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Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE
Supreme Court of Virginia
AT RICHMOND

8170

WILLIAM BARNES

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

MORTON B. SPERO, Petersburg (Spero and Levinson,
Petersburg) for plaintiff in error.

LINWOOD T. WELLS, JR., Asst. Atty. Gen.
(Andrew P. Miller, Atty. Gen.), for
defendant in error.

APPENDIX

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COMMONWEALTH OF VIRGINIA,)
CITY OF PETERSBURG,) To Wit

IN THE HUSTINGS COURT OF SAID CITY
January 20th, 1972

The Grand Jurors of the Commonwealth of Virginia,
in and for the City of Petersburg, and now attending said
Court, upon their oaths, present that WILLIAM BARNES on or
about the second day of January in the year Nineteen
Hundred and Seventy-Two in the said City, and within the
jurisdiction of the said Court, did feloniously kill and
murder (Va. Code Sec. 18.1-21) Robert Nelson Abbott against
the peace and dignity of the Commonwealth of Virginia.

Upon the testimony of
Off. R. E. Williams
Off. F. W. Sutherland

Sworn in Court and sent to the Grand Jury to give evidence.

/s/ Ruth M. Bailey
Clerk

A TRUE BILL
/s/ R. H. Godsey
FOREMAN

VIRGINIA: IN THE HUSTINGS COURT OF THE CITY OF PETERSBURG,
APRIL 12, 1972.

Commonwealth

v. Felony - Murder - Convicted Involuntary Manslaughter
William Barnes (Age 19) Defendant

This day came the Attorney for the Commonwealth,
and William Barnes who stands indicted for a felony, to-wit:
did feloniously kill and murder Robert Nelson Abbott, as
charged in the indictment, appeared according to the
condition of his recognizance; and came also Morton B.
Spero, his attorney.

Whereupon the accused was arraigned and after
private consultation with his said attorney, pleaded not
guilty to the indictment, which plea was tendered by the
accused in person.

The Court then impanelled (sic) twenty qualified
jurors, free from exception. Whereupon the Attorney for the
Commonwealth and the Attorney for the defendant exercised
their rights to strike names from the panel, as provided
by law, and the remaining twelve jurors, constituting the
jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury
heard the evidence presented by the Commonwealth and the
defendant. At the conclusion of the Commonwealth's
evidence, the attorney for the defendant moved the court

to strike the Commonwealth's evidence, which motion was overruled and exception was noted.

After hearing the evidence, the instructions of the court and argument of counsel, the jurors 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 involuntary manslaughter and we do ascertain his punishment to be confinement in the penitentiary for five (5) years.

T. T. MUSGROVE, JR.
Foreman"

The attorney for the defendant then moved the court to set aside the verdict, which motion was overruled and exception was noted.

The attorney for the defendant further moved the court to suspend imposition of sentence to allow the defendant to complete within the next two months his high school education, which motion was denied.

The court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the court finds the defendant guilty of involuntary manslaughter as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of

five (5) years.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

After pronouncing sentence, the Court requested that the attorney for the defendant advise him of his right to petition for an appeal to the Supreme Court of Virginia.

At all times during the trial of this case the defendant and his counsel were present.

The Court orders that the defendant be allowed sixteen (16) days credit for the time spent in jail awaiting trial.

It is adjudged that the Commonwealth recover from the defendant costs assessed in this proceeding.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy, Teste:
/s/ Ruth M. Bailey, Clerk

Entered: Common Law Order Book
Vol 61, Page 279.

VIRGINIA,

IN THE HUSTINGS COURT OF THE CITY OF PETERSBURG

COMMONWEALTH OF VIRGINIA

v.

WILLIAM LEE BARNES

O R D E R

It is the Order of this Court that the sentence of William Lee Barnes, convicted of involuntary manslaughter in this Court on the 12th day of April, 1972, be revoked at this time, and that pronouncement of sentence and execution thereof be continued until the 15th day of June, 1972 at 10:00 A.M., at which time the defendant is ordered to appear in this court.

It is further ORDERED that said defendant be now admitted to bail, and that his bond presently posted with the Court in the amount of \$5,000.00 be continued.

ENTER THIS:

April 14, 1972

/s/ Oliver A. Pollard
OLIVER A. POLLARD, JR., JUDGE

Entered: Common Law Order Book
Vol. 61, Page 280

VIRGINIA: IN THE HUSTINGS COURT OF THE CITY OF PETERSBURG

June 15, 1972

Commonwealth

v. Felony - Murder - Convicted Involuntary Manslaughter

William Barnes. (Age 19)

Defendant

This day came the Attorney for the Commonwealth and William Barnes, who stands convicted of a felony, to-wit: involuntary manslaughter, appeared according to the condition of his recognizance, and came also Morton B. Spero, his counsel.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the Court having heretofore found the defendant guilty of involuntary manslaughter as charged in the indictment, sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of five (5) years, and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

At all times during the trial of this case the defendant and his counsel were present.

The Court orders that the defendant be allowed sixteen (16) days credit for the time spent in jail awaiting trial.

Whereupon, the defendant, by counsel, moved the Court to let the defendant to bail pending the outcome of his appeal to the Supreme Court of Virginia, which motion the Court doth sustain, and it is ORDERED that the execution of sentence be, and hereby is, stayed for a period of one hundred and twenty (120) days.

And the bond of the accused is fixed at \$5,000.00.

A Copy, Teste:

/s/ Ruth M. Bailey, Clerk

Entered: Common Law Order Book
Vol. 61, Page 397.

VIRGINIA:

IN THE HUSTINGS COURT OF THE CITY OF PETERSBURG

COMMONWEALTH OF VIRGINIA

Complainant

v.

WILLIAM BARNES

Defendant

NOTICE OF APPEAL
AND
ASSIGNMENT OF ERRORS

The defendant, William Barnes, gives Notice of Appeal from the judgment of the Court rendered herein on the 15th day of June, 1972.

The transcript of this case has been filed with the Clerk of this Court on the 10th day of July, 1972.

As required by Rule 5:6 of the Rules of The Supreme Court of Virginia, as amended, the following errors are assigned:

1. The Court erred in overruling the motion of the defendant to strike the evidence of the Commonwealth after the Commonwealth had rested its case.
2. The Court erred in refusing to permit the jury to hear the testimony of Nancy Holt as a witness for the defendant.
3. The Court erred in refusing to permit the jury

to hear the testimony of Howard Wild as a witness for the defendant.

4. The trial judge prejudiced the defendant by the manner, form and tone of his questioning of the defendant while on the stand.

WILLIAM BARNES
by counsel

/s/ Morton B. Spero
MORTON B. SPERO, ESQ.
SPERO AND LEVINSON
Attorneys at Law
Suite 203, Union Trust Building
Petersburg, Virginia 23803

On further consideration whereof, it is ordered that the parts of the record to be printed or reproduced in the appendix are to be limited to those parts of the record germane to assignments of error Nos. 2 and 3, and the briefs to be filed shall be limited to such discussion as is relevant to those assignments of error upon which this writ of error is awarded.

This petition for writ of error is refused as to the remaining assignments of error.

A Copy,

Teste:

/s/ H. G. Turner

Clerk

MATERIAL EXCERPTS FROM TRANSCRIPT

[Tr. 20, L. 6 - Tr. 21, L. 24] (Morton B. Spero, attorney
for the defendant, opening statement)

" You will hear that Abbott's condition, at the time he was working, was that of one who who was inebriated; you will hear that at the time the Medical Examiner examined his body approximately eight hours after his death and took his -- a sample of his blood that had come back .21 percentage by alcohol; you will hear that after they worked for a while they would work and have some drinks and work and have some drinks; you will hear that two thing happened inside of the One-Hour Cleaners that caused some dissension between Bill Barnes and Robert Abbott, that will come out from the stand, and that as a result of this dissension Bill was -- had left Abbott on the second floor and was walking down the steps and had gone into the interior of the first floor, not too far from the steps, when he heard Abbott coming down the steps and that he could tell Abbott was coming becuase there was a faulty step that made a certain creep or thump as you stepped on him, he heard that, and that he turned around and Abbott was coming at him with a razor in his hand; ***** and that he had no time to do anything and that he pulled out his gun and Bill will tell you he intended to fire one time, and Bill will tell you that that gun kept going off, it wasn't an automatic, the evidence will show that each shot you will have to squeeze the trigger, but that in the excitement of this man coming at him. that he emptied the gun in -- toward Abbott.

[Tr. 55, L. 21 - Tr. 56, L. 3] (J. Thompson Wyatt,
Commonwealth's Attorney)

"Now if the Court pleases, Dr. Pope is out of the State, I think, today and and his analysis shows that the blood alcohol that was drawn developed to be 0.21 percent alcohol, and Mr. Spero, defense counsel,

and I have agreed to the result of that statement and file this as evidence."

[Tr. 88, L. 11 -16] (Robert E. Williams, Detective,
Petersburg Police Department)

"Q. Did you talk to Mr. Barnes, did he make any statement to you? A. Yes, sir, I saw the subject laying in a pool of blood, Mr. Abbott. At this time, I advised Mr. Barnes of his rights, he stated that Mr. Abbott had come at him with a razor, that he'd shot him in self-defense."

[Tr. 94, L. 19 - Tr. 95. L. 14] (S. W. Sutherland
Detective, Petersburg Police Department)

"Q. Did he make any statement? ***** A. He stated that he was in the One Hour Martinizer earlier cleaning up and at approximately 10:15 p.m., he left there and went to the Busy Bee to have some beer, there he stated he met this Mr. Abbott and bought him a beer. He then stated he asked Mr. Abbott if he would like to come back up there and help him move some boxes and if he did come that he would buy him some beer or get him something to drink.

"He stated they were moving boxes from the bottom floor to the top floor which is the -- on two floors, upstairs and he was coming downstairs. When he got down to the bottom of the stairs, he stated he heard something behind him. At that time he stated he turned around and saw Mr. Abbott come at him with a razor. He stated at this time he took the gun out of his pocket which he had in his pocket and started shooting, but he also stated he didn't mean to shoot him but one time."

[Tr. 100, L. 7 - Tr. 101, L. 10] (A. V. Bowen, Captain
of Detectives, Petersburg Police Department)

"Q. Do you have a correct narrative of his statement? A. Yes, sir, ***** They had both been carrying cardboard boxes from the bottom floors to the front top floor of the

cleaners and as he came back to pick up the last box he heard Abbott on the stairway, he looked up and saw Abbott with a razor in his hand, he pulled his weapon a .25 pistol from his right pocket, he stated that he do not remember whether or not anything was said either by him or Abbott. He stepped back and Abbott was on the third step from the bottom at this time. Abbott continued towards him and he fired one time spinning Abbott around and the gun continued to go off until all the bullets had been fired."

[Tr. 140, L. 8 - Tr. 150, L. 4] (Material part of transcript of rejected testimony, subject of this appeal).

"BY MR. SPERO:

Q. Please state your name and residence?

A. Nancy Holt, 4404 Long Leaf Drive --

Q. Now, Mrs. Holt, I understand that you're a woman but we have women's liberation and we want you to speak up so I can hear you over here. Mrs. Holt, were you at one time married to the deceased Robert Nelson Abbott?

A. Yes, sir. (whispering)

Q. How long ago were you married to him?

A. We've been separated since sixty-seven.

MR. WYATT: Your Honor, I object to the wife being called in this case, I think any -- any testimony between man and wife during coverture is confidential.

THE COURT: I think that might be true if he were the one charged, Mr. Wyatt.

MR. WYATT: I know, but it's still confidential, I think. *****

THE COURT: let's wait and see what he's going to ask.

MR. WYATT: I'd like to ask for exclusion of the Jury, could I ask that the Jury be excluded a minute.

THE COURT: All right, Sheriff, have the Jury excluded.

NOTE: At this time, the Jury retired from the Courtroom.

MR. WYATT: Well, if the Court pleases, we have to anticipate some things in a case, particularly if the defense is represented by very astute attorney, in thinking that this witness is being called to prove the pugilistic tendencies of the deceased and, if that's true, I'm sure the defendant knows that that is not evidence, unless it's first proved that the person who's claimed self-defense knew of the -- unless he knew of this boy's pugilistic tendencies, if that's what he's trying to prove, before it's not testimony preceding his testimony.

THE COURT: All right, Mr. Spero, what are you trying to get at with this witness?

MR. SPERO: I'm going to ask her two separate lines of questioning, one, his tendency to drink alcoholic beverages, and how does -- what is his personality at the time he drinks that she has observed.

THE COURT: Well, let me ask you this, you say separated from him in 1967, is she familiar with his attitudes and habits since that time.

MR SPERO: I have

THE COURT: this is 1972 --

MR. SPERO: my next witness will carry it up --

THE COURT: No, I'm asking you about this witness now, this was five years ago since she lived with the man.

MR. SPERO: You'll have to ask her whether she has --

THE COURT: I question whether that would be pertinent to his --

MR. SPERO: Well, it would show a chain of events, in other words, Your Honor, I intend to show how she knew the man, what caused his problem, as drinking, and my next witness will show that his drinking problem continued up till his death.

THE COURT: I don't see, frankly, what caused any drinking problem has got to do with this charge.

MR. SPERO: I didn't say what caused his drinking problem what is --

THE COURT: You said you were going to ask her what caused his problem.

MR. SPERO: Well, what causes his aggressiveness, in other words, I -- I offered to prove this, Your Honor, I offered to prove that this man --

THE COURT: Mr. Wyatt represents what the law is, and it seems it's probably correct, that if you are going to show any aggressive tendencies you are going to have to show that your client was aware of them and took whatever action he took because he realized the man tended to aggression -- tended to aggressive act.

MR. SPERO: Your Honor, that is one -- one -- though part of the law is correct, but there also can be evidence introduced in Court to show that the man acted irrationally under the influence of alcoholic beverages, that he was aggressive under alcoholic intoxicants, and that he was inebriated since she was separated from him and was committed to an institution for that purpose.

THE COURT: I don't think the fact this man's been committed is proper evidence in this case, Mr. Spero.

MR. SPERO: On what ground, Your Honor?

THE COURT: What ground is it?

MR. SPERO: To show the Jury what type of person the deceased was.

THE COURT: I don't -- you have evidence that he was drinking that day.

MR. SPERO: I know, but what happens to him when he drinks --

THE COURT: I'm not going to allow the evidence this man was committed for drinking, no.

MR. SPERO: Well. Your Honor, of course, I object to your ruling on the ground that the Jury is entitled to know the background of this man and the --

THE COURT: They are entitled to have any evidence presented to them that's germane to this question, to this case.

MR. SPERO: We certainly agree with that conclusion and I --

THE COURT: I disagree that what this man -- might have happened to him in 1967, or '68, or anytime remote from this case that doesn't have any direct bearing on this case, I'm not going to allow it in.

MR SPERO: Your Honor, if I have to make a record, they'll later say I didn't state grounds for my objection, if I can really say what I want to say. I say that the Jury should be entitled for follow a chain of events, there is very possible in any case that no one person can furnish all of the information. I intend to call this witness to show that during her marriage and up through her marriage he had a drinking problem and that this drinking problem caused him to be aggressive when he was drinking. I then intend to call the next witness to show that he has been hospitalized because of his drinking problem almost to the time of his death, many times, and what he was classified as --

THE COURT: Mr. Spero, this man could have been completely sober the night this thing happened --

MR. SPERO: But I'm -- I'm bringing a whole --

THE COURT: Then of what value to the Jury would it be that the man had a drinking problem?

MR. SPERO: Well, had this woman been his wife up to the time of his death, I would assume you would allow the testimony to come in?

THE COURT: Perhaps, some of it.

MR. SPERO: Well, then what happens when we have people.

THE COURT: not all of it.

MR. SPERO: who move from one place to another and only one person knows them a day at a time.

THE COURT: Mr. Spero, I'm not going to allow any evidence in this about this man unless you can convince me it has anything to do with this case.

MR. SPERO: Yes, sir.

THE COURT: if you can show evidence of this man's condition on the afternoon of the day this thing happened, or that night, we've already had some evidence in, the man's dead, we can't say what -- he can't testify what his condition was, I don't think it's fair or got anything to do with this case to go back five or six years to what his drinking habits were.

MR. SPERO: Your Honor, I can't put all my witnesses on at one time, I will have the defendant take the stand --

THE COURT: What do you intend to get out of this witness?

MR SPERO: That this man -- what his personality and how aggressive he became when he was drinking. Now, my next witness will show that that drinking problem continued almost up to his death, then the defendant will get on the stand and testify

he was drinking and what happened to him in that store. Now, it's --

THE COURT: Mr. Wyatt,

MR. SPERO: it's a chain of events.

THE COURT: what have you got to say about that?

MR. WYATT: That's not evidence, Your Honor, I -- whether it's a chain or no chain or sequence or no sequence, it's just can't be shown, this aggressiveness, or this man, even if he could prove it, it's got nothing to do with this case unless the -- unless the defendant knew of it and knowing of that made him act quickly.

THE COURT: I agree with you. Mr. Spero, I'm not going to allow that in.

MR. SPERO: Well, Your Honor, I would for the record like to show that I'm offering to prove by Mr. Howard Wild, who is a Rehabilitation Officer at Central State Hospital that the decedent was a patient in Central State Hospital from 19 -- through 1970 and '71 as a habitual excessive drinker.

MR. WYATT: I think that's --

MR. SPERO: I make that as an offer of proof outside the --

THE COURT: What did you say, Mr. Wyatt?

MR. WYATT: I don't think that's evidence.

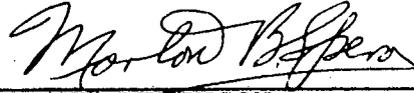
THE COURT: I agree with you.

MR. SPERO: Well, I say I make that an offer of proof for the record, and I object to the denial of the witnesses, Your Honor. With that denial, may Mr. Wild and Mrs. Holt be excused?

THE COURT: Certainly may.

MR. SPERO: Thank you."

THIS APPENDIX IS SUBMITTED PURSUANT TO AGREEMENT OF COUNSEL.



SPERO AND LEVINSON
by Morton B. Spero, Esq.
Counsel for Plaintiff in Error