

11/12/26
147-609
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JOSEPH GRAYSON

v.

COMMONWEALTH

Record 322

FROM THE CIRCUIT COURT OF STAFFORD COUNTY, VIRGINIA.

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

H. STEWART JONES, Clerk.

147 Va 609

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

JOSEPH GRAYSON

v.

COMMONWEALTH.

To the Honorable the Supreme Court of Appeals of Virginia:

Your Petitioner, Joseph Grayson, respectfully shows unto the Court that he is aggrieved by a certain final order, entered by the Circuit Court of Stafford County, Virginia, at the May term, thereof, on the 10th day of May, 1926, convicting him of a violation of the prohibition law and sentencing him to pay a fine of \$50.00 and costs and to confinement in jail for thirty days.

Petitioner was indicted on two counts, one charging "the unlawful possession of mash, capable of being used in the manufacture of ardent spirits", and the other charging "the possession of a still and still cap, used in the manufacture of ardent spirits". The indictment was based on Section 4675, paragraph 20 of the Code.

At the trial of the case, no evidence was introduced to sustain the second count of the indictment and this charge was abandoned by the Commonwealth; therefore, petitioner was convicted and sentenced by the Court for "having in his possession, mash capable of being used in the manufacture of ardent spirits". Paragraph 20 of Section 4675 is headed as follows:

"Requiring stills to be registered and declaring all unregistered stills contraband; proceeding upon seizure providing for the registration of certain stills and issuance of a permit from the commissioner; offenses and presumptions."

That part of the paragraph applicable to the case at bar, reads as follows:

“It shall be unlawful for any person to own or to have in his possession without a permit as provided by this section any still, still cap, worm, tub fermenter, or any of them, or any other appliances connected with a still and used, or mash or other substances, capable of being used in the manufacture of ardent spirits, unless such owner shall be registered with the commissioner and obtain from him a permit to own such still, which permit shall be kept conspicuously posted at the place where such a still is located. All stills in this State not registered under a permit as herein required and all mash or other products used in the operation of such a still are hereby declared contraband and shall be subject to seizure by any officer charged with the enforcement of the law, which officer shall destroy all mash and other like products found at such still and used in the operation thereof and shall forthwith notify the commissioner and turn over to him all stills, caps, worms, tubs, fermenters and other appliances to be disposed of as required by this act.”

It is apparent from the heading of this paragraph and from its language as well, that it is intended to cover the unlawful possession of stills and appliances connected therewith and only applies to “mash or other substances capable of being used in the manufacture of ardent spirits”, where found and seized along with a still, still cap, worm, tub fermenter or other appliances connected with a still.

This is clearly shown by that part of the paragraph reading as follows: “all stills in this State not registered under a permit as herein required, and all mash or other products *used in the operation of such a still* are hereby declared contraband and shall be subject to seizure etc”.

The Court will observe that the prohibition act makes no provisions for the destruction of mash except where found or used in connection with a still. Only in such instance is it declared contraband and subject to seizure and destruction. Obviously the reason for this is that on thousands of farms throughout Virginia, there can be found mash of one variety or another, capable of being used in the manufacture of ardent spirits, but not so used. Likewise, there can be found on every farm, perhaps, “other substances” capable of being used in such manufacture, but the law does not intend to make a criminal out of every man in whose possession such mash or other substances is found.

Mash is defined in the latest edition of Webster's Revised Unabridged Dictionary as "Ground or bruised malt or meal or rye, wheat, corn or other grain (or a mixture of malt and meal) steeped and stirred in hot water for making the wort".

It is also defined in the same dictionary as "a mixture of meal or bran and water fed to animals".

It is further defined as "a mass of mixed ingredients, reduced to a soft pulpy state by beating or pressure; a mass of anything in a soft pulpy state".

No matter what definition is adopted, if the mash contains vegetable matter, it is almost invariably capable of being manufactured into ardent spirits.

It is the contention of petitioner that the General Assembly did not intend to make unlawful the mere possession of vegetable mash with such potentiality, but simply intended to make contraband such mash when found in conjunction with a still or its appliances. Petitioner respectfully insists that inasmuch as the agreed facts fail to show that the mash found at his dwelling was intoxicating or that it contained more than one-half of one per cent of alcohol by volume, he cannot be punished for the mere possession of such mash. Any such construction of that Section of the Code upon which the indictment against the petitioner was founded, would bring under the bar of the law, almost every farmer in Virginia.

Petitioner submits that the mere possession of mash, independent of a still and of a character not capable of being defined as ardent spirits, is not made a substantive offense by the Statute.

ASSIGNMENT OF ERROR.

Court erred in overruling the Defendant's demurrer to the first count of the indictment and the Court further erred in refusing to set aside the said judgment and conviction of Defendant as contrary to the law and evidence.

Petitioner therefore prays that he may be awarded a writ of error and *supersedeas* from said judgment, and that said judgment may be set aside.

Respectfully,

JOS. GRAYSON,
By C. O'CONOR GOOLRICK,
His Atty.

Supreme Court of Appeals of Virginia.

I, C. O'Connor Goolrick, an attorney practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion it is proper that the judgment and conviction complained of in the foregoing petition be reviewed by the Supreme Court of Appeals of Virginia.

C. O'CONOR GOOLRICK.

Received July 7, 1926.

R. H. L. C.

Writ of error and *supersedeas* awarded. But the *supersedeas* shall not operate to release his bond, if on bail, or to discharge the defendant from custody, if in jail.

R. H. L. CHICHESTER.

July 8, 1926.

In the Circuit Court of Stafford County, Virginia.

PLEAS OF THE COMMONWEALTH.

Commonwealth of Virginia

vs.

Joe Grayson.

At a Circuit Court held in and for the County of Stafford, Va., at the Court House thereof, on Monday, November 9th, 1925, the following indictment was returned by the Grand Jury:

Commonwealth of Virginia,

In the Circuit Court for Stafford County.

The grand jurors of the Commonwealth of Virginia, in and for the body of the County of Stafford, and now attending the Circuit Court for said County at its November, 1925, term thereof, do, upon their oaths present, that Joe Grayson, in the said County of Stafford, and within one year next prior to the finding of this indictment, did unlawfully have in his possession mash capable of being used in the manufacture of ardent spirits.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Joe Grayson, in the said County of Stafford, and within one year next prior to the finding of this indictment, did unlawfully have in his possession a still and still cap used in the manufacture of ardent spirits, and that the owner of such still and still cap was not registered with the Attorney General and that no permit to own such still and still cap had been obtained from the said Attorney General and that no permit to own such still and still cap was kept conspicuously posted at the place where said still and still cap was located in the said County of Stafford against the peace and dignity of the Commonwealth.

Upon the evidence of

W. E. CURTIS,
J. C. DILLARD.

A True bill.

R. A. CLOE, Foreman.

page 2 } At another term of said Court, held, to-wit, on
Monday, January 11, 1926, the following order was
entered:

This day came the accused, Joseph Grayson, by his attorney, and likewise came the Commonwealth's Attorney, and thereupon the accused demurred to the first count of the indictment, said demurrer being as follows, to-wit:

The defendant, by counsel, demurs to the first count in the indictment and says that the same is not sufficient in law.

For reason thereof, defendant says:

1st: That the indictment fails to allege that the so-called mash was intoxicating or that it contained more than $\frac{1}{2}$ of one per centum of alcohol by volume.

2nd: That said count fails to allege that the so-called mash was used or possessed in connection with the operation of a still by defendant.

Whereupon after argument the Court doth overrule the said demurrer, to which action of the Court the accused, by counsel, excepted.

At another term of said Court, held on the 10th day of May, 1926, the following order was entered:

This day, came the attorney for the Commonwealth and likewise came the Defendant, and the said Defendant pleaded not guilty, and with the consent of the Attorney for the Commonwealth and the accused, the Court proceeded to hear the case without a jury on agreed statement of facts in writing, signed by the Attorney for the Commonwealth and by the attorney for the accused, and reading as follows, to-wit:

STATEMENT OF FACTS.

It is agreed that Federal prohibition agents found under the front porch of the residence of the accused in Stafford County, Va., a barrel containing mash, capable of being used in the manufacture of ardent spirits, same being found within one year next prior to the finding of the indictment against the accused.

O. K.

F. P. MONCURE,

Com. Atty.

C. O'CONOR GOOLRICK,

Atty. for the accused.

page 3 } And the Court being of the opinion that the Defendant is guilty of having in his possession one barrel of mash, capable of being used in the manufacture of ardent spirits, it is ordered by the Court that a fine of \$50.00 and costs and one month's confinement in the County jail be, and the same is imposed upon the Defendant Joe Grayson, and if the said Grayson fails to pay said fine and costs he shall serve three additional months confinement in jail, and thereupon, the defendant moved the Court to set aside the said conviction and judgment as contrary to the law and the evidence, which motion the Court overruled, to which ruling of the Court the said Defendant excepted, and the Defendant having signified his intention of appealing therefrom, it is ordered that the execution and sentence herein imposed be and the same is suspended until the 15th day of July, 1926, and thereupon the said Joe Grayson and Henry Burke, as surety, appeared in open Court and acknowledged themselves severally indebted to the Commonwealth of Vir-

ginia in the sum of \$500.00 dollars each, out of their respective goods and chattels, to be levied to the said Commonwealth, rendered upon condition that the said Joe Grayson personally appear before this Court on the 15th day of July at ten o'clock A. M., to answer Information and Conviction to-wit: whereof he stands accused and not depart thence without the leave of this Court, then this *recognance* to be void, otherwise to remain in full force and virtue and the said Joe Grayson and Henry Burke hereby waive the benefit of their homestead exemption as to this obligation.

A Copy—Teste:

JAMES ASHBY,
Clerk Circuit Court Stafford Co., Va.

I, James Ashby, Clerk of the Circuit Court of Stafford County, do hereby certify that due and legal notice was given by Joseph Grayson to F. P. Moncure, Commonwealth's Attorney of said County, of his intention to apply for transcript of the record in this case.

Witness my hand this 7th day of July, 1926.

JAMES ASHBY,
Clerk Circuit Court of Stafford County, Virginia.

A Copy—Teste:

H. STEWART JONES, C. C.

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SECRET

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