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# Record No. 4088

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**MILES SPENCE BRAY**

v.

**COMMONWEALTH OF VIRGINIA**

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FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

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**RULE 5:12—BRIEFS.**

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. **SIZE AND TYPE.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

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

195 VA 31

## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§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.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



IN THE

**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 4088**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Monday the 1st day of December, 1952.

MILES SPENCE BRAY, Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

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From the Circuit Court of Arlington County.

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Upon the petition of Miles Spence Bray a writ of error is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 29th day of July, 1952, in a prosecution by the Commonwealth against the said Miles Spence Bray, for a misdemeanor; upon the petitioner or some one for him, entering into bond with sufficient surety before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

## RECORD

Address: 530 N. Nelson St.  
Arlington, Va.

Permit: 5C2822445 Va.  
License: 186—089 Va.

Commonwealth of Virginia, Arlington County, to-wit:

To the Sheriff or any Peace Officer of the said County:

WHEREAS Officer B. Keyes of the said County, has this day made complaint and information on oath before me, the undersigned Judge of County Court for the said County, that Miles Spence Bray did, on the 16th day of Apr., 1952, in said County own or use a motor vehicle, regularly intended to be operated over the highways of said County, without displaying a County license plate thereon, in violation of a County Ordinance, unlawfully and against the peace and dignity of the Commonwealth. These are, therefore, in the name of the Commonwealth of Virginia, to command you forthwith to summon before me the said defendant named above to answer the said complaint, and to be further dealt with according to law, and to summon the witnesses named on the back hereof to appear on the next day following the arrest.

Given under my hand and seal this 18th day of Apr., 1952.

HARRY R. THOMAS, Asso. Judge (Seal)

(on back)

\* \* \* \* \*

4/18.

67397

In the County Court of Arlington County  
Commonwealth of Virginia

*v.*

Miles Spence Bray

Charged with

No County Tag—Vio. Co. Ord.

Warrant of Arrest

Officer's Return

Executed the within warrant this .... day of .....  
19.. by delivering a true copy thereof to the defendant, and  
summoning him.

.....  
.....  
of Arlington County, Virginia.

Plea of .....

4-18-52.

Plea of Not Guilty by reason of the invalidity of the ordi-  
nance and that the ordinance is unconstitutional. Deft. found  
Guilty and fined \$5.00 and costs. Appeal noted. Bond of the  
defendant taken in the penalty of \$25.00.

HARRY R. THOMAS  
Asso. Judge.

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APPEAL FROM THE COUNTY COURT.

NOW COMES the defendant in the above entitled cause  
and says:

1. That the Automobile License Ordinance, Marked "Ex-  
hibit No. "A", and Exhibit No. "B", as set forth in the Stip-  
ulation and Agreement of Facts and Exhibits, is invalid.
2. That the ordinance shows on its face that it is local and  
special legislation, and therefore violates the Constitution of  
Virginia, to-wit, Section 63, Sub-section 5, and Section 64, of  
said Constitution.

MILES SPENCE BRAY, Defendant.

Filed. May 26, 1952.

H. BRUCE GREEN, Clerk.  
 Circuit Court, Arlington County, Va.  
 By EDW. E. RONSAR, Deputy Clerk.

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Filed. May 26, 1952.

H. BRUCE GREEN, Clerk.  
 Circuit Court, Arlington County, Va.  
 By EDW. E. RONSAR, Deputy Clerk.

#### STIPULATION OF FACTS AND EXHIBITS.

It is agreed by counsel for the defendant and the attorney for the Commonwealth that:

1. The defendant was a resident of Arlington County, Virginia, on the 16th day of April, 1952.
2. That the defendant was the owner of a 1951 Ford passenger automobile on the 16th day of April, 1952. Said automobile on the said day being regularly used and intended to be regularly operated upon the streets or highways of Arlington County, Virginia.
3. That on February 2, 1949, the County Board of Arlington County, Virginia, adopted an alleged Ordinance in the form attached hereto as Exhibit "A".
4. That the publication of the said alleged Ordinance appeared in a newspaper of general circulation in Arlington County, Virginia, in the form attached hereto as Exhibit "A".
5. That subsequently, the said alleged Ordinance was amended by action of the County Board of Arlington, Virginia, so that the form of the alleged Ordinance as amended to April 16, 1952, was in the form attached hereto as Exhibit "B".

6. That on the 16th day of April, 1952, the defendant did operate his said automobile over the public streets of Arlington County, Virginia, without having obtained and having displayed thereon the 1952 County tag required by the alleged ordinance as so amended.

7. That on the 16th day of April, 1952, the defendant was arrested by a member of the Arlington County Police Department and charged with the offense for which he now stands trial.

8. That on the 18th day of April, 1952, the defendant was tried for the commission of the alleged offense in the County Court of Arlington, Virginia, on a plea of "not guilty", and was found "guilty" as charged, by the Judge of the said Court, and fined \$5.00 and costs.

9. That the defendant then and there appealed and posted the required appeal bond and that the case is now before this Court *de novo* on a plea of "not guilty".

That the following exhibits are agreed upon:

1. Exhibit "A", The Arlington County Vehicle License Ordinance as adopted on February 2, 1949, and as published as stated above.

2. Exhibit "B", The Arlington County Vehicle License Ordinance as amended to April 16, 1952.

3. Exhibit "C", Extracts from the Journal of the House of Delegates.

4. Exhibit "D", Extracts from the Journal of the Senate.

Seen and agreed to:

WILLIAM J. HASSAN,  
Attorney for the Commonwealth.

GREEN AND TRUEAX.  
By JOHN LOCKE GREEN, and  
MILES SPENCE BRAY,  
Attorneys for the Defendant.

W. T. McCARTHY, Judge.



\* \* \* \* \*

Recorded in Common Law Order Book No. 34, Page No. 309,  
on 7/29, 1952.

### ORDER.

THIS CASE came on the 27th day of May, 1952, to be heard *de novo* upon the appeal from a finding of "guilty" in the County Court of Arlington County, Virginia, of the defendant; upon the defendant's plea of "not guilty", upon a stipulation of facts and exhibits, and upon the defendant's defense set forth in his appeal from the said County Court.

And the defendant having waived a trial by jury, and all matters of law and fact having been submitted for determination by the Court, the Court proceeded to hear, *ore tenus*, all of the evidence offered by the Commonwealth and the defendant, and thereafter considered the matter upon the oral argument upon law and fact submitted by Counsel.

And the Court having considered the same, and having reached certain conclusions, doth find the defendant "guilty as charged"; doth fine the defendant Five Dollars (\$5.00), besides the costs of this proceeding, and doth now adjudge and declare as follows:

1. That the Arlington County Automobile License Ordinance, marked "Exhibit No. A", and Exhibit No. "B", and agreed upon in the Stipulation and Agreement of Facts and Exhibits, was validly adopted by the County Board of Arlington County, Virginia, pursuant to enabling legislation embodied in Section 46-64 of the Virginia Code of 1950, as amended;

2. That the classification set forth in Section 46-64 of the Virginia Code of 1950, as amended, insofar as the same relates to density of population, to-wit: "and counties having a population in excess of two thousand inhabitants per square mile according to the last preceding United States  
page 18 } census" is reasonable, and, therefore, the said enabling legislation embodied therein is not local and special law for the assessment or collection of taxes prohib-

ited by Section 63 of the Constitution of Virginia, Sub-section 5, and is not in violation of Section 64 of the Constitution;

To which findings and rulings of the Court the defendant excepts.

And this order is final.

WALTER T. McCARTHY, Judge.

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Filed. Sep. 11, 1952.

H. BRUCE GREEN, Clerk.

Circuit Court, Arlington County, Va.

By V. LONG, Deputy Clerk.

NOTICE OF APPEAL.

To H. Bruce Green, Clerk of said Court:

You are hereby notified that petition for a writ of error in the above action will be filed in the Supreme Court of Appeals of Virginia within the time prescribed by the rules of that Court, and you are accordingly requested to make up the record on appeal as required by the rules of said Court.

ASSIGNMENT OF ERROR.

The Court erred in entering a final judgment affirming the conviction of the defendant, in which it levied a fine of \$5.00 and costs, because said action of the Court was predicated on an unconstitutional statute, to-wit, Title 44-64, which applies only to Arlington County, and is a special and local law for

Supreme Court of Appeals of Virginia

taxation, and violates Section 63 and Section 64 of the Constitution of Virginia.

GIVEN under my hand this 11th day of September, 1952.

MILES SPENCE BRAY, Petitioner.  
By Counsel.

\* \* \* \* \*

Presented. 9/19/52.

Signed. 9/19/52.

W. T. McCARTHY, Judge.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

Vertical text on the left margin, possibly a page number or reference.

