

# Record No. 5604

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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CECIL LYONS

v.

COMMONWEALTH OF VIRGINIA

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FROM THE CIRCUIT COURT OF AMHERST 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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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**Record No. 5604**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 29th day of November, 1962.

CECIL LYONS,

Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

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From the Circuit Court of Amherst County  
C. G. Quesenbery, Judge

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Upon the petition of Cecil Lyons a writ of error and *superseas* is awarded him to a judgment rendered by the Circuit Court of Amherst County on the 25th day of June, 1962, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *superseas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

**RECORD**

\* \* \* \* \*

page 6 } REPORT TO AMHERST COUNTY COURT  
AMHERST, VIRGINIA  
SUNDAY MARCH 25, 1962

Name: Cecil Kidd Lyon

Address: Arrington, Va. (Phoenix Cross Roads)

Race: White—Sex: Male

Age: 17, born Dec. 13, 1944 (Verified)

Father: Woodrow W. Lyon, born 1-30-14, now in State Penitentiary for illegal manufacture on Oct. 18, 1961. He was tried and convicted Nov. 27, 1961, given one year to serve, should be out if he made parole now.

Mother: Carrie Lee (Jones) Lyon, born 6-22-17, Arrington, Va., enjoys poor health, operated on at U. of Va. Hospital 2-13-62, depends on Cecil for part of her support, began receiving ADC grant for 2 children; Mary, born 10-17-47 and Elizabeth, born 1-24-50.

Grandfather: Joe Jones, 75, address, State Farm, caught with Woodrow at the pot site 10-18-61 while celebrating his 75th birthday, given six months concurrent sentence with his suspended sentence and banishment from Nelson to Lanexa the year before.

*Referral:* On Oct. 10, 1961 Evelyn Saunders, Supt. DPW Amherst County, wrote to Nelson Co. DPW requesting information on Cecil Lyon. Enclosed was a letter dated 10-2-61 from Hon. L. H. Shrader, Judge Juvenile & Domestic Relations Court, Amherst, to Mrs. Saunders as follows: "Dear Mrs. Saunders: Mr. McClenny has asked me to ask you to give him a report on Cecil Lyon who lives with John H. Mantiply near New Glasgow, Virginia, and who is about sixteen years of age and is charged with assisting in manufacturing whiskey. It is possible that his parents live in Nelson County, Virginia. If I can help you in any way please call me. Thanking you for your prompt attention, I am, Sincerely yours, L. H. Shrader, Judge Juvenile & Domestic Relations Court."

Mrs. Saunders reply on 10-10-61 as follows: "Dear Judge Shrader: Your letter of October 2, regarding Cecil Lyon, received. I visited the Mantiply home at New Glasgow and talked with Mr. Mantiply. He said that Cecil does not live there. Cecil's brother married his daughter, and Cecil visits in the Mantiply home. According to Mr. Mantiply, Cecil

lives with his parents, Mr. and Mrs. Woodrow Lyons at Phoenix, Virginia. He is supposed to be working at the Arrington Cold Storage this week. Since the Lyons live in Nelson County I am sending your request to the Nelson County Welfare Department for attention. Yours truly, Mrs. Evelyn W. Saunders, Superintendent"

On 10-10-61 we inquired of William Whitehead, Nelson County Sheriff, of possible whereabouts of Cecil or his parents as we made a trip to the home and could locate no one. We had tried Arrington Cold Storage, Cecil was not working there, had been seen in a car with his brothers.

On 10-13-61 we again went to the Storage and home—no Cecil. We heard he was in Lanexa visiting family.

On 10-18-61 we talked to Woodrow Lyon and Joe Jones in the Nelson jail, at length. They were just fresh in from the sight of the smashed up still. They denied Cecil was around; said he was visiting his people; said Cecil couldn't possibly be mixed up in manufacturing in Amherst as at the time he was cutting wood for a man.

10-20-61: This date we talked to Evelyn Saunders, giving her information about the family and telling her we could not locate Cecil. She did not know when a hearing would be held.

page 7 } 10-18-61: Carrie Lyon and Cecil in our office as Carrie had heard of our repeated efforts to find Cecil and Woodrow was just caught.

#### *Cecil's Statement & Reaction:*

This boy flatly stated he was not at the scene of a still in Amherst County; that ABC agents, Matthew & Hays, came to Hunter's Store at Clifford and asked which of several boys there was Cecil Lyon, didn't know him by sight, then arrested him and Wayne Mantiply, 21, and took them in accusing them of operating a still the day before. Cecil claimed he was in Amherst County working on an auto transmission for his brother, Robert, when the ABC men raided a still and caught no one, on a negro Arvin Carter's, place over 1/2 mile from where they were.

Cecil said he was bonded out along with Wayne Mantiply, Bond \$5,000.00, by Wayne's father who also hired Assistant Judge Robert E. Tinsley, to defend his son and Cecil. Cecil stated he paid Atty. R. E. Tinsley \$50.00 and was oweing him another \$50.00 whenever tried. We told Cecil and mother to notify us whenever a hearing was set for this boy.

12-18-61: Carrie Lyon in our office; said they had not had a summons for a Juvenile hearing for Cecil in Amherst;

wanted us to request Earl Jordan, Parole Officer, to let Woodrow out as Cecil and Lester, born 2-18-43, could only get in a day now and then cutting firewood for sale. We discussed this with Earl Jordan several days later. He knew of no hearing date set for Cecil; said he was not ordered to make a pre-trial report on Cecil as an adult by the Amherst Circuit Court.

We talked to Dr. Roberts of Lovingsston, who is treating Cecil for malnutrition (too many soft drinks, candy, canned beans and bologna). He advised a more substantial diet for Cecil who is working in fruit repacking at Arrington Cold Storage.

2-2-62: Carrie Lyon in to apply for ADC for 2 young daughters as Woodrow still in jail and Cecil is the only bread earner in the home and he is out of work due to bad weather. Lester lives alone nearby and unemployed, Robert L. Lyon, has two children and a wife to support on part time work.

2-17-62: Visit to Arrington Community. Carrie out of hospital; boys may help with hospital bill for Menomehrorrhagire. Carrie claims Woodrow couldn't work if he got out and could find employment as he has bad eye-sight, bad feet, Arthritis, alcoholism, gland trouble, stomach ulcers and bad back, besides only a 4th grade education.

She said Cecil was cutting wood, behaving and in poor health; had boils and was taking sulfa-drugs. She also said the charges must have been dismissed against Cecil as he had no court summons and Wayne was found not guilty and turned loose.

3-19-62: Carrie Lyon and Cecil at DPW; had received first DPW check for Aid to Dependent Children and was making out with the boy's help and that small grant. Cecil treated by Dr. Gamble for boils and skin eruptions. Carrie got Woodrow's clothes from jail; no word on his release.

3-18-62: Worker saw R. L. Hays in Sheriff's Office here. Mr. Hays asked when we were sending a prehearing report to Amherst Court as they wanted to close the case. He said it was still pending. We told him we had material but had received no copy of Form JS-1 naming charges, setting date of returnable investigation or date of hearing.  
 page 8 } He said he filed charges against Cecil alleging him to be near still site, did not recall the exact charges. He will ask the Amherst Court and Mrs. Saunders, on the way back through Amherst. We told him we saw Mrs. Saunders Sunday at Church and she had asked us to send indormation direct to Amherst County Court. He said the case was made in September, a felony, Cecil being under suspicioin of illegal



manufacture. Also Atty. Tinsley (he believed) defended Mantiply on same charge and Mantiply was dismissed.

3-23-62: Mrs. Margaret T. Burks, Clerk of Amherst County Court, telephoned saying, in questioning, that JC-1 was for their Court and copy never sent out to officer making investigation for Court. She said they needed a pre-sentence report by Mar. 27, 1962. We asked the allegations. She replied, "Charged with operating a still with his father," as near as she could recall; that the Judge did not want a regular pre-hearing report, just a letter giving the facts.

On this basis we make this admittedly inadequate report not knowing what is requested.

*Summary:* This family, caught in the mesh of a near declined economy in a poverty stricken section of a poor County, has been trying to earn a subsistence living, poor worn out land, no industry nearby, large families, little education, scorned by their peers, they and their neighbors earn a hard existence by the flash of the gun, the flip of the hook and an occasional small mash.

Woodrow summed it up very well in his press release, Lynchburg News Nov. 28, 1961, at the time of his sentence, we quote the item. "Through counsel Lyon said his physical condition barred him from a regular job. He said he had been making whiskey to 'help take care of my wife and six children' after being denied material relief by the Welfare authorities."

We collectively plead guilty of this greatest of the Commandments, "love thy neighbor." International Sunday School lesson for today, 3-25-62.

*Plan:* Open.

Respectfully submitted,

PAUL B. MAYS,  
Nelson County Probation  
Officer.

PBM/me  
Enclosure:

Bonus copy of Pre-Hearing Report of another of our wayward boys we assume will be tried in your Court in the near future—Bernard Lee Dolan, #2181.

\* \* \* \* \*

page 10 } Virginia:

At a Circuit Court of the County of Amherst, begun and held at the Court House of said Court in said County, on Monday, the 11th day of June, in the year of our Lord nineteen hundred and sixty-two, in the 186th year of our Commonwealth.

A Special Grand Jury having been ordered by the Court from a list furnished the Court as the law directs, W. E. Gill, Clyde M. Mays, J. Lively Davis, Thomas W. Pettyjohn and F. M. Burleigh, who were regularly and duly sworn a Special Grand Jury of Inquest for the Commonwealth of Virginia, in and for the body of the County of Amherst, and having received their charge from the Court, were sent to their room to consider of their duties, and after some time spent therein, returned into Court and presented the following indictments, to-wit:

\* \* \* \* \*

“Commonwealth of Virginia *v.* Cecil Lyons, Indictment for a Felony, A true Bill”

\* \* \* \* \*

And the jurors having no further business before them were adjourned subject to the call of the Court.

\* \* \* \* \*

page 11 } State of Virginia,  
County of Amherst, to-wit:

In the Circuit Court of Amherst County:

The Grand Jurors of the State of Virginia, in and for the body of the County of Amherst, and now attending said Court at its June Term, 1962, upon their oaths present that Cecil Lyons heretofore, to-wit: on the 14 day of September 1961, within one year next prior to the finding of this indictment, in the said county of Amherst, and within the jurisdiction of the Circuit Court of Amherst County did unlawfully and feloniously manufacture alcoholic beverages without being licensed under the provisions of the *Alcoholic Beverage Control Act* to manufacture such *alcoholic* beverages against the peace and dignity of the Commonwealth of Virginia.

## Second Count.

And the Jurors aforesaid, upon their oaths present that Cecil Lyons, heretofore, to-wit: on the 14th day of Sept. 1961, within one year next prior to the finding of this indictment in the said County of Amherst, and within the jurisdiction of the Circuit Court of Amherst County, did unlawfully and feloniously keep and have in his possession, a still and distilling apparatus, without a permit therefor from the *Alcoholic Beverage Control Board* against the peace and dignity of the Commonwealth of Virginia.

## Third Count.

And the Jurors aforesaid, upon their oaths present that Cecil Lyons, heretofore, to-wit; on the 14 day of Sept. 1961, within one year next prior to the finding of this indictment, in the said County of Amherst, and within the jurisdiction of the Circuit Court of the said County, did unlawfully have in his possession illegal intoxicating *alcoholic* beverages, or ardent spirits and fermented mash for the manufacture of the same, which has been illegally acquired by Cecil Lyons against the peace and dignity of the Commonwealth of Virginia.

Witnesses sworn and sent by the Court to the Grand Jury to give evidence.

Pete Hayes

WM. E. SANDIDGE, Clerk.

page 12 } Virginia:

At a Circuit Court of the County of Amherst, begun and held at the Court House of said Court in said County, on Monday, the 11th day of June, in the year of our Lord nineteen hundred and sixty-two, in the 186th year of our Commonwealth.

\* \* \* \* \*

The said Cecil Lyons this day again came into Court pursuant to his recognizance, represented by counsel of his own choosing, and was set to the bar. On motion of the attorney for the Commonwealth and by consent of the attorney for the



said accused, it is ordered that this case be set for trial on June 25, 1962, at 9:30 o'clock A. M.

Thereupon, the said Cecil Lyons was released until said date upon his present recognizance heretofore entered into in this case.

\* \* \* \* \*

page 19 } We the jury find Cecil Lyons guilty and fix his punishment at 6 months in jail and \$100.00 fine.

WILLIAM O. TUCKER, JR., Foreman.

\* \* \* \* \*

page 20 }

\* \* \* \* \*

At a Circuit Court of the County of Amherst, continued and held at the Court House thereof, on Monday, the 25th day of June, in the year of our Lord nineteen hundred and sixty-two.

\* \* \* \* \*

The said Cecil Lyons this day again came into Court pursuant to his recognizance, represented by his Court appointed counsel, and was set to the bar, and being arraigned upon said indictment pleaded "not guilty." And no writ of *venire facias* having been issued for the trial of this case, there being more than one felony case for trial at this term and only one *venire* summoned as directed by law, it is ordered that the *venire* summoned to this term for the trial of Frank James Collins upon an indictment for a felony, be used for the trial of this case, and a panel of twenty qualified jurors, free from exceptions, being completed from those so summoned, and the attorney for the Commonwealth and the said accused having each stricken from the said panel four of the said jurors in the manner directed by law, the remaining twelve constituted the jury for the trial of the said Cecil Lyons upon the indictment aforesaid, to-wit: T. D. Massie, Robert L. Jennings, Jr., Wm. M. Pollard, Sam Tinsley, Clarence G. Mays, W. O. Tucker, Jr., Walter E. Smoot, Thomas C. Wallace, Esthmus Carson, Arthur H. Coffey, J. Leonard Proffitt and E. Page Coffey, who were duly sworn well and truly to try and a true deliverance to make between the Commonwealth and the said

Cecil Lyons, and a true verdict to render according to the law and the evidence.

page 21 } At the conclusion of all of the evidence the attorney for the accused, Cecil Lyons, moved the Court to strike the Commonwealth's evidence on the grounds that it is not sufficient to warrant a conviction, which motion the Court overruled, to which action of the Court in overruling the said motion the accused, by his attorney, excepted.

And the jury having fully heard the evidence and argument of counsel, were sent to their room to consider of their verdict, and after some time spent therein, returned into Court and rendered the following verdict, to-wit: "We the jury find Cecil Lyons guilty and fix his punishment at 6 months in jail and \$100.00 fine (Signed) William O. Tucker, Jr., Foreman"

Whereupon, the said accused, by his attorney, moved the Court to set aside the said verdict of the jury and grant him a new trial upon the following grounds, to-wit:

1. Whereupon, the Court should have tried the said Cecil Lyons as a juvenile, since he had no previous record and was not shown to be one who could not be adequately controlled or induced to lead a correct life by use of the various disciplinary and corrective measures available to the Court under juvenile law.

2. The verdict of the jury was contrary to the law and the evidence and without evidence to support it.

3. The Court should have struck the evidence of the Commonwealth when the Commonwealth's evidence had been completed and when all the evidence was in.

4. The remark of the Commonwealth's Attorney, that if the jury made a mistake the Judge would correct it, was prejudicial to the accused, and the Court should have declared a mistrial.

5. To sentence a seventeen year old boy to jail for six months for being in the vicinity of an illicit distillery without showing any connection therewith is contrary to public policy, is a harsh and inhuman punishment, and is in violation of the Constitution of Virginia and the Constitution of the United States.

page 22 } Which motion the Court overruled, to which action of the Court in overruling the said motion the said accused, by his attorney, excepted.

Therefore, it is considered by the Court that the Commonwealth of Virginia recover of and against the said accused the One Hundred Dollar (\$100.00) fine, and her cost by her about her *prosecution* in this behalf expended, and that the

said accused be confined and imprisoned in the jail of this county for the term of six months, the period of his confinement therein by the jurors in their verdict ascertained, and further until he pay the fine and cost imposed upon him as aforesaid.

And it appearing that the said Cecil Lyons was lodged in the jail of this County on the 15th day of September, 1961, and was released from jail on September 15, 1961, it is ordered that the said Cecil Lyons be given credit for all time so spent in jail.

And the said Cecil Lyons signifying his intention of applying to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment of the Court in this case, the Court doth postpone the execution of its judgment in this case for a period of sixty days from this date.

And thereupon, the said Cecil Lyons was released upon his present recognizance until the further order of this Court.

\* \* \* \* \*

page 23 }

\* \* \* \* \*

#### MOTION TO SET ASIDE VERDICT.

The defendant, Cecil Lyons, by counsel, moves the Circuit Court of Amherst County, Virginia to set aside the verdict of the jury rendered June 25th, 1962, wherein the said Cecil Lyons was adjudged guilty of the illicit manufacture of intoxicating liquors and was sentenced to six months in jail and fined Ten Dollars (\$10.00), for the following reasons, to-wit:

1. The Court should have tried the said Cecil Lyons as a juvenile, since he had no previous record and was not shown to be one who could not be adequately controlled or induced to lead a correct life by use of the various disciplinary and corrective measures available to the Court under juvenile law.

2. The verdict of the jury was contrary to the law and the evidence and without evidence to support it.

3. The Court should have struck the evidence of the Commonwealth when the Commonwealth's evidence had been completed and when all the evidence was in.

4. The remark of the Commonwealth's Attorney, that if

the jury made a mistake the Judge would correct it, was prejudicial to the accused, and the Court should have declared a mistrial.

5. To sentence a seventeen old boy to jail for six months for being in the vicinity of an illicit distillery without showing any connection therewith is contrary to public policy, is a harsh and inhuman punishment, and is in violation of the Constitution of Virginia and the Constitution of the United States.

page 24 }

\* \* \* \* \*

Filed in Clerk's Office Amherst Circuit Court Aug. 24, 1962.

WM. E. SANDIDGE, Clerk.

#### NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Honorable William M. McClenny, Attorney for the Commonwealth of Amherst County:

#### PLEASE TAKE NOTICE:

That the undersigned will, as soon as can conveniently be done, apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to that certain indictment charging him with manufacturing whisky, and the possession of distilling apparatus upon which he was tried in the Circuit Court of Amherst County, Virginia on June 25th, 1962, and given six months in jail and fined One Hundred Dollars (\$100.00).

As his grounds of appeal the said Cecil Lyons alleges the following errors:

1. The Court erred in not trying him as a juvenile, he having been only sixteen (16) years of age on September 14th, 1961, the date of the alleged crime and being just seventeen (17) years of age at the time of his trial.
2. The Court erred in failing to set aside the verdict of the jury.
3. The Court erred in failing to strike the evidence of the Commonwealth, both when the Commonwealth's evidence had been completed and when all of the evidence had been heard.

4. The Court erred in failing to declare a mis-  
 page 25 } trial when the Commonwealth's Attorney told the  
 jury that if they made a mistake the Judge would  
 correct it.

Respectfully,

CECIL LYONS  
 By HAROLD B. SINGLETON  
 Counsel.

\* \* \* \* \*

page 26 } Filed in Clerk's Office Amherst Circuit Court  
 Sep. 3, 1962.

WM. E. SANDIDGE, Clerk.

\* \* \* \* \*

# STATEMENT OF THE EVIDENCE AND THE FACTS OF THE TRIAL JUNE 25, 1962.

Cecil Lyons, a seventeen year old boy, was tried by a jury of twelve men at the bar of the Circuit Court of Amherst County, Virginia on June 25th, 1962, on an indictment, charging the manufacture of whisky and the possession of distillery apparatus on November 14th, 1961, at which time he was sixteen years of age. He was convicted and given six months in jail and fined One Hundred Dollars (\$100.00).

At the outset of the trial his attorney moved the Court to try him as a juvenile, which motion was overruled by the Court and excepted to by his attorney.

The only witness called by the Commonwealth was Ronald Hayes, investigator for the Virginia Alcoholic Beverage Control Board, who testified that on September 14th, 1961, he and investigators, Matthews and Robertson, were checking an illicit distillery on the property of a man named Carter about three hundred yards from the home of a Mantiplay family; that the still was located near New Glasgow, in Amherst County, Virginia; that as he and Robertson approached the still site from opposite sides a *god* started barking and ran down towards Robertson; that he saw two young boys at the still site; that he could not make out what they were doing, but that they were moving within the still site. The boys stepped up on a high bank and from this position were observing. The indications were that the boys had observed

Hayes' position. Hayes, who was crouched behind a large bush, got the idea that they had spotted him because they  
page 27 } left and ran up to the Mantiply home. One of the boys was tall and the other of medium height. He could not get a good view of the tall boy's face, but did get a good view of the shorter boy. Hayes stated that he came within forty or fifty feet of the boys. The next day he saw the boys at Hunter's Service Station near Temperance School and recognized them as the ones he had seen at the still site. He arrested both of them but later dismissed the tall boy, whose name turned out to be Wayne Keith Mantiply, because he had some doubt as to whether he was the boy he had seen at the still site.

On cross examination Hayes was asked how Lyons was dressed, and he said that he wore normal clothing. He did not know whether the boy he saw at the still site wore glasses or not, but he knew Lyons was the one he saw at the still site. He recognized Lyons as the boy whom he had seen at the still site when he saw him at the Hunter's Service Station the next day. He said that he had observed Lyons from a distance of seventy-five (75) or a hundred feet and from a distance of forty or fifty (40 or 50) feet and that the boy who was being tried was one of the boys he had seen at the still site.

The Commonwealth then rested, and the motion of Lyons' attorney to strike the evidence was overruled, whereupon, the attorney excepted to the Court's action in overruling his motion.

The defendant then called Wayne Keith Mantiply, who testified that on the 14th of September, 1961, he and Lyons had assisted Robert Lee Lyons, Cecil's brother, and his brother in law, in working on his car until about 11:30 A. M. at which time they started for Cecil's home at Fenix, Virginia, about seven miles away. They walked to Cecil's home, arriving there about 1:30 or 2:00 in the afternoon. They were there to get a tie rod for Cecil's car. Cecil wore his greasy clothes. As soon as they had gotten the tie rod  
page 28 } they returned to the Mantiply home. He denied that either he or Cecil had been near a still and denied knowing anything about the still which Hayes described.

On cross examination Mantiply said he did not know anything about the still and how long it had been at its present location. He was asked why he would walk seven miles and he said he had no other way to go. He said he knew nothing about the operation of a still or what makes it go.

The next witness called by the defense was Carrie Lee Lyons, the defendant's mother. She said that on September 14th, 1961, sometime after one o'clock P. M. Cecil Lyons and

Wayne Mantiply came to her home for a part on some kind of car. They stayed at her house until about six P. M. and when they left, they left there walking. She said they went straight to work on the car, trying to get a tie rod off, that this took some time. She did not look at the clock, but it was close to sundown when they left. Her son, Cecil, had worked for the Mantiplys and lived at their home most of the summer. He did not have an automobile. She further testified that he would be eighteen December 13th, 1962.

Lester Wilson Lyons testified that he was a brother of Cecil Lyons, and nineteen years of age. He estimated that on September 14, 1962, Cecil and Wayne Mantiply reached his mother's house a little after twelve. They wanted a tie rod for a '49 Plymouth. He tried to explain why it took them so long to get one off of the car at his house. He then said it did not take them long. Cecil and Wayne then left and went back. Lester said Cecil did have a car at New Glasgow, a '49 Plymouth. His mother knew he had this car. He did not remember what kind of work he was doing at the time. He said it was seven miles from Fenix to New Glasgow.

Robert Lee Lyons, brother of Cecil, testified that Cecil got up around eight or nine o'clock and helped him work on his car until about eleven A. M., when he said he was going over to his house to get a tie rod. He and Wayne Mantiply  
page 29 } left walking and did not come back until dark. He said Cecil had worn glasses since he started to school; but had broken them and was not wearing them on September 14th 1961 that he was working for the Mantiplys getting out timber and had been doing so all summer. Around the middle of the day he heard a fellow yell that a dog was about to bite him. It was Mr. Hayes, the A. B. C. man. Mr. Hayes told him about the still. This was the first he had heard of it. He said he had lived at the Mantiply house since his marriage to a Mantiply girl. He estimated that the still was a half mile from the Mantiply house and on the property of a man named Carter.

Cecil Lyons was the last witness for the defense. He said that he helped his brother repair his car until after eleven A. M. when he left to go to Fenix for a tie *road* for his car which would not run. He had to walk because he had no way to ride. Wayne Mantiply went with him and they got to his house about one P. M. or a little after. He took a tie rod off of a car and then sat around the house talking to Lester. He stayed at home until about six P. M. when he and Wayne started walking back. He denied any knowledge of a still, and denied that he had on glasses that day as his were broken.

On cross examination he said the public road was about a



half mile from his house. He described it as being a "little small" public road. There is a Church on the side of the road. You go on by the Church. You go on down to the New Glasgow bridge across the train track a half mile, then by three small stores, across the railroad bridge to Tye River two and a half miles. It is about five or five and a half miles to my house. Asked if it were not seven or eight miles, he replied that he had not measured it. He said he walked every inch of it. His car broke down a day or so before. A tie rod  
page 30 } dropped off. Asked why he was not working, he replied there was no timber to cut that day. He said he had cut five or six places. He said he had never been to the still site.

The defense then rested, and Mr. Hayes was recalled. He was asked where Mr. Matthews, another A. B. C. investigator was, and replied that he was sick and unable to come to Court. He described a path going down past and old out building to a fence which continued on down to a wooded area near the still site. There was some timber that had been cut, but this timber had not been cut recently.

The prosecution then rested and the defendant moved to strike the Commonwealth's evidence. This motion was overruled and the defendant excepted.

The jury was instructed, and the case was argued. During the argument the attorney for the Commonwealth said "If you make a mistake the Court can correct it." This was objected to by the defendant, and the Court directed the jury to disregard the Commonwealth's Attorney's argument. Defendant thought the Court should have declared a mistrial and excepted.

The jury found the defendant guilty and gave him six months in jail and a fine of One Hundred Dollars (\$100.00).

The defendant moved the Court to set aside the verdict on the following grounds:

1. The Court should have tried the said Cecil Lyons as a juvenile, since he had no previous record and was not shown to be one who could not be adequately controlled or induced to lead a correct life by use of the various disciplinary and corrective measures available to the Court under juvenile law.

2. The Court should have struck the evidence of the Commonwealth when the Commonwealth's evidence had been completed and when all the evidence was in.

3. The verdict of the jury was contrary to the law and the evidence and without evidence to support it.

page 31 } 4. The remark of the Commonwealth's Attorney, that if the jury made a mistake the Judge would

correct it, was prejudicial to the accused, and the Court should have declared a mistrial.

5. To sentence a seventeen year old boy to jail for six months for being in the vicinity of an illicit distillery without showing any connection therewith is contrary to public policy, is a harsh and *inuman* punishment, and is in violation of the Constitution of Virginia and the Constitution of the United States.

This motion was overruled and the defendant excepted.

The defendant asked for a sixty day suspension in order to apply to the Supreme Court of Appeals for a writ of error and *supersedeas*. This was granted, and the defendant was discharged on his bond.

I, Harold B. Singleton, counsel for Cecil Lyons, do hereby certify that this day I delivered to William M. McClenny, Attorney for the Commonwealth for Amherst County, Virginia, a true copy of the foregoing statement of the evidence and the facts of the trial June 25th, 1962.

Given under my hand this 24th day of August, 1962.

HAROLD B. SINGLETON  
Counsel for Cecil Lyons.

Tendered on 8/24/62.  
Signed 9/3/62.

C. G. Q.

A Copy—Teste:

H. G. TURNER, Clerk.

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