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Record No. **4314**

In the
Supreme Court of Appeals of Virginia
at Richmond

COMMONWEALTH OF VIRGINIA

v.

OLAN MILLS, INCORPORATED, ET AL.

FROM THE CORPORATION COURT OF DANVILLE

RULE 5:12—BRIEFS.

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

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

H. G. TURNER, Clerk.

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

196VA898

RULE 5:12—BRIEFS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLERK
SUPREME COURT OF APPEALS

RECEIVED
AUG 3 1954
RECEIVED
RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 4314

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 3rd day of May, 1954.

COMMONWEALTH OF VIRGINIA, Appellant,

against

OLAN MILLS, INCORPORATED, ET AL., Appellees.

From the Corporation Court of Danville.

Upon the petition of Commonwealth of Virginia an appeal is awarded her to an order entered by the Corporation Court of Danville on the 29th day of October, 1953, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and Olan Mills, Incorporated, et al., were defendants, no bond being required.

RECORD

* * * * *

PARTICULAR OFFENSES WARRANT

Commonwealth of Virginia,
City of Danville, to-wit:

To Any Police Officer of said City:

WHEREAS, O. J. Hanks, W-M- License Inspector of said City, has this day made voluntary complaint and information on oath before me, the undersigned, of said City that P. W. McCarter, W-M- Agent of Olan Mills Inc. on the 1st day of June, 1953, in said City, did unlawfully Violate Section 58-393 Va. State Code to-wit operate Photographers business without a License, in violation of the laws of the Commonwealth and ordinance of the City.

THESE ARE, THEREFORE, in the name of the Commonwealth of Virginia to command you forthwith to apprehend and bring before the Trial Justice Court of said City, the body of the said Defendant to answer said complaint and to be further dealt with according to law.

And you are hereby commanded to summon
.....
.....
to appear at the Trial Justice Court as a witness in the above case.

Given under my hand this 1st day of June, 1953.

JOHN O. SIZEMORE
Clerk-Deputy Clerk-Complaint Officer.

(on back)

Occupation	Age	Color	Married-Single	Sex	Address
Salesman	31	W	M	M	Fair Grounds Trailer Park

123983

1556

APPEAL

Commonwealth

v.

Pleas Wilber McCarter

To July Co. 1953 (6th)

1953 June 26th

Filed in Clerk's Office

1953 July Co. Cont'd.

1953 Sept. Co. Cont'd.

1953 Oct. Co. (29th) Dismissed by the Court after jury waived.

Appeal Noted Jun. 10, 1953

Executed 6-1-53 Set For 6-10-53

Executed By Towler & Chaney

Jailed Summoned

Cont'd to Bonded For 6-10-53

Recog. Bond

Appeal Noted Jun. 10, 1953

Adjudged Guilty as Charged.

Sentenced to . . . Days on City Farm.

Fined as Indicated Below.

CITY FINES, ETC.

Fine	
Costs: Warrant, Arrest, Sum.	2.00
Jail Commitment Fee	
Jail Board Fee	
Auto Fee	
Trial Fee	2.00
Commonwealth Atty's Fee	2.50
Clerk Court Fee	
Search Warrant Fee	
Witness Fees	
Bail Fee	
Total	<hr/> 6.50

Supreme Court of Appeals of Virginia.

STATE FINES, ETC.

FINE	50.00
Costs: Clerk Cor'n. Court	1.25
Jail Committal Fee	
	<hr/>
Total	51.25

Jun. 10, 1953

CALVIN W. PERRY, Trial Justice.

page 2 } PARTICULAR OFFENSES WARRANT

Commonwealth of Virginia,
City of Danville, to-wit:

To Any Police Office of said City:

WHEREAS, O. J. Hanks, W-M- License Inspector of said City, has this day made voluntary complaint and information on oath before me, the undersigned, of said City that Olan Mills, Inc. P. W. McCarter, District Manager and Agent, on the 1st day of June, 1953, in said City, did unlawfully Violate Section 58-393 Va. State Code to-wit operate Photographers business without a License in violation of the laws of the Commonwealth and ordinance of the City.

THESE ARE, THEREFORE, in the name of the Commonwealth of Virginia to command you forthwith to apprehend and bring before the Trial Justice Court of said City, the body of the said Defendant to answer said complaint and to be further dealt with according to law.

And you are hereby commanded to summon
.
.
to appear at the Trial Justice Court as a witness in the above case.

Given under my hand this 1st day of June, 1953.

JOHN O. SIZEMORE
Clerk-Deputy Clerk-Complaint Officer.

(on back)

Occupation Age Color Married-Single Sex Address

1556

123982

APPEAL

Commonwealth

v.

Olan Mills, Inc.

P. W. McCarter—Agent

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Trial Fee	2.00
Commonwealth Atty's Fee	2.50

Supreme Court of Appeals of Virginia.

Clerk Court Fee	
Search Warrant Fee	
Witness Fees	
Bail Fee	
Total	<u>6.50</u>

STATE FINES, ETC.

FINE	50.00
Costs: Clerk Cor'n. Court	1.25
Jail Committal Fee	
Total	<u>51.25</u>

Jun. 10, 1953

CALVIN W. PERRY, Trial Justice.

* * * * *

page 27 } STIPULATION BY COUNSEL AS TO FACTS
 IN THE CASES OF COMMONWEALTH OF
 VIRGINIA V. PLEAS WILBER McCARTER AND
 COMMONWEALTH OF VIRGINIA V. OLAN MILLS,
 INCORPORATED AND P. W. McCARTER.

The undersigned, Eugene A. Link, Commonwealth Attorney for the City of Danville, Virginia, and Garrett and Wheatley, Attorneys of record for Pleas Wilber McCarter and Olan Mills, Incorporated in the two above styled cases, do hereby stipulate and agree that the facts which shall form the basis of the Court's decision in said two cases are as follows:

"Employed by Olan Mills, Incorporated, a Tennessee corporation, qualified to do business in the State of Virginia and under the direct supervision of the principal office of said corporation located in Chattanooga, Tennessee, an advance sales unit, composed of from two to five salesmen, canvass or solicit orders in a municipality for photographs. All orders are accepted for future delivery to be manufactured, processed and finished in Chattanooga, Tennessee. At the time an order is accepted the customer is notified where and when to appear and have the 'sitting' or 'exposure' made. A fifty (50c) cent deposit is collected at this time. These sittings or exposures are made customarily at a leading hotel in the municipality

or at some other location rented on a temporary basis. The customer is given the original copy of the order. The corporation reserves the right to accept or reject any order, accepted by its salesmen.

‘At the appointed time and place, a cameraman, also employed by and under direct supervision of the principal office of the corporation located at Chattanooga, Tennessee, takes the sitting or exposure. At this time an additional deposit of 50c is collected. These negatives are then sent by the United States mails to the corporation’s plant at Chattanooga, Tennessee. They are there developed, processed and
page 28 } proofs manufactured. These proofs are then sent by the United States mails to another representative located at the place where the order was taken and also employed by said corporation and acting under the direct supervision of the principal offices of the corporation in Chattanooga, Tennessee. The customer is notified by the United States mails as to the day and place to select the proof and order any additional pictures desired. For the One (\$1.00) Dollar deposit paid the customer is to receive one 8x10 size unmounted photograph. These orders are then sent by the United States mails to the corporation’s plant in Chattanooga, Tennessee, where the finished photographs are processed, finished or manufactured and mailed directly to the customer. Any balance due on the order, arising out of orders for additional photographs, mountings, tinting the finished prints, etc., all of which is done at the corporation’s plant in Chattanooga, Tennessee, is paid cash on delivery. No part of the processing or manufacturing is done within the City of Danville or the State of Virginia.

‘The warrant against Pleas Wilber McCarter was issued by reason of his soliciting an order for a photograph and performing the duties of his employment by said corporation as a member of an advance sales unit of the corporation in the City of Danville, Virginia, pursuant to the manner in which the corporation conducts its business as hereinabove outlined and while acting under the direct supervision of said corporation’s principal office located at Chattanooga, Tennessee. The warrant against Olan Mills, Incorporated and P. W. McCarter was issued to cover the corporation’s criminal liability for the acts of the said P. W. McCarter and its other employees in the City of Danville, including its cameraman, who, it is stipulated and admitted, took sittings or exposures in the City of Danville, Virginia as an employee of said corporation and un-

der the direct supervision of said corporation's principal office located in Chattanooga, Tennessee."

Given under our hands this 25 day of July, 1953.

page 29 }

EUGENE A. LINK
Commonwealth Attorney for
the City of Danville, Virginia
618 Masonic Building
Danville, Virginia.

GARRETT AND WHEATLEY
By C. STUART WHEATLEY
A Member of the Firm
824 Masonic Building
Danville, Virginia
Counsel for Defendants.

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* * * * *

ORDER.

This day came the Attorney for the Commonwealth, as well as the defendants named in the two above styled warrants, that is, Olan Mills, Incorporated and P. W. McCarter, District Manager and Agent, (Warrant No. 1) and Pleas Wilber McCarter (Warrant No. 2) by Counsel, and on motion of Counsel for said defendants, with the consent of the Attorney for the Commonwealth and with the assent of the Court, the two aforesaid warrants having been consolidated and tried together, and neither party requiring a jury, with the consent of the Attorney for the Commonwealth and with the assent of the Court, the Court proceeded to hear and determine the two aforesaid cases without the intervention of a jury, and on the stipulation of facts entered into between the Attorney for the Commonwealth and Counsel for the defendants and heretofore filed in this cause, and the Court having heard the argument of counsel for defendants, argument by the Attorney for the Commonwealth having been waived, the Court is of the opinion (1), that Section 58-393 of the Code of Virginia page 31 } 1950 as amended is not so drafted as to cover the type of operation carried on by the defendants as set forth in the aforesaid stipulation of facts; that is, that the aforesaid statute by its terms is confined to persons "who shall canvass for any photographer or shall act as the agent

for the photographer in transmitting pictures or photographs to other points for the purpose of having them copied, enlarged or colored", whereas, the operation of the defendants as revealed by the aforesaid stipulation of facts is confined to the taking of orders for original photographs; and the Court is of the opinion further (2), that even if the aforesaid statute should be construed to cover the defendants' operations, then it is invalid on constitutional grounds in that it imposes an undue burden on interstate commerce in violation of the Commerce Clause of the Constitution of the United States. Therefore, the Court doth find the said Olan Mills, Incorporated and P. W. McCarter, District Manager and Agent, not guilty on the warrant No. 1 charging them jointly with the violation of said Section 58-393 of the Virginia State Code by operating a photographer's business without a license, and doth find the said Pleas Wilber McCarter not guilty on the warrant No. 2, charging him with violating Section 58-393 of the Virginia State Code, to-wit, operating a photographer's business without a license.

WHEREFORE, it is considered by the Court that the said Olan Mills, Incorporated and P. W. McCarter as District Manager and Agent, and the said Pleas Wilber McCarter be each acquitted and discharged of the offenses charged in each and both of the two aforesaid warrants and that each shall go thereof without day.

page 32 }

* * * * *

Filed in Clerk's Office, Corporation Court, Danville, Virginia, December 12th, 1953.

Attest:

T. F. TUCKER, Clerk
By MARGARET EDMUNDS, Dpty. Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

As provided in Section 19-255 of the Code of Virginia, 1950, the Commonwealth appeals from the final order and judgment of the Corporation Court of the City of Danville entered in the above-styled causes in favor of the Defendants, which causes were consolidated and tried together, whereby the De-

endants were acquitted of the charges filed against them, to-wit: violating Section 58-393 of the Code of Virginia by operating a photographer's business in this State without a license.

ASSIGNMENTS OF ERROR.

The Petitioner assigns as error the following actions of the Trial Court:

1. In its determination that Section 58-393 of the Code of Virginia, 1950, as amended, does not embrace the type of operation carried on by the Defendants.
- page 33 } 2. In its determination that, if Section 58-393 of the Code of Virginia, 1950, as amended, be construed to embrace Defendants' operations, such section is violative of the Commerce Clause of the Constitution of the United States.

Dated this 11th day of December, 1953.

EUGENE A. LINK,
Commonwealth's Attorney for the
City of Danville.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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