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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5175

In the Supreme Court of Appeals of Virginia at Richmond

MERLE E. MARTIN

v.

CITY OF HARRISONBURG

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY

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.

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

Record No. 5175

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 7th day of March, 1960.

MERLE E. MARTIN, Plaintiff in Error,

against

CITY OF HARRISONBURG, Defendant in Error.

From the Circuit Court of Rockingham County

Upon the petition of Merle E. Martin a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Rockingham County on the 17th day of November, 1959, in a prosecution by the City of Harrisonburg against the said petitioner for a misdemeanor; upon the petitioner, or some one for him, entering into bond with sufficient surety before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

• • • • •

The Commonwealth of Virginia,
City of Harrisonburg, to-wit:

To the Chief of Police or any Policeman of Said City:

WHEREAS, M. A. Firebaugh has this day made information and complaint on oath to me, John G. Leake, City Justice of the Peace of the said City that Merle Martin on the 1st day of January 1958, in said City did unlawfully fail to pay City License Tax for Superior Bus Service in violation of section 95 of the License Tax Ordinance of the said City of Harrisonburg, Virginia in violation of an ordinance of said City.

These are, therefore, in the name of the Commonwealth, to command you forthwith to summon the said Merle Martin to appear before R. A. Jackson, Police Justice of said City at the Police Court Room, 89 W. Water Street, Harrisonburg, Va., on the 15th day of August, 1958, at the hour of 9 A. M., of that to answer the said complaint and to be further dealt with according to law. And you are, moreover, required to summon ..... to appear at the same time and place, to testify as witnesses on behalf of the Commonwealth, touching the matter of the complaint. And have you then there this warrant with your return thereon. Given under my hand and seal, this 8th day of August, 1958.

JOHN G. TEUKE
City Justice of the Peace.

Filed in Clerk's office December 23, 1958.

(on back)

#3527

JUDGMENT.

Date: 12/12/58.

Upon the examination of the within charge, I find the accused guilty and impose a fine of 25.00 and costs, and suspend the fine on the payment of the cost.

Fine $25.00
Issuing and
Trying Warrant ....$ 3.00
Arrest .....$....
Summoning Witness ..$....
Witness Attendance ..$....
Jail Fees .....$....
..... $....
..... $....
Total $28.00

R. A. JACKSON, Pol. Just.

Set 9/8/58 at 9:30 A. M.
Set 9/29/58—9:30 A. M.
Set 10/3/58—9:30 A. M.
Set 10/13/58—9:30 A. M.
Set 10/24/58—9:30 A. M.
Set 11/10/58—9:30 A. M.
Set 11/21/58—9:30 A. M.
Set 12/8/58—9:30 A. M.
Set 12/12/58—9:30 A. M.

12/12/58—Appeal noted and granted to the Circuit Court of Rockingham County.

R. A. JACKSON, Pol. Justice.

MISDEMEANOR SUMMONS.

City of Harrisonburg,

v.

MARTIN, Merle Superior Bus Service.

Executed 8-8 1958.

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Plea n. g. 12/23/58.

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STIPULATION.

The City of Harrisonburg, a municipal corporation, appellee, and Merle E. Martin, appellant, stipulate as to the following:

(1) That the said Merle E. Martin, appellant, owned and operated three (3) passenger buses in the City of Harrisonburg in intracity transportation during the year 1958; and maintained and used one additional standby passenger bus for said purposes during said year.

(2) That the said Merle E. Martin, appellant, has not paid the license tax assessed against him by the appellee for the year 1958;

(3) That the license tax was assessed by the appellee under section 95 of the License Tax Ordinance for the City of Harrisonburg, 1953, said ordinance being in effect during the year 1958, which was as follows:

"*Section 95. Passenger Bus Permit and License*

Any individual, firm or corporation engaged substantially in operating a passenger bus or busses exclusively for hauling for hire or compensation passengers over the streets of the City of Harrisonburg, Virginia, shall not do so without first obtaining from the common council of said city a permit; and said operator for said permission shall pay to said city for said privilege an annual license fee of one hundred twenty-five dollars ($125.00) for the first bus, and fifty ($50.00) dollars for each additional bus; said license fee or fees to be paid annually on or before the thirty-first day of January of each year."

(4) That the city relies upon the authority of section 12 of its City Charter (approved by the General Assembly of Virginia, April 8, 1952), for the enactment of the above quoted section 95; and upon the further authority of section 58-266.1 of the Code of Virginia, 1950, as amended.

LAWRENCE H. HOOVER &
JAMES R. SIPE
Counsel for the City of Harrisonburg.

GLENN W. RUEBUSH
Counsel for Merle E. Martin.

11-17-59.

H. H.

page 3 } Virginia:

In the Circuit Court of Rockingham County, November 17, 1959.

* * * * *

This day came the City of Harrisonburg by its attorneys, Lawrence H. Hoover and James R. Sipe, and the defendant, Merle Martin, came in person and by his attorney, Glenn W. Ruebush. And by agreement of the defendant and all of counsel herein, and with the consent of the court, trial by jury was waived and all matters of law and fact submitted to the court for hearing and determination; and the court thereupon proceeded to hear and determine this case without the intervention of a jury. Having heard the evidence, the court found the said Merle Martin guilty as charged in the warrant and fixed his punishment at a fine of twenty-five dollars. And it is therefore considered by the court that the City of Harrisonburg recover of the said Merle Martin twenty-five dollars, the fine aforesaid, and the costs incident to this prosecution in this court and in the City Police Court.

On motion of said defendant, by counsel, execution of this sentence is hereby suspended for a period of forty-five (45) days in order to allow him opportunity to apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of this court, if he be so advised.

* * * * *

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ASSIGNMENTS OF ERROR.

The above named defendant for his Assignments of Error alleges as follows:

(1) The trial court erred in finding the defendant guilty of the offense charged in the warrant and assessing him with a fine.

(2) The judgment of the trial court is contrary to the law and the evidence and is without evidence to support it.

(3) The trial court erred in determining that Section 95 of the Ordinances of the City of Harrisonburg is valid.

(4) The trial court erred in failing to find that Section 95 of the Ordinance of the City of Harrisonburg is void.

(5) The trial court erred in failing to find that the defendant was not guilty.

GLENN W. RUEBUSH
Attorney for the Defendant..

Filed in the Clerk's Office Rockingham County, Va. Dec. 9 1959.

J. ROBERT SWITZER, Clerk.

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Filed inthe Clerk's Office Rockingham County, Va., Dec. 11, 1959.

J. ROBERT SWITZER, Clerk.

CERTIFICATE OF EXCEPTIONS AND EVIDENCE.

BE IT REMEMBERED that on the trial of this cause had on the 26th day of October, 1959, wherein the defendant, Merle E. Martin, was charged with having failed to pay an annual license tax for the year of 1958 for operating passenger buses in the City of Harrisonburg, Virginia, a jury was waived and the cause was heard by the Circuit Judge. No evidence was introduced on behalf of either party, except a stipulation, which is attached to this certificate of exceptions and made a part hereof. Whereupon the plaintiff rested and a motion was made by the defendant that the plaintiff's evidence be stricken and that the defendant be found not guilty. Whereupon the court heard argument of counsel and took the cause under advisement and on the 17th day of November, 1959 rendered its judgment that the defendant was guilty of violating Section 95 of the Ordinances of the City of Harrisonburg, Virginia, in that he failed to pay an annual license tax for the operation of three passenger carrying buses in the

said City and the maintaining of a stand-by bus and imposed a punishment upon him of a fine of Twenty-Five Dollars ($25.00) and costs, but granted a stay of the execution of the sentence for a period of 45 days from that date to enable the defendant to apply to the Supreme Court of Appeals of Virginia for a writ of error.

We, Lawrence H. Hoover and James R. Sipe, Attorneys for the City of Harrisonburg, Virginia, and Glenn W. Ruebush, Attorney for the defendant, Merle E. Martin, do hereby stipulate and agree that the foregoing is a true and correct summary or narrative of the evidence and proceedings in the case of the City of Harrisonburg, Virginia *v.* Merle E. Martin.

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LAWRENCE H. HOOVER
JAMES R. SIPE
GLENN W. RUEBUSH

I, Hamilton Haas, Judge of the Circuit Court of Rockingham County, Virginia do hereby certify that the foregoing stipulation and bill of exceptions was the 11th day of December, 1959, presented to me for signature within 45 days from date of the judgment and that due notice of the same was given to Lawrence H. Hoover and James R. Sipe, Attorneys for the City of Harrisonburg, Virginia.

HAMILTON HAAS, Judge.

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A Copy—Teste:

H. G. TURNER, Clerk.

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