216 Va. 25
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740962

WILLIAM LEE ROLLINS — Plaintiff in Error

v.

TOWN OF GORDONSVILLE — Defendant in Error

APPENDIX

S. Page Higginbotham
Higginbotham & Puryear
Orange, Virginia 22960

Counsel for Plaintiff in Error

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* (R1)

ARREST WARRANT
(Filed 11/21/73)

STATE OF VIRGINIA)
)
TOWN OF GORDONSVILLE, VA.) To-Wit:
)
TO ANY POLICEMAN OF SAID TOWN:)

WHEREAS, Officer R. W. Giles Gordonsville, Va. has this day made complaint and information on oath before me, E. B. Kirkpatrick Justice of The Peace, for the said Town, that William Lee Rollins R 2 Box 20 Orange, Va. in the said Town did on the 15th day of October, 1973: Unlawfully Operate a motor vehicle on the public highway, while under the Influence of Alcoholic Beverage or other self_administered Intoxicant or drug:

On the basis of the sworn statement(s) of Officer R. W. Giles the undersigned has found probable cause to believe the accused has committed the offense.

* * *

(R17)

JURY VERDICT
(Filed 4/9/74)

We, the Jury, find the Accused guilty of driving under the Influence of Intoxicants as charged in the Warrant and fix his penalty at a fine of $750.00

s/ Lindsay B. Clarke
Forman
April 9, 1974

* Record page number

(R19)

ORDER OF TRIAL
(Filed 4/9/74)

This day came the Attorney for the Town of Gordonsville and the defendant, William Lee Rollins, appeared personally in open court pursuant to his recognizance, and pursuant to an appeal warrant dated October 15, 1973, charging him with a misdemeanor, to-wit: Operating a motor vehicle on the public highway in the Town of Gordonsville while under the influence of alcoholic beverage or other self-administered intoxicant or drug, and came also his counsel, S. Page Higginbotham; thereupon the defendant in person pleaded not guilty to the charge contained in the warrant, and the case proceeded to trial.

After certain motions of defense counsel were overruled by the Court, and excepted to, a lawfully empanelled jury was sworn to try well and truly the issue joined in this case.

And the jurors, after hearing the evidence, the instructions of the Court and the argument of counsel were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading:

> "We, the Jury, find the accused guilty of driving under the influence of intoxicants as charged in the warrant and fix his penalty at a fine of $750.00.
>
> (signed) Lindsay B. Clarke, Foreman
> April 9, 1974"

There being no objection to the form of the verdict, the jury was discharged.

Whereupon defense counsel moved the Court to set aside the verdict of the jury as contrary to the law and evidence and other issues raised in the trial, which motion the Court doth take under advisement, and doth withhold sentencing until the first day of the May Term, May 27, 1974. The defendant is released upon his continuing bond for his appearance in this court on the aforesaid date.

Enter: s/ Harold H. Purcell, Judge

Date: April 9, 1974

(R33) LETTER - JUDGE TO DEFENSE COUNSEL
(Filed 6/6/74)

May 5, 1974

Mr. S. Paige Higginbotham
Attorney at Law
Orange, Virginia

Re: Town of Gordonsville, Va. vs. Rollins

Dear Mr. Higginbotham:

The Gordonsville Ordinance was very much the topic of conversation at our recent Judicial Conference. I found the judges divided about 50-50 as to whether or not the ordinance was valid.

Since my ruling in the Town of Culpeper case, there have

been several rulings in this area. I have discussed this matter with the other judges in the Sixteenth Circuit and a majority feel that my ruling in the Culpeper case was incorrect. I bow to superior wisdom in this regard and since I feel that all judges in this circuit should rule the same on a given issue, I reached the conclusion that I must rule against your client in the above captioned case. Your motion to re-consider is denied. I wish you much luck on appeal.

Very truly yours,

s/ Harold H. Purcell
Harold H. Purcell

(R32)

LETTER OPINION
(Filed 5/29/74)

May 23, 1974

Mr. U. P. Joyner
Attorney at Law
Orange, Virginia

Mr. S. P. Higginbotham
Attorney at Law
Orange, Virginia

Re: Town of Gordonsville vs. Rollins

Gentlemen:

I have reached the conclusion that Mr. Higginbotham's motion to set aside the verdict of the jury as contrary to the law and evidence must be over-ruled as to each and every point

raised. Mr. Joyner will prepare the necessary order and submit it to Mr. Higginbotham for his endorsement showing that Mr. Higginbotham excepts to the ruling of the Court so that Mr. Higginbotham will be in a position to appeal this case if he so desires.

Very truly yours,

s/ Harold H. Purcell

Harold H. Purcell

(R34) LETTER - DEFENSE COUNSEL TO JUDGE
(Filed 6/6/74)

June 3, 1974

Honorable Harold H. Purcell, Judge
Ninth Judicial Circuit
Louisa, Virginia

Re: Town of Gordonsville v. William Lee Rollins

Dear Judge Purcell:

We have received your letter of May 23, 1974, in the above styled case over-ruling our motion to set aside the verdict on the grounds that the Town ordinance is invalid.

We understand that the Town of Culpeper has an identical ordinance which was prepared by Michie Publishing Company, as was the Gordonsville ordinance, and that you have previously ruled the Town of Culpeper ordinance to be invalid for the reasons raised in our memorandum.

In view of the previous ruling of the Court on this point, we would request a reconsideration of the ruling in the Rollins case on the grounds that the precedent hereto established by the Court should be followed.

Very sincerely yours,

HIGGINBOTHAM & PURYEAR

s/ S. Page Higginbotham

By: S. Page Higginbotham

(R35)

ORDER OF CONVICTION
(Filed 6/13/74)

On May 27, 1974, came the defendant by counsel and came also the attorney for the Town of Gordonsville and this matter came on to be again heard upon the motion of the defendant by counsel to set aside the verdict of the jury as contrary to the law and the evidence and other issues raised in the trial, and the Court having taken the said motion under advisement and having received and considered briefs from the defendant and the Town on the motion, the Court overruled the motion of the defendant to which action of the Court, the defendant by counsel duly objects and excepts on the grounds stated at the trial and in subsequent correspondence.

And the defendant by counsel on June 3, 1974, moved the Court to reconsider its decision and the Court on June 5, 1974, having overruled the motion of the defendant to reconsider, to

which action of the Court, the defendant by counsel duly objected and excepted.

And it appearing unto the Court that the verdict of the jury should be confirmed, the Court doth further hereby ADJUDGE, ORDER and DECREE in accordance with the jury's verdict that the defendant be, and he is hereby, sentenced to pay a fine of Seven Hundred Fifty Dollars ($750.00) and to pay the costs of this proceeding.

And the defendant by counsel having indicated to the Court his intention to appeal, execution of the sentence of the Court is suspended for a period of sixty (60) days from this date to allow an opportunity for the defendant to file his notice of appeal and assignments of error.

ENTER: s/ Harold H. Purcell
Judge

Date: 6/13/74

(R37) NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
(Filed 7/5/74)

Comes now William Lee Rollins, Defendant in the above case, by Counsel, and gives notice of appeal to the Supreme Court of Virginia from the order of the Circuit Court of Orange County, Virginia, entered herein on June 13, 1974, finding the Defendant guilty of driving under the influence.

The assignments of error are as follows:

1. The Town Ordinance of the Town of Gordonsville is void because it attempts to incorporate by reference Title 18.1, Chapter 2, Article 6 of the Code of Virginia but actually incorporates by reference only Title 18.1, Article 6, omitting Chapter 2; and,

2. The said Town Ordinance is void because it incorporates only the provisions of the Virginia Code as they existed at the time of the adoption of the Ordinance. Subsequently and prior to the date of the alleged offense, the driving under the influence statutes of Virginia were enlarged or amended so that the Town Ordinance in question did not include the amendments to the general State statute; and,

3. The said Town Ordinance is void because it is vague and indefinite and fails to fully advise the Defendant of the charge against him. The title of the said Town Ordinance recites adoption of "Portion of State Law Regarding Driving Under the Influence", and is otherwise ambiguous and indefinite.

Statement of Facts, testimony and other incidents of the case will hereafter be filed.

Respectfully submitted this 5 day of July, 1974.

WILLIAM LEE ROLLINS

By: s/ S. Page Higginbotham
Counsel for William Lee Rollins

(R40)

STATEMENT OF FACTS
(Filed 8/8/75)

This is a case of driving under the influence brought by the Town of Gordonsville against the Defendant, William Lee Rollins.

The Defendant was tried before a jury on April 9, 1974, and was found guilty and his punishment was fixed at a fine of $750.00. The issue of fact in the trial was whether or not the Defendant was operating the vehicle. This issue was resolved against the Defendant.

The Town of Gordonsville offered in evidence its ordinance, a copy of which ordinance is attached hereto and made a part hereof, and marked, "Exhibit A". This ordinance was objected to on the grounds that it was not proper to incorporate the Virginia statute in the ordinance by reference and that the ordinance did not fully advise the Defendant of the charge against him. The point was also raised by the Court that the statutes of Virginia had been amended since the adoption of the ordinance and that therefore, the amendments of the statutes would not be incorporated in the ordinance and the ordinance therefore would be void. The Defendant took the position that the ordinance was void for this reason also.

The Defendant moved the Court to set aside the verdict

as being contrary to the law and the issue in this case is whether or not the ordinance of the Town of Gordonsville is a valid ordinance.

The Defendant by letter of April 10, 1974, addressed to the Court, pointed out that in adopting the pertinent sections of the Virginia Code by reference was not proper in that "Title 18.1, Article 6" was incorporated by reference, whereas the driving under the influence statute is "Title 18.1, Chapter 2, Article 6".

The Town of Gordonsville, by Counsel, filed a reply by letter dated April 12, 1974. By letter of May 7, 1974, the Defendant replied to the April 12th letter of the Attorney for the Town of Gordonsville. The Attorney for the Town of Gordonsville, by letter of May 9, 1974, replied to the Defendant's letter of May 7, 1974. By letter to both Counsel dated May 23, 1974, the Court indicated that it would overrule the Defendant's motion to set aside the verdict. Subsequent to that time, the Defendant's Counsel learned that the point in question had previously been ruled upon by Judge Purcell in favor of a Defendant in a case involving the Town of Culpeper, which had an identical ordinance, and for this reason, the Defendant's Counsel, by letter of June 3, 1974, addressed to Judge Purcell, requested the Court to reconsider its ruling. By letter of May 5, 1974 (apparently intended to be dated June 5, 1974), the Court overruled the Defendant's motion to reconsider its previous ruling.

The Court, on June 13, 1974, entered a Final Order upholding the jury's verdict finding the Defendant guilty of driving under the influence and fixing his punishment at a fine of $750.00, to which Order of the Court, the Defendant duly objected and excepted for reasons stated in Court and set forth in communications to the Court.

The Defendant filed his Notice of Appeal and Assignments of Error on July 5, 1974.

(R44)

ORDINANCE
(Filed 8/8/74)

ADOPTION OF PORTION OF STATE LAW REGARDING DRIVING UNDER THE INFLUENCE

Pursuant to the authority of Section 46.1-188 of the Code of Virginia 1950, as amended, all of the provisions of the laws of Virginia contained in Title 18.1, Article 6 of the Code of Virginia, as amended, and in force on July 1, 1972, are hereby adopted and incorporated in this ordinance by reference and made applicable within the Town. References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the Town. Such provisions and requirements are hereby adopted mutatis mutandis and made a part of this ordinance as fully as though set forth at length herein and it shall be unlawful

for any person within the Town to violate or fail, neglect or refuse to comply with any provisions of Title 18.1, Article 6 of the Code of Virginia, as amended, which is adopted by this section, PROVIDED HOWEVER, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 18.1, Article 6 of the Code of Virginia.

This ordinance suplants and replaces Ordinance # 18.1-54 which is hereby rescinded.

The above ordinance was adopted by the Town Council of the Town of Gordonsville on Monday, July 17, 1972, to be effective from the date adopted.

s/ Linda M. Anderson
Town Clerk

CERTIFICATE

The undersigned, S. Page Higginbotham, an Attorney qualified to practice in the Supreme Court of Virginia, doth hereby certify that Rule 5:49 has been complied with on January 24, 1975, by filing 25 copies of this Appendix to Brief and 25 copies of the Brief with the Clerk of the Supreme Court of Virginia, and by mailing three copies of this Appendix to Brief and three copies of the Brief to U. P. Joyner, Jr., Esq., P. O. Box 629, Orange, Virginia, Attorney of record for the Defendant in Error, and to A. P. Beirne, Esq., Orange, Virginia, Commonwealth's Attorney for Orange County, Virginia.

Given under my hand this 24th day of January, 1975.

S. Page Higginbotham
Orange, Virginia