Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

209 VA 153

Record No. 6789

In the Supreme Court of Appeals of Virginia at Richmond

CLARENCE O. WILEY, JR.

v.

COUNTY OF HANOVER

FROM THE CIRCUIT COURT OF HANOVER 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6789

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1967.

CLARENCE O. WILEY, JR., Plaintiff in error,

against

COUNTY OF HANOVER, Defendant in error.

From the Circuit Court of Hanover County
Edward P. Simpkins, Judge

Upon the petition of Clarence O. Wiley, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Hanover County on the 12th day of April, 1967, in a prosecution by the County of Hanover 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 A }

* * * * *

No. 46222 U

County of Hanover Virginia

Received of Clarence O. Wiley, Jr. for the appearance of self before the County Court of Hanover County on the 17 day of Nov. 1966 at 9 A.M. to answer charge made against him-her under oath by Rosewell Page, Jr. on the 3 day of Nov. 1966. One hundred & 00/100 Dollars $100.00 which includes fee of the justice for taking this recognizance.

Nov. 8, 1966. R. H. Worrell, Justice of the Peace

Section 19.1-131, 1950 Code of Virginia

* * * * *

page 1 }

* * * * *

To any Sheriff or Police Officer:

WHEREAS, Rosewell Page, Jr. Executive Secretary, of Hanover County, has this day made complaint and information on oath before me, W. R. Lumpkin Justice of the Peace of the said County, that Clarence O. Wiley, Jr. in the said County, did on the 3rd. day of November, 1966: Unlawfully Violate 1 section of Article 4-1 of the Hanover County Code. to-wit, did Raise, Shelter and Harbor a certain number of Pigeons, in violation of the above section.

P. N. G.

THESE ARE, THEREFORE, To command you, in the name of the County of Hanover, to apprehend and bring before the County Court of the said County, the body (bodies) of the above accused, to answer the said complaint, and to be further dealt with according to law. And you are also directed to summon

.....color ..... Address ..... ☐
.....color ..... Address ..... ☐

.....color ..... Address ..... ☐
.....color ..... Address ..... ☐
.....color ..... Address ..... ☐
as witnesses.

Given under my hand and seal, this 3rd. day of November, 1966.

W. R. Lumpkin, J. P. [Seal]

(Title of Issuing Officer)

STATE OF VIRGINIA—COUNTY OF HANOVER, to-wit:

I, R. H. Worrell, a Justice of the Peace in and for the County aforesaid, State of Virginia, do hereby certify that Clarence O. Wiley and ..... as his suret ....., have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of One hundred & 00/100 Dollars ($100.00), to be made and levied of their respective goods and chattels, lands, and tenements, to the use of the Commonwealth to be rendered, yet upon this condition: That the said ....., shall appear before the County Court of Hanover County, on the 17 day of Nov., 1966, at 9 A.M., at Hanover C.H., Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any Court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart thence without the leave of said Court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent Court; and upon the further condition that the said ..... shall keep the peace and be of good behavior for a period of ..... days from the date hereof. Non-appearance of the above bound ..... shall be deemed to constitute a waiver of trial by jury, in any Court having jurisdiction.

Given under my hand, this 8 day of November, 1966.

R. H. Worrell, J.P.

* * * * *

COUNTY OF Hanover

11-17-66

) WARRANT OF ARREST
vs.)
) Clarence O. Wiley, Jr.
1606 Landover Drive
Mechanicsville, Virginia

Executed this, the 8th day of Nov., 1966
H. E. Bradley

Upon the examination of the within charge, I find the accused guilty and fine him $10.00 *and the costs.*

J. L. LANDRAM
Judge, Hanover County Court

Nov. 17, 1966

APPEALED TO THE CIRCUIT COURT

J. L. LANDRAM
Judge, Hanover County Court

Nov. 17, 1966

* * * * *

page 2 }

* * * * *

IN THE CIRCUIT COURT
FOR THE
COUNTY OF HANOVER
DECEMBER 30, 1966

* * * * *

This day came the Attorney for the Commonwealth and the accused, Clarence O. Wiley, Jr., having appeared in Court according to the condition of his recognizance. Whereupon the accused stated that he was ready for trial and desired to be tried on this day and thereupon was arraigned and pleaded not guilty to Violation of the Zoning Code as charged in the warrant.

And after being advised by Counsel and the Court of his right to trial by jury, the accused waived a trial by jury, with the concurrence of the Attorney for the Commonwealth and the Court here entered of record, thereupon the Court, in lieu of a jury, proceeded to hear the evidence of the Commonwealth, thereupon the defendant, by Counsel, moved the Court to strike the evidence of the Commonwealth, which motion, the Court overruled, exception was noted by the attorney for the defendant. Evidence was then heard on behalf of the defendant, whereupon the Court took this case under advisement until March 3, 1967.

The defendant will remain on bond.

* * * * *

page 7 }

* * * * *

IN THE CIRCUIT COURT
FOR THE
COUNTY OF HANOVER
APRIL 12, 1967

* * * * *

This day came the Attorney for the Commonwealth and the accused, Clarence O. Wiley, Jr., having appeared in Court according to the conditions of his recognizance;

The Court having heard evidence in this case on January 3, 1967 and taken the case under advisement;

On Consideration Thereof, it is the judgment of this Court that Clarence O. Wiley, Jr. is guilty of Violation of the Zoning Code as charged in the warrant and it is the judgment of this Court that he be fined the sum of Ten ($10.00) Dollars. Thereupon the defendant, by Counsel, moved the Court to suspend execution of sentence in this case pending an appeal, which motion was sustained by the Court. Execution of sentence in this case is suspended until June 30, 1967, at 10:00 o'clock A.M.

* * * * *

page 10 }

* * * * *

AMENDED ASSIGNMENT OF ERROR

The defendant assigns the following error committed by the Court:

The Court erred in finding the defendant guilty for the following reasons:

1. Ordinance was invalid for vagueness;
2. Ordinance was invalid because it was unreasonable;
3. Use of building fell within definition of accessory building and, therefore, a permitted use;
4. Finding of Court was contrary to law and evidence;

CLARENCE O. WILEY, JR., Defendant

* * * * *

Filed 6-9-67. JEAN HARRIS, Dep. Clerk.

page 11 }

* * * * *

NARRATIVE STATEMENT OF THE EVIDENCE

The defendant, Clarence O. Wiley, Jr., was at the time of his arrest the owner and occupant of a single family dwelling located in the Mayfield Farms sub-division which subdivision is zoned R-1 in the County of Hanover, Virginia. The defendant erected on this property a small building approximately 8 feet by 12 feet, which did not require a building permit from Hanover County, to serve as a pigeon roost for approximately one hundred racing, homing pigeons and which could also be used as a tool house. On the 3rd day of November, 1966, a warrant, hereto attached, was caused to be issued by Rosewell Page, Jr., Executive Secretary of Hanover County, as complainant, charging that the defendant did "unlawfully violate Title 1, Section 4-1 of the Hanover Code. to-wit, did raise, shelter and harbor a certain number of pigeons, in violation of the above section." Said warrant being executed on the defendant the 8th day of November, 1966. A hearing was had in the County Court of Hanover and the defendant was found guilty and fined $10.00, which he appealed to the Circuit Court of the County of Hanover which came to be heard without a jury on April 12, 1967.

Rosewell Page, Jr., the complainant, testified in the Circuit Court on direct-examination that he visited the home of the defendant and found pigeons in the roost on the property of the defendant in Hanover County. Title 1, Section 4-1 of the County Code was introduced into evidence, a copy of which is hereto attached. On cross-examination he
page 12 } testified that part of his duty was to enforce zoning regulations; that in this particular instance, he acted on a complaint of a neighbor. Mr. Page further testified that the authority of his office gave him the discretion of whether or not to issue said warrant upon complaints and that he did not have and has not issued similar warrants for dog houses or bird houses in the same sub-division, or any other area covered by the same zoning ordinance. He further testified that in the same sub-division there are dog houses, tool houses and the like whereby residents kept their pets or pursued hobbies. The definition of "accessory building" which falls under Section 4-1-6 was also introduced into evidence and the definition of an "accessory building" by the Hanover Code reads as follows:

"a subordinate use or building customarily incidental to and located upon the same lot occupied by a main use or building."

At the conclusion of the Commonwealth's evidence, counsel for the defendant made a motion to strike the evidence as the ordinance was unreasonable in that municipal corporations derive their authority from the Legislature to make only reasonable ordinances or regulations, and that an ordinance which prohibited the pursuit of a wholesome hobby was unreasonable. The motion to strike was overruled and excepted to.

The defendant was the only other witness to testify. He testified that he was an owner-occupant in Mayfield Farms sub-division and that the type of pigeons kept in the roost were now 35 racing, homing pigeons; that he had raised pigeons since a young man as a hobby; that the pigeons did not fly loose around the sub-division but these pigeons would be caged and shipped to a given point, sometimes out of the State, by a racing association to which he belongs and they would compete with other pigeons back to their roost, and this was the extent of their being out of the building. The defendant further testified there were no droppings
page 13 } in the community; there was no noise eminated from the building, and there were no personal complaints made to him. He further stated that these pigeons

were subject to the draft by the United States Government, and the average cost of his pigeons was $35.00 each. The defendant belongs to various racing clubs and there are other pigeon fanciers in Hanover County who customarily house their pigeons in the manner used by the defendant; that the building was also used as a tool house. At the conclusion of testimony to these facts and after argument by counsel, the lower court's decision was affirmed.

Counsel for the defendant made a motion to set aside the judgment of the court as being contrary to the law and evidence for the following reasons:

1. That the evidence before the court was that Mr. Wiley also used the pigeon roost as a tool house which is a permitted use under the ordinance;

2. The roost qualified within the definition of the *orginance* as an "accessory building customarily used and incidental to the main use".

The motion was overruled and excepted to.

EDWARD P. SIMPKINS, Judge

Date tendered to Judge—June 9, 1967.
Date Signed & delivered to Clerk—June 13, 1967.

JUNIE L. BRADSHAW
Counsel for the Defendant

Seen and Agreed to:
ANDREW J. ELLIS, JR.
Commonwealth's Attorney

Received by Clerk, June 13, 1967.

JEAN C. HARRIS, Dep. Clerk

* * * * *

ARTICLE 4.

RESIDENTIAL, LIMITED, DISTRICT R-1.

Statement of Intent.

This district is composed of certain quiet, low-density residential areas plus certain open areas where similar

residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to prohibit all activities of a commercial nature. To these ends, development is limited to relatively low concentration and permitted uses are limited basically to single unit dwellings providing homes for the residents plus certain additional uses, such as schools, parks, churches, and certain public facilities that serve the residents of the district.

4-1. Use regulations.

In residential district R-1, structures to be erected or land to be used, shall be for one or more of the following uses:

4-1-1. Single-family dwellings.

4-1-2. Schools.

4-1-3. Churches.

4-1-4. Parks and playgrounds.

4-1-5. Off-street parking as required by this Ordinanie.

4-1-6. Accessory buildings permitted as defined, however, garages or other accessory buildings, such as carports, porches and stoops attached to the main building shall be considered part of the main building. No accessory building may be closer than one foot to any property line.

4-1-7. Public utilities: Poles, lines, distribution transformers, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage facilities.

4-1-8. Business signs only to advertise the sale or rent of the premises upon which erected.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Certificate pertaining to Bond	2
Warrant	2
Order—December 30, 1966	4
Judgment—April 12, 1967	5
Amended Assignments of Error	6
Narrative Statement of the Evidence	6
Title 1, Article 4, of the Hanover County Code	8