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Richmond, Va.

Record No. 6333

In the
Supreme Court of Appeals of Virginia
at Richmond

STEWART W. NEWSOM

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND, PART II

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. 6333

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 18th day of January, 1966.

STEWART W. NEWSOM, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond, Part II
M. Ray Doubles, Judge

Upon the petition of Stewart W. Newsom a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 10th day of April, 1953, 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

* * * * *

page 6] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 10th day of April 1953.

COMMONWEALTH OF VIRGINIA, plaintiff,

against

STUART W. NEWSOM (w), defendant,

INDICTMENT FOR A FELONY, NO. 1

Stuart W. Newsom (w), who stands charged with a felony, to-wit: That on the 14th day of June, 1952, he did feloniously kill and murder one James F. Brown, was this day led to the bar in the custody of the Sergeant of the City of Richmond, and also came Percy S. Smith, his attorney. The defendant, being arraigned of said offense, refused to plead. Whereupon, the Court entered a plea of not guilty on behalf of the defendant.

Whereupon, the Sergeant, having returned the *Venires Facias,* drawn in the manner prescribed by law, and of the number so summoned and attending, a panel of twenty names, free from exceptions for the trial of the defendant was made up and completed. And the Assistant Attorney for the Commonwealth and the attorney for the defendant, having alternately, beginning with the Assistant Attorney for the Commonwealth, each struck from the said panel, the names of four of the said jurors, the remaining twelve constituted the jury for the trial of the defendant, to-wit: Leon Atkins, Fred S. Brummer, Linwood W. Cobb, Robert H. Harvey, James M. Gary, Walker S. Smith, Rudolph C. Hassell, Harry Sachs, William G. Smith, George W. Mayo and Chas. H. Tate, who were sworn the truth of *an* upon the premises to speak, and having fully heard the evidence, the instructions of the Court, and arguments of counsel, were sent to their room in the custody of the City Sergeant to consult of their verdict, and after some time returned into Court with a verdict

as follows: "We the jury on the issues joined find the defendant guilty of murder in the first degree as charged in the indictment and fix his punishment at

page 7] life imprisonment in the penitentiary."

Whereupon, counsel for the defendant moved the Court to set aside the verdict but gave no grounds in support of his motion. Whereupon, the Court overruled the defendant's motion and the defendant by counsel excepted to the Court's ruling.

Whereupon, it being demanded of the said *Stuart* W. Newsom, if anything for himself he knew or had to say why the Court should not now proceed to pronounce judgment against him according to law, the said defendant arose and stated to the Court that he should not be sentenced as his attorney had failed to introduce certain evidence on his behalf and asked that he be given ten days within which to produce such evidence, which request the Court denied and to which ruling the defendant objected and excepted. Whereupon, it is ordered by the Court that the said *Stuart* W. Newsom be confined in the penitentiary for and during his natural life, this being the period by the jurors ascertained.

It is ordered that the Sergeant of the City of Richmond, when required so to do, deliver the said *Stuart* W. Newsom from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law.

It is further ordered by the Court that the Commonwealth do recover of the said *Stuart* W. Newsom her costs incident to this proceeding.

Whereupon, the said defendant was remanded to jail.

Enter 4/10/53
M.R.D.

★ ★ ★ ★ ★

page 15] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 12th day of November 1956.

COMMONWEALTH OF VIRGINIA, plaintiff,

against

STUART W. NEWSOM (w), defendant,

ORDER

Stuart W. Newsom (w), who was heretofore on April 10, 1953, convicted in this Court of murder and sentenced to life imprisonment in the Penitentiary, was this day led to the bar in the custody of the Sergeant of the City of Richmond, and also came McC. G. Finnigan, his attorney previously appointed by the Court to represent him in this proceeding; whereupon the Court heard the evidence on behalf of the Commonwealth and the defendant upon the Rule To Show Cause entered herein on November 1, 1956 and made returnable to this day.

Counsel for the defendant moved the Court to provide a Court Reporter at the expense of the Commonwealth to record these proceedings, which Motion the Court overruled, and to which action of the Court the defendant, by counsel, objected and excepted.

And it appearing from the evidence that the order heretofore entered herein on April 10, 1953, is defective in that it did not name Kendick Duncan as one of the jurors sworn to try this case; and it further appearing to the Court from the Clerk's original Jury List used by counsel for the Commonwealth and the defendant for the purpose of striking jurors from the panel of twenty (20) that Kendrick Duncan was one of the jurors sworn to try this case together with the other eleven jurors named in the order of April 10, 1953; and it further appearing from the Jury Allowance Book that the said Kendrick Duncan was allowed payment for services on the said day; and it further appearing that the aforementioned *quasi* record is corroborated (although the Court is of opinion that such corroboration is unnecessary) by the oral testimony of the said Kendrick Duncan that he did in fact serve upon the said jury;

page 16]

It is, therefore, ordered that the order heretofore entered herein on April 10, 1953, convicting the accused, *Stuart* W. Newsom, be, and the same is hereby, amended and corrected

so as to read as follows, and entered *nunc pro tunc* as of April 10, 1953:

"*Stuart* W. Newsom (w), who stands charged with a felony, to-wit: That on the 14th day of June, 1952, he did feloniously kill and murder one James F. Brown, was this day led to the bar in the custody of the Sergeant of the City of Richmond, and also came Percy S. Smith, his attorney. The defendant, being arraigned of said offense, refused to plead. Whereupon, the Court entered a plea of not guilty on behalf of the defendant.

Whereupon, the Sergeant, having returned the *Venires Facias,* drawn in the manner prescribed by law, and of the number so summoned and attending, a panel of twenty names, free from exceptions for the trial of the defendant was made up and completed. And the Assistant Attorney for the Commonwealth and the attorney for the defendant, having alternately, beginning with the Assistant Attorney for the Commonwealth, each struck from the said panel, the names of four of the said jurors, the remaining twelve constituted the jury for the trial of the defendant, to-wit: Leon Adkins, Fred S. Brummer, Linwood W. Cobb, Robert H. Harvey, James M. Gary, Walker S. Smith, Rudolph C. Hassell, Harry Sachs, William G. Smith, Kendrick Duncan, George W. Mayo and Chas. H. Tate, who were sworn the truth of and upon the premises to speak, and having fully heard the evidence, the instructions of the Court, and arguments of counsel, were sent to their room in the custody of the City Sergeant to consult of their verdict, and after some time returned into Court with a verdict as follows: "We the jury on the issues joined find the defendant guilty of murder in the first degree as charged in the indictment and fix his punishment at life imprisonment in the penitentiary."

page 17] Whereupon, counsel for the defendant moved the Court to set aside the verdict but gave no grounds in support of his motion. Whereupon, the Court overruled the defendant's motion and the defendant by counsel excepted to the Court's ruling.

Whereupon, it being demanded of the said *Stuart* W. Newsom, if anything for himself he knew or had to say why the Court should not now proceed to pronounce judgment against him according to law, the said defendant arose and

stated to the Court that he should not be sentenced as his attorney had failed to introduce certain evidence on his behalf and asked that he be given ten days within which to produce such evidence, which request the Court denied and to which ruling the defendant objected and excepted. Whereupon, it is ordered by the Court that the said *Stuart* W. Newsom be confined in the penitentiary for and during his natural life, this being the period by the jurors ascertained.

It is ordered that the Sergeant of the City of Richmond, when required so to do, deliver the said *Stuart* W. Newsom from the jail of this City to the superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law.

It is further ordered by the Court that the Commonwealth de recover of the said *Stuart* W. Newsom her costs incident to this proceeding.

Whereupon, the said defendant was remanded to jail."

To which action of the Court, the defendant objected and excepted, and the defendant in person stated his intention to apply for a writ of error and requested the Court to appoint an attorney to prosecute such application. Wherefore, the Court doth designate Arlin F. Ruby, Attorney at Law, to represent the defendant in such application.

Enter 11/12/56 MRD

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page 25] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 30th day of November 1956.

COMMONWEALTH OF VIRGINIA, plaintiff,

against

STUART W. NEWSOM (w), defendant.

ORDER

This day came Arlin F. Ruby, counsel appointed for the defendant, after notice to the Commonwealth, and moved the

Court to vacate the *nunc pro tunc* order entered herein on November 12, 1956, on the grounds that under the decision of *Hampton Catlett* vs. *Commonwealth,* rendered by the Supreme Court of Appeals of Virginia on November 26, 1956, the Court erred in entering the said *nunc pro tunc* order because a defendant is entitled under the Constitution of Virginia to a trial by twelve jurors in a felony case; that a *fortiori* the Constitution requires that such a trial must be shown by the record, e.g. the order of conviction; that the original order of conviction entered herein on April 10, 1953, shows a trial by eleven jurors; and that the rule in *Catlett* vs. *Commonwealth* has modified what was said in *Council* vs. *Commonwealth,* 198 Va. 288;

Upon a consideration whereof, the Court doth order the defendant's Motion filed, and the Court being of opinion that the Constitution of Virginia does not require *expressly* that the order of conviction itself in a fellow case show a trial by twelve jurors nor their names, but simply that if there is a trial by a lesser number than twelve that there be a waiver thereof with the consent of the defendant and the concurrence of the Commonwealth's Attorney and the Court entered of record; that the original order in the present case states that the defendant was tried by twelve jurors and is erroneous only in that the name of one of the twelve is omitted; that such ommission and failure of the order to state
page 26] the true facts can be corrected by an order *nunc pro tunc* in which the name of the twelfth juror can be added if such fact can be established by competent evidence; and that while the case of *Catlett* vs. *Commonwealth* casts some doubt on the extent of limitation of the rule stated in *Council* vs. *Commonwealth,* nevertheless, thus far the limitation is only that if a matter is *expressly* required by the Constitution to be made of record, then a *nunc pro tunc* order cannot be entered unless the record justifies the same.

Wherefore, the Court doth deny the defendant's Motion to vacate the *nunc pro tunc* order entered herein on November 12, 1956; to which action of the Court the defendant, by counsel, objects and excepts.

Enter 11/30/56 MRD

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page 36] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 22nd day of January 1957

COMMONWEALTH OF VIRGINIA, plaintiff,

against

STUART W. NEWSOM (w), defendant,

ORDER

The defendant, *Stuart* W. Newsom, heretofore having requested the Court to designate counsel for him to appeal from a *nunc pro tunc* order entered herein on November 12, 1956; and the Court having designated Arlin F. Ruby, Attorney, who has to this date taken all steps required under the Rules of the Supreme Court of Appeals for prefection of a Writ of Error; and the defendant having informed said counsel that he did not desire to pay anything toward the costs incident to an appeal in event a writ of error is awarded; and the defendant having made a statement to the Court in response to a Rule issued herein on January 4, 1957, wherein the defendant stated "For lack of funds to pay cost I am forced to abandon the appeal;" and the Court having ascertained from a Rule issued upon the Superintendent of the State Penitentiary that the said defendant had in his spending account at the time the sum of $100.74; therefore the Court doth adjudge and order that Arlin F. Ruby be, and he is hereby, relieved of all further responsibility herein as counsel created by the order of this Court entered on November 12, 1956.

Enter 1/22/57 MRD

* * * * *

page 38] VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 1st day of March, 1960.

STUART W. NEWSOM, Petitioner,

against

HONORABLE M. RAY DOUBLES, JUDGE OF THE HUSTINGS COURT OF THE CITY OF RICHMOND, PART II, Respondent.

On January 27, 1960, a petition was received from *Stuart* W. Newsom praying that this court enter an order disqualifying the Honorable M. Ray Doubles from presiding in the Hustings Court of the City of Richmond, Part II, at a hearing on a certain petition filed therein by the said *Stuart* W. Newsom for the reasons set out in said petition.

On mature consideration whereof, the prayer of the said petition is denied.

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page 39] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 28th day of April 1960

COMMONWEALTH OF VIRGINIA, plaintiff,

against

STUART W. NEWSOM, defendant,

ORDER

The Court, heretofore having received direct from the petitioner, *Stuart* W. Newsom, a petition for a writ of Error *Coram Vobis,* the Court, treating the same as a written motion in the nature of a petition for a writ of error *coram vobis* under section 8-485 of the Code, doth order the same filed; and the petitioner is permitted to proceed in *forma pauperis.*

And upon a consideration of the same and being of opinion that the Petition fails to state a case for issuance of the writ or granting of the motion (see *Dobie* vs. *Commonwealth,* 198 Va. 762) the Court doth deny the said Petition; to which

action of the Court an objection and exception is noted on behalf of the petitioner, *Stuart* W. Newsom.

Enter 4/28/60 MRD

* * * * *

page 79] VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 10th day of October, 1960.

The petition of *Stuart* W. Newsom for a writ of error to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 28th day of April, 1960, in a certain proceeding then therein depending, wherein Commonwealth of Virginia was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said hustings court.

* * * * *

page 81] VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of April, 1965.

* * * * *

Upon mature consideration whereof, leave is hereby granted the said Stewart W. Newsom to proceed *in forma pauperis* and to apply for a writ of error to the judgment rendered by the Hustings Court of the City of Richmond, Part II, on April 10, 1953, in the case of *Commonwealth of Virginia* v. *Stewart W. Newsom.*

And on further consideration whereof, it is ordered that the said Hustings Court of the City of Richmond, Part II, appoint counsel to assist the said Stewart W. Newsom to perfect the

appeal, and that all computations of time as required by the rules of this court and the applicable statutes of this Commonwealth be computed from the date on which counsel is appointed by the said Hustings Court of the City of Richmond, Part II, to represent the said Stewart W. Newsom.

Which is ordered to be certified to the said hustings court.

A Copy—Teste:

H. G. TURNER, Clerk.

page 82] Virginia:

In the Hustings Court of the City of Richmond, Part II, the 17th day of May, 1965

COMMONWEALTH OF VIRGINIA

vs.

STEWART W. NEWSOM

ORDER

Pursuant to the order of the Supreme Court of Appeals of Virginia entered April 28, 1965, leave is granted the defendant, Stewart W. Newsom, to proceed *in forma pauperis* and to apply for a writ of error to the judgment rendered herein on April 10, 1953.

And the Court doth designate Sidney L. Berz to represent the defendant in perfecting an appeal, all computations of time as required under the Rules of Court and the applicable statutes to be computed from the date of entry of this order.

Enter 5/17/65 MRD

page 83]

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

NOTICE OF APPEAL

Defendant gives notice of his appeal from the final order entered herein on the 10th day of April, 1953.

ASSIGNMENT OF ERROR

Defendant assigns the following errors committed by the Court:

1. Defendant was denied due process of law by the failure of the Court to appoint counsel to prosecute an appeal within a reasonable time after the final order.
2. Denying to the defendant the right to a speedy trial by its failure to appoint counsel timely to prosecute an appeal.
3. Failure of the Court to have the proceedings transscribed or recorded so that the defendant would have an accurate record of the evidence.

STEWART W. NEWSOM
By Counsel

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page 1]

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CERTIFICATION OF THE EVIDENCE AND INCIDENTS OF THE TRIAL

Prosecuting Attorney: Charles E. Maurice
Defense Counsel: Percy S. Smith and Robert J. Smith
Date of Trial: April 10, 1953
Plea: On arraignment the defendant stood mute; whereupon the Court ordered that a plea of "Not Guilty" be entered on behalf of the defendant and that a jury be impanelled.

THE EVIDENCE: DIRECT and ON CROSS-EXAMINATION

Dr. Fred Walls, Jr.:

The deceased, James Brown, white, male, age 50 years, was shot in two places: (1) a bullet entered the rear thigh and came out in front; (2) a bullet entered the back just below the 6th rib and came out the front at the 6th rib, death resulting from this shot.

Mrs. Grace B. Brown (widow of the deceased):

In 1945 my husband and I rented two rooms from Mrs. Newsom (mother of the defendant) at her home on Florida Avenue in Richmond on the north side of the city. The defendant lived there with his mother. My husband worked during the day; Mrs. Newsom worked during the day; the defendant worked at night and was at home during the day.

I became intimate with him and had improper
page 2] relations with him on many occasions.

In 1947 we moved to South Richmond, but I would meet him on numerous occasions and would go to a hotel in Richmond with him and there had intimate relations with him.

Later I tried to break with him but he kept hounding me by telephone and would drive in front of our home at all hours. He threatened to kill me if I stopped seeing him, and I did continue to see him through fear.

On June 13, 1952, I was out walking with my baby grandson. My daughter (Mrs. Horton) was staying with us at the time because she was expecting the birth of her second child in a week or so. The defendant drove up and insisted that I get in the car. Rather than produce a scene I did, together with my grandson. We went to a Mrs. Tucker's where I had been with him before, but I had no relations with him on this occasion; I told him I had to return home with the grandson; he took us home; when I got out I told him I was through with him for good, and if he didn't like it to go ahead and shoot me.

On June 14, 1952, the day following, he drove by the house several times during the afternoon. In the later afternoon I cut the grass in the back yard. He was parked a block away in a U-Drive-It car he had rented. About 5 o'clock my husband came home from work; I asked him to hook up the hose so I could water the grass; my husband went out into the back yard with our baby grandson; brought some shears into the house so that the baby wouldn't hurt himself; went back out and within a few minutes I heard several shots; I thought they were firecrackers being set off by the boy who lives next door. I went to the door in time to see my husband lying on the ground and the defendant jumping over the back fence.

Mr. Beverly Atkins:

page 3] I lived at the time of the shooting in the same block as the Browns; my back yard goes back to the same alley but my lot is on the opposite side of the alley and 2 or 3 lots down the street. On June 14, 1952, I was on my upstairs back porch, from which I can see into the Browns' backyard. Mr. Brown was in his back yard. I was busy working on some curtain rods *which* I heard some shots; I looked up; saw Mr. Brown stagger towards his house, and I exclaimed to my wife "Brown has shot himself." I ran down stairs, up the alley, and was preparing to enter Brown's yard when I came face to face with the defendant who was coming out of Mr. Brown's yard in a crouched position with a gun in his hand. I dove over an adjoining hedge for self preservation and got away from there.

Mrs. Horton (daughter of the deceased):

I was pregnant and expecting to be confined in a week or two and was up at the home of my parents at 3711 Hull Street. My father had worked all day this Saturday (usually he is off on Saturdays) and got in around 5:00 P.M. for supper. While my mother was getting things ready to eat she asked my father to get the hose out of the shed in the back yard and hook it up so she could water the grass after we had eaten. My father took my little boy (his grandson) and went out in the back yard. He returned in a few seconds and brought some shears, so that the baby wouldn't hurt himself with them. He then returned to the back yard. The next thing I heard was some popping — sounded like firecrackers and we went to the back door. My father was lying on the ground and Mr. Newsome was shooting at him as he was laying there helpless on the ground. We ran out and my Mother grabbed me and my little boy and hustled us back in the house. In the meantime Mr. Newsome jumped the back fence and ran.

page 4] Three Police Officers testified in substance that they received a radio call to go to the rear of 3711 Hull Street on June 14, 1952 between 5:00 and 5:30 P.M. On arrival they found James Brown mortally wounded by gunshot wounds and lying in his back yard. He died on the way to the hospital.

A general alarm for all police to be on the lookout for

Stuart W. Newsom was then broadcast, but no trace could then be found of him. About 8:30 P.M. the same night the car Newsom had been driving was noticed in the vicinity of 3711 Hull Street and the police closed in and began a systematic search of the vicinity. They discovered Newsom peeping in the rear window of No. 3711 Hull Street — the Brown home — with a revolver in his hand and when they called on him to surrender, he turned on them and began shooting at them. They returned his fire and wounded him and placed him under arrest.

DEFENSE EVIDENCE

The accused did not take the stand but introduced as witnesses —

Mr. Fred M. Abrams, the room clerk of a local hotel, who testified that the accused and Mrs. Brown (widow of the deceased) had been coming to his hotel on an average of twice a week for the last two years and registering under the name of Horton.

Mrs. L. G. Newsom, the mother of the accused, testified that she knew an affair was going on between her son and Mrs. Brown while the Browns were living at her home and that she got after both of them and tried to break it up, but that Mrs. Brown kept after her son and she was unable to do anything about it. She made the Browns move because of those conditions.

Mrs. Lucille Tucker testified that she had known Mr. Newsom and Mrs. Brown for about two years, that they visited in her home from time to time.

No evidence of any kind was introduced on behalf of the accused except that tending to prove an improper relation was existing between Mr. Newsom and Mrs. Brown
page 5] and that she kept after him (Newsom) and was as much responsible for this condition as Mr. Newsom. There was no evidence of any kind against the deceased.

The above is agreed upon as being a summary of all the evidence introduced in the case of *Commonwealth* v. *Stuart W. Newsom.*

CHAS. E. MAURICE
Asst. Attorney for Commonwealth

SMITH & SMITH, attorneys
By ROBERT J. SMITH
Counsel for *Stuart* W. Newsom
PERCY S. SMITH

Sept. 24, 1953
M. Ray Doubles, Judge

I wrote out the testimony of Dr. Walls, Mrs. Grace B. Brown, and Mr. Beverly Atkins the day following the trial and asked counsel to supply the balance which they have done.

M. RAY DOUBLES, Judge

Filed in Clerks office September 24, 1953.

Attest: CHAS. PURDY, Clerk.

page 6] HUSTINGS COURT

Of The City of Richmond, Va.
Part II
Richmond, Va.
June 30, 1965

Sidney L. Berz, Esquire
Mutual Building
Richmond, Virginia

Percy S. Smith, Esquire
Mutual Building
Richmond, Virginia

Robert J. Smith, Esquire
Mutual Building
Richmond, Virginia

Honorable Chas. R. Purdy, Clerk
Hustings Court, Part II
Richmond, Virginia

Gentlemen: Re: *Commonwealth* vs. *Stewart W. Newsom*

You, and each of you, are hereby notified that as Assistant Attorney for the Commonwealth of Virginia for Hustings

Court Part II, I shall, on the 14th day of July, 1965, at 9:30 A. M., tender on behalf of the Commonwealth of Virginia a transcript of the evidence in this case as it now appears in the files of this case for certification to accompany any other papers that may be presented to the Supreme Court of Appeals of Virginia.

Very truly yours,
CHAS. E. MAURICE
Assistant Attorney for the
Commonwealth

CEM: irp

page 7]

* * * * *

This is to certify that the foregoing "Certification of the Evidence and Incidents of the Trial" of *Commonwealth of Virginia* v. *Stuart W. Newsom,* was tendered to me on July 14, 1965 by the Assistant Attorney for the Commonwealth after notice to Sidney L. Berz, Attorney, who was designated by the Court on May 17, 1965 to represent the defendant in prosecuting a writ of error herein; and Mr. Sidney L. Berz, not having been in the case originally and knowing nothing of the trial of his own knowledge, objected to the certification thereof on that ground and that the original certification appears not to have been made until September 24, 1953.

It appearing to the Court that notice of tender of such "Certificate of the Evidence" was also given to Robert J. Smith and Percy S. Smith, who represented the defendant at his trial and who signed the said "Certification of the Evidence" at that time, and who offer, no corrections at this time, and it further appearing, pursuant to the order of the Supreme Court of Appeals of Virginia entered herein on April 28, 1965, that time for all purposes of appeal, began to run when counsel was designated herein which date was May 17, 1965 and that the present certification of the Court is to speak as of now and not as of September 24, 1953,

Therefore, the Court doth overrule the objections of coun-

sel for the defendant and doth now, July 14, 1965, certify the foregoing narrative to be the evidence in the said trial.

July 14, 1965 M. RAY DOUBLES
Judge

Received in Clerk's office Hustings Court Part II this 19th day of July, 1965.

Attest: CHAS. R. PURDY, Clerk

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A Copy—Teste:

H. G. TURNER, Clerk.

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