the man not guilty.

We think, on such evidence as the Commonwealth has presented, it is not sufficient for Your Honor to revoke the suspended sentences, and it should not be necessary for the defendant to put on evidence at this stage.

We sincerely ask Your Honor, under these circumstances, to dismiss the rule.

The Court: What does the statement refer to, Mr. Sharp? Does the statement talk about the adding machine?

Mr. Sharp: It refers to this adding machine.

The Court: What about the adding machine?

Mr. Sharp: He has said in the statement:

"I took her out to the car and showed it to her in the car. It was in a paste board box on the floor in the back of the car. She said she would like to have it. Then I told her that she was getting a bargain because it looked brand new. I told her it may be stolen or hot.

"I told her about this Rogers hard luck story,
page 16 } and he had to get back to New York."

"She came back and said all she could get was $45.00. I told Roger and he said that was alright. So she gave me the $45.00 and I took her and Johnny out to the car. Johnny took the adding machine out of Roger's car and put it in the trunk of his own car. I went back in and threw the money on the table in front of Lloyd and Roger and they gave me $15.00 and said, 'There is your part for selling it.' "

The Court: I understand all of it perfectly now, so much so I could recite it because it has come back to me now.

Suppose it was his own adding machine. What is there to show that there was anything wrong with the adding machine?

Mr. Sharp: He says in the statement, "I told her it may be stolen or hot."

The Court: It is not my place to come down there and prove your case. Have you proven the adding machine was stolen?

Mr. Sharp: By his statement, yes, sir.

The Court: I am not going to take it that way. I will give you an opportunity—

Mr. Sharp: I would like to call Detective Lakata
page 17 } back.

Mr. Legum: We would like to object to any

testimony by Detective Lakata after the Commonwealth has rested.

The Court: Overruled.

Mr. Legum: We except.

S. A. LAKATA,

a witness herein, having been previously sworn and examined, was recalled for further examination and testified as follows:

DIRECT EXAMINATION.

By Mr. Sharp:

Q. In your investigation of a break-in and larceny of Lewis Business Machine Company, did you have occasion to see this adding machine?

A. Yes, sir.

Q. Can you tell me where this adding machine page 18 } came from?

Mr. Legum: I object to that.

The Court: Objection overruled.

Mr. Legum: Exception.

A. It was recovered from the home of Mrs. Moreyra at 1317 West 39th Street.

By Mr. Sharp:

Q. Can you tell me whether or not this is one of the machines that was taken from the Lewis Business Machine Company.

Mr. Legum: I object to that. The best evidence would be the owner.

The Court: I overrule the objection.

Mr. Legum: Exception.

A. The serial numbers corresponded with the numbers of the machines that had been stolen from Lewis Business Machine Company.

By Mr. Sharp:

Q. Is this the adding machine to which the defendant referred when he said it might be hot?

A. Yes, sir.

S. A. Lakata.

Mr. Legum: Objection.
The Court: Overruled.

page 19 } By Mr. Sharp:
Q. That is the machine?
A. Yes, sir.

Mr. Sharp: No further questions.
Mr. Legum: No questions.
Mr. Sharp: You may come down.
The Court: Is there any argument?
Mr. Sharp: We have proved this is the adding machine and the defendant said it was stolen or hot, that he was dealing in stolen property and he received $45.00 for the sale of it, and the evidence before the Court clearly shows he has violated the conditions of his probation and the suspended sentences should be revoked.
Mr. Legum: I have a certified copy of the order showing that he was tried and acquitted on that charge.
The Court: Do you think that is conclusive of his innocence?
Mr. Legum: I would think so because he has been tried before a jury.
The Court: It is all predicated upon whether or not the police justice violated his discretion.
page 20 } Mr. Legum: I don't think the Commonwealth has shown any grounds whatsoever based upon the testimony that the detective gave of why this man's sentences should be revoked.
I don't see where he has violated any conditions of his suspended sentences. The jury having found he was not guilty of the charges, and certainly he has not violated the conditions of his sentences.
The Court: The case has come back to me now.
While it may not be appropriate to express myself, I will say I never saw a clearer case of a jury violating their oath than what I saw in this case.
Mr. Legum: You will recall, Your Honor, that Roger Kuhn testified that he didn't tell the defendant that they had stolen that machine, that he told him it was his.
The Court: It has all come back clearly to me now.
Mr. Legum: The woman in this case, Mrs. Kotowitzy—her

case was *nol prossed.* She was never tried, Your Honor. I ask your Honor to strike the evidence without our
page 21 } having to go forward with evidence of our own.

I don't think they have proved sufficiently that this man's suspended sentences should be revoked.

The Court: I am here to determine whether the police justice acted arbitrarily in revoking his probation, and I think the evidence so far shows that the way he acted was proper in revoking it.

Mr. Legum: We note an exception, Your Honor.

W. E. DUGAN,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Legum:

Q. Will you tell His Honor your name?
page 22 } A. W. E. Dugan.

By the Court:

Q. What is your name?
A. W. E. Dugan.

By Mr. Legum:

Q. Where do you live?
A. 1223 West 27th Street.
Q. Norfolk, Virginia?
A. Norfolk, Virginia.
Q. What is your occupation?
A. I am a painting contractor.
Q. Tell His Honor if Mr. James Nelson Marshall has worked for you?
A. Yes, sir.
Q. Is he now working for you?
A. Yes, sir.
Q. What kind of work does he do?
A. He is a painter.
Q. Mr. Dugan, on this particular occasion that Mr. Marshall was charged with receiving or possessing this adding machine knowing it to be stolen, did you come into the Ideal Cut Rate Store on that particular night?

W. E. Dugan.

A. Yes, sir.
page 23 } Q. Did you talk to Mr. Marshall?
A. Yes.

Q. What, if anything, did Mr. Marshall say to you on that occasion?

A. He told me that—I didn't know this Mr. Roger's last name, but he said he had an adding machine he wanted to sell, that he was going back to New York, and he asked me if I wanted to buy it.

I told him I didn't know, I didn't have a lot of capital.

By the Court:

Q. That was Roger?

A. Some sailor.

By Mr. Legum:

Q. Was Mr. Marshall present at the time?

A. Yes, sir. He was sitting back in the booth, and I went home and talked to my wife and she said we didn't have the money to spare, and then I told him I was not interested, that I didn't have the money.

Q. Did you know the adding machine was stolen?

A. No, sir.

Q. How long have you known Mr. Marshall?

A. I imagine about eight or nine years.
page 24 } Q. Is he married?
A. Yes, sir.

Q. How many children does he have?

A. Three.

Q. Has he, or not, been a good worker for you?

A. Yes. He used to live right across the street from my mother when I first met him.

Q. What do you pay him?

A. $2.96 an hour.

Mr. Legum: You may answer Mr. Sharp.

CROSS EXAMINATION.

By Mr. Sharp:

Q. How long has Mr. Marshall been working for you?

A. About three weeks.

Q. Where did he work before that?

A. A contractor, Mr. Allen.

Q. Do you know how long he worked for him?

A. No, sir.

Mr. Sharp: That is all.

page 25 } RE-DIRECT EXAMINATION.

By Mr. Legum:
Q. You also testified before His Honor and a jury on May 26th, 1959, did you not?
A. Yes.

By the Court:
Q. Was the sailor who had the adding machine in the store at that time?
A. Yes.
Q. In the store?
A. Yes.
Q. Why was it Mr. Marshall was doing the talking?
A. I don't know.
Q. My experience is that if you want a thing well done, do it yourself. What could be the reason for the sailor not doing the talking?
A. I don't know.
Q. Wasn't the defendant's father in the store at the same time?
A. Who?
Q. This defendant's father, was he in the store with the sailor?
page 26 } A. His father?
Q. Yes?
A. I don't remember seeing his father, no, sir.

Mr. Sharp: I think it was his brother, if Your Honor please.
The Witness: His brother, yes, sir.

MRS. BERLIE MARSHALL,
called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Legum:
Q. Please state your name?
A. Berlie Marshall.

Berlie Marshall.

Q. Where do you live?
A. 1438 West 27th Street.
page 27 } Q. Norfolk, Virginia?
A. Norfolk, Virginia.
Q. You are the wife of the defendant, Mr. James Nelson Marshall?
A. Yes, sir.
Q. How long have you been married to him?
A. Sixteen years next month.
Q. How many children do you have?
A. Three.
Q. What are their names and ages?
A. Evelyn Judy Ann Marshall, 14, Janice L. Marshall, 13, and the young one, Erna Jean Marshall is 13 months.
Q. Do you and your children live with Mr. Marshall?
A. Yes, sir.
Q. Is he presently employed and supporting you and the family?
A. Yes.
Q. On this occasion of the adding machine where was your husband working?
A. Norfolk & Western Railroad.
Q. What kind of work was he doing there?
A. Painter.
Q. How long had he worked there?
A. About eight years.
Q. After that occurrence the railroad laid off
page 28 } some employees, including your husband?
A. Yes.
Q. Where did your husband find employment after that?
A. Mr. Allen.
Q. A painting contractor?
A. Yes, sir.
Q. Then he worked for Mr. Allen until about three weeks ago?
A. Yes, sir.
Q. What was the reason for his leaving Mr. Allen?
A. He didn't have any more work.
Q. Has your husband been a good father and good husband?
A. He has.

Mr. Legum: That is all.
Mr. Sharp: I have no questions.

By the Court:

Q. Was he working for the railroad at the time this adding machine deal was carried on in this store?

A. Yes, sir.

Q. That is the place he worked, and he had come home that day?

A. Yes, sir.

page 29 } Q. Has he worked for the railroad since the 26th of May, 1959?

A. He got off the 18th, I think.

Q. And hasn't worked for the railroad since the date of this offense?

A. That is right.

The Court: That is all.

IRVIN GOLDSTEIN,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Legum:

Q. Tell His Honor your name, please?

A. Irvin Goldstein.

Q. Where do you live?

A. 6201 Juanita Circle.

page 30 } Q. Norfolk?

A. Yes.

Q. What is your business?

A. Yes.

Q. What is your business, sir?

A. I operate a cut rate store.

Q. Where is it located?

A. 1452 West 38th Street.

Q. How long have you known Mr. Marshall?

A. Five years, during the time I have had the store.

Q. During that time have you come to know him quite well?

A. Yes, sir.

Q. Has he been a good father and family man?

A. Yes.

Q. Has he stayed continuously employed?

A. He has tried to work as much as possible.

Irvin Goldstein.

Mr. Legum: You may inquire.
Mr. Sharp: I have no questions.

page 31 } Mr. Legum: We rest, if Your Honor please.
Mr. Sharp: I have nothing further, Your Honor.
The Court: Any argument?

(The case was argued).

The Court: I sustain the Police Court order.
Mr. Legum: We wish to except to Your Honor's ruling and note an appeal. We ask you to set a bail bond. We have someone here to go on his surety.
We ask Your Honor to set it as low as possible.
The Court: I will set it at $500.00.

page 32 } JUDGE'S CERTIFICATE.

I, H. Lawrence Bullock, Judge of the Corporation Court of the City of Norfolk, who presided over the trials of the cases of Commonwealth of Virginia *v.* James Nelson Marshall, and City of Norfolk *v.* James Nelson Marshall, do hereby certify that the foregoing is a true and correct transcript of the trial of said causes, including all of the evidence adduced, all of the exhibits offered in evidence, all of the objections to the evidence or any part thereof offered, admitted, rejected or stricken out, together with all motions and objections of the parties, all rulings of the Court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of said cause.

As to the original exhibits introduced in evidence as shown by the foregoing report, to-wit: Commonwealth's Exhibits 1 and 2, and Defendant's Exhibit 1, which have been initialed by me for the purpose of identification, it is agreed between the attorney for the Commonwealth and the attorneys for the defendant that they shall be transmitted to the Supreme Court of Appeals of Virginia, together with the record in this case in lieu of certifying to the said Court copies of said exhibits.

I further certify that this certificate has been tendered to and signed by me within the time prescribed by Section 8-330 of the Code of Virginia for tendering and signing
page 33 } bills of exception and certificates of record, and that reasonable notice in writing has been given to

the attorney for the Commonwealth of the time and place at which said certificate has been tendered.

Given under my hand this 25th day of November, 1959.

H. LAWRENCE BULLOCK
Judge of the Corporation Court
of the City of Norfolk.

page 34 } CLERK'S CERTIFICATE.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, Virginia, Part I, do hereby certify that the foregoing is a true and correct copy of all the testimony, exhibits and other incidents of the trial of the cases of Commonwealth of Virginia *v.* James Nelson Marshall, and City of Norfolk *v.* James Nelson Marshall, together with the original exhibits therein referred to, duly initialed and authenticated by the Judge who presided over the trial of said cases, were lodged and filed with me as Clerk of said Court on the 25th day of November, 1959.

W. L. PRIEUR, JR.
Clerk of the Corporation Court
of the City of Norfolk, Virginia
By IRA B. WHITE, Deputy.

page 35 } CLERK'S CERTIFICATE.

Virginia:

In the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, on the 25th day of November in the year 1959.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, Virginia, do certify that the foregoing is a true and correct transcript of the record in the cases of Commonwealth of Virginia *v.* James Nelson Marshall, and City of Norfolk *v.* James Nelson Marshall, lately pending in said Court.

I further certify that the same was not made up and completed and delivered until the attorney for the Commonwealth had received due notice in writing thereof, and of the intention of the defendant to apply to the Supreme Court of

Appeals of Virginia for a writ of error and *supersedeas* to the judgment therein.

Teste:

W. L. PRIEUR, JR.
Clerk of the Corporation Court
of the City of Norfolk, Virginia,
Part I.
By IRA B. WHITE, Deputy.

A Copy—Teste:

H. G. TURNER, Clerk.

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