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Record No. 5180

In the Supreme Court of Appeals of Virginia at Richmond

GARNETT ODELL DUDLEY COFFEY

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKBRIDGE 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. 5180

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 20th day of April, 1960.

GARNETT ODELL DUDLEY COFFEY, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Rockbridge County

Upon the petition of Garnett Odell Dudley Coffey a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Rockbridge County on the 25th day of February, 1960, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor; 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

* * * * *

page 8 } INSTRUCTION 1.

The Court instructs the jury that the burden is not upon the Commonwealth to prove that while the accused, Garnett Odell Dudley Coffey, was driving the automobile involved in this case, that he, the said Garnett Odell Dudley Coffey, was under the influence of intoxicants to such an extent that his ability to drive with safety to himself and others was thereby materially impaired. The test to be applied in this case is not merely the ability of the driver to operate the automobile with safety to himself and others, but whether or not he was under the influence of intoxicants at the time he was driving the said automobile.

WM. S. M.

page 9 } INSTRUCTION 2.

The Court instructs the jury that "any person who has drunk enough alcoholic beverages to so affect his manner, dispostiion, speech, muscular movement, general appearance or behavior, as to be apparent to observation, shall be deemed to be under the influence of intoxicants."

WM. S. M.

page 10 } INSTRUCTION 3.

The Court instructs the jury that if they believe from the evidence in this case beyond a reasonable doubt that the accused, Garnett Odell Dudley Coffey, on the 15th day of August, 1959, within the County of Rockbridge, did drive and operate a motor vehicle on the public streets or highways while under the influence of self-administered intoxicants, he having previously been convicted of a second offense within ten years thereof, then it is the duty of the jury to find the accused, Garnett Odell Dudley Coffey, guilty as charged in the warrant in this case and ascertain and fix his punishment by a fine or not less than $100.00, nor more than $1,000.00, and by imprisonment for not less than one month nor more than one year.

WM. S. M.

page 11 } INSTRUCTION 4.

The Court instructs the jury that the credibility of the witnesses in a case is a matter exclusively for the jury to determine, and the law is that where witnesses in a case testify opposite to each other, the jury is not bound to regard the weight of the evidence as equally balanced, but the jury have the right to determine from the appearance of the witnesses on the witness stand, their manner of testifying, their apparent intelligence, their relationship to the parties, if any, their interest in the case, if any, and from all of the other surrounding facts appearing at the trial, which of the said witnesses are more worthy of credit and to give credit accordingly.

WM. S. M.

* * * * *

page 13 } INSTRUCTION D-1.

The Court instructs the jury that the defendant's plea of not guilty is a denial of every charge against him, and the burden of proof rests upon the Commonwealth throughout the case and never shifts. To bear the burden of proof the Commonwealth by competent evidence must prove the defendant's guilt beyond a reasonable doubt of a crime, and every material element thereof, as charged.

The defendant does not have to prove his innocence, nor does he have to prove the truth of his defense or of any fact; for all that is necessary to entitle him to an acquittal is that from the evidence as a whole, or lack of evidence, there is raised in the mind of the jury a reasonable doubt of his guilt.

To warrant a conviction of the defendant the facts proven must not only be consistent with his guilt but be inconsistent with his innocence and exclude every reasonable hypothesis of his innocence.

Proof of the defendant's guilt by a mere preponderance of evidence, or by evidence that raises in the mind of the jury only suspicion of guilt however strong, or by evidence that for any proper reason falls short of satisfying the jury of his guilt beyond a reasonable doubt, is insufficient to warrant a conviction.

If the jury have a reasonable doubt of the defendant's guilt upon the case as a whole or upon any material element

thereof, they should give him the benefit thereof and acquit him.

WM. S. M.

* * * * *

page 14 } INSTRUCTION D-3.

The Court instructs the jury that if the evidence as a whole is susceptible of two or more reasonable interpretations, one of which is consistent with the innocence of the defendant, the jury may not arbitrarily adopt that interpretation which incriminates him, but it is their duty to adopt the interpretation of innocence, and to find him not guilty.

WM. S. M.

page 15 } INSTRUCTION D-4.

The Court instructs the jury that the burden is upon the Commonwealth to prove beyond a reasonable doubt that the defendant was under the influence of intoxicants while he was operating his vehicle and when the accident happened. His condition subsequent to the accident or at the time of his arrest or subsequent thereto is immaterial.

Therefore, even though you should believe from the evidence that the defendant was under the influence of intoxicants at the time of his arrest and at the time he was examined by a physician, yet unless you believe beyond a reasonable doubt, from competent evidence produced by the Commonwealth, that the defendant was under the influence of intoxicants while operating his vehicle, you must find him not guilty.

WM. S. M.

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* * * * *

This day came the Attorney for the Commonwealth and the defendant, by Counsel, and the Court having heard the arguments of Counsel on December 22, 1959, to set aside the verdict of the jury rendered in this cause on November 24, 1959, and now having maturely considered the motion doth

overrule the motion of the said defendant made on November 24, 1959, as aforesaid; it is therefore,

Ordered by the Court that the said Garnett Odell Dudley Coffey be and he hereby is assessed with a fine of One Hundred Dollars ($100.00) and sentenced to jail for a period of thirty (30) days, the judgment of the jury as ascertained on November 24, 1959.

Thereupon the defendant, by Counsel, moved the Court for a stay of Execution of the said sentence in order to apply for and perfect a Writ of Error and *Supersedeas* from the Supreme Court of Appeals of Virginia, and the Court doth grant said motion and doth order and direct that the said Garnett Odell Dudley Coffey appear before this Court or Judge thereof on or before the 25th day of April, 1960, to accept and abide by this Judgment of the Court in the event the same shall not have been suspended by the Supreme Court of Appeals of Virginia or one of its Justices.

It is further ordered by the Court that the bond as heretofore entered into and acknowledged by the said accused and his surety be and the same is still in full force and effect.

And this cause stands continued.

WILLIAM S. MOFFETT, Jr., Judge.

2/25/60.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Rockbridge County:

Counsel for Garnett Odell Dudley Coffey, the defendant in the above styled case in the Circuit Court of Rockbridge County, Virginia, hereby gives notice of Appeal from the Order entered in this case on February 25, 1960, and sets forth the following assignments of error.

I.

The refusal of the Court to strike the evidence when the Commonwealth rested its case, for the reason that the evidence was wholly inadequate and insufficient to support the charge.

II.

The refusal of the Court to strike the entire evidence and render final judgment for the defendant, for the reason that the evidence was wholly inadequate and insufficient to be submitted to the jury.

III.

The refusal of the Court to set aside the verdict of the jury, for the reason that the same was contrary to the evidence.

PAUL A. HOLSTEIN
Counsel for Garnett Odell
Dudley Coffey, defendant.

Filed in the Clerk's Office of the Circuit Court at Rockbridge County, Virginia on the 11 day of March 1960.

ELLEN D. TOMLINSON, D. C.

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NOTICE.

To: Charles H. Davidson, Jr. Attorney for the Commonwealth for Rockbridge County, Virginia.

You are hereby notified that on March 17, 1960, at 10:00 o'clock A. M., pursuant to Section 8-487 of the 1950 Code of Virginia and the amendments thereto, Counsel for the defendant will appear before the Judge of the Circuit Court of Rockbridge County, in the Courthouse thereof at Lexington, Virginia, and will tender to the Judge of said Court, a statement in writing of the facts proved at the trial of this case, and will move the Court to give a certificate of the facts and that the same shall be made a part of the record.

PAUL A. HOLSTEIN
Counsel for Garnett Odell
Dudley Coffey, defendant.

I accept due and timely service of this Notice.

C. H. DAVIDSON, JR.
Attorney for Commonwealth for
Rockbridge County, Virginia.

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 11 day of March 1960.

ELLEN D. TOMLINSON, D. C.

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STATEMENT OF FACTS.

This case was tried before a jury in the Circuit Court of Rockbridge County, Virginia, on the 24th day of November, 1959, on appeal from the Rockbridge County Court, on two warrants; one charging the defendant with operating a motor vehicle while under the influence of self-administered intoxicants or drugs, he having been previously convicted, to-wit, on March 11, 1958 of a like offense, and one charging him with operating a motor vehicle upon a public highway in a reckless manner.

With the concurrence of the Attorney for the Commonwealth, of the defendant and of the Court, it was Ordered by the Court that the defendant be tried upon both charges.

Upon his arraignment, the defendant entered a plea of Not Guilty to the charges as contained in each of the said warrants.

At the conclusion of the evidence presented by the Commonwealth, the defendant moved the Court to strike the evidence for the reason that the evidence was wholly inadequate and insufficient to support the charges in each of the said warrants. The Court, after hearing argument on the Motion, overruled the same and the defendant excepted, and stated in the record his grounds for said exception.

At the conclusion of the evidence presented by the defendant, and both the Commonwealth and the defendant having rested, the defendant again moved the Court to strike the evidence and to render final judgment for the defendant, for the reason that the evidence was wholly inadequate and insufficient to be submitted to the jury. The Court, after having heard argument on the Motion, overruled
page 38 } the same, and the defendant excepted and stated in the record, his grounds for said exception.

Trooper C. B. Colonna.

The jury returned the following verdicts:

"We the jury find the defendant not guilty of reckless driving as charged in the warrant.

LEONARD F. MILLER, Foreman."

"We the jury find the defendant guilty of driving a motor vehicle while under the influence of self-administered intoxicants as charged in the warrant and fix his punishment at a fine of $100.00 and thirty days in jail.

LEONARD F. MILLER, Foreman."

The defendant moved the Court to set aside the verdict of the jury convicting him of the charge of operating a motor vehicle while under the influence of self-administered intoxicants, for the reason that the same was contrary to the law and the evidence in the case.

On the 22nd day of December, 1959 argument was heard by the Court on the defendant's Motion to set aside the verdict of the jury.

On the 25th day of February, 1960 the Court overruled the defendant's Motion, and the defendant excepted for the reason that the verdict was contrary to the law and the evidence in the case, and was without evidence to support it.

EVIDENCE PRESENTED BY THE COMMONWEALTH.

TROOPER C. B. COLONNA,

the arresting officer, testified that on August 15, 1959, at 3:55 o'clock p. m., he was called to investigate an accident which had occurred at or about 3:15 o'clock p. m. on Route #714, about 2.3 miles south of Fairfield in Rockbridge County. He arrived at the scene at 4:10 o'clock p. m. and found a 1952 model Studebaker pick-up truck which had run off the road and over an embankment into a field. He found the defendant sitting down, and the defendant admitted he page 39 } was the driver of the truck. The defendant explained that an approaching truck had struck the left side of his truck forcing him off the road. The Trooper smelled alcohol on the defendant's breath. The Trooper was of the opinion that the defendant was under the influence of intoxicants because he was unsteady on his feet and was in-

Dr. F. A. Feddeman.

coherent in his speech. When questioned, the defendant denied having anything to drink, and stated "I do not drink whiskey and I hate people that do." The Trooper observed that the defendant had suffered an injured arm and shoulder and his shirt was covered with blood, all of which was apparently caused by the accident.

The Trooper further testified as to the measurements he had made of the tracks made in the road by the defendant's truck.

The Trooper drove the defendant to the hospital for treatment of his injuries. At the hospital the defendant stated that he had brushed his teeth with alcohol and later stated that he had consumed a glass of vinegar. The Trooper advised the defendant that he had the right to take a blood test.

The Trooper admitted that he did not know the exact time of the accident; that it had been reported to him that it had occurred about 3:15 o'clock p. m.; that he did not arrive at the scene of the accident until about one hour later. He also admitted that he did not know whether the defendant had been drinking while actually operating his truck, and that he did not know what the defendant's condition was, with reference to drinking, prior to and at the time of the accident.

It was stipulated by counsel that the defendant had been previously convicted of a similar offense in March of 1958.

DR. F. A. FEDDEMAN,

the next witness called by the Commonwealth, testified that he examined the defendant several hours after the accident. His examination was made at the hospital. The defendant had suffered injuries which consisted of facial brush burns, an injured left arm which was swollen and an injured nose. He detected the strong odor of alcohol. The defendant page 40 } stated that he had been drinking vinegar. Later he stated he had been drinking camphor or rock candy solution. He also said he had had nothing to drink for four days. The defendant's shirt was bloody which was apparently caused by an injury received in the accident. The Doctor's definite impression was that the defendant was under the influence of intoxicants. The defendant's eyes were bloodshot and his face was flushed. The Doctor admitted that he did not know whether the defendant was drinking while he was actually operating the truck, and that he did not know what the defendant's condition was, with reference to drinking, at the time of the accident or prior thereto.

A. M. Mackey—D. C. Teaford—Guy Agnor—Catherine Lang—C. M. Camper.

A. M. MACKEY,

the third and only other witness called by the Commonwealth, testified that the accident happened sometime during the middle of the afternoon. He talked with the defendant after the accident and before the Trooper arrived on the scene. He did not see the defendant take anything to drink. The defendant was sitting in the shade of a tree. He was closer than 12 feet from the defendant and was in a position to observe his condition. He could not tell that the defendant had been drinking. The defendant explained that an approaching truck had sideswiped him. One of the defendant's sons brought two pints of whiskey out from under a fence and gave them to his mother.

THE COMMONWEALTH RESTED ITS CASE.

EVIDENCE PRESENTED BY THE DEFENDANT.

D. C. TEAFORD,

testified that he was intimately acquainted with the defendant. Between 1:00 o'clock and 1:30 o'clock p. m. on August 15, 1959 he saw the defendant at Harper & Agnor's feed store in Lexington. The defendant purchased turnip seeds. He shook hands with the defendant and they engaged in conversation. He smelled no *alochol* on the defendant and could not tell that he had been drinking.

GUY AGNOR,

the owner and manager of Harper & Agnor feed store testified that on August 15, 1959 at about 1:30 o'clock p. m. he sold the defendant turnip seeds. He had known page 41 } the defendant intimately. He smelled no alcohol on him and observed nothing which would have lead him to believe that the defendant was drinking.

MRS. CATHERINE LONG,

a sister of the defendant, testified that he came to her home on August 15, 1959 at about 2:30 o'clock p. m. The defendant visited with her for about ten minutes. She smelled no alcohol on him. He positively was not drinking.

C. M. CAMPER,

the owner and operator of a general merchandise store, testified that the defendant came by his store on his way to Rockbridge Baths and purchased one dollar's worth of

Goldie Plogger—Mrs. Charles Graves—Virginia Coffey—Mrs. Garnett Coffey.

gasoline. This was between 2:30 and 3:00 o'clock p. m. He had known the defendant since he was a small boy. He could not tell whether the defendant was drinking. He did not particularly observe or pay attention to the defendant while in his store.

MRS. GOLDIE PLOGGER,

the mother-in-law of the defendant, testified that during the afternoon in question, the day of the accident, the defendant came to her house at Rockbridge Baths at about 3:00 o'clock. She smelled no alcohol. He was not drinking. The defendant's wife and three children left the house a few minutes after 3:00 o'clock in an automobile and the defendant followed in his truck.

MRS. CHARLES GRAVES,

a sister-in-law of the defendant, testified that she was at Mrs. Plogger's house when the defendant came there on August 15, 1959 at about 3:00 o'clock p. m. She smelled no alcohol and he was not drinking. He and his wife and their three children left Mrs. Plogger's a few minutes later. Mrs. Coffey, the defendant's wife, drove her automobile with the children in it and the defendant followed them in his pick-up truck.

VIRGINIA COFFEY,

the 14 year old daughter of the defendant, testified that in the afternoon of the day her father had the accident, her father came to her grandmother's house. He was not drinking. When they left, she rode in her mother's automobile in the front seat and her two brothers rode in the back seat. Her father followed in his truck. She looked back several times and saw him following. Neither the automobile nor
page 42 } the truck stopped any place before the accident, except before entering the highway. As her mother drove down Mackey's Lane a big truck came towards them and forced her mother off the road. The two boys in the back seat screamed "He hit daddy."

MRS. GARNETT COFFEY,

the wife of the defendant, testified that she and her three children were visiting her mother at Rockbridge Baths, on the afternoon of August 15, 1959. Her husband came there at 3:00 o'clock. He was not drinking. A few minutes later

she and the three children left her mother's house and started for home. Her husband followed in his pick-up truck. They stopped nowhere except just before entering the highway. As they went down Route #714 (Mackey's Lane) she observed her husband following her automobile in his truck about three car lengths behind. An approaching truck forced her off the road. After it passed, the children screamed "He hit daddy." She and her son Randolph, walked up the road to where the truck had gone over the embankment. She found her husband was injured and left her son to look after him while she went for assistance and to call a State Trooper. Later her son gave her two pints of whiskey, one of which had been opened and a small portion taken out; the other bottle remained sealed. She surrendered both bottles to the Trooper.

RANDOLPH COFFEY,

the 12 year old son of the defendant, testified that when his daddy came to his grandmother's the afternoon of the accident, his daddy was not drinking. Soon after that they left. As they were going down Mackey's Lane a large truck forced them off the road. He looked back through the rear window of the automobile and saw the truck strike his daddy. He and his 9 year old brother both screamed and yelled "He hit daddy." He and his mother went to help his daddy. His mother told him to look after his daddy while she called a State Trooper. He found his daddy lying on the ground. He found two sealed pints of whiskey in the truck. He opened one of the pints with a knife and gave his daddy a drink, because he thought it would help him. He had seen his mother do the same for his sister one time page 43 } when she was awful sick. Before the Trooper came he hid the two pints under the fence. He did not know why; and his daddy did not tell him to hide them. He later gave the two pints to his mother.

GARNETT ODELL DUDLEY COFFEY,

the defendant, an uneducated man 37 years of age, testified that he had had nothing to drink during the time he drove his truck and before the accident during the afternoon of August 15, 1959. He had been to Lexington to buy turnip seeds, and while there bought two pints of whiskey which were sealed at the time of the accident. He later visited with his sister; then stopped at Camper's store; then drove to his mother-in-law's home at Rockbridge Baths. He arrived there at 3:00

Garnett Odell Dudley Coffey.

o'clock p. m. A few minutes later, his wife and three children left in her automobile and he followed in his truck. He continued to maintain a distance of approximately three car lengths behind his wife. As they were driving down Mackey's Lane, a large truck, unidentified, forced his wife off the road, and then struck the left side of his truck forcing him off the road. Up until that time, he positively had had nothing to drink. He remembered nothing until he regained consciousness at the hospital and was talking to a colored orderly. He remembered nothing of his conversation with the State Trooper or with the Doctor. Except for his prior conviction of a similar offense in March of 1958, he, the defendant, had never been in any other trouble.

THE DEFENSE RESTED.

It is stipulated that the foregoing is a correct statement of the facts proved in the case of Commonwealth of Virginia *v.* Garnett Odell Dudley Coffey, tried in the Circuit Court of Rockbridge County on the 24th day of November, 1959.

C. H. DAVIDSON, JR.
Attorney for the Commonwealth
for Rockbridge County.

PAUL A. HOLSTEIN
Attorney for the Defendant.

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 23 day of March 1960.

ELLEN D. TOMLINSON, D. C.

page 44 } Virginia:

In the Circuit Court of Rockbridge County, March 17, 1960.

To: The Clerk of the Circuit Court.

The foregoing is certified as a correct statement of the facts proved in the trial of the case of the Commonwealth of Virginia *v.* Garnett Odell Dudley Coffey, on the 24th day of November, 1959.

Given under my hand this 24th day of March, 1960.

WM. S. MOFFETT, JR.
Judge of the Circuit Court of
Rockbridge County.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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