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IN THE

# Supreme Court of Virginia

AT RICHMOND

8189

NELSON JAMES LEWIS

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

L. B. Chandler, Jr.
Chandler and Huff
415 Park Street
Charlottesville, Virginia 22901

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APPENDIX A

IN THE EIGHTH REGIONAL JUVENILE AND DOMESTIC RELATIONS COURT OF THE CITY OF CHARLOTTESVILLE

| | | |
|---|---|---|
| Re: Nelson James Lewis | ) | O R D E R |

Having carefully considered the facts of these cases now pending in this Court, and having carefully read the social study dated June 15, 1972, and the other reports and records in this file, and having personally heard and observed this juvenile on this date and prior occasions, in accord with the provisions of Code Section 16.1-176.1, the Court does find and certify that it is in the public interest for this matter to be disposed of in this Court, and it is ORDERED accordingly.

Now, therefore, the Court having heard the evidence upon said petition and being of the opinion that the said child comes within the purview of the Juvenile and Domestic Relations Court Law and that the welfare and best interests of said child requires that the State should assume his guardianship, doth so adjudicate, and doth order that the said child be committed and doth hereby commit said child to the State Department of

Welfare and Institutions to be received, detained, managed and controlled in the manner prescribed by law.

ENTER: /s/ R. P. Zehler, Jr.
R. P. Zehler, Jr., Judge

DATE: June 16, 1972

The Assistant Commonwealth's Attorney for the City Of Charlottesville this date appeared and gave the Court notice that he deems action by the court of record necessary, in accord with the provisions of Code Section 16.1-176.

/s/ R. P. Zehler, Jr.
R. P. Zehler, Jr., Judge

A COPY TESTE:

/s/ Nancy G. Proffitt
Clerk

APPENDIX B

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

IN THE CORPORATION COURT OF SAID CITY, JUNE TERM, 1972

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Charlottesville and now attending the Corporation Court of said City, upon their oath present that Nelson James Lewis, on or about March 2, 1972, in said City, did feloniously break and enter First Baptist Church on East Jefferson Street, Charlottesville, Virginia with intent to commit larceny therein;

SECOND COUNT: The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Charlottesville and now attending the Corporation Court of said City, upon their oath present that Nelson James Lewis on or about March 2, 1972, in said City, did feloniously take, steal and carry away more than $100.00 in United States currency, a billfold and property therein, all the property of Lucille Holliday, with intent to deprive permanently the owner of possession thereof against the peace and dignity of the Commonwealth.

Indictment found on the evidence of C. E Jones, witnesses sworn in open Court and sent to the Grand Jury to give evidence.

/s/ J. T. Camblos
Attorney for the Commonwealth

A true bill

/s/ Randolph H. Perry
Foreman

## APPENDIX C

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

IN THE CORPORATION COURT OF SAID CITY, JUNE TERM, 1972

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Charlottesville and now attending the Corporation Court of said City, upon their oath present that Nelson James Lewis, on or about May 30, 1972, in said City, did feloniously break and enter in the nighttime the store room of Charlottesville Apartments, Inc., a corporation, t/a Tarleton Square, with intent to commit larceny therein;

SECOND COUNT: The Grand Jurors of the Commonwealth Of Virginia in and for the body of the City Of Charlottesville and now attending the Corporation Court of said City, upon their oath present that Nelson James Lewis, on or about May 30, 1972, in said City, did feloniously take, steal and carry away furniture moving pads, of a value of more than $100.00, the property of Charlottesville Apartments, Inc., a corporation, t/a Tarleton Square, with intent to deprive permanently the owner of possession thereof, against the peace and dignity of the Commonwealth.

Indictment found on the evidence of William Edward Bullock witnesses sworn in open Court and sent to the Grand Jury to give evidence.

/s/ J. T. Camblos
Attorney for the Commonwealth

A true bill

/s/ Rudolph H Perry
Foreman

## APPENDIX D

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v. MOTION

NELSON LEWIS

This day came the defendant by counsel and moved the court to quash the indictments returned against him because he has been previously tried on the same charges in the 8th Regional Juvenile and Domestic Relations Court and sentenced by an order of that court. To try the defendant again in the Corporation Court would be double jeopardy and in violation of the State and Federal Constitution.

/s/ Robert Huff
NELSON LEWIS
By Counsel

Hayden, Chandler and Huff
Attorneys At Law
415 Park Street
Charlottesville, Virginia 22901

By /s/ Robert Huff

Filed: June 23, 1972
Carl E. Hennrich, Clerk

# APPENDIX E

1 THE COURT: I don't think that there is any
2 point in arraigning him at this time.
3 The outcome of this motion may determine whether he
4 is tried.
5 MR. CHANDLER: I would move to quash the in-
6 dictment that under the laws of the State of Virginia
7 that this court now no longer has jurisdiction to
8 try this individual.
9 I would cite Virginia Code §16.1-176.1. And
10 I would like to read briefly what it says: Trial in
11 court of record where juvenile over sixteen has pre-
12 viously been committed to training school.
13 If a juvenile sixteen years of age or over, who has
14 been previously committed to any juvenile training
15 school in this State or any other state, is charged
16 with an offense which, if committed by an adult,
17 could be punishable by death or confinement in the
18 penitentiary, the case shall be certified for proper
19 criminal proceedings, if probable cause be found,
20 to the appropriate court of record having jurisdiction
21 of such offense if committed by an adult.
22 And this is what I base my motion: Unless the
23 juvenile and domestic relations court shall find
24 and shall certify in its order that it is in the
25 public interest for the matter to be disposed of

1 therein.

2 On June the 16th of this year, Your Honor,
3 Judge Zehler of the Juvenile and Domestic Relations
4 Court in the City of Charlottesville entered an order
5 stating that having heard the facts of the case now
6 pending in this court, and having read the social
7 study dated June 15, 1972 on Mr. Lewis of other
8 courts of record in his file, and having personally
9 heard and observed this juvenile on this occasion
10 and on prior occasions that in accord with the
11 provisions of Code §16.1-176.1, which I have just
12 read, the court must find and certify that it is in
13 the public interest that this matter be disposed of
14 in this court and it is ordered accordingly.

15 Your Honor, I think this is very clear. We
16 have here a juvenile over the age of sixteen years
17 who previously been committed to s state training
18 school and he falls squarely within the purview of
19 the section.

20 Judge Zehler certifies for the specific pur-
21 pose the fact and that this boy would not be tried
22 again in the order that he entered and that it was
23 in the best interest, in the best of public interest
24 that the matter be disposed of in the court below.
25

We contend that the legislature has specifically provided for these cases in this section, and that unless the juvenile and domestic relations court shall find and certify in its order that it is in the public interest for the matter to be disposed of therein.

Therefore, we move to quash the indictment.

THE COURT: Just for the record, Mr. Camblos, do you agree that the defendant is over sixteen and has been previously committed to an institution of the Commonwealth, State Board of Welfare and Institutions?

MR. CAMBLOS: Yes, sir, the record so shows.

THE COURT: And also, you went to the Grand Jury and had him indicted, is that correct?

MR. CAMBLOS: Yes, sir, after notice to the Juvenile and Domestic Court as required under §16.1-176, Your Honor.

THE COURT: All right, does that complete your motion?

MR. CHANDLER: Yes, sir. We do have the recent Virginia Supreme Court case of June 12, 1972, Watts v. Commonwealth, advance sheet in which they make mention of this section.

1 THE COURT: But that was a case where ...

2 MR. CHANDLER: Yes, this is a different case

3 but they do make reference to the jurisdiction of

4 the court...

5 THE COURT: All right, Mr. Camblos.

6 MR. CAMBLOS: May it please the Court: I think

7 one of the basic rules of statutory construction is

8 that the court should give meaning to all parts of

9 the statute and to all different statutes if it can

10 do so without straining the apparent intent of the

11 legislature.

12 The clear meaning of that statute to me is

13 that the court must take an extra step to keep that

14 case in the juvenile court, a requirement more than

15 is set out in §16.1-176 which deals with juveniles

16 over 14 years of age.

17 So that §16.1-176 deals with this juvenile

18 but in addition with younger juveniles who have pre-

19 viously been before the juvenile court. As to the

20 older ones, the juvenile court can keep those cases

21 in this court only if in his order he certifies that

22 he finds it is in public interest to do so.

23 Now this does not conflict in any way with

24 the provisions of §16.1-176 which provides the means

25 whereby if the Commonwealth's Attorney and the

1 juvenile court has decided what it is going to do,
2 can then bring a case before the Grand Jury and then
3 ultimately to this court.
4 I would point out, Your Honor, that under
5 §16.1-176.1 which provides as has been pointed out,
6 that the case shall be certified unless the court
7 finds and certifies it is in the public interest to
8 keep it in the juvenile court.
9 Now that was passed in 1960 by our legislature
10 and has not been amended. After the passage of that
11 section in 1970, the court made some changes in
12 §16.1-176 but passed it in 1970.
13 Now §16.1-176 says that if a child 14 years
14 of age or over, charged with an offense which, if
15 committed by an adult, would be punishable by death
16 or confinement... it goes on, that the juvenile court
17 in its discretion may retain jurisdiction or certify
18 the defendant, in this case, to the Corporation
19 Court.
20 This is not in conflict with §16.1-176. You
21 can read them both together and there is only an
22 additional requirement in the case of a juvenile
23 over 16.
24 It goes on to say that if the juvenile court
25 does not so certify and if the offender has

1 previously been before the juvenile court, then the
2 Commonwealth's Attorney may by giving the required
3 notice to the juvenile court bring him to the Grand
4 Jury.
5 This again is not in conflict with §16.1-176.
6 You can read them all together. It provides for the
7 juvenile court, what the juvenile court can do in
8 one case and must do in another case unless it makes
9 a certain finding, and superimposed on top of both
10 of those, is the provision of what the Commonwealth's
11 Attorney can do if he doesn't agree with the juvenile
12 court, in certain cases and this is one.
13 In this case, the Commonwealth's Attorney did
14 not agree with the juvenile court. This offender has
15 been before the court, the juvenile court multiple
16 times, I forget how many times, but fourteen or six-
17 teen times but I may be incorrect about that -- how
18 many times but the Commonwealth's Attorney did not
19 agree with the juvenile court and gave the requisite
20 notice and sent the matter to the Grand Jury.
21 I think that the case is properly before this
22 court and the court does have jurisdiction under the
23 section of the Code.
24 MR. CHANDLER: I think that the statute is
25 clear. The very fact that it was amended in 1970,

1 but was not amended as to this specific section...
2 the fact that no one who is sixteen years of age or
3 over who has been sent to a detention home... it
4 just says a jvenile over the age of fourteen - not
5 a juvenile over the age of fourteen who was sent to
6 a detention home. I think that this is probably
7 significant but why the legislature had this in mind,
8 I don't know.
9 I don't know the statutory history behind the
10 statute but I think that it goes clearly that the
11 legislature chose to amend part of the section in
12 1970 but specifically left this section in dealing
13 with juveniles over the age of sixteen who have
14 previously been sent to a detention home, and whether
15 in changing the statute to .....fourteen years or
16 over ... there was no mention made of those who had
17 been sent to a detention home...
18 The fact that the Commonwealth's Attorney
19 shall give three days notice of his intention to
20 go to the Grand Jury for certification is not
21 men tioned. The statute where the persons over the
22 age of sixteen years who have been sent to a
23 training school and I would say by this very nature
24 is excluded and that the Commonwealth's Attorney i
25 has no right - only to the children over the age of

1 fourteen but once the child becomes sixteen and has
2 been sentenced to a detention home previously, he
3 becomes another class... becomes a separate member
4 of another class and is taken away from jurisdiction
5 of the Commonwealth's Attorney if he does not agree
6 with the juvenile court. I would ask the Court to
7 accept this motion and quash the indictment.
8 THE COURT: Mr. Chandler, why would the legis-
9 lature fix it so that someone under sixteen could
10 be indicted by... under the same set of circumstances
11 .. could be indicted by the Commonwealth's Attorney
12 but that somebody over sixteen could not be?
13 MR. CHANDLER: I really don't know, Your Honor.
14 I would only be guessing but I think the important
15 part is not so much the age... but the fact that this
16 man or boy whatever you want to call him has been
17 sent to a juvenile detention home that they take it
18 perhaps this is the best rehabilitation for him, he
19 has been there once and perhaps going back there
20 would help him more than being certified but I don't
21 really know.
22 THE COURT: But don't you agree that under
23 §16.1-176, if he was under sixteen either fourteen
24 or sixteen and had been committed to a juvenile
25 detention home and even though the juvenile and

1 domestic relations court judge certified that he
2 remain there that the Commonwealth's Attorney could
3 still get an indictment against him?
4 MR. CHANDLER: Yes, sir, I agree.
5 THE COURT: Can you think of any good reason?
6 MR. CHANDLER: I could not -- I really don't
7 know....
8 THE COURT: Well, if he has been before the
9 juvenile court before, I think that the Commonwealth's
10 Attorney upon giving proper notice can have him in-
11 dicted., and of course, if he has been committed to
12 a juvenile detention home, he would have to have
13 been before the juvenile court before... I will read
14 this but it looks like to me that in §16.1-176.1,
15 they are making it mandatory on the juvenile judge
16 to certify him to the Grand Jury unless he makes
17 this finding, whereas in §16.1-176, there is no
18 mandatory requirement. He has complete discretion.
19 Let's take a recess for awhile here.
20 RECESS
21 THE COURT: All right, gentlemen, the Court
22 is going to overrule the motion. I think clearly
23 the intent of the legislature in reading 176 and
24 176.1 together that in a proper case the fact that
25 the Commonwealth's Attorney can go over the head of

the juvenile and domestic relations judge by giving proper notice and have him indicted by the Grand Jury.

It is significant to me in §16.1-176.1 makes no reference to the seriousness of the offense whatsoever, the only test being whether or not he was sent to a juvenile training school...

MR. CHANDLER: We except to the ruling, Your Honor.

THE COURT: All right.

REPORTER'S NOTE: Whereupon, Court stood adjourned.

## APPENDIX F

VIRGINIA: AT A CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE, ON THE LAW SIDE THEREOF, HELD ON WEDNESDAY, JULY 5th, 1972.

Present: Honorable GEORGE M. COLES, Judge

COMMONWEALTH OF VIRGINIA Plaintiff

Indictment No. 1, Count 1 - Break and enter
Count 2 - Grand Larceny

v.

Indictment No. 2, Count 1 - Break and enter
Count 2 - Grand Larceny

NELSON JAMES LEWIS Defendant
Date of birth: 3/27/55

This day came the Commonwealth by her Attorney and the defendant was led to the bar of this Court in the custody of the Sheriff, also appeared L. B. Chandler his attorney heretofore appointed by this Court.

And the defendant by counsel having filed a motion on June 23, 1972, that the indictments be quashed, the Court proceeded to hear argument of counsel on the question of whether the indictment in this court and trial thereon constituted double jeopardy. Upon consideration of which the Court overrules the motion, to which action of the court the defendant excepted.

The defendant was remanded to jail pending

further proceeding in this court.

/s/ GEORGE M. COLES, Judge

A Copy Teste:

/s/ Carl E. Hennrich, Clerk

# APPENDIX G

COMMONWEALTH OF VIRGINIA

JUDGE
HARRISON, SR. JUDGE
S. PROFFITT
P. PATTON, DEPUTY
R. RITCHIE, DEPUTY
A COUNTY
T. WATTS, DEPUTY
ENE COUNTY
A T. MCMULLEN, DEPUTY
SON COUNTY
RIS A. JUDY, DEPUTY

CHIEF PROBATION OFFICER
ARTHUR G. DANIELS

PROBATION OFFICERS
BETTIE S. KIENAST
CLIFFORD R. JACKMAN
JOHN T. FRAY
FRANK W. JOHNSTONE

EIGHTH REGIONAL JUVENILE AND DOMESTIC RELATIONS COURT
SERVING THE
CITY OF CHARLOTTESVILLE AND ALBEMARLE, FLUVANNA, GREENE AND MADISON COUNTIES
CHARLOTTESVILLE, VIRGINIA 22901

July 13, 1972

RE: Social History of Nelson James Lewis dated 6-15-72

I certify that this is the original social study on Nelson James Lewis considered by the 8th Regional Juvenile and Domestic Relations Court at the hearing held on 6-16-72 for disposition of the petitions against Nelson James Lewis wherein he was charged with grand larceny from Lucille Holliday and grand larceny and breaking and entering from the Charlottesville Apartments.

Given under my hand this 13th day of July, 1972

Nancy G. Proffitt, Chief Clerk
8th Regional Juvenile and Domestic
Relations Court for the City of
Charlottesville, Virginia

ngp:

EIGHTH REGIONAL JUVENILE AND DOMESTIC RELATIONS COURT

CITY OF CHARLOTTESVILLE

SOCIAL HISTORY

JUNE 15, 1972

NAME: Nelson James Lewis

SEX: Male

ADDRESS: 313 4th St., S.W.
Charlottesville, Va.

RACE: Negro

DATE OF BIRTH: 3/27/55

ATTORNEY: Robert Huff, Esq.
(Appointed)

ADJUDICATED: 6/9/72

DISPOSITION: 6/16/72

---

COMPLAINT: #8 on 3/21/72 the subject did take steal, and carry away property belonging to Betty Greaver, valued at $10.00 with the intent to permanently deprive the owner of the use thereof in violation of Sec. 18.1-101 of the 1950 Code of Virginia as amended.

#9 on 3/3/72 the subject did take, steal and carry away property (U. S. Currency) belonging to Nora Beverly valued at $2.00 with intent to permanently deprive the owner the use thereof in violation of Sec. 18.1-101 of the 1950 Code of Virginia as amended

#10 on 3/2/72 the subject did unlawfully and feloniously take, steal and carry away (U. S. Currency) belonging to Lucille Holliday valued at $115.00 with the intent to permanently deprive the owner of the use thereof in violation of Sec. 18.1-101 of the 1950 Code of Virginia as amended.

On 5/30/72 the subject did unlawfully and feloniously take, steal and carry away property belonging to the Charlottesville Apartments valued at more than $100.00 with the intent to permanently deprive the owner of the use thereof in violation of Sec. 18.1-100 of the 1950 Code of Virginia as amended.

PRIOR RECORD: Petition #1 in the City of Charlottesville on February 2, 1966 the subject did break and enter in the night time the Tie Lot Service Station with intent to commit larceny therein. Disposition occurred on 4/19/66 at which time he was committed to the Charlottesville Department of Public Welfare.

Petition #2 on 3/20/66 in the City of Charlottesville the subject did unlawfully turn over and break and damage over thirty tombstones in the Oakwood Cemetary, thereby causing approximately $1,000.00 in damage. Disposition occurred on 4/19/66 when the subject was committed to the Charlottesville Department of Public Welfare.

Petition #3 on 4/17/66 did unlawfully damage and deface tombstones in Oakwood Cemetary. Disposition on 4/19/66 when the subject was committed to the Charlottesville Department of Public Welfare.

Petition #4 states that in the City of Charlottesville it has been indicated by his behavior (and after proper examination) that he is in need of placement in a controlled institutional setting for further help with his problems. Disposition occurred on 7/21/66 with the evaluation by the Children's Service Center in Charlottesville, Virginia. Please find enclosed a copy of the findings of Jerrold E. Hammond, M.D. , Director.

Petition #5 on August 1, 1967 did unlawfully run away from a foster home. Disposition occurred on 11/20/67 when he was committed to the State Department of Welfare and Institutions.

Petition #6 in the City of Charlottesville the subject is incorrigible in that he has run away from the foster home three times and does not obey the foster parents and is beyond their control. Disposition occurred on 11/28/67 when he was committed to the State Department of Welfare and Institutions.

Petition #7 states that in the City of Charlottesville on 11/21/70 the subject did unlawfully go upon the premises of McCrory's Store at 209-213 East Main Street in violation of Sec. 18.1-173 of the 1950 Code of Virginia as amended. Disposition occurred on 12/8/70 when the subject was placed on probation until the end of the school year.

FAMILY BACKGROUND:

The father of Nelson James Lewis is unknown and while discussing this subject with the subject's mother she reports that she knows the subject's father only by his first name and that is James. Mrs. Carter reports no other information concerning Nelson's father except that she met him in South Carolina.

The subject's mother is Daisey Lewis Carter age 58, having been born on the 28th day of May, 1914. She resides presently at the address of 313 4th Street, S.W. in Charlottesville, Virginia. She has had no formal education however, is able to read and write to a small degree. She has had no religious training nor attendance at any church of her choice. She reports fair health but has had some trouble with her legs in recent years. She is presently employed two days a week in domestic work and receives income from other members of her immediate family as well as relatives who live in New York. It should be noted that Mrs. Carter has a previous record which is as follows;

12/18/58 Cursing and abuseing and disorderly conduct; 30 days jail suspended

12/15/58 Neglecting four children; 12 months to 3 years at the Industrial Farm for Women at the State of Virginia.

8/16/60 Non-support; 90 days in jail suspended.

5/28/54 Disorderly Conduct; dismissed.

4/24/66 Contributing to delinquency; 12 months in jail suspended.

The subject's step-father is Charles Carter who's age, date of birth and place of birth are unknown and it is believed that he is possibly residing in Washington, D.C. at the present time. His educational background is unknown however, it is believed that he is not in good health at the present time and possibly has a tuberculosis problem. Mrs. Carter reports that she has not seen Charles Carter for the past five years. Last known he was working in construction work and is known to be "a heavy drinker".

The investigation revealed that Mrs. Carter was never married to the subject's father however, it is found that she was married to Charles Carter on July 2, 1962 in Esmont by one Rev. Ward who is now deceased. Mrs. Carter reports having separated from Mr. Carter during the year of 1965 and "he would not work and would drink all of the time." She also states that he got trifling. From all indications the marriage appears to have been a stormy one and one which was very unstable and appeared to be contributing little to a positive home and family environment.

The subject has the following brothers and sisters;

Vivian Lewis Harris, age 34, is married however, separated and at the present time resides in New York City and her present employment is unknown.

Jerry Lewis, age 26, is married and divorced and is presently residing in New York City and was last employed in a cleaning establishment.

Mickey Mayo Lewis, age 19, is not married and resides in the family home at 313 4th Street, Charlottesville, Virginia and is employed by the Yellow Cab Company.

Emma Daisey Lewis, age 18, is not married and presently resides at 707 8th Street, N.W. and her present employment is unknown.

Freeman Allen Lewis, age 15, attends Buford Junior High School in Charlottesville, Virginia and presently resides with his mother at 313 4th Street, S.W. in Charlottesville, Virginia.

The home and neighborhood in which the subject has been reared has consistantly been very unstable as is known by the prior record of the subject's mother wherein she was sentenced to the Industrial Farm for Women of the State for neglecting her children. The family has never had a positive male figure in the home for the children to identify with and admittedly Mrs. Carter has had difficulty in raising her children. It should be noted however that in spite of the instability of the family internally the family has shown little mobility in that it has moved only three times within the past ten years and on each occasion has simply moved to another residence in the City of Charlottesville. At the present address the family is renting a two bedroom part of a duplex and the rent is in the amount of $72.50 per month. At the present time the family is residing in a high delinquency section of the City of Charlottesville. Living conditions leave something to be desired in that the home has a very strong odor of mildew is unpainted, however, it should be noted that the conditions are tidy. This seems to indicate that Mrs. Carter does make some effort to do the best she can under the circumstances in which the family lives. It should be noted that prior to the present location the family lived in the Commerce Street section of Vinegar Hill which was then demolished some years ago.

The family relations in the home appear to have been lacking those ingredients which lead to stable family relationships. This is noted by the inconsistancy in discipline in the home which has also contributed to the internal conflicts of the children in the family. There appears to have been difficulty in the fact that Mrs. Carter has been both disciplinarian and mother to the children and she readily admits that she has had little training in knowing how to be a mother and provider for the children. Mrs. Carter's main energies have been taken up by being a provider to the family which she sees as her main role in the home at the present time.

PERSONAL BACKGROUND:

The subject Nelson James Lewis was born on 3/27/55 in the City of Charlottesville, Virginia. His infancy was "normal" as reported by his mother in that he was a good child and never "caused much trouble". Mrs. Carter continues to see her son as a good son inspite of his difficulty and believes that he simply has gotten with "the wrong crowd".

During an interview with the subject it was noted that he showed a great deal of remorse for his present difficulty with the Court as well as his past violations of the law. Nelson readily admits to stealing clothes, candy and cigarettes in his early teenage years due to the fact that he reports that he never had any money while at the same time wanting the things "that other kids had". Nelson's teenage years have been somewhat stormy in that his poverty has encouraged him to accept anti-social methods of satisfying his needs. He states that he has frequently tried to find jobs in order to earn money to pay for "stuff like other kids did". His main desire in life is to find good custodial type work and he reports having received some training in this at the University of Virginia. Nelson states that he never had money to buy his lunch or to buy things like other peers and he also remarks that when working at the University of Virginia janitorial work that he would bring his money home to his mother and that she would always ask for more and would not allow him to keep any for himself. After giving her his money he would then go out and steal in order to meet his own needs.

The investigation reveals that from November, 1963 to February, 1964 while in school the subject was involved with homosexual activities with another 12 year old student. On occasion the subject was known to masturbate in the school classroom which increased his school problems and adjustment made more difficult. Reports indicate that the subject's social skills have been poorly developed that he has been neglected and that his home life has been filled with inconsistant and arbitrary disciplinary measures.

The subject's involvement with the Juvenile Court is as follows;

On 4/19/66 the subject was committed to the Charlottesville City Department of Public Welfare and placed in foster care.

On 11/28/67 after a second attempt to place the subject in a second foster home which was unsuccessful he was committed to the State Department of Welfare and Institutions of the State of Virginia.

On 12/23/69 the subject was released for aftercare supervision.

12/8/70 Nelson appeared in Juvenile Court once again for trespassing and was placed on probation supervision therefore his aftercare supervision was terminated on 1/14/71.

Nelson was released from probation supervision on 7/29/71.

During an interview with the subject he expressed a great deal of remorse in realization and yet bewilderment as to how to resolve his present difficulties. Nelson seems to understand that his methods of meeting his needs are not good but yet sees himself as being thwarted in all attempts to improve himself. Nelson seems to see himself as being somewhat worthless and causing people a great deal of difficulty and by so doing becomes very discouraged with any attempts to help himself or to accept those attempts of others in his rehabilitation.

The subject's educational background begain when he attended the Waverly Yowell Elementary School in Madison, Virginia. He attended this school in the 1st and 2nd grades and then transferred to Jefferson Elementary School in Charlottesville for the remainder of the second grade and the third grade. He also attended the Clarke Elementary School for the 4th, 5th and 6th grades. He then after completing his elementary work attended Buford Junior High School in Charlottesville for the 7th and part of the 8th grade. The school records show that Nelson dropped out of school while in the 8th grade and was finally excused from the State's Compulsory Attendance Law on April 23, 1971 by Court Order. Therefore the records show that Nelson has a 7th grade education. The records show some difficulty with his adjustment in school, weak adjustment is indicated by his low grades. However, it should be noted that he did well in the 7th grade by getting mostly C's and D's however in the 8th grade he began getting all F's . The records do not indicate but it appears that his promotion in school have been of a social type in that he was simply moved along in the educational processes due to his age not necessarily due to his academic

accomplishments. In October, 1970 the subject received the Otis Quick Scoring Test and received a score of 68. During the same month he was also given the Differential Apptitude Test and scored in the lower quarter. While in the 7th grade Nelson was given readily tests which showed that he was four to five years behind in his reading ability. Therefore, it appears that this was one reason why he may have done poorly in school academically and finally dropped out while in the 8th grade. Evidentially Nelson found the academic world unrewarding which is indicated by the fact that he was frequently absent from school.

The subject's health at the present time is satisfactory and he and his mother report no physical difficulties. It should be noted however, that in his early years the subject received a serious burn on both of his feet which necessitated skin being grafted from his back. Mrs. Carter also reports that Nelson had an operation on his right eye at about the age of eight due to a blood clot from having bottle caps thrown in his eye by another boy. He was given an eye examination which indicated that his right eye has a 20/200 vision and his left eye has a 20/20 vision.

There seems to be some question as to Nelson's emotional and mental health which is indicated by various tests which he has been given. In November of 1969 the subject was given the WISC Tests and he received a verbal IQ score of 65. On the Rorschach Test he received a performance score of 82 and on the Bender-Gestalt Test he received a full scale score of 70. All these indicate that he is of borderline intelligence. The examining psychologist believes that the low scores are due to emotional problems and his educational deficiencies. The tests also reveal that the subject needs very strong support of counselling in order to make a strong identity with a positive male figure. The tests also reveal that the subject tends to project his own aggressiveness on to others and appears very suspicious. He is easily angred by his peers but seems to tolerate and adjust fairly well to the direction given to him by adults. Projective tests show that he feels negative towards himself, is aggressive in nature and frequently expects rejection by people in general.

It should be noted that the subject has a Sickle Cell trait which is a physical problem wherein the subject should avoid travel in air craft.

The subject has had very little if any religious training in his home. However, he does state that while at Hanover School for Boys he did attend Chapel and upon returning to the community for aftercare supervision he began attending church however, this was only for a very short time and has not attended any religious services during the past year. He reports that this is not encouraged in his home but does feel a need to do so.

Nelson's employment records consist mainly of having gone through custodial training at the University of Virginia in the Department of Buildings and Grounds wherein he earned $1.60 per hour. This training was provided the subject by Virginia Vocational Rehabilitation Department and the training began on 11/27/71 and terminated on 1/14/72. The subject apparently could have been placed permanently in the custodial staff at the University of Virginia in the Buildings and Grounds Department however, the subject left at the end of this training program. The fact that the subject left at the end of his training program but yet wants to be a custodian seems to be contradictory and the subject could not give any reason for this apparent contradiction. He states that his reason for leaving the University was simply that he was not making enough money to meet the needs required of him by his home enviornment. Nelson admits to having other odd jobs in the community and earning a few dollars here and there whenever needed.

Nelson's hobbies seem to be mainly in drawing. He states that he likes to sketch in pencil people and buildings and he reports that he would like to become better in this area. He states that he does not intend to do anything professionally with it but simply to use this as a hobby.

Respectfully Submitted:

Arthur G. Daniels

Arthur G. Daniels
CHIEF PROBATION OFFICER

AGD:lrr

CHILDREN'S SERVICE CENTER
1312 Lane Road
Charlottesville, Virginia

June 17, 1966

Miss Jean Kelly
Casework Supervisor
Department of Public Welfare
Midway Building
Charlottesville, Virginia

Re: Nelson James Lewis
D.O.B. 3-27-55

Dear Miss Kelly:

I saw this boy recently at the Children's Service Center in response to your request for evaluation prior to final placement for this boy. We had seen this lad in January of 1960 at the request of the City Welfare Department for psychological and behavior evaluation. At the time that we saw him he had just recovered from some rather severe burns on the legs and buttocks for which he had had skin grafts. At that time, he achieved an I.Q. of 109 on the Revised Stanford-Binet Scale, Form L.

The evaluation of the examiner was as follows: "From the evaluation and interpretation of tests and observed behavior this boy seems to be of good normal intelligence with an I.Q. range in the upper normal level. He can relate to others. Although he does not respond readily to adult commands, he can modify his urge to resist. He can show affection and appears to want it and certainly needs it. He does have overly assertive and oppositional trends; but in general he shows good inner resources."

From the way the boy has developed, from the account of his behavior, and from the account of his deprived care and guidance, it seems that he has not developed anywhere near his propensities. The issue now is what to do with him; that is, either institutional care or foster care.

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I saw the boy June 3, 1966. He is very small and wiry for his age. He says he's only in the second grade and I can see why. His reading is very inadequate, his word recognition being only at a second grade, four months level. His paragraph reading is at about a beginning second grade.

He impresses me as still having his innate intellectual ability but certainly he does poorly when it comes to areas of information, vocabulary and judgment. On performance items of the Wechsler Intelligence Scale for Children, he did very well, indicating his basic innate intelligence.

He showed no resistiveness at all until late in the hour and then he would not speak at all. In response to my one rule that I have here with children, that is they must do something and if they can not do something they must walk, I took him to the basement to have him walk the floor with me and he became very extravagant in his resistiveness by shouting and screaming and swinging his fists at me. When he saw that this was to no avail, he broke down completely and became very infantile, calling for his mama, sobbing desperately with mucus and saliva dripping from his nose and mouth.

I do not regard the boy as having a bad character disorder; that is, an associal or dyssocial personality disturbance. He's quite a stubborn, unrealized boy. The biggest problem in planning for him overall is his academic defects. He's going to have to have special education which is probably going to be unavailable in most foster placements, particularly if they are out of the city.

The disposition that would probably get at the majority of his needs, that is, remedial education, habit training, discipline and as much adult male supervision as possible, would be at Central State Hospital in the Child and Adolescent Ward. Then perhaps at the end of the year he could be re-evaluated and a decision made to leave him there or return him to foster care.

This boy is getting old enough now so that if he does not begin to perform in school in the next couple of years, I doubt if he goes much further.

Another possibility might be the Negro Virginia Baptist Home for Children. I can't think of any other possibility.

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If there is any further way that I can be of service to this boy, please advise.

Cordially yours,

Jerrold E. Hammond, M.D.
Director

JEH:swh

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# PSYCHOLOGICAL REPORT

NAME: Lewis, Nelson James N/M 20447

BORN: 3/27/55 AGE: 14-7 SPASE: 4th

DATE TESTED: 11/12/69

PREVIOUS TEST: 8/16/66 WISC Verbal Scale I. Q. 76,
Performance Scale I. Q. 74,
Full Scale I. Q. 72

12/12/67 Bata I. Q. 85, WRAT 2.6

REASON FOR REFERRAL: A psychological is necessary and requested by the Eighth Regional Juvenile and Domestic Relations Court for placement.

TESTS ADMINISTERED:

WAC
Rorschach
TAT
Bendar-Costair
TAT-PAP

WISC SCORES:

| | |
|---|---|
| Verbal I. Q. | 65 |
| Performance I. Q. | 82 |
| Full Scale I. Q. | 78 |

OBSERVATIONS AND INTERVIEW:

Nelson was a small, friendly boy who cooperated quite well and was reasonably well motivated. There were several instances where he was discouraged and wanted to give up on a problem he considered too difficult for him to solve but he was responsive to encouragement.

Nelson feels that he is getting along all right at Hanover where he goes to school in the morning and works in the tailor ship in the evening. Although he has been getting useful training in the tailor shop, his ambition is to become an artist because he enjoys drawing pictures.

Nelson's mother has only been to Hanover twice to visit her son and he is eagerly looking forward to returning to the community and rejoining his family. He has difficulty verbalizing his feelings about his mother and became quite defensive in spite of her obvious lack of concern for him.

TESTS RESULTS:

Results of the WISC indicate that Nelson was functioning at the lower limit of the borderline range of intelligence at the time of testing. His potential is estimated to be higher but it appears doubtful that he can ever function on a higher level. There was a good deal of intertest scatter with scores ranging from defective to average. His verbal scores were markedly lower than performance scores, seemingly because of both emotional problems and educational deficiency. In addition, it was noted that there was a considerable amount of intratest scatter whereby Nelson would miss easy items but answer correctly on more difficult ones.

Nelson's lowest scores were on tests of social comprehension and arithmetic. His social skills are poorly developed and he shows the effects of neglect and inconsistent or arbitrary discipline. Nelson's store of factual information is limited as is his immediate recall. He has considerable difficulty concentrating and paying close attention.

Nelson is a very concrete youngster and is unable to deal with abstract concepts.

Nelson's visual motor skills are under average and his execution of the Bender figures indicates that he is very careless. He works quickly but does not check his work for errors. His potential for rote learning is good.

The projectives reveal a rather negativistic and aggressive youth who expects to be rejected by the environment. He sees the environment as barren and unyielding, unable to furnish the gratification of his needs. He projects much of his own aggressiveness onto others and is quite suspicious. He has developed some tolerance for frustration and limited control over his impulses where adults are concerned but is easily angered by his peers. He has some ego strength but will very likely need supportive counseling in order to function effectively in a less-structured environment. Nelson is striving to make a satisfactory sexual adjustment and has been able to make a more positive identification with male figures of authority.

Although Nelson's potential is probably higher than the I. Q. scores indicate, it seems unlikely that he can function in a regular classroom situation and it is recommended that he be enrolled in a special education class. It is also recommended that he be in close contact with a strong masculine figure who can offer both support and encouragement.

Eleanor S. Friedenberg
Staff Psychologist
Mobile Psychiatric Clinic

# APPENDIX H

THE CLERK: The case of the Commonwealth vs. Nelson James Lewis.

MR. CAMBLOS: May it please the Court. This is the matter of Nelson James Lewis, a juvenile who has been indicted by the Grand Jury of this Court on two indictments and each indictment containing two counts.

I think that the record should show that this matter was first brought in juvenile court on ... The petitions that were brought before that court contained the same charges, and the juvenile court heard the evidence in the cases.

At the hearing in juvenile court, Nelson James Lewis was represented by counsel and that his mother was present.

The juvenile court pursuant to §16.1-176.1, found and entered an order stating that the welfare and best interest of the child requires that the State should assume his guardianship.

Pursuant to §16.1-176, I, as Commonwealth's Attorney gave within three days provided by statute the necessary notice in order to bring this matter before the Grand Jury.

The record will show, Your Honor, this juvenile has previously been before the juvenile

court on several occasions. At least one of these occasions being on a charge if committed by an adult could result in a penitentiary sentence of 20 years or more.

Others of those occasions being ... having to do with charges indicating a viciousness of character and all of which permit the action that I have taken under Code §16.1-176.

And that is the way the matter is brought here today. Among the court papers there is, Your Honor, a certified social study which was considered by the court below in connection with its determination and proper disposition of the matter.

I think that the statute also requires that such a study be before this court or this court can make a study of its own with this study which was prepared fairly recently. I would assume that this court would not feel it necessary to make another study and I think the matter is ready for a hearing today.

We have had one previous hearing in the same connection, Your Honor, in which counsel for the defendant has moved to quash the indictment on the grounds that my action - the action that I have taken as Commonwealth's Attorney is barred by

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§16.1-176.1. The Court has overruled defense counsel on that motion.

I think at the same time defense counsel excepted and saved the point for purposes of appeal.

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Now the two indictments that we have, one charges a statutory burglary in a Baptist church on the first count, grand larceny of United States Currency of more than a $100, that is the second count.

The first count, Your Honor, rests on fairly thin evidence. I think the evidence would be more than sufficient to sustain it but because there is some doubt - small doubt in my mind on it, I would ask that as to the indictment that he be arraigned on the second count only.

The other indictment, I think that he should be arraigned on both counts.

THE COURT: I believe that I have here a subpoena for Daisy Lewis Carter who I believe is the mother of the defendant. Is Daisy Lewis Carter in the court room?

DAISY LEWIS CARTER: Yes, sir.

THE COURT: I belive that you have been served with a copy of this subpoena?

DAISY LEWIS CARTER: Yes, sir.

THE COURT: To the effect that your son was going to be tried here this afternoon?

DAISY LEWIS CARTER: Yes, sir.

THE COURT: That is correct?

DIASY LEWIS CARTER: Yes, sir.

THE COURT: Now, Mr. Chandler, you have been appointed as an attorney for the defendant?

MR. CHANDLER: Yes, sir.

THE COURT: And you have served as an attorney all of the way through this proceeding, is that correct?

MR. CHANDLER: No, Your Honor, Mr. Huff was originally appointed. I had been appointed to a companion case, Mr. James Seay involving two of the counts. And I believe it was the Court's opinion at that time, several weeks ago, to appoint myself in place of Mr. Huff.

THE COURT: I see.

MR. CHANDLER: Mr. Huff handled the affair in juvenile court.

MR. CAMBLOS: I believe that Mr. Huff was appointed in juvenile court.

MR. CHANDLER: Yes, I believe that he was.

THE COURT: I think that there is only one other step. The Court has read the social study

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history of Nelson James Lewis prepared by the Eight Regional Juvenile Domestic Relation Court by Arthur D. Daniels, and I believe it would be a question of whether the Court would find he should be treated as a juvenile or an adult.

I think that should be determined before he is arraigned.

MR. CAMBLOS: Perhaps, Your Honor, unless you feel that the evidence in this case might have an influemce on your decision....

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THE COURT: I think probably the proper ... the first procedure is for me to find that he should be treated as an adult and he then can be arraigned, I could hear the case and after hearing all of the evidence, if the Court reaches a contrary conclusion, I could change my mind but if he isn't arraigned and treated as an adult throughout, I don't see... it would then be necessary to have another trial after his arraignment.

MR. CAMBLOS: I think that would be entirely correct, Your Honor.

THE COURT: The Court for purposes of the record will find that after carefully reading and considering this report prepared for the Juvenile ~~and Domestic Relations Court and certified to this~~

court by the clerk thereof that this defendant should be treated as an adult.

MR. CHANDLER: We would except to the ruling, Your Honor.

THE COURT: All right. I think that it will now be in order for the defendant to be arraigned.

THE CLERK: Your name is Nelson James Lewis?

THE DEFENDANT: Yes, sir.

THE CLERK: Mr. Lewis, you have been indicted by the Grand Jurors of the Commonwealth of Virginia in and for the City of Charlottesville at the June Term 1972, with two counts - two indictments.

Number one charges that on or about May 30, 1972 in the City of Charlottesville that you did feloniously break and enter in the nighttime the storeroom of the Charlottesville Apartments, Inc., a corporation trading as the Tarleton Square Apartments, with attempt to commit larceny therein, against the peace and dignity of the Commonwealth. How do you plead to this charge?

THE DEFENDANT: Not guilty.

THE CLERK: You plead not guilty?

THE DEFENDANT: Yes, sir.

THE CLERK: The second count of this indictment charges that on or about May 30, 1972 in the

City of Charlottesville that you did feloniously take, steal and carry away furniture of a moving van of a value of more than a $100, the property of Charlottesville Apartments Inc. a corporation trading as Tarleton Square Apartments with intent to deprive the owner the possession thereof, against the peace and dignity of the Commonwealth. How do you plead to this charge?

THE DEFENDANT: Not guilty.

THE CLERK: In indictment number two it charges that on or about May 30, 1972, in the City of Charlottesville that you did feloniously take, steal and carry away more than $100 in United States Currency a billfold the property therein, and all the property of Lucille Holland with intent to deprive permanently the owner the possession thereof against the peace and dignity of the Commonwealth. How do you plead to this charge?

THE DEFENDANT: Not guilty.

MR. CAMBLOS: May it please the Court: At the previous hearing in this court, on motion of defense counsel and in the presence of the defendant, defense counsel stated to the Court and to the Commonwealth's Attorney that there was no contest as to the facts in these cases, or at least that

was my understanding.

MR. CHANDLER: That is correct.

MR. CAMBLOS: The Commonwealth is here prepared to try these cases on guilty pleas today, but on the admissions as to facts, I well understand that for purposes of saving these technical points, the defendant should plead not guilty but I would like assurance at this time that the facts are admitted.

MR. CHANDLER: It was strictly done for the point of appeal attacking the jurisdiction of this court.

THE COURT: Well, I think very probably that he should not plead guilty if he wanted to question the jurisdiction of the court to try it and I think that was the proper procedure but it is my understanding that there is no contest as to the facts?

MR. CHANDLER: No, Your Honor, Mr. Camblos stated correctly that we...

BY THE COURT:

Q Will you remain standing? I have some questions to ask you. What is your age?

A Seventeen.

Q I believe that you were seventeen on the twenty- seventh day of March of this year, is that correct?

A Yes, sir.

Q Have you seen a copy of the indictments?

A Yes, sir.

Q And you understand the charges against you?

A Yes, sir.

Q Have you conferred with your attorney about the charges against you?

A Yes, sir.

Q Have you talked to Mr. Chandler?

A Yes, sir.

Q Do you know how many times that you have talked to him and how long? Maybe, Mr. Chandler has kept a record of that, do you know how much time that you have spent talking to the defendant about this case?

MR. CHANDLER: Like I say, Your Honor, Mr. Huff was also talking to him. I talked to him several times. I have spoken to him in jail and I have spoken to him, of course, we had a hearing, and prior to that hearing and subsequent to the last hearing, I have spoken to him. I have spoken to him toady and on Tuesday down at the jail, so, I would say five times - four or five times.

MR. CAMBLOS: Your Honor, perhaps, the record should show that Mr. Huff and Mr. Chandler are

partners.

THE COURT: All right, sir. Now, my question is directed to the defendant. Have you had ample time to talk to Mr. Chandler about any defense that you might have to these charges?

A Sir?

Q Have you had plenty of time to talk to Mr. Chandler about any defenses that you might have?

A No, sir.

Q You haven't had time?

A No, sir.

THE COURT: All right, Mr. Chandler, we will suspend here a moment, will you take him into the jury room and confer with him?

MR. CHANDLER: Fpr the record, Your Honor, I would state that I have conferred at length with Mr. Huff and I can state that I know that the defendant had spoken in length to Mr. Huff about his defense.

THE COURT: He has also talked to you, has he?

MR. CHANDLER: Yes, sir, he has.

THE COURT: That is what we were talking about when you said that you had talked to him?

MR. CHANDLER: That is correct.

THE COURT: Well, go on and take him into the jury room there and talk to him.

REPORTER'S NOTE: Defendant and counsel comfer in jury room upon returning to court room, the proceedings continue as follows:

BY THE COURT:

Q Have you now talked to Mr. Chandler about any defense that you have in this case?

A Yes, sir.

Q Have you given your attorney the names of any witnesses that you would like to have here?

A Yes, sir, but I didn't have any witnesses.

Q No witnesses that you want other than are here?

A No, sir.

Q Are you entering a plea of not guilty freely and voluntarily under the circumstances?

A [no answer]

Q Do you understand what I mean by that? In other words, in order to save the right to appeal, you are entering a plea of not guilty, that is what you want to do?

A Yes. sir.

Q Do you understand that you can either be tried by a jury or tried by the court without a jury? You are now being tried by the court without a jury, is that what you want?

A Yes, sir.

Q Have you talked to Mr. Chandler about whether you want to be tried without a jury or with a jury?

A Yes, sir.

Q Do you understand the questions that I have asked you?

A Yes, sir.

THE COURT: All right, thank you very much. The Court accepts your pleas.

MR. CAMBLOS: May it please the Court: The Commonwealth will also waive trial by jury.

THE COURT: All right.

MR. CAMBLOS: Your Honor, with consent of defense counsel I believe that I can state to the Court the pertinent facts in these cases although I have witnesses in the court room to prove most of the facts.

A portion of the case as to the theft from Lucille Holland, I would have to call her if the Court feels it is necessary and she is, I believe, available.

The cases are just what has been stated, Your Honor. Lucille Holland worked at a church school, not a Sunday School but during the week they have children there at this church. They are taught and taken care of there and Lucille Holland is one of the persons working in this capacity.

On the day stated in the indictment, she went there and put her purse in a closet and then went about her duties in connection with the school.

While she was out of the room where the closet was, the defendant came there and went into the closet. He found her purse and took her billfold containing some $115.00 and sneaked away with it.

Later, Mr. Bullock who is the caretaker for the Tarleton Square Apartments checked the apartments before retiring for the evening. He closed and locked various doors and whatnot and during the course of the evening, he went to his apartment and when he was getting ready to go to bed, he heard a noise.

He and his son went back out and looked around and they didn't see anything. He started back to bed again he heard a noise. He went down and found the defendant with an adult named Seay and whom the court has already tried in this connection coming from the storeroom part of the apartments.

They had some moving pads that the corporation had stored in the storeroom there. And they also had, I believe, some candles of a small value.

The padding that they had taken was worth, I have forgotten the exact amount but about $200.00 or $300.00.

Mr. Bullock held the defendant and his companion there until the police could be called. When the police were called, the defendant and his companion were arrested.

After having his rights under the Miranda decision explained to him, the police questioned the defendant, and he admitted that he was the one who had taken this Lucille Holland's money.

Your Honor, you have seen the social study made by the juvenile court personnel in this case. This defendant has been in trouble, most any kind that you could mention from the time he was old enough to get into trouble.

There is little if anything in the social study to recommend him for probation or recommend him for being treated as a juvenile and sent to some juvenile training school.

I think that this defendant has demonstrated that the only thing that is going to get him

straightened out is to realize that he must be answerable for his serious wrongdoing. These are serious cases. The court could sentence him on these charges on which he has been arraigned to a total of 60 years under the statute.

Of course, that is not called for but I do feel he has previously been to the State's training school for juveniles and I feel, Your Honor, the only proper disposition of this case now is to find him guilty and sentence him to the penitentiary, and I believe that we should in connection with that recommend that he be sent to Southampton.

Southampton is a place for young offenders. He will be given an opportunity to improve himself, to complete his education and learn a trade and he can do all of these things if he will apply himself.

I believe that from the standpoint in the interest of society and to the defendant, Your Honor, that is where he should be sent but if something isn't done with him and he continues the kind of behavior that he has indulged in up to this point that sooner or later he is going to get seriously hurt or he is going to seriously hurt somebody and commit even more serious crimes.

I would recommend to the Court that on these three counts that he be sentenced to two years on each.

And I believe if he can or will apply himself, he can then come from Southampton as a good citzen. Of course, he would be entitled to credit for time he has already been locked up in connection with these charges.

THE COURT: All right, Mr. Chandler.

MR. CHANDLER: Your Honor, for the record, I again renew my motion to quash the indictments on the grounds that the court lacks jurisdiction.

I would also ask the court as the court stated at the beginning of the trial that after hearing the evidence if it would be of the opinion to change its mind, I would ask that Mr. Lewis be treated as a juvenile.

The facts that you have before you show that the Juvenile and Domestic Relations Court Judge Zehler certified in public interest, in the interest of society and to the Commonwealth of Virginia that this boy be treated as a juvenile and sent to Beaumont.

The evidence here shows that he had taken

away some $115.00, I believe it was, and he had broken into the Tarleton Square Apartments and he taken some moving pads, some quilt pads.

Again, none of the crimes had any aura of violence about them. No one was injured in the crimes that were committed. The social study report, Your Honor, has before him shows that the boy is really a classic example not from a broken home but no home at all. The father's whereabouts unknown. He never really had a father and he had many, many problems that I am not going into but the court has this report before him and has access to it. I think in a case such as this that leniency could be given. That this is a proper case for it and under the circumstances I would think that this boy would have a much better chance of rehabilitating himself at this stage being treated as a juvenile and being sent to Beaumont rather than being given six years in the penitentiary system although he be sent to Southampton.

I believe it would be judicial knowledge that most of the people in the area would be a great deal older than he would be the boy having just turned seventeen in March, just two or three months ago.

I think that under the circumstances this penalty would be a little severe. You have the court's discretion to think about giving a sentence perhaps somewhat less severe.

And even if he is sent to the penitentiary system, we would really put forth to the court that this boy be treated as a juvenile in accordance with what the juvenile and domestic court judge has done.

THE COURT: How much schooling has he had?

MR. CHANDLER: To the 9th grade, Your Honor.

THE COURT: Did he attend school prior to this arrest on these charges?

Were you in school?

THE DEFENDANT: Was I in school when I done these things? No, sir.

THE COURT: I see that in 1970 that you were placed on probation until the end of the school year. Hafe you been back? You haven't been back to school since 1970, have you?

THE DEFENDANT: No, sir.

THE COURT: Anything more, Mr. Camblos?

MR. CAMBLOS: May it please the Court: Counsel argues that no one was hurt in connection with these crimes. Mr. Bullock the caretaker of Tarleton Square Apartments is in the court room. The Court

can observe Mr. Bullock. He tells me that he weighs 285 pounds and had the caretaker of those apartments been of somewhat slight stature and undertaken to apprehend this defendant, who is certainly a well built husky seventeen year old, the results might have been far different.

The fact that no one was hurt, I think very well be attributable to Mr. Bullocks' stature. He had with hima stepson who is not quite as large as he is but very much the same stature, Your Honor.

THE COURT: It is always a difficult choice about what to do in these cases. It seems to me that this young man has been sent under the juvenile system ... sent to a school but that has not resulted in getting him straightened out.

I think if he actually went to Beaumont where they had opportunities for schooling and learinging a trade and all, there is a possibility that he could get straightened out but of course, unless he is willing to do it, why, no matter where he is sent, it can't be done.

But I think that the way that they look at it, just send him down there for such a short time that they don't have any opportunity to really train, and for that reason, while six years may seem a

long time but if he behaves himself and co-operates it would mean a year and a half. And I think, I feel that it is not too long as training is concerned.

MR. CAMBLOS: May it please the Court: The Court said if he were sent to Beaumont there would be a possibility of him getting schooling and being straightened out.

THE COURT: I don't mean Beaumont - but I mean Southampton. I think under the circumstances that this is worth a try or otherwise it is kind of a hopeless situation.

And unless he can get straightened out, this will happen over and over again. Now this breaking and entering, sooner or later there is a confrontation between them and somebody is going to get hurt. I think that these are serious offenses. I am going to accept the recommendation of the Commonwealth's Attorney.

Will the defendant stand? You have heard the recital of the facts by the Commonwealth's Attorney, do you have any fault to find with the statement of facts as Mr. Camblos has stated them?

THE DEFENDANT: No, sir.

THE COURT: Have you anything to say or any reason here why you should not be sentenced at

this time?

THE DEFENDANT: No, sir.

THE COURT. Do you have anything that you want to say at all?

THE DEFENDANT: No, sir.

THE COURT: On indictment number one charging you with breaking and entering in the nighttime the storeroom of Charlottesville Apartments, Inc. a corporation trading as Tarleton Square Apartments, as set out in the indictment, on the statement of counsel, and the agreed statement of facts, the Court finds you guilty as charged and I sentence you to serve a term of two years in the penitentiary.

The second count of the same indictment charging you with taking, stealing, and carrying away furniture moving pads of a value of more than a $100, the property of the Charlottesville Apartments, Inc., the Court finds you guilty and I sentence you to serve a term of two years in the penitentiary.

On indictment number two, under the second count charging you with stealing more than a $100 the property of Lucille Holland, the Court finds you guilty and I sentence you to serve a term of two years in the penitentiary. You may be seated.

The court wishes to cite for the record the fact that the defendant's mother, Daisy Lewis Carter has been present in the court room throughout the entire proceedings. The defendant, of course has been here through the entire proceedings with his attorney Mr. Chandler and who has capably represented the accused in every respect. I wish to advise the defendant that he has a right to appeal and it is my understanding that an appeal ... an appeal is to be undertaken, is that correct?

MR. CHANDLER: Yes, sir. Does the Court wish to appoint me?

THE COURT: I would be very happy if you would represent him in this case.

MR. CHANDLER: I will do it, sir.

MR. CAMBLOS: I would move to nolle prosse count one of the indictment charging breaking and entering, theft of property from Lucille Holland. I would move to nolle prosse that count, Your Honor. He was not arraigned.

THE COURT: All right.

MR. CAMBLOS: That is the first count of indictment number two.

REPORTER'S NOTE: Whereupon, Court stood adjourned.

# APPENDIX I

VIRGINIA: AT A CORPORATION COURT

OF THE CITY OF CHARLOTTESVILLE, ON THE LAW SIDE THEREOF,

HELD ON THURSDAY, JULY 13, 1972.

Present: Honorable GEORGE M. COLES
Judge

COMMONWEALTH OF VIRGINIA Plaintiff

Indictment No. 1, Count 1 - Break and enter
Count 2 - Grand Larceny

V.

Indictment No. 2, Count 1 - Break and enter
Count 2 - Grand Larceny

NELSON JAMES LEWIS Defendant
Date of Birth: 3/27/55

On this day came the Commonwealth by her Attorney and the defendant was led to the bar of this court by the Sheriff; likewise appeared L. B. Chandler, Jr., his attorney heretofore appointed by the court to represent the defendant in the defense of charges pending against him.

Thereupon the Court ordered that the evidence and incidents of trial of this case be recorded by a court reporter, and thereupon Mrs. Elaine H. Helvin, a competent court reporter, was duly sworn according to law.

Whereupon the Commonwealth moved the court to make a determination and order that the defendant who

is a juvenile, age 17, be tried as an adult on the indictments now pending against him, and was argued by counsel. The Court having maturely considered the investigative report and social history of the defendant prepared by Arthur G. Daniels, Probation Officer, dated June 15, 1972, and it appearing in addition that the defendant was not certified to the Grand Jury by the Juvenile and Domestic Relations Court but was presented to a Grand Jury by the Commonwealth Attorney after due notice to the Eighth Regional Juvenile and Domestic Relations Court, this court now determines and orders that the defendant be tried as an adult in the Corporation Court.

Whereupon the Commonwealth moved that the defendant be arraigned on Indictment No. 1, Counts 1 and 2, and on Indictment No. 2, Count 2, and there being no objection, the Court grants the motion.

Thereupon the defendant, being arraigned upon the indictments herein pending against him with the exception of Count 1 of Indictment No. 2, personally entered his pleas of not guilty to the charges therein contained, and the defendant renewed his exception to the Court's earlier ruling denying defendant's motion to quash the proceedings in this court.

Whereupon, with the concurrence of the

Attorney for the Commonwealth and of the Court herein now entered of record, the Court having determined that the waiver and consent were voluntarily and intelligently made, the said defendant personally waived trial of this case against him by a jury and elected and requested that the matter be wholly submitted to the Court for hearing and determination without the intervention of a jury.

And it being stipulated by the defendant that there is no denial of the facts as alleged in the indictment and that the pleas of not guilty was entered by the defendant in order to preserve his right of appeal on the question of jurisdiction of the court and the question of double jeopardy, the court proceeded to hear the evidence as agreed by counsel.

And the Court, having fully heard the evidence and argument of counsel and having maturely considered of its judgment finds the defendant guilty of each as charged, in that he did (1) on the 30th of May, 1972, feloniously break and enter in the nighttime the store room of Charlottesville Apartments, Inc., a corporation, t/a Tarleton Square, with intent to commit larceny therein; and on May 30, 1972, in said City, did feloniously take, steal and carry away furniture moving pads, of a value of more than $100.00, the property of Charlottesville Apartments, Inc., a corporation, t/a

Tarleton Square, with intent to deprive permanently the owner of possession thereof, and (2) on the 2nd day of March, 1972, in said City, did feloniously take, steal and carry away more than $100.00 in United States currency, a billfold and property therein, all the property of Lucille Holliday with intent to deprive permanently the owner of possession thereof, and fixes his punishment at confinement in the penitentiary system of the Commonwealth for a term of two (2) years on each of two (2) counts of Indictment No. 1 and on Count No. 2 of Indictment No. 2, a total of six (6) years with the suggestion that consideration be given to assigning him to the correctional farm at Southhampton, Virginia, where he may receive training.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him, according to law, and nothing being offered or alleged in delay of judgment, it is, therefore adjudged and ordered that the defendant be confined in the penitentiary of this Commonwealth for a term of six (6) years, the period of confinement by the Court in its judgment ascertained; subject, however, to a credit thereon from June 9, 1972, to date hereof, a total of 35 days, and the defendant was advised by the Court of his right of appeal.

At each and every stage of the trial of this case the defendant, Nelson James Lewis, had been personally present, and his above named attorney was likewise personally present and capably represented the defendant. Likewise the defendant's mother, Daisey Lewis Carter was present in the courtroom during the entire proceedings, in response to a subpoena duly served.

And the defendant was remanded to jail to await transfer to the penitentiary there to execute the sentence imposed.

Whereupon the Commonwealth Attorney moved the Court to enter a nolle prosequi to charges contained in Count 1 of Indictment No. 2, which motion, upon due consideration by the court, was granted, and such nolle prosequi is here entered of record.

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/s/ George M. Coles, Judge

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LAW ORDER BOOK 34, PAGE 260

A Copy Teste:

Carl E. Hennrich, Clerk

/s/ Ruby G. Walker, Deputy Clerk

## APPENDIX J

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v. NOTICE OF APPEAL

NELSON JAMES LEWIS

To The Honorable Carl E. Hennrich, Clerk Of The Above Styled Court.

### NOTICE OF APPEAL

Notice is hereby given that the Defendant, Nelson James Lewis, files his notice of appeal to his conviction by order of The Corporation Court Of The City Of Charlottesville dated July 13, 1972, and will apply to the Justices of The Supreme Court Of Appeals Of Virginia for a Writ of Error.

### ASSIGNMENT OF ERROR

The following errors are assigned to the judgment of The Corporation Court Of Charlottesville entered on July 13, 1972:

1. That the said Court was without jurisdiction to try this case in that Section 16.176.1 of the

Code of Virginia conferes on the Juvenile and Domestic Relations Court exclusive jurisdiction to dispose of a criminal proceeding involving a juvenile sixteen years of age or over who has previously been committed to any juvenile training school in Virginia where the Juvenile and Domestic Relations Court "shall find and shall certify in its order that it is in the public interest for the matter to be disposed of therein."

2. That the trial of the defendant in the Corporation Court Of The City Of Charlottesville, after the defendant had been tried and convicted in The Eighth Regional Juvenile and Domestic Relations Court Of The City Of Charlottesville is a violation of the Fifth and Fourteenth Amendments Of The Constitution Of The United States, and is a violation of Article I, Section 8 of The Constitution Of Virginia.

/s/ L. B. Chandler, Jr.
Nelson James Lewis
By Counsel

Hayden, Chandler and Huff
415 Park Street
Charlottesville, Virginia 22901

By /s/ L. B. Chandler, Jr.

I hereby certify that I have on this 4th day of August, 1972, mailed a true and certified copy of the foregoing to John T. Camblos, Esquire, Commonwealth's Attorney for the City Of Charlottesville.

/s/ L. B. Chandler, Jr.