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Clerk, Supreme Court of Appeals
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Record No. 5289

In the Supreme Court of Appeals of Virginia at Richmond

JAMES HAZEL BRITT

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF GOOCHLAND COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 5289

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 12th day of January, 1961.

JAMES HAZEL BRITT, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Goochland County

Upon the petition of James Hazel Britt a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Goochland County on the 10th day of October, 1960, in a prosecution by the Commonwealth against the said James Hazel Britt 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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* * * * *

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Goochland, duly summoned to and now attending said Court, on their oaths present, that James Hazel Britt during the month of March in the year one thousand nine hundred and Fifty-nine in the said County, and within the Jurisdiction of the said Circuit Court of the County of Goochland, did unlawfully and feloniously under promise of marriage, seduce and have illicit connection with Thelma Dickerson, an unmarried female of previous chaste character, against the peace and dignity of the Commonwealth of Virginia.

PEARL DICKERSON
THELMA DICKERSON

Witnesses sworn and sent by the Court to the Grand Jury to give evidence.

(on back)

AN INDICTMENT FOR A FELONY.

A True Bill.

H. A. LAYNE, Foreman.

Aug. 8, 1960.

Arraigned August 8, 1960.
Entered pleas of not guilty.

* * * * *

page 14 } We the jury find the accused James Hazel Britt guilty as charged in the indictment, and fix his punishment in the penitentiary for two (2) years.

D. H. BOGGS, Foreman.

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* * * * *

August 10, 1960.

This day came the attorney for the Commonwealth and this day also came the attorney for the accused, and the accused, James Hazel Britt appeared in open Court pursuant to his recognizance.

Thereupon, the accused, was duly arraigned upon an indictment which was returned against him by a lawfully empaneled Grand Jury, in and for this, the County of Goochland, State of Virginia, on the 8th day of August, 1960 charging him with a felony, to-wit: Seduction, to which charge he entered a plea of not guilty.

Thereupon, a jury of twenty (20) was duly empaneled from which panel eight (8) were struck off by the attorney for the Commonwealth and the attorney for the accused, alternately, beginning with the Commonwealth, thus leaving twelve (12) who were sworn to well and truly try and true deliverance make between the Commonwealth and the defendant, and a true verdict give according to the law and the evidence, and after having received their charge and after hearing opening statement of the attorney for the Commonwealth, the attorney for the accused offering no opening statement, and after hearing all of the evidence introduced by the attorney for the Commonwealth, the accused offering no evidence, and after hearing the instructions of the Court and arguments of counsel, retired to their jury room to consider of their verdict and later returned into open Court with the following verdict, to-wit:

"We, the jury find the accused, James Hazel Britt guilty as charged in the indictment, and fix his punishment in the Penitentiary for two (2) years,

D. H. BOGGS, Foreman."

page 16 } Thereupon, the Court inquired of counsel if there were any objections to the form of the verdict, and counsel replied in the negative, and the verdict was ordered to be recorded.

Thereupon, Counsel for the accused, moved the Court to set aside the verdict of the jury as being contrary to the law and the evidence, to which motion the attorney for the Commonwealth objected, and which motion the Court took under advisement and continued this case until the 10th day of October, 1960, and the accused was released on his continuing

bond until October 10, 1960. The accused was present during all stages of the trial.

Enter.

C. CHAMPION BOWLES, Judge.

* * * * *

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* * * * *

October 10, 1960.

This day again came the attorney for the Commonwealth and this day again came the attorney *v*or the accused, and the accused, James Hazel Britt, appeared in pursuance to his recognizance.

Thereupon, the accused who had been previously convicted of the crime of Seduction, on the 10th day of August, 1960, and upon motion of the accused, by counsel, to set aside the jurys verdict as being contrary to the law and the evidence, the Court, after duly considering the matter, on this date overruled the motion and 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, and thereupon, the Court sentenced the accused, James Hazel Britt, in accordance with the jury's verdict to be confined in the State Penitentiary for a period of two (2) years.

Thereupon, Counsel for the accused moved the Court for a stay of execution of the sentence of the Court until the 1st day of the December 1960 term of this Court, in order that the accused may have time to apply for a writ of error to the Supreme Court of Appeals of Virginia, which motion the Court granted upon the condition that the accused give bond in the amount of $1,000.00 with approved surety, and the accused, James Hazel Britt is released until the 1st day of the December 1960 term of this Court.

Enter.

C. CHAMPION BOWLES, Judge.

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STATEMENT OF PROCEEDINGS AND EVIDENCE.

On the 8th day of August, 1960, a Grand Jury of the Circuit Court of Goochland County found the following indictment:

Virginia:
County of Goochland, to-wit:

In the Circuit Court of the County of Goochland.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Goochland, duly summoned to and now attending said Court, on their oaths present, that James Hazel Britt during the month of March, in the year one thousand nine hundred and Fifty-nine, in the said County, and within the jurisdiction of the said Circuit Court of the County of Goochland, did unlawfully and feloniously under the promise of marriage, seduce and have illicit connection with Thelma Dickerson, an unmarried female of previous chaste character, against the peace and dignity of the Commonwealth of Virginia.

Prior to the arraignment of the accused, the accused moved the Court to quash the indictment on the ground that in his charge to the grand jury the court stated, in effect, that "the Commonwealth's Attorney does not send all of his witnesses to the grand jury because that is not necessary. He just sends enough to show probable cause." The accused contended that this statement was prejudicial to the accused in that it directed that a true bill be found. The motion was overruled to which the accused objected and excepted.

Upon the arraignment of the accused on the 8th day of August, 1960, he pleaded not guilty. The case was set for trial on August 10, 1960.

On August 10, 1960, the accused was called to the bar for trial and was tried by a jury on the following evidence.

page 20 } STATEMENT OF THE EVIDENCE FOR THE COMMONWEALTH.

THELMA DICKERSON,

a negro female, testified that she became eighteen years of age during February, 1960; that she completed the tenth grade in public school and had become a beautician through study of beauty culture at the Apex school. She said that she had known the defendant for about three years and started dating him as a boy friend during July 1957 or 1958, and on dates had attended the movies, dances, and had gone to church with him three or four times. The movies attended were in Richmond, the dances at a tavern known as "Watson's Paradise" in Goochland County and the churches were Mt. Olivet Baptist Church, which was near her home and the Jerusalem Baptist Church. Mt. Olivet Baptist church was in sight of her home on the road from Manakin to Centerville.

She stated that the defendant had never taken any meals at her house; that he had given her presents as follows: A make-up set on her birthday in February 1958 or 1959 (she was uncertain which), necklace at Christmas 1958 and a sweater at Christmas 1959, and a box lunch on Memorial Day, 1960. She was unable to assign any approximate value to any of these gifts. She could not say whether the necklace was worth, in the store, ten cents or ten dollars.

Thelma testified that her first act of sexual intercourse with the defendant took place in March of 1958 and later changed her statement after several probing questions by the Commonwealth's Attorney, to March, 1959. She also said that it was the first act of sexual intercourse she had ever engaged in; that it took place about 12:25 a. m. on a date she could not remember on the lead-in road to the Deep Run Hunt Club Property about a mile from the highway and in the defendant's automobile in which they had returned from the movies in Richmond. Thelma testified on direct examination that the defendant asked her to have sexual intercourse with him after they had been parked about twenty or twenty-five minutes during which period he had been hugging and kissing her and having his hands on her; that she refused, saying that she was afraid she would become pregnant; that the defendant said if that happened he would marry her; that she then went ahead and had sexual intercourse with him; that they had had sexual intercourse on several subsequent occasions; and, that on each
page 21 } such occasion she would say that she was afraid she would become pregnant after which the de-

fendant promised to marry her if she became pregnant and then she would have sexual intercourse with him.

The prosecutrix testified that she was pregnant at the time of the trial, (which was very obvious); that the defendant has come to see her twice on week-ends and once during the week for two years until he stopped entirely about the first of June 1960. She said that she had never been married; that she had not had sexual intercourse before it occurred with the defendant; and that the defendant, at the time of the trial was twenty years old.

On cross examination the prosecutrix said that when the defendant, on the night of the first intercourse, passed her home and drove his automobile into the Deep Run Hunt Club property she thought that he did so because he intended to have sexual intercourse with her; that she did not protest his actions; that the only question in her mind was the possibility of becoming pregnant; and, that sexual intercourse was alright with her except for the possibility of pregnancy. She further stated that the accused did not give her an engagement ring nor any other ring.

PEARL DICKERSON,

the mother of the prosecutrix, testified on behalf of the prosecution that Thelam was 18 years old; that Thelma and the defendant had been going together for about three years as any boy would go to see a girl; that he came quite often and never missed over two weeks at a time from coming to see Thelma; that they went together to the movies and to church; that he gave her presents of a sweater, a vanity set, a necklace and a box lunch on Memorial Day, 1960. She stated that she did not know whether they were planning to get married.

Pearl said that she thought the defendant was in love with Thelma; that they acted like boys anud girls who are in love; that other boys came to the house to see Thelma and her older sister and the two girls would go out with two boys on occasions when the defendant was not one of them; and, that the defendant did not prevent other boys from coming to see Thelma.

page 22 } CLARENCE DICKERSON,

the father of the prosecutrix, testified on behalf of the prosecution that the defendant had been going with Thelma for two or three years; that when they went out he never heard the defendant say where they were going; that

sometimes they went out alone and sometimes with another couple; that he did not know where they went and did not ask them. He further stated that he had not seen the defendant "for a good while"; that he thought they were in love; and that he saw the box that Thelma said the defendant gave her.

The prosecution rested its case.

The defendant, Britt made, not in the presence of the jury a motion to strike the Commonwealth's evidence as being insufficient to support a verdict of guilty on the grounds that:

1. There was not corroborating evidence to support the statement of the prosecutrix that the defendant had sexual intercourse with her.
2. There was not corroborating evidence to support the statement of the proxecutrix that the defendant promised to marry the prosecutrix.

The motion was overruled. The defendant objected and took exception to the ruling.

The defendant rested his case.

There were no objections or exceptions to the instructions given by the court.

The jury found the accused guilty and fixed his punishment at 2 years confinement in the penitentiary.

The accused moved the court that the verdict of the jury be set aside as being contrary to the law and the evidence on the same grounds as given in support of the motion made at the conclusion of the Commonwealth's evidence to strike that evidence from the record.

The court took the motion under advisement and continued the case to the first day of the October, 1960, term of the court. Counsel for the accused was advised by the court that he might file a memorandum in support of his motion and that if such were filed a copy thereof be furnished to the attorney for the Commonwealth.

page 23 } The accused, having previously given bond for his appearance in court which is a continuing bond, he was released on the same bond for his appearance in court on the first day of said October, 1960, term of court.

The defendant, James Hazel Britt, appeared in court again on the 10th day of October, 1960, and, by counsel, again moved the court to set aside the verdict of the jury, by which the defendant had previously been convicted of the crime

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of seduction upon the same grounds as previously assigned. The Court overruled the said motion to which ruling the defendant duly excepted.

The Court thereupon, in accordance with the verdict of the jury, sentenced said defendant to be confined in the penitentiary for a term of two years. Upon motion by counsel for the accused for a stay of execution of the sentence in order that a writ of error might be applied for the Court granted the motion upon the condition that the accused give bond in the amount of $1,000.00 with approved surety, which was thereupon given, and the accused was released until the 1st day of the December, 1960, term of the Court.

J. KENNETH RADER
Counsel for James Hazel Britt.

J. C. KNIBB
Attorney for the Commonwealth.

Date Record Received: 11/11/60.
Date Record Signed: 11/11/60.

C. CHAMPION BOWLES, Judge
Circuit Court of Goochland County.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To the Clerk of the Circuit Court of Goochland County:

Counsel for James Hazel Britt, the defendant in the above styled case in the Circuit Court of Goochland County, Virginia, hereby gives notice of appeal from the order entered in this case on October 10, 1960, and sets forth the following assignments of error:

1. That the Court erred in refusing to quash the indictment upon the motion of the defendant made on the 8th day of August, 1960, prior to the arraignment of the accused.

2. That the Court erred in refusing to strike out the

Commonwealth's evidence upon the motion made by the defendant at the conclusion of the Commonwealth's case.

3. That the Court erred in refusing to set aside the verdict of the jury and grant a new trial upon motion of the defendant on the ground that the verdict was contrary to the law and the evidence.

J. KENNETH RADER
Counsel for James Hazel Britt.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.