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Supreme Court of Appeals
Richmond, Va.

Record No. 6911

In the Supreme Court of Appeals of Virginia at Richmond

KERMIT W. SALYER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF FRANKLIN 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. 6911

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 5th day of March, 1968.

KERMIT W. SALYER, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Franklin County
Langhorne Jones, Judge

Upon the petition of Kermit W. Salyer a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Franklin County on the 16th day of October, 1967, in a prosecution by the Commonwealth against the said petitioner for contempt; 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

* * * * *

An Editorial

FRANKLIN COUNTY'S NON-REDISTRICTING

Although citizen apathy, political controversy and an unsatisfactory state law combined to kill Franklin County's proposed magisterial redistricting, the issue of non-representative courthouse government is not one that can be blinked away indefinitely.

The situation that presently exists in Franklin, whereby a minority of rural citizens is guaranteed hammerlock control of the county government, is indefensible from the standpoint of both logic and law. Under rulings of the U.S. Fourth Circuit Court of Appeals, whose jurisdiction includes Virginia, the existing plan of magisterial districts is patently unconstitutional. Nonetheless, the first legal attack of Franklin's malapportionment has met with an anticlimatic, inglorious end.

Instead of continuing to insist upon a realistic redrawing of the obsolete boundaries that presently form the county's seven magisterial districts, a group of redistricting petitioners inexplicably abandoned their praiseworthy effort at the first hint of political controversy and a resultant threat of costly legal battles. In the face of such a change of heart, Franklin Circuit Judge Langhorne Jones ultimately upheld the objectors' motion for dismissal, thereby blocking any redistricting for at least a year. Although Judge Jones apparently was on sound legal grounds in so acting, his curious decision flies in the face of a long series of favorable redistricting actions in other Western Virginia counties, including many which were routinely ordered by judges of circuit courts.

The Franklin County case provides compelling evidence, it seems to us, of the need for a new approach to the entire magisterial redistricting question. In the first place, it is unfair to assign to citizen-petitioners the burden of forcing redistricting of a reluctant board of supervisors. Few citizens can be expected voluntarily to assume the inconvenience and financial cost of risking legal battle with the rural districts' countless lawyer-defenders who readily seize upon specious allegations, mischievious courtroom motions and ubiquitous legal technicalities to frustrate the reformers' desire for good government.

Secondly, it is illogical to give circuit judges discretion in determining whether provable malapportionment of county districts should be overturned. Common sense as well as accepted legal procedure dictates that the boards of supervisors should be routinely required to redistrict whenever official census figures reveal existing substantial population disparities in the election districts. While the circuit courts should be empowered to police these redistricting actions, primary and nondiscretionary responsibility for correcting discriminatory districting plans should rest with the boards themselves.

The background of the Franklin County case provides a classic example of the lamentable conditions that invariably result when obsolete district lines give rural, stand-pat citizens an unfair advantage in determining governmental policy. The redistricting petitioning, which initially was supported by a number of the county's business and professional leaders, was a direct outgrowth of last year's ill-advised defeat of a proposed countywide zoning plan. In rejecting that proposal, the rural-area supervisors turned a deaf ear to progressive-minded citizens once they discovered that farmers and other rural residents were not yet persuaded that the county's Smith Mountain Lake shorelines required modern land-use controls in order to insure their proper development.

To this day, Franklin County lacks a zoning ordinance. The reason, of course, is that control of the county government remains in the hands of a minority of its citizens. So long as the county redistricting issue is pushed aside, that situation is unlikely to change.—*The Roanoke Times.*

(*Editor's Note—We believe the citizens of Franklin County will be interested in seeing the editorial above which was published in The Roanoke Times, Friday, September* 29.

The writer of the editorial throws a polysyllabic smokescreen over the entire question.

Freely translated, the editorial says, "Judge Jones didn't have the guts to order a redistricting or to set up a redistricting commission as is being done in other counties of the state."

We would like to add our two cents worth to this translation too. When a judge can't see the inequity in such a spread in population as Rocky Mount district's 8880 *and Snow Creek's* 2540, *seems like the court is blind.*

Petitions were signed by eighty citizens of the county asking that the county be redistricted. That was enough of a mandate to Judge Jones to go ahead and redistrict or appoint a commission. These petitions signed by eighty people were thrown out on a protest from four people. That is democracy? —*KWS.*)

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IN RE: *RULE AGAINST KERMIT W. SALYER*

O-R-D-E-R

By virtue of Section 18.1-292 of the Code of Virginia as amended, it is ORDERED that a Rule shall issue against Kermit W. Salyer, commanding him to appear before this court on October 16, 1967 at 9:00 o'clock, a.m. to show cause, if any he can, why he should not be dealt with and punished for contempt by reason of certain vile, contemptuous and insulting language published of and concerning the Judge of this court in an "Editor's Note" or comment, or editorial initialed by the said Kermit W. Salyer as "K. W. S." appearing in the Franklin News Post in the issue dated October 5, 1967, a copy of which is filed in the Clerk's Office of this court, along with this order.

ENTER this the 11th day of October, 1967.

L. JONES, Judge

* * * * *

page 5 }

* * * * *

Circuit Court for Franklin County October 16, 1967

* * * * *

This day came the defendant, Kermit W. Salyer, in his proper person, pursuant to a rule issued by this court on the 11th day of October, 1967, to show cause why he should not be dealt with and punished for contempt and insulting language published of or concerning the Judge of this court, and likewise came the attorney for the Commonwealth, and the court having inquired of the defendant if he was represented by counsel and being advised he was not so represented, and thereupon the court advised the defendant of his right to counsel, and being advised by the defendant he did not desire counsel and was ready for trial.

Thereupon an issue of the "Franklin News Post", a newspaper published and having general circulation in Franklin County of which Kermit W. Salyer is designated as editor was presented in evidence and the defendant after being asked if he had anything to say in his behalf thereupon took the witness stand and read and made a statement in his behalf, and no further evidence having been introduced, the court being of the opinion that the language appearing in the October 5th issue of the Franklin News Post, designated as "Editor's Note" or comment and published by said defendant over his initials "K. W. S." is vile, contemptuous and insulting language published of the Judge of this court by reason of proceedings heretofore had as provided by Section 18.1-222, the court doth so determine, and thereupon the inquiry was made of the defendant if he had anything to say or offer before sentence was pronounced and none being offered, it is the judgment of this court that said defendant be and he is hereby sentenced to jail for a period of ten days and shall pay the costs of this proceedings.

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page 6 }

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Enter October 16, 1967

L. JONES, Judge

page 7 }

* * * * *

MOTION

TO THE HONORABLE LANGHORNE JONES, JUDGE OF SAID COURT:

This Defendant, Kermit W. Salyer, respectfully moves you, the Honorable Langhorne Jones, to enter of record the fact that you are the party alleged to be injured by the conduct of the said Kermit W. Salyer as required by the provisions of Section 19.1-7 of the Code of Virginia of 1950, as amended.

Filed 11/2/67.

Y.

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page 8 }

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MOTION

TO THE HONORABLE LANGHORNE JONES, JUDGE OF THIS COURT.

The Defendant, Kermit W. Salyer, respectfully moves the Court to vacate its Order of October 16, 1967, and to set aside the Judgment in said Order, and either dismiss the Rule issued herein on the 11th day of October, 1967, or grant him a rehearing and new trial thereon for the following reasons:

1. The Judgment of the Court is contrary to the law and the evidence.

2. The evidence adduced before the Court does not support the finding that the language attributed to the Defendant in the "Editor's Note" described in the Judgment of the Court is "vile, contemptuous or insulting" within the meaning of Section 18.1-292 (3) of the Code of Virginia of 1950, as amended.

3. The language attributed to the Defendant in the "Editor's Note" described in the Judgment of the Court is not vile, contemptuous or insulting language addressed to or published of a judge within the meaning of Section 18.1-292 (3) of the Code of Virginia of 1950, as amended.

4. The case referred to in the language attributed to the Defendant in the "Editor's Note" described in the Judgment of the Court had, in fact, been terminated before said language was published, and Section 18.1-292 (3) of the Code of Virginia of 1950, as amended, insofar as it applies to proceedings already terminated, violates Amendments One and Fourteen of the Constitution of the United States.

page 9 } 5. The use of the language attributed to the Defendant in the "Editor's Note" described in the Judgment of the Court is within the protection of Amendments One and Fourteen of the Constitution of the United States and Sections 12 and 58 of the Constitution of Virginia.

6. The language attributed to the Defendant in the "Editor's Note" described in the Judgment of the Court does not constitute a clear and present danger to the administration of Justice under the rule of the Supreme Court of Appeals of Virginia, as set forth in *Weston* v. *Commonwealth of Vir-*

ginia, 195 Va. 175, 77 SE 2d 152, (1953) and in related cases of the Supreme Court of the United States.

7. The Honorable Langhorne Jones, Judge of this Court, was disqualified from trying this case under the provisions of Section 19.1-7 of the Code of Virginia of 1950, as amended, because this is a prosecution in which the Judge himself is the person alleged to have been injured.

8. He has been deprived of his liberty without due process of law and denied his right to be tried by an impartial judge in violation of the 14th Amendment of the Constitution of the United States.

9. He has been denied his right to be tried by an impartial tribunal in violation of the Constitution of Virginia.

Filed 11/2/67. L. JONES

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page 13 }

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ORDER

On the 2nd day of November, 1967, came the defendant, by his Counsel, M. Caldwell Butler, likewise came Virgil H. Goode, Commonwealth's Attorney, and the defendant filed his motion to vacate the order of October 16, 1967, and set aside the judgment, and dismiss the Rule on the grounds therein stated; and the Court having taken the same under consideration doth this day OVERRULE said motion, to which the defendant, by Counsel, EXCEPTS.

And the defendant likewise filed his motion to enter of record as a matter of fact that the Judge of this Court is the party alleged to be injured and the Court likewise having considered the same is of the opinion that such order is improper, doth OVERRULE said motion, to which act Counsel for defendant EXCEPTS.

ENTER this the 3rd day of November, 1967.

L. JONES, Judge

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO THE HONORABLE EDWIN GREER, CLERK OF SAID COURT:

Counsel for the Defendant, Kermit W. Salyer, hereby gives notice that they will apply to the Supreme Court of Appeals of Virginia for a writ of error from the final judgment entered herein by the Circuit Court of Franklin County, Virginia, on October 16, 1967, and that they will rely on the following assignments of error:

1. The Honorable Langhorne Jones, Judge of said Court, erred in failing to disqualify himself from participation in the trial of this case and in proceeding to preside over the trial thereof.
2. The Court erred in entering judgment of contempt against the Defendant.
3. The Court erred in overruling Defendant's motion to vacate and set aside the judgment for the reasons assigned with said motion.
4. The Court erred in overruling Defendant's motion to enter of record the fact that the Honorable Langhorne Jones, Judge of said Court, was the person alleged to be injured by the conduct of the Defendant as required by the provisions of Section 19.1-7 of the Code of Virginia of 1950.

* * * * *

Filed 7 day of December, 1967.

Teste

EDWIN GREER, Clerk

* * * * *

TRANSCRIPT OF EVIDENCE

The following testimony constitutes the evidence introduced in the above styled case heard before Honorable Langhorne Jones in the Circuit Court of Franklin County, Rocky Mount, Virginia, on the 16th day of October, 1967.

page 1 } By The Court: Mr. Salyer you are up here on a rule to show cause why you should not be dealt with on a contempt case. I think I asked you if you had a lawyer.

By Mr. Salyer: I have none.

By The Court: Do you want an opportunity to get a lawyer?

By Mr. Salyer: No.

By The Court: You would like to have—

By Mr. Salyer: I do not want one.

By The Court: You do not want a lawyer. Now, under the law, particularly contempt cases, the Court will furnish you an attorney if you desire one under certain conditions.

By Mr. Salyer: I don't think I want one.

By The Court: You don't care for a lawyer.

By Mr. Salyer: No, sir.

By The Court: You understand what the charge is?

By Mr. Salyer: I would say so.

By The Court: Mr. Salyer, if you are ready, then we will proceed in this case.

page 2 } By Mr. Salyer: I'm ready.

By The Court: You are ready for trial?

By Mr. Salyer: Yes, sir.

By The Court: I have here a newspaper article of the Franklin News Post published on October the 5th, 1967; and according to the statement in the paper, required by law, you have listed yourself as editor and publisher of this paper, the article which is referred to follows a copy of an editorial of the Roanoke Times and I wanted to introduce into evidence and let you see the article before—

By Mr. Salyer: I acknowledge it, I acknowledge it.

By The Court: I didn't ask you a question, I'm just putting it in evidence. You don't have to answer it unless you desire to.

Sheriff Price shows paper to Mr. Salyer

By The Court: That will go into evidence. Now, Mr. Salyer, under the law, as I Understand it, a word spoken, it has to be proved but for publications it is a matter for the judgment of the Court to determine whether or

page 3 } not it is vile, I believe the Statute uses the word vile and contemptuous or insulting language addressed to or published of a Judge for respect of any act proceeding had or to be had in any court. And the court is of the opinion that this is within the meaning of that

Statute. If you have anything that you desire to say for any defense that you have to make, you may do so at this time.

Mr. Salyer: I have a statement I would like to read.

By The Court: All right, sir. Would you stand before the microphone please, and if you are going to testify, I think you had better be sworn Mr. Salyer.

By The Clerk: Hold up your right hand.

By Mr. Salyer: This is not testimony.

By The Court: Well, in other words, you are not testifying at this time?

By Mr. Salyer: I'm making a statement.

By The Court: All right, sir.

page 4 } By Mr. Salyer: "First let me say that I give way to no one in my respect for law and order.

"It is my inalienable right as guaranteed to me by the constitution, to criticize a public official when I think he is wrong. Neither the Code of Virginia nor any ruling by this Court can abridge that right. I think this court made the wrong decision on re-districting. And I Believe that decision was made under political pressure.

"This court, when it threw out the re-districting petition in effect told me that my vote was worth less than the vote of any man in any other district in the county.

"This court told me that my vote was worth only 33% of the vote of a voter in Boone District; worth only 37% of the vote of a voter in Blue Ridge District; worth only 36% of the vote of a voter in Union Hall District; worth only

page 5 } 32% of the vote of a voter in Blackwater District; worth only 29% of the vote of a voter in Gills Creek District and worth only 28% of the vote of a voter in Snow Creek District.

"I contend that my vote should be worth 100% of the vote of any other voter in the county. And it is the Burden of this court—not my burden—to correct this situation. Therefore, I ask this court to rescind its action on re-districting and see that the county is re-districted in order that the nearly nine thousand people in Rocky Mount District may enjoy the rights of first class citizens.

"I will not apologize for what I wrote in the Franklin News-Post on October 5 regarding this matter. Rather, I believe it is the duty of this court to apologize to the people of Rocky Mount District. I Still feel the same way and would write the same words again given the same circumstances.

page 6 } "I have no respect for this court. And I am not alone in this. I think most of the God-fearing, law-abiding citizens of this community feel the same. It is known

everywhere that a man can literally get away with murder in Franklin County.

"I have no respect for this court because of the way it reduces practically every fine and sentence in cases appealed from the lower courts. Those defendants appeal because they know they will get off altogether or have their fines and sentences materially reduced.

"I have no respect for this court because of the way the Commonwealth's Attorney plays politics with his office. Most of the time you can't tell whether he is the prosecuting attorney or the defense attorney. I believe he considers the political implications in every case. I believe he counts the votes involved in every case.

"I don't think the judge of this court belongs on the circuit court bench and I don't believe the Commonwealth's
page 7 } Attorney belongs in his post.

"If this be contempt, then make the most of it."

By The Court: Mr. Salyer, I don't know whether you ought to be sent to some institution or not, but anyhow, be that as it may. I don't have to answer you at all; but I want to make this observation and I had not intended making it until you read the statement which you read. In the first place a petition was filed before me for re-districting on which your name appears in which you represented yourself as a qualified voter of Franklin County. After this petition was filed with me, I checked to determine who were qualified voters and who were not. It was revealed to me by my investigation that you are not a resident of Franklin County, that you are not qualified to vote in Franklin County, and that you misrepresented to the Court that you are a citizen of Franklin County and voter of Franklin County.
page 8 } By Mr. Salyer: I pay my taxes in Franklin County and I have been voting in Franklin County.

By The Court: Well, that's my information—my investigation was that you did not live in the County and that you worked in the County. I don't know whether that is right or not, but that's my information, that's what I found from my investigation. You can answer that for your own self. Furthermore, this Court set a public hearing on this case. There was only one person out of eighty who signed this petition that appeared before the Court at that time. That Gentleman was a respected citizen of this County. A man whom I respect highly. He said he would not at that time—a petition was filed by four qualified voters of this County, contesting it which they had a right to do under the law. Since the matter was contested, then the person who has filed

the petition has a right to answer. In order to
page 9 } protect you, I told the gentleman who appeared
that signed, that that was the law and that they
should answer it. So, I extended the time from that date. I believe that was July 29th, I extended that until July 29th. Then I extended that date to September 23rd 1967. At the request of Mr. Robert C. Haumesser, who by a letter which is in the file, advised me that he was speaking for the petitioners. There's Mr. Haumesser's letter "In behalf of eighty plaintiffs in the Franklin County Magisterial District, I submit myself as representation for notification of further hearings in this matter. The plaintiffs have discussed and investigated the recommendation that we hire an attorney to represent us. We have come to the conclusion that such action should not be necessary with so able a Jurist as yourself presiding." I talked to Mr. Haumesser and we had a very fine conversation. I advised him that I could not act as
Attorney. He asked for a continuance of the
page 10 } matter, which I did continue until the 23rd day
of September. The day before this was to be—
that he had to file his petition he called me on the telephone and said in effect, I can't repeat his words, that he had tried his best to get them together and to prepare an answer to file and to get an attorney that he could not get anything out of them, he was one of them; and, therefore, he would not appear. He would not file anything in the proceedings so there was nothing for me to do. When a person brings a suit in Court, if this Court were to represent every person who brought a suit in there because they didn't desire to get an attorney, then the Court would have to start practicing law, which the law does not allow. There was nothing for me to do, except dismiss the petition. I did not rule on anything except to dismiss the petition. You then had a right within
twenty-one days to appeal the situation to an-
page 11 } other Court. Now, not only that, but there is
nothing in the petition nor any proof to me as to
the situation in Franklin County. It may be something you assume; I don't know, it may be top heavy, I don't know.

By Mr. Salyer: Population figures alone show that.

By The Court: But the Supreme Court of the United States has never ruled and has not ruled until this day that it is mandatory to have a re-districting in a political subdivision of the state. Some of the Federal Courts have ruled one way and some another. They are not binding on a state Court, they may be persuasive but they are not binding. Therefore, you had a real constitutional question and you

had a lot of things in there that this Court couldn't represent the petitioners against the contestants in this case, nor any other case. Now, I'm not responsible for your personal opinion about this Court or any other Court, but not only do I think the piece that you had in your paper was *contemptious* but I think the statement you read this morning

page 12 } is *contemptious*. As a good citizen of Franklin County, *It* seems to me that the language which has been used in your paper particularly in this case and in other cases should not be used by a person in a publication. To me, it is vile, *contemptious* and insulting. I may have been raised wrong, I don't know. My education may have been limited; to me the words which you used are vile and *contemptious,* the statement which you read this morning is.

Therefore, I find you guilty of contempt. Do you have anything to say before the Court pronounces sentence?

By Mr. Salyer: No, sir.

By The Court: It is the judgement of this Court that you be confined in the jail of this Commonwealth for a period of ten days, that is the limit that I can give you.

By Mr. Salyer: May I appeal that?

By The Court: What?

By Mr. Salyer: May I appeal that?

By The Court: Yes, sir, you can appeal by giving a bond in the sum of $500 and the judgment will be sus-

page 13 } spended for a period of 60 days in order that you may apply to the Supreme Court of Appeals of Virginia for a writ of error. You will have to give the bond this morning. I will give you an opportunity with the Sheriff to find your bondsman.

page 14 } The foregoing transcript of oral testimony and other incidents of trial recorded on the 16th day of October, 1967; in the trial of this case was recorded by and transcribed under the direction of the undersigned Court Reporter, who was first duly sworn according to law.

ANN C. ALTIEE
Court Reporter

The undersigned Counsel for Commonwealth in the case of Commonwealth of Virginia vs. Kermit W. Salyer, final judgment wherein was rendered on the 16th day of October, 1967, hereby affix his signature to the foregoing transcript of the oral testimony and other incidents of the trial of said case, as provided by Rule 5:1, Section 3 (e) of the Rules of

the Supreme Court of Appeals, to the end that the same may become part of the record on appeal.

Given under my hand this 10 day of November, 1967.

VIRGIL H. GOODE
(Counsel for Commonwealth)

page 15 } Tendered on this, the 18 day of November, 1967, and within sixty days after final judgment.

LANGHORNE JONES
Judge of the Circuit Court of
Franklin County, Virginia

CERTIFICATE

I, Langhorne Jones, Judge of the Circuit Court of the County of Franklin, presiding in the case of Commonwealth of Virginia vs. Kermit W. Salyer, do hereby certify that the foregoing is a true and correct copy and report of the evidence and other incidents of the trial therein, all questions raised and all rulings thereon and exceptions noted in the above styled case, in said Court at Rocky Mount, Virginia, on October 16th, 1967; and it appears that reasonable notice was given that this transcript would be presented for certification, and which was presented to me within sixty days after final judgment and signed by me within seventy days.

I also certify that the Court Reporter reporting said case was sworn to operate the electric recording machine and to transcribe said testimony and other incidents faith-
page 16 } fully and accurately to the best of her ability.

Given under my hand this 27 day of Nov., 1967.

L. JONES, Judge

I, Edwin Greer, Clerk of the Circuit Court of Franklin County, Virginia, do hereby certify that the foregoing transcript of the oral evidence and incidents of the trial of the case of Commonwealth of Virginia vs. Kermit W. Salyer was received by me on this 27 day of November, 1967.

EDWIN GREER
Clerk of the Circuit Court of
Franklin County, Virginia

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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