

147 Va 709

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JOE THURPIN

v.

COMMONWEALTH

Record 354

FROM THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, VA.

“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 709

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

JOE THURPIN

vs.

COMMONWEALTH.

*To the Honorable Judges of the Supreme Court of Appeals
of Virginia:*

Your Petitioner, Joe Thurpin, who has been indicted, arraigned and tried in the above named case, under the name of Joe Thurpin, respectfully represents unto your Honors, that he is aggrieved by the final judgment of the Circuit Court of Arlington County, Virginia, entered on the 24th day of June, 1924, which said judgment sentenced him to confinement in the penitentiary for a term of five years on an indictment for transporting and having in his possession ardent spirits, and he exhibits this, his petition and states as follows:

The Attorney for the Commonwealth, over the objections of the defendant, made the following statements in his argument to the jury (Record, page 10):

“Joe Thurpin is under bond in the District of Columbia for violating the prohibition law. He has been raided in the District of Columbia on several occasions by officers in search of liquor. He is the head of a gang of bootleggers in Arlington County. He is known to be a liquor runner and has been for several years, and has accumulated and acquired considerable money and property by his activities as a bootlegger and has been living with Lucy Robertson, who was convicted here the other day for bootlegging and his house is the headquarters for bootleggers. To all of which statements defendant, by his counsel, objected, the Court overruled the objec-

tion and defendant excepted thereto; the Court instructed the jury not to consider the statements as they have no bearing in the case."

There was absolutely no evidence to sustain such statements.

At the trial of this case the Attorney for the Commonwealth was permitted over the objection of the defendant to ask the following questions on cross examination of the defendant (Record. p. 14):

"You know you are a bootlegger. You know you are a head of a gang of bootleggers. You know you have liquor runners all over Arlington County and that the police have raided your place a number of times."

The Court further over the objection of the defendant, permitted the Sheriff, a witness for the Commonwealth, to make the following statement in answer to a question as to the reputation of the accused for violation of the prohibition law (Record, p. 13).

"I am informed that he has been raided several times in Washington, D. C., and that he is now under bond for violation of the prohibition law over there."

The Court permitted the witness to further state that the accused has a bad reputation in the District of Columbia, and the Court further permitted the Commonwealth Attorney to state as follows to the witness (Record, p. 15):

"You have been living with Lucy Robertson who was convicted for violating the prohibition law here yesterday, and whose house is a bootleggers headquarters." This statement in the form of a question was permitted to go to the jury over the objection of the defendant.

Wherefore, your Petitioner prays that a writ of error and *supersedeas* may be awarded to the judgment of the Circuit Court of Arlington County, and that the said judgment may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

JOE THURPIN,
By his Attorneys,
WM. S. SNOW,
BARBOUR, KEITH, McCANDLISH & GARNETT,

In the Supreme Court of Appeals of Virginia.

Joe Thurpin
vs.
Commonwealth.

I, William S. Snow, an Attorney, practicing in the Supreme Court of Appeals in Virginia, do certify that in my opinion it is proper that the decision in the above entitled case of Joe Thurpin vs. Commonwealth, should be reviewed by the Supreme Court of Appeals of Virginia.

Given under my hand this 21st day of August, 1926.

WM. S. SNOW.

Received Aug. 23, 1926.

R. H. L. CHICHESTER.

Virginia,

In the Supreme Court of Appeals, held at the Court House thereof, in the City of Staunton on Friday, the 17th day of September, 1926.

Upon the petition of Joe Thurpin a writ of error and *supersedeas* is awarded him to a judgment of the Circuit Court of Arlington County pronounced on the 24th day of June, 1924, in a prosecution by the Commonwealth of Virginia against the said Joe Thurpin for a felony, whereby it was considered by said court that the said Joe Thurpin be confined in the Penitentiary for a term of five years; said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, nor to release his bail, if out on bail.

Which is ordered to be certified together with the papers in the cause to the clerk of this court, at Richmond.

A Copy—Teste:

H. H. WAYT.

Clerk.

Supreme Court of Appeals of Virginia.

In the Clerk's Office of the Circuit Court of Arlington
County, Virginia.

TRANSCRIPT OF RECORD.

In the Case of

The Commonwealth, Plaintiff,

vs.

Joe Thurpin, Defendant.

Felony—Violation Prohibition Law.

page 1 } In the Circuit Court of Arlington County,
Virginia.

PETITION.

To the Honorable Samuel G. Brent, Judge of the Circuit
Court of Arlington County, Virginia:

Your petitioner, William C. Gloth, Attorney for the Com-
monwealth, respectfully represents unto Your Honor as fol-
lows:

At the October Term, 1924, one Joe Thurpin was indicted
for a felony.

Your petitioner further represents unto Your Honor that
the original indictment against the said Joe Thurpin has
either been lost or destroyed and cannot be found in the
Clerk's Office of said County.

In View of the Premises and in accordance with Section
6241 of the Code of Virginia your petitioner, William C.
Gloth, Attorney for the Commonwealth as aforesaid, prays
that said case may be heard and that a copy of the said indict-
ment may be filed herein in lieu of the said original indict-
ment which has either been lost or destroyed.

WILLIAM C. GLOTH,
Commonwealth's Attorney.

Subscribed and sworn to before me the undersigned No-
tary Public this 23rd day of June, 1926.

EMMA A. WEEKLEY,
Notary Public.

page 2 } Commonwealth of Virginia,
 County of Arlington, To-wit:
 In the Circuit Court of said County.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Arlington, and now attending the said Court at its October Term, 1924, upon their oaths do present that one Joe Thurpin, in the said County of Arlington, to-wit, the twentieth day of July, 1924, feloniously did manufacture, sell, keep, transport, store and expose for sale ardent spirits, feloniously, unlawfully and against the peace and dignity of the Commonwealth.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do hereby find the following facts, to-wit: That an indictment against the said Joe Thurpin was returned by the Grand Jury sitting in the Circuit Court of Arlington County, Virginia, on the seventeenth day of October, 1921, the same being in words as follows, to-wit:

“Commonwealth of Virginia,
 County of Arlington, to-wit:
 In the Circuit Court of said County.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Arlington and now attending the said Court at its October, 1924, Term, upon their oaths do present that one Joe Thurpin, within one year next prior to the finding of this indictment, in the said County of Arlington, did unlawfully manufacture, sell, offer, keep, store, expose for sale, give away, transport, dispose, solicit, advertise and receive orders for ardent spirits, against the peace and dignity of the Commonwealth.

Second Count: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said Joe Thurpin, in the said County, within one year preceding the finding of this indictment, unlawfully did receive more than one quart of distilled liquor within a period of one month, against the peace and dignity of the Commonwealth.

FRANK L. BALL,
Commonwealth's Attorney.

Witnesses sworn and sent to the Grand Jury by the Court to give evidence this 17th day of October, 1921.

Z. O. Kines,
George F. Marcey,
H. A. Smoot.

page 3 } Teste: WILLIAM H. DUNCAN, Clerk.

A True Bill.

C. C. DONALDSON, Foreman Grand Jury.

October 17th, 1921.

That upon the said indictment the said Joe Thurpin was arraigned in the Circuit Court of Arlington County, Virginia, on, to-wit, the third day of November, 1921, and upon such arraignment entered a "plea of guilty of violating the Prohibition Law as charged in the indictment", and was thereupon found guilty by the Court and sentenced to be confined in the County Jail for one month and to pay a fine of \$50.00 for the use of the Commonwealth. And so the Jurors aforesaid, upon their oaths aforesaid, do say that the offense charged in this indictment is the second offense by the said Joe Thurpin against the Prohibition Laws of the State of Virginia, since the first day of November, 1916; feloniously, unlawfully and against the peace and dignity of the Commonwealth.

WILLIAM C. GLOTH,
Commonwealth's Attorney.

Witnesses sworn and sent to the Grand Jury by the Court to give evidence this 20th day of October, 1924.

H. B. Fields.

Teste: WM. H. DUNCAN, Clerk.

page 4 } At a Circuit Court for Arlington County, Vir-
 ginia, held at the Court House thereof at 10 o'clock
A. M., Thursday, June 24, 1926.

Present: The Hon. Sam'l G. Brent, Judge.

In Re: Petition of William C. Gloth, Commonwealth's At-
torney.

It appearing to the Court from the petition filed herein by

William C. Gloth, Attorney for the Commonwealth that the original indictment against Joe Thurpin charged with a felony in the Circuit Court of Arlington County, Virginia, has been lost or destroyed and it appearing to the Court from said petition that the said petitioner has filed with said petition an exact copy of said indictment, it is, therefore, ordered that the same be and it is hereby filed and it is, further ordered that the said case be heard and determined and tried on the copy as aforesaid.

SAM'L G. BRENT, Judge.

page 5 } Circuit Court for the County of Arlington, Vir-
ginia, the 24th day of June, in the year of our Lord
nineteen hundred and twenty-six.

Present: The Hon. Sam'l G. Brent, Judge.

Commonwealth
vs.
Joe Thurpin.

Felony—Violation Prohibition Law Possession.

This day came the Attorney for the Commonwealth and the defendant, pursuant to his recognizance. The defendant upon being arraigned entered a plea of "not guilty" to the indictment herein.

Thereupon issue was joined, thereupon came a venire of twenty, composed of the following named persons, to-wit: R. A. Wilkenson, Carroll Wright, H. W. Cauffman, Peter Latterner, L. J. Lesieur, W. H. Loveless, J. H. Martin, H. H. Milks, O. J. LePrevost, J. G. Brown, J. E. Banforth, W. P. Boswell, J. R. Pendleton, P. A. Speek, A. G. Bladen, E. G. Beale, M. Blumenthal, J. J. Bray, E. B. Brasse and Herbert Bowbeer, who were duly summoned as the law directs as a Venire for the trial of this case, from which Venire both sides struck four.

Thereupon came a jury of twelve, composed of the following named persons, to-wit: R. A. Wilkenson, Carroll Wright, H. W. Cauffman, W. H. Loveless, O. J. LePrevost, J. G. Brown, J. E. Banforth, P. A. Speek, A. G. Bladen, E. G. Beale, E. B. Brasse and Herbert Bowbeer, who were sworn in the manner prescribed by the law as a jury for the trial of this case.

The jury having heard the opening statements of counsel

for both sides, hearing all of the evidence produced by both sides, receiving the instructions of the Court and hearing the closing arguments of counsel for both sides, retired in custody of the Sheriff to their room to consult, and page 6 } after a time, in custody of the Sheriff, returned into Court, and in the presence of the defendant, presented their verdict, reading in the following words and figures, to-wit:

“We, the jury, find the defendant ‘guilty’ and fix punishment at five years confinement in the State Penitentiary.

(Signed) CARROLL WRIGHT, Foreman.”

Upon consideration of the jury’s verdict, it is the judgment and sentence of the Court that the defendant be confined in the State Penitentiary for a period of five years and that he be remanded to jail to be safely kept by the Sheriff, until he is delivered to the proper authority to be conveyed to the State Penitentiary at Richmond, Virginia, to comply with this judgment.

So, thereupon, the defendant, by counsel, moved the Court to set aside the verdict and in arrest of judgment and to grant him a new trial, and assigned the following grounds for said motion:

1. That the verdict is contrary to the law and evidence.
2. That the said verdict is excessive.
3. For errors of the Court in permitting the Attorney for the Commonwealth to make certain statements to the Jury in both the opening and closing arguments, and, permitting certain evidence by the Sheriff, and, permitting the Attorney for the Commonwealth to ask the defendant certain questions.
4. For error of the Court in permitting the Jury to examine the contents of the jar containing the alleged corn liquor.
5. And for other errors of law and fact permitted by the Court, during the trial of this case.

which motion the Court overruled, to which ruling the defendant, by counsel, excepted.

And the defendant having signified his intention of applying to the Supreme Court of Appeals of this State for a writ of error and *supersedeas* to the said judgment, the execution of the said judgment is hereby, upon the motion of the defendant, suspended, for a period of sixty days from the date of said judgment.

Thereupon the defendant moved the Court to admit him to bail, which motion the Court granted and fixed bond in the amount of \$5,000.00 with J. A. Thomas as surety.

Thereupon the said Joe Thurpin and the said J. A. Thomas both appeared in open Court and acknowledged themselves indebted to the Commonwealth of Virginia, in the full and just sum of \$5,000.00 of all their goods and chattels, lands and tenements, and hereditaments, yet to be levied upon this condition; that the said Joe Thurpin, upon the rendering by the Supreme Court of Appeals of this State of its verdict on the said writ of error shall deliver himself to the sheriff of Arlington County, Virginia, to comply with the said decision and not depart thence without due leave from the proper authority, otherwise, this obligation shall be in full force and virtue and as to this obligation, they, the said Joe Thurpin and the said J. A. Thomas, each waive the benefit of their homestead exemptions.

SAM'L G. BRENT, Judge.

page 8 } Circuit Court of the County of Arlington on the
25th day of June, in the year of our Lord Nineteen
Hundred and Twenty-six.

Present: The Hon. Sam'l G. Brent, Judge.

Commonwealth

vs.

Joe Thurpin.

Felony—Violation Prohibition Law Possession.

This day came J. A. Thomas and moved the Court to permit him to withdraw, as surety on the defendant's appeal bond for a writ of error and *supersedeas*, and it appearing to the Court that the said J. A. Thomas has good reasons to be permitted as said surety.

Upon consideration whereof, it is ordered that the Clerk issue a *capias* directed to the Sheriff of this County com-

manding him to arrest the defendant herein and have his body before the Judge of this Court forthwith.

SAM'L G. BRENT, Judge.

page 9 } Circuit Court of the County of Arlington on the
25th day of June, in the year of our Lord Nineteen
Hundred and Twenty-six.

Present: The Hon. Sam'l G. Brent, Judge.

Commonwealth

vs.

Joe Thurpin.

Felony—Violation Prohibition Law Possession.

Now comes the Sheriff and delivers the defendant into Court and the motion of J. A. Thomas, pending herein to release him as surety on the appeal bond is hereby granted.

And the defendant is remanded to jail.

SAM'L G. BRENT, Judge.

page 10 } Commonwealth of Virginia.
In the Circuit Court of Arlington County.

Commonwealth

vs.

Joe Thurpin.

Be it remembered that on the trial of the above styled case after all the evidence had been presented in behalf of the Commonwealth and after the jury had been instructed, the Attorney for the Commonwealth in his opening argument made the following statement to the jury:

Joe Thurpin is under bond in the District of Columbia for violating the prohibition law. He has been raided in the District of Columbia on several occasions by officers in search of liquor. He is the head of a gang of bootleggers in Arlington County. He is known to be a liquor runner and has been for several years, and has accumulated and acquired considerable money and property by this activities as a bootlegger and has been living with Lucy Robertson who was convicted here the other day for bootlegging and his house is the headquarters for bottleggers. To all of which state-

ments defendants, by his counsel, objected, the Court overruled the objection and defendant excepted thereto; the Court instructed the jury not to consider the statements as they have no bearing in the case.

After the jury had retired to its room to consider a verdict, one of the jurors requested privilege of examining the jar and its contents, which was pointed to by the Sheriff as the jar containing liquor which Joe Thurpin was in possession of. The Court then permitted the jury to come into the courtroom and each juror was permitted to smell and examine the contents of said jar, to which action on the part of the Court, defendant, by its counsel, objected, page 11 } and objection was overruled by the Court, to which ruling defendant, by its counsel, excepted and presents this his bill of Exception and prays that the same may be signed and sealed, and made a part of the record; which is done accordingly.

Given under my hand and seal this 17th day of August, 1926.

(Signed) SAM'L G. BRENT, (Seal)
Judge of the Circuit Court of Arlington County, Virginia.

page 12 } Commonwealth of Virginia.
In the Circuit Court of Arlington County.

Commonwealth
vs.
Joe Thurpin.

Be it remembered that after the jury was sworn to try the issue joined in this cause, the Commonwealth, to prove and maintain the issue on its part introduced the following evidence:

The first witness introduced by the Commonwealth after first being duly sworn, stated as follows:

My name is HOWARD W. FIELDS, Sheriff of Arlington County, Virginia. On the 20th day of July, 1924, I was traveling north on Mt. Vernon Boulevard in the County of Arlington, in my automobile, and when at the intersection of the said Mt. Vernon Boulevard, with overhead bridge, I looked up the road to the left and saw Joe Thurpin coming toward me. He was without a coat and had on a thin silk shirt, and I saw a half-gallon jar of liquor inside of his shirt. I could

see that the jar had liquid in it because it was sloshing around as he walked. I called to him and stopped my car. He walked away from me a few steps and pulled his shirt out and let the jar fall in a ditch. I then placed him under arrest and told him that I had told him before to let liquor alone and that he was going to get in serious trouble. He then pulled away from me and ran. I picked up the jar of liquor and went to Joe's house down the street and there were several men there and glasses on the table. I asked them where Joe was and they said he had gone out but would return in a few minutes. That was the last I saw of Joe until he was arrested on the 12th day of June, 1926.

page 13 } In reply to a question as to the reputation of
Joe Thurpin for violation of the prohibition law,
witness stated as follows:

His reputation is bad for violation of prohibition law. I am informed that he has been raided several times in Washington, D. C., and that he is now under bond for violation the prohibition law over there.

Counsel for the accused objected to the testimony, which objection was overruled and exception noted.

Witness stated that his reputation was bad in the District of Columbia, to which counsel for accused objected. Objection was overruled and exception taken. Upon cross-examination, witness stated that even though the accused was several yards away from him and he, the witness was riding along the road in an automobile, he could see through the shirt of the accused the jar of liquor and could see that it contained a liquid; that he did not lose sight of the jar at any time while getting out of the car and that even after accused had dropped same in a ditch he could still see it, and that after he had arrested accused and accused pulled away and ran, he could still see the jar. That he was armed and that he made *not* effort to catch accused but went immediately and took possession of the jar of liquor. He then pointed to a certain jar of liquor setting on a table in the courtroom and stated that, that was the jar which he found and that he could positively identify it. A jar containing one-half gallon of alleged liquor was then offered in evidence by the Commonwealth.

Commonwealth then offered in evidence the record of a former conviction of Joe Thurpin in the said Court for a violation of the prohibition law and proved the same by William H. Duncan, Clerk of said Court. Whereupon the Commonwealth rested its case.

page 14 } The accused, JOE THURPIN, testified as follows:

My name is Joe Thurpin. I live in Arlington County, Virginia. On the day on which the Sheriff arrested me, I was coming down the road toward the Mt. Vernon Highway and saw the Sheriff pass in his automobile. I had nearly crossed the highway when he stopped his automobile, and called me. I walked up to him and he searched me and asked me where was that jar of liquor. I told him I had not had any liquor. He then said you can go ahead. I walked on down to my house, it being then about five thirty in the evening and that night I heard the Sheriff had found some liquor and said it was mine and was looking for me. I went over to Washington and stayed there, coming back to Arlington County once in a while until the time I was arrested. I did not have any liquor on the day the Sheriff says he saw me with some.

Upon cross-examination, the witness stated as follows:

I ran away because I was afraid that they would lock me up in jail. When asked by the Commonwealth Attorney if he meant to call the Sheriff a liar, the witness stated that he did not want to call the Sheriff a liar, and upon being asked if what he stated about not having the liquor was true, witness said it is true.

The Commonwealth Attorney then asked the following questions in the form as follows:

You know you are a bootlegger. You know you are a head of a gang of bootleggers. You know you have liquor runners all over Arlington County and that the police have raided your place a number of times. Whereupon counsel for the defendant objected the form of the questions as well as the questions themselves. Which objection was overruled by the Court and exception was taken.

Commonwealth Attorney then stated as follows:

page 15 } You have been living with Lucy Robertson who was convicted for violating the prohibition law here yesterday and whose house is a bootleggers headquarters and you have been hanging up with bootleggers all the time. To which question and the form thereof, counsel for the accused *objection*. Objection was overruled and exceptions noted. To all of which questions the answer was no. The accused then testified under cross-examination that he worked for a Taxicab Company in Washington, D. C., Commonwealth Attorney then said "You were running liquor in a taxicab." To which counsel for accused objected. Objection was overruled and exception taken.

There being no further testimony the defense rested. To all of which rules of the Court in permitting the said questions *an* answers and refusing to instruct the jury to ignore said questions and answers, the defendant, by his counsel, excepted and presents this his Bill of Exceptions, and prays that it may be signed, sealed and made a part of the records hereof; which is done accordingly.

Given under my hand and seal this 17th day of August, 1926.

SAM'L G. BRENT, (Seal)

Judge of the Circuit Court of Arlington County, Virginia.

page 16 } I, Wm. H. Duncan, Clerk of the Circuit Court of Arlington County, Virginia, the same being a Court of record, do hereby certify that the foregoing copies, are true copies of the originals on file in my office, and that they together constitute the record in the case of the Commonwealth vs. Joe Thurpin, in so far as this transcript of record pertains, and

It is further certified that the Attorney for the Commonwealth has accepted legal service on the notices on the application to the Judge of the said Court for the signing of the Bills of Exceptions herein, and the application for this transcript of record.

Given under my hand this 20th day of August, 1926.

WM. H. DUNCAN,

Clerk of the Circuit Court of Arlington County, Virginia.

A Copy—Teste:

H. STEWART JONES, C. C.

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