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**Record No. 710**

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**CHARLIE SPRATLEY, Appellee,**

v.

**COMMONWEALTH OF VIRGINIA,  
Appellee.**

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FROM THE HUSTINGS COURT OF THE CITY OF PORTSMOUTH.

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“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.

154 Va 854

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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CHARLIE SPRATLEY, Appellant,

v.

COMMONWEALTH OF VIRGINIA, Appellee.

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

Your petitioner, Charlie Spratley, represents that he is aggrieved by a judgment in the Court of Hustings for the City of Portsmouth entered on the 13th day of December, 1928, in which said judgment Charlie Spratley was sentenced for a term of two (2) years, upon a verdict of a jury in which he was found guilty on an indictment charging him with transporting ardent spirits in an automobile, having in said automobile a loaded pistol at the time said ardent spirits were being transported.

There is only one Bill of Exception in this case, that being that the verdict of the jury was contrary to the law and the evidence.

ARGUMENT.

There is no better settled principal of law than that a man, in order to be convicted, must be confronted with some evidence of his guilt, and in this case the only testimony for the Commonwealth is that of a police officer, Leroy Saunders, who testified that he arrested these three men in an automobile on the back seat of which were Willie Stancil and Charlie Spratley and front of them were three (3) five-gallon flasks of whiskey in a tow bag, and on the seat with them, one (1) gallon jug and two (2) pint bottles, part of which were in paper bags; and that on the front seat was Clarence Stancil who had by him a loaded thirty-eight calibre revolver,

and also there was taken from the car a belt containing cartridges.

This was all the testimony for the Commonwealth.

To contradict this testimony, both Clarence Stancil and Willie Stancil testified, as did Charlie Spratley, that they picked up Charlie Spratley on the road between Churchland, Virginia, and Portsmouth, Virginia, he having asked them for a ride, and picked him up at a point known as "Three Corners", and were bringing him to Portsmouth. It was late at night and all three men testified that Charlie Spratley knew nothing whatsoever of the presence of this liquor in the car at the time they took him in; that he had no connection with the car and that he had nothing to do with the whiskey, and had no interest whatsoever in it. Therefore, there is no evidence other than his presence in the car to connect him with ownership, control or knowledge of the whiskey, all three of which are denied by the other witnesses.

Willie Stancil testified that the whiskey was his and that his brother, Clarence Stancil, knew nothing of the presence of it in the back of the car, he having put it there and told his brother, Clarence Stancil, that it was some vegetables which had been given him in Churchland.

Clarence Stancil testified that the pistol which he had was given him as security for part payment of an automobile which he had sold in North Carolina that day and that he was bringing it home to take care of until the car was paid for; that he did not know that his brother had the whiskey in the back of the car as his brother had taken the car while he was at a dance in Churchland.

The whole testimony in this case tends to show that Charlie Spratley had no connection whatsoever with this whiskey, he being a mere passenger who was picked up on the road and given a free ride to the City. There is no evidence to connect him as a friend of the Stancils or to hold him for any criminal act other than being in the automobile, which of itself does not constitute a crime.

Willie Stancil absolutely claims ownership of the ardent spirits in question and absolves not only Charlie Spratley, but Clarence Stancil, from any connection whatsoever with the whiskey.

In view of this simple testimony your petitioners feel that there should have been no penalty placed against Charlie Spratley and Clarence Stancil, and that for this reason the case should be reversed and that a *supersedeas* should be granted as to both Charlie Spratley and Clarence Stancil,

and that the judgment as to these two defendants should be set aside and a new trial granted.

Your petitioners have attached hereto copy of the record and the evidence in this case, which is made a part of this petition.

Respectfully submitted.

CLARENCE STANCI,  
CHARLIE SPRATLEY,  
WILLIE STANCI.

By HARRY A. BRINKLEY,  
Their Attorney.

I, Harry A. Brinkley, an Attorney practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion the judgment of the Court in the above case of the Commonwealth vs. Clarence Stancil, Charlie Spratley and Willie Stancil should be reviewed and reversed.

HARRY A. BRINKLEY.

Rec'd June 6, 1929.

H. S. J.

Virginia:

In the Supreme Court of Appeals, held at the Court House of Wythe County, in the Town of Wytheville, on Tuesday, the 11th day of June, 1929:

The petition of Clarence Stancil, Charley Spratley and Willie Stancil for a writ of error and *supersedeas* to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 13th day of December, 1928, in a prosecution therein by the Commonwealth against petitioners for a violation of the prohibition law, whereby they were found guilty and the said Clarence Stancil was sentenced to serve a term of three years in the penitentiary. And the said Charley Spratley and Willie Stancil were sentenced to serve a term of two years each in the penitentiary, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right as to Clarence Stancil and Willie Stancil doth reject said petition and refuse said writ

## Supreme Court of Appeals of Virginia.

of error and *supersedeas* as to them, the effect of which is to affirm the said judgment as to Clarence Stancil and Willie Stancil.

Upon the petition aforesaid of Charley Spratley a writ of error is allowed and *supersedeas* awarded him to the said judgment of the Court of Hustings for the City of Portsmouth entered on the 13th day of December, 1928; but this *supersedeas* is not to operate to discharge the said petitioner from custody, if in custody, nor to release his bail, if out on bail.

A Copy—Teste:

J. M. KELLY, Clerk.

Copy to Hustings Court.

VIRGINIA:

Pleas before the Court of Hustings for the City of Portsmouth, at the Court-house of said City on the 10th day of January, 1929:

Commonwealth of Virginia

vs.

Clarence Stancil, Charlie Spratley and Willie Stancil.

UPON AN INDICTMENT FOR TRANSPORTING  
ARDENT SPIRITS WITH FIRE ARMS.

Be it remembered, that the special grand jury impanelled and sworn in the Court of Hustings for the City of Portsmouth, at the term thereof commencing on the 20th day of September, 1928, in and for the body of said City, and attending said court, found an indictment against Clarence Stancil, Charlie Spratley and Willie Stancil, which with the endorsement thereon by the Foreman, is as follows:

Commonwealth of Virginia,  
City of Portsmouth, To-Wit:

In the Court of Hustings for the City of Portsmouth:

The Grand Jurors in and for the body of said City of Portsmouth, and now attending said Court at its September, 1928, term, upon their oaths, do present that Clarence Stan-

cil, Charlie Spratley and Willie Stancil, within one year next prior to the finding of this indictment, in the said City of Portsmouth, did unlawfully sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise and receive orders for ardent spirits.

Against the peace and dignity of the Commonwealth of Virginia.

2nd Count. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Clarence Stancil, Charlie Spratley and Willie Stancil, on the 6th day of July, 1928, did unlawfully and feloniously transport ardent spirits in an automobile from one point in the City of Portsmouth to another point in the said City of Portsmouth, they the said Clarence Stancil, Charlie Spratley and Willie Stancil, having in the said automobile a loaded pistol at the time the said ardent spirits were being transported, as page 2 } aforesaid,

Against the peace and dignity of the Commonwealth of Virginia.

3rd Count. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Clarence Stancil, Charlie Spratley and Willie Stancil, on the 6th day of July, 1928, did unlawfully have in their possession ardent spirits, which were illegally acquired by them since the 1st day of November, 1916, contrary to the form of the statute in such cases made and provided, against the peace and dignity of the Commonwealth of Virginia.

ROBT. B. ALBERTSON,

Commonwealth's Attorney.

A True Bill,

H. A. IRVING, Foreman.

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the Courthouse of said City, on the 13th day of December, 1928.

At this day came the Attorney for the Commonwealth and the defendants, Clarence Stancil, Charlie Spratley and Willie Stancil each being called, each appeared in Court in answer to their recognizances, and each being arraigned, tendered a plea of "Not Guilty", and from a list furnished the

Sergeant of this City by the Clerk of this Court, Court, and from lists furnished by the Court, a panel of twenty jurors, free from exceptions was completed, and from said panel, the Attorney for the Commonwealth and the accused each erased four, each erasing one name alternately, the Attorney for the Commonwealth erasing the first name and the remaining twelve constituted the jury for the trial of the case, to-wit: Moses Luke, Geo. N. Nelson, B. E. Jewell, S. M. Brooks, W. C. Eley, Geo. W. Batcheller, Geo. W. Eason, T. C. Owens, Geo. O. Diggs, R. C. Buck, J. H. Joy and H. Reid Wilkins, who being duly sworn the truth of and upon the premises to speak, and having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict, and after sometime returned into Court, having found the following verdict: "We the Jury find the defendants Guilty, as charged in the indictment and fix their punishment as follows: Clarence Stancil page 3 } 3 yrs. in penitentiary, Charley Spratley and Willie Stancil, each two years in penitentiary. J. H. Joy, Foreman"; whereupon, the defendants, Clarence Stancil, Charlie Spratley and Willie Stancil, by counsel, moved the Court to set aside the said verdict and grant them a new trial, on the ground that the said verdict is contrary to the law and evidence, which motion being heard, the Court doth overrule the same, to which ruling of the Court, the defendants, by counsel, excepted; and thereupon, it being demanded of the said Clarence Stancil, Charlie Spratley and Willie Stancil, if anything for themselves they had or knew to say, why the Court here should not now proceed to pronounce judgment against them, according to law, and nothing being offered or alleged in delay of judgment, it is considered by the Court that the said Clarence Stancil, Charlie Spratley and Willie Stancil, each be confined in the Public Jail or Penitentiary House of the Commonwealth, the said Clarence Stancil, for the term of Three (3) years, and the said Charlie Spratley and Willie Stancil, each for the term of Two (2) years, the period by the jurors in their verdict ascertained. And the Clerk of this Court is directed to forthwith transmit to the Superintendent of the Penitentiary, a copy of his judgment; but the said Clarence Stancil, Charlie Spratley and Willie Stancil, having signified their intention to appeal to the Supreme Court of Appeals of Virginia, for a writ of error, to this judgment, it is ordered that execution of sentence against them be suspended for Sixty (60) days, from the date of this order.

And the prisoners are committed to jail.

And at this day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the Courthouse of said City, on the 10th day of January, 1929.

At this day came the parties by their Attorneys and the defendants, Clarence Stancil, Charlie Spratley and Willie Stancil, tendered their Bill of Exceptions, No. 1, which was this day signed by the Judge of this Court and made a part of the record of this case, after it appearing in page 4 } writing, that the Attorney for the Commonwealth had been given proper notice according to law of the time and place of tendering said Bill of Exceptions.

The Bill of Exceptions referred to in the foregoing order is in the words and figures following, to-wit:

Virginia:

In the Court of Hustings for the City of Portsmouth:

Commonwealth of Virginia, Plaintiff,

v.

Clarence Stancil, Willie Stancil and Charlie Spratley, Defendants.

#### BILL OF EXCEPTIONS.

Be It Remembered, That after the Jury was sworn to try the issue joined in this cause, the following evidence for the Plaintiff and Defendant was introduced:

#### TESTIMONY OF POLICE OFFICER, LEROY SAUNDERS.

Witness testified that on the morning that these men were arrested he observed their car coming down County Street, near Effingham Street, in the City of Portsmouth, Virginia, between one and two o'clock in the morning and becoming suspicious he directed them to drive to the side of the street and stop, and upon investigation he found a Dodge Touring Car which was being operated by Clarence Stancil, and on the back seat were Willie Stancil and Charlie Spratley, and that in front of them on the floor were three five-gallon flasks of whiskey in tow bags and with them on the back seat one-gallon jugs and one-half gallon jugs of whiskey, and two

pint bottles, one full and one half full of whiskey, the gallon and half-gallon jugs being in paper bags and the two pint bottles unwrapped and uncovered. He further testified that in the Police Court Willie Stancil said that the whiskey was his and that the others had nothing to do with it. Witness also testified that he took from the front seat beside Clarence Stancil a loaded thirty-eight calibre revolved and from the car a belt containing cartridges, both of which were exhibited in evidence, and that Clarence Stancil told him (the witness) when arrested that the whiskey, gun and page 5 } car were all his (Clarence Stancil's) property.

FOR THE DEFENDANTS:

*Testimony of Clarence Stancil.*

Witness testified that he had been that day to Como, North Carolina, where he had sold a car to a man by the name of Paul Jordan; that the purchaser of this car lacked the sum of \$25.00 in paying him for the car and that he took the pistol and belt as security for the payment of the \$25.00; that on that day he drove from Como, North Carolina, to Churchland, Virginia, where his father lived, intending to pay him a visit; that while in Churchland he ascertained that a dance was to be given and left his car at his father's house, walking a short distance to the hall where he attended the dance and when he returned that his brother told him he had used the car and that he had some vegetables in the back of the car which had been given him; that he got in the front seat, and his brother in the back, and started home and when at a place on the road between Churchland and Portsmouth, known as the "Three Corners" they met Charlie Spratley who requested them to give him a lift to Portsmouth, which they did; that he knew nothing of the packages which were in burlap bags except what his brother had told him, and did not know that it was intoxicating liquor, and that Charlie Spratley knew nothing of what was in the car also, as far as he knew; and that the pistol was lying on the seat beside him with the cartridge belt in the pocket of the car, and that he was simply bringing it to town to keep as security for the \$25.00 due him.

*Testimony of Willie Stancil.*

Willie Stancil testified that on the day and night in question he was at his father's house in Churchland, Virginia,

when he was offered the whiskey at a low price by  
 page 6 } a man in Churchland, and that he purchased it and  
 hid it some little distance from the road in a clump  
 of bushes, and that when his brother came he thought it was  
 a good opportunity to get the liquor home so he took it and  
 put it in the back of his brother's car and told his brother it  
 was some bags of vegetables which had been given him; that  
 his brother knew nothing of the contents of these bags and  
 that he had nothing whatever to do with the whiskey, and  
 owned none of it, and that he, Willie Stancil, had no knowl-  
 edge of the pistol in the car, and that his brother, Clarence  
 Stancil, had attended a dance that night in Churchland and  
 had no knowledge that they had whiskey in the automobile.  
 Witness also corroborated Clarence Stancil in that they  
 picked up Charlie Spratley at "Three Corners" on the road  
 between Churchland and Portsmouth, Virginia, when he asked  
 for a lift, and that he had no knowledge of the whiskey and  
 had nothing to do with it.

*Testimony of Charlie Spratley.*

Charlie Spratley testified that he had been out to visit a  
 friend at "Three Corners" on the road between Churchland  
 and Portsmouth, Virginia, and was getting ready to wait for  
 the bus which came by when he saw this car with the Stancils  
 in it, which he hailed and asked for a lift; that he was taken  
 in and saw the bags and did not know whiskey was in the bags,  
 knowing nothing of their contents until they were all arrested;  
 that he had no interest in the whiskey and would not have  
 ridden in the car if he had known there was whiskey in it,  
 and that he did not know anything about, nor did he see the  
 pistol until they were arrested.

Upon which evidence the jury rendered a verdict of  
 "guilty" and fixed the punishment of Clarence Stancil at  
 three (3) years in the Penitentiary, and Willie Stancil and  
 Charlie Spratley at two (2) years each in the Peni-  
 page 7 } tentiary.

Whereupon the defendants moved that the verdict  
 be set aside upon the grounds that it was contrary to the  
 law and the evidence, submitting the motion without argu-  
 ment; and thereupon the Court overruled the said motion to  
 set aside said verdict and grant a new trial, to which action  
 and ruling of the Court in refusing to set aside said verdict  
 and grant a new trial the defendants then and there excepted,  
 and prays that this Bill of Exceptions No. 1, may be signed

## Supreme Court of Appeals of Virginia.

and sealed and made a part of the record in this case, and the same is accordingly done.

And Be It Further Remembered, That this Bill of Exceptions No. 1 was signed and sealed within sixty (60) days from the time said Court pronounced judgment, and after legal notice to the Attorney for the Commonwealth.

Given under my hand this 10th day of January, 1929.

K. A. BAIN,  
Judge of the Court of Hustings for the  
City of Portsmouth.

State of Virginia,  
City of Portsmouth, to-wit:

I, L. L. Thompson, Clerk of the Court of Hustings for City of Portsmouth, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record in the foregoing cause; and I further certify that the notice required by Section 6339, Code of 1919, was duly given in accordance with said section.

Given under my hand this 8th day of May, 1929.

L. L. THOMPSON, Clerk,  
By KENNETH A. BAIN, Jr., D. C.

A Copy—Teste:

H. STEWART JONES, C. C.

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