

206 Va 716b

Record No. 6117

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM V. ROBINSON

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF WARREN COUNTY

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.

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* * * * *

On this 11th day of July, 1964 came the accused in person and by his attorney and also came the attorney for the Commonwealth who prosecutes on its behalf;

Whereupon, the Commonwealth moved to amend the warrant by the deletion of the word "livestock" and the insertion therefor of the word "cattle", and there being no objection by the accused, the warrant is ordered to be so amended.

And thereupon, the Court proceeded to hear the case on the warrant and the accused's plea of not guilty thereto, and the accused having waived his right to trial by jury which waiver was concurred in by the Commonwealth by her attorney and agreed to by the Court;

And thereupon, the Commonwealth proceeded to introduce her evidence until she had rested her case;

And thereupon, the accused, by his attorney, moved to strike out the evidence of the Commonwealth tending to show the guilt of the accused on the grounds that there was no evidence upon which the accused could be found guilty of the offense charged and upon the further ground that the statute, Virginia Code Section 8-886, upon which the charge in the warrant was based, does not create any violation of the law punishable as a misdemeanor, which motion the Court doth overrule and deny, to which ruling the accused, by his attorney, objected and excepted;

And thereupon the accused rested his case without the introduction of new evidence tending to show his page 5 } innocence;

Upon consideration whereof, the Court doth adjudge the accused guilty of permitting certain of his cattle to run at large in the County of Warren beyond the limits of his own land, the boundaries of the lots or tracts of land in said County having been constituted a lawful fence by ordinance duly adopted by the Board of Supervisors of Warren County, and the Court doth impose upon the accused a fine of \$100.00 and he shall pay the costs of this prosecution;

And thereupon the accused by his attorney moved the Court to set aside and vacate the judgment and for a new trial on the grounds previously assigned and the Court doth take such motion under advisement with leave to the Commonwealth and to the accused to file briefs or memoranda of authority within ten days, and the Court doth set the 6th

of August, 1964 for hearing of argument upon said motion, until which day said judgment shall be of no force and effect, the execution thereof being suspended for the purpose of hearing said motion.

ELLIOTT MARSHALL, Judge.

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EXHIBIT NO. 1.

7/11/64.

ELLIOTT MARSHALL, Judge.

At a Regular Meeting of the Board of Supervisors of the County of Warren, State of Virginia, held in the Courthouse of said County on Thursday, the 30th day of November, 1961.

All members being present.

On motion of George B. Baggarly, seconded by G. Alton Atwood and by unanimous vote, the following notice is ordered to be given in conformance with Title 8, Chapter 38, Article 4 of the Code of Virginia of 1950, as amended:

Be It Ordained and Enacted by the County Board of Supervisors of Warren County, Virginia, that said Board hereby declares the boundary line of each lot or tract of land, or any stream in said County of Warren, to be a lawful fence as to any horses, mules, cattle, hogs, sheep or goats.

It shall be unlawful for the owner or manager of any horses, mules, cattle, hogs, sheep or goats to permit any such animals to run at large beyond the limits of his own lands.

Any violation of the provisions of this ordinance shall upon conviction thereof be punished by a fine of not less than Five Dollars nor more than Three Hundred Dollars for each offense.

This ordinance was adopted at its first reading and ordered published as hereinafter set forth and will be proposed for final passage at the meeting of said Board on January 31, 1962.

The Clerk of this Board is directed to cause the within notice, including the time and place of said meeting, namely, January 31, 1962, in the Court House of Warren County, Front Royal, Virginia, at 10:00 A. M., to be forthwith posted at the front door of said Court House and at each voting

place within the County of Warren, and further cause it to be published once a week for four (4) successive weeks in the Warren Sentinel, a newspaper having general circulation in Warren County.

E. Maurice Bowen, Chairman

A Copy—Teste:

JULIAN UPDIKE, Clerk
Board of Supervisors,
Warren County.

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On this 26th day of September, 1964, came the accused by counsel, and also came the Commonwealth by her attorney.

Whereupon, the Court previously having heard argument on the motion of the accused to set aside and vacate the judgment of this Court and for a new trial, and the Court having taken such motion under advisement; and

Whereupon, the Court is of the opinion that Section 8-886, of the Code of Virginia, 1950 creates a criminal offense punishable as a misdemeanor, and the Court doth therefore deny and overrule the said motion, and doth adjudge and order that the judgment previously rendered shall be executed, and the said accused, William V. Robinson, is ordered to make payment of the fine and costs on or before October 15th, 1964, and if said fine and costs are not paid by that date, then the said accused, shall, on October 15th, 1964, be confined in jail until he has paid the fine and costs heretofore imposed, to all of which the accused objected and excepted.

Whereupon, the accused moved the Court for the suspension of execution of sentence and judgment for a period of sixty (60) days pending application for writ of error and *supersedeas* to the Supreme Court of Appeals of Virginia, which motion is sustained and it is ordered that execution of said judgment and sentence be and the same is hereby suspended for the period of sixty (60) days, such order, however, to be of no effect until or unless the accused or some person in his behalf shall post bond with the Clerk

of this Court with approved private security in the penalty of \$300.00, conditioned as required by law.

ELLIOTT MARSHALL, Judge.

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NOTICE OF APPEAL.

Defendant, William V. Robinson, does herewith give notice of appeal from the judgment of the Trial Court entered on the 11th day of July, 1964, and the final judgment of the Trial Court entered September 26, 1964.

WILLIAM V. ROBINSON
By W. C. ARMSTRONG, JR.
Counsel.

ASSIGNMENTS OF ERROR.

Defendant, William V. Robinson, assigns the following errors:

- 1. The Court erred in holding that the warrant did not charge a violation of an ordinance of the County of Warren, Virginia.
- 2. The Court erred in holding that Virginia Code Section 8-886 creates an offense which is punishable as a misdemeanor, and in convicting the defendant of a misdemeanor in the violation of said Code Section and in imposing a fine for the violation thereof.
- 3. The Court erred in finding the defendant
page 23 } guilty under the warrant and in imposing a fine
as the County ordinance, upon which the warrant
was based, was not validly enacted.

WILLIAM V. ROBINSON
By W. C. ARMSTRONG, JR.
Counsel.

Filed Nov. 21, 1964.

HELEN E. MAUCK, Deputy Clerk.

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WRITTEN STATEMENT OF FACTS, TESTIMONY AND OTHER INCIDENTS OF THE CASE.

A warrant was issued by a Justice of the Peace of Warren County, Virginia, on the 27th day of May, 1964, charging that William V. Robinson did, on the 27th day of May, 1964, "Unlawfully against a Warren County ordinance allow his livestock to run at large beyond the limits of his own land, against the peace and dignity of the Commonwealth." The defendant was convicted by the Judge of the County Court on the charge contained in the warrant, and a fine was imposed. The defendant appealed to the Circuit Court of Warren County, Virginia, and the case came on for trial on July 11, 1964, before the Judge of said Court without a jury, each party waiving trial by jury. This case was tried together with another case based upon a warrant charging a similar violation on the 26th day of May, 1964. Before the Court heard evidence on appeal the Commonwealth's Attorney moved the Court to amend the warrant by deleting the word "livestock" and inserting the word "cattle," and the Attorney for the Commonwealth further moved the Court to amend the warrant by deleting the words "against a Warren County ordinance." Defendant did not object to the amendment in deleting the word "livestock" and inserting the word "cattle,"

page 25 } but defendant did object to the amendment of the warrant by deleting the words "against a Warren County ordinance." The Court permitted the amendment of the warrant changing the word "livestock" to "cattle," but overruled the motion of the Commonwealth to amend the warrant by deleting the words "against a Warren County ordinance." Whereupon the Court heard evidence offered by the Commonwealth in support of the charge contained in the warrant.

At the conclusion of the evidence offered by the Commonwealth defendant, by counsel, moved the Court to strike the evidence of the Commonwealth and to enter a judgment finding the defendant not guilty. The motion was based upon the following grounds:

- 1. The County ordinance alleged to have been violated was not valid because:

(a) The ordinance was not advertised and published as required by Virginia Code Section 15-8;

(b) The ordinance enacted by the County was not authorized by the provisions of Virginia Code Section 15-8; and

(c) Title 8, Chapter 38, Article 4 of the Code of Virginia did not authorize nor confer authority upon the County of Warren to enact that portion of the ordinance upon which the warrant was issued providing that it shall be unlawful to permit livestock to run at large.

2. The evidence was legally insufficient upon which the Court could find the defendant guilty of violating the ordinance.

During argument of counsel on the motion it was agreed by counsel that the ordinance of the County of Warren upon which the warrant was based was not advertised and published as required by Virginia Code Section 15-8 in effect at the time the ordinance was enacted.

page 26 } After hearing argument the Court held that the provision in the ordinance making it unlawful for livestock to run at large was not enacted pursuant to Section 15-8 of the Virginia Code, and that said provision of said ordinance was not validly enacted under Title 8, Chapter 38, Article 4 of the Code of Virginia because said Section of the Code did not authorize and empower the boards of supervisors of counties to make it unlawful for cattle to run at large and to impose a penalty for the violation thereof. The Court thereupon held that the warrant charged a violation of Virginia Code Section 8-886, to which holding of the Court counsel for defendant objected and excepted. Whereupon counsel for defendant moved to strike the evidence of the Commonwealth and to enter a judgment finding the defendant not guilty upon the ground that Section 8-886 of the Code of Virginia did not create an offense punishable as a misdemeanor. The Court, being of the opinion that the defendant was guilty of permitting his livestock to run at large in violation of Virginia Code Section 8-886, overruled defendant's motion and found the defendant guilty of violating said Section of the Code and imposed a fine of \$100.00 and costs. To this action of the Court, defendant, by counsel, objected and excepted.

Counsel for defendant thereupon moved the Court to set aside and vacate the judgment of the Court and for a new trial upon the grounds previously assigned in support of defendant's motions, and counsel further moved the Court to suspend the execution of judgment pending the hearing on

said motion. The Court thereupon entertained the motion to set aside and vacate the judgment and to grant a new trial and suspended the execution of the judgment pending a hearing and ruling on said motion.

At a later date, and upon hearing argument of counsel on the motion to set aside and vacate the judgment and to grant a new trial, the Court, after due consideration, page 27 } overruled said motion, to which action of the Court counsel for defendant objected and excepted.

A final order was entered September 26, 1964.

JOHN F. EWELL

Commonwealth's Attorney for
Warren County, Virginia.

W. C. ARMSTRONG, JR.

J. SLOAN KUYKENDALL

Counsel for William V. Robinson.

Tendered to the judge of the Circuit Court of Warren County, Virginia, on the 21 day of November, 1964.

Signed by the Judge of the Circuit Court of Warren County, Virginia, on the 21 day of November, 1964.

ELLIOTT MARSHALL

Judge of the Circuit Court of
Warren County, Virginia.

Filed Nov. 21, 1964.

HELEN E. MAUCK, Deputy Clerk.

A Copy—Teste:

H. G. TURNER, Clerk.

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