COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of said County:

The grand jurors in and for the body of said County of Rockingham and now attending said Court at its October term, 1927, upon their oaths do present that Ewell Breeden, James T. Dean, and Lloyd Dean, within one year next prior to the finding of this indictment, in the said County of Rockingham, did unlawfully manufacture, sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise and receive orders for ardent spirits, against the peace and dignity of the Commonwealth of Virginia.

The jurors aforesaid, upon their oaths aforesaid, do further present that Ewell Breeden, James T. Dean, and Lloyd Dean, within one year next prior to the finding of this indictment, in the said County of Rockingham, did unlawfully have in their possession ardent spirits, against the peace and dignity of the Commonwealth of Virginia.

The jurors aforesaid, upon their oaths aforesaid, do further present that Ewell Breeden, James T. Dean, and Lloyd Dean, within one year next prior to the finding of this indictment in the said County of Rockingham, did unlawfully receive ardent spirits, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of J. L. Dirting, W. E. Thurber, D. H. Dofflemyer, W. T. Rexrode, and George Lawson, witnesses sworn in Court and sent before the grand jury to give evidence.

We the jury find the defendants, James T. Deane and Lloyd Dean guilty as charged in the indictment and fix their punishment at one minute in jail and a fine of Two Hundred Dollars each.

Chas D Hoover, Foreman

B. I.

Commonwealth

v) Indictment

Ewell Breeden
James T. Dean
Lloyd Dean

Misdemeanor

October term, 1927

A True Bill:

J. C. Cadow
Foreman

D. W. Earman
Commonwealth's Attorney

Commonwealth of Virginia, }
Rockingham County, } To-wit:

BE IT REMEMBERED that on the 2r day of Aug 1927, Loyd Dean & Edna J Dean came before me V H Bruce of the said county of Rockingham, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia, in manner and form following, that is to say: the said ---------- in the sum of One Thousand ---------- Dollars good and lawful money of the United States, ~~and the said~~ ---------- ~~in the sum of~~ ---------- Dollars ~~of like good and lawful money, to be~~ respectively made and levied of their several goods and chattels, lands and tenements, and they severally waived the benefit of their Homestead Exemption as to this obligation, and also waived any claim or right to discharge any liability to the Commonwealth arising under this recognizance with coupons detached from the bonds of this State, to the use of the Commonwealth of Virginia if the said Loyd Dean shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound Loyd Dean do and shall personally appear before the Circuit Court of Rockingham on the 1st day of the Oct Term next thereof, being the 17 day of Oct 1927, at the Court-house thereof, and then and there answer the Commonwealth of Virginia concerning a certain ---------- whereof the said Loyd Dean stands charged, and shall not depart thence without the leave of said Court, then the above recognizance shall be void and of no effect, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the day and year first above written.

V H Bruce J.P.

Commonwealth of Virginia, } To-wit:
Rockingham County, }

Be it Remembered that on the ..... day of ..... 192 .....

came before me ..... of the said county of Rockingham, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia, in manner and form following, that is to wit: the said ..... Dollars good and lawful money of the United States, and the said ..... in the sum of ..... Dollars of like good and lawful money, to be respectively made and levied of their several goods and chattels, lands and tenements, and they severally waived the benefit of their Homestead Exemption as to this obligation, and also waived any claim or right to discharge any liability to the Commonwealth arising under this recognizance, with costs, detected from the funds of this State, to the use of the Commonwealth of Virginia if the said ..... shall make default in the performance of the condition underwritten.

The condition of the above recognizance is such that if the above bound .....

Court of Rockingham on the ..... day of the ..... Term next thereof, being the ..... day of ..... 192 ..., at the Court-house thereof, and then and there answer the Commonwealth of Virginia concerning a certain ..... wherein ..... is plaintiff and ..... defendant, and shall not depart thence without the leave of said Court, then the above recognizance shall be void and of no effect, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the day and year first above written.

.....

Arrest Warrant

Commonwealth of Virginia,
Rockingham County, } To-Wit:

To G. A. Lawson Deputy Sheriff, a ~~Constable~~ of said County:

Wheras, W. T. Rexrode of the said County, has this day made complaint and information on oath before me, R. H. Brown a Justice of the said County, that Jas. T. Dean of the said County, on the 22 day of May, 1927, in the said County, did unlawfully have in possession distilled spirits, aiding and abetting in the sale & keeping of the same

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before, me or some other Justice of the said County, the body of the said Jas. T. Dean to answer the said complaint and to be further dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 22 day of May, in the year 1927.

R. H. Brown J. P. [Seal]

Commonwealth

vs.

.....

Judgment

That the Defendant found guilty and fined and costs as follows:

Fine - - - - .....

Clerk's Fee - - - .....

Justice's Fee - - - .....

Arrest - - - - .....

Summoning Witness - .....

Witnesses Attendence and Mileage .....

Total - - - .....

.....

Justice of the Peace.

Commonwealth

vs. } Arrest Warrant

Jas. T. Dean

.....

Executed the within warrant by arresting and delivering the body of

Jas T. Dean

before L. H. Bruce

a justice of Rockingham County, and by summoning the within named witnesses in person

this 22 day of August 1927

H. T. Reeves

~~Constable of Rockingham County~~

State Inspector

Jas. T. Dean and Jas. Zelley arraigned, pleaded guilty, & were sentenced to pay a fine & costs of prosecution & be confined in the Rockingham County Jail for the term of twelve months. Defendants waived appeal & were committed to jail. Oct. 1927

Taken and sworn to before me this 27 day of Oct. 1927

L. H. Bruce J.P.

All fees due

Arrest Warrant

Commonwealth of Virginia,
Rockingham County, } To-Wit:

To Ga Lawson Deputy Sheriff, a ~~Constable~~ of said County:

Wheras, W. J. Rexrode of the said County, has this day made complaint and information on oath before me, R H Bruce, a Justice of the said County, that Loyd Dean of the said County, on the 20 day of Aug, 1927, in the said County, did unlawfully aid and abet in transporting and sales of Ardent Spirits,

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before, me or some other Justice of the said County, the body of the said

to answer the said complaint and to be further dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 22 day of Aug, in the year 1927.

R H Bruce J. P. [Seal]

Commonwealth

vs.

.....

Judgment

That the Defendant found guilty and fined and costs as follows:

Fine - - - - .....

Clerk's Fee - - - .....

Justice's Fee - - - .....

Arrest - - - - .....

Summoning Witness - .....

Witnesses Attendence and Mileage .....

Total - - - .....

.....

Justice of the Peace.

Commonwealth

vs. } Arrest Warrant

Loyd Deane

.....

Executed the within warrant by arresting and delivering the body of

Loyd Deane

before L H Bauer

a justice of Rockingham County, and by summoning the within named witnesses in person

this 12 day of Aug 1927

Ezra Landon

~~Constable of~~ Rockingham County

D. S.

J M Cardwell

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon J. L. Deiting, M. E. Thurber, D. H. Dafflemyer, W. T. Reyrsel, Geo. Lawson, W. E. Lucas, L. H. Bruce, & J. L. Flory

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 9th *day of* Nov. *1927, to testify and the truth to say in* ***behalf of the Commonwealth*** *against* Ewell Breeden, Lloyd Dean & James T. Dean

who stand~~s~~ charged with and indicted for a ~~felony~~ misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 4th *day of* Nov., *1927, and in the* 152d *year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

News-Record, Harrisonburg, Va.

Executed Nov 5 - 1927 By delivering
a true copy of this writ to W E Lucas
L. H. Bruce J. L. Flory in person

G. A. Lawson, D.S

Commonwealth
vs
Cuell Breeden
Floyd Dean
James T. Dean

Sheriff fee $ H. C.

1927
Nov 9

Executed Nov. 5. 1927 by delivering a true copy
of this summons to J. L. Stiles, W. E.
Stanley, A. H. Dellinger, W. T. Reynolds,
& Geo. Bowman each in person
G. W. Lawson, S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Ewell Breedin

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 9th *day of* Nov. *19*27 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

James T. Dean & Lloyd Dean

who stands charged with and indicted for a ~~*felony*~~ *misdemeanor.*

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 5 *day of* Nov. *19*27 *and in the* 151st *year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

News-Record, Harrisonburg, Va.

Executed Nov. 8, 1927 by delivering a true Copy of the within Summons to Ewell Breeden

_____ in person.

C. W. Dove, S.R.C.

James T. Dean
Floyd Dean
adv.
Com.

E. D. Ott, p.d.

Sheriff fee, 50

1927
Nov. 9

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

J. L. Dirting, W. E. Thurber, D. H. Dofflemyer,
W. T. Rexrode, and George Lawson

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 17th *day of* October, *19* 27
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY
vs. Ewell Breeden, James T. Dean and Lloyd Dean

who stands charged with and indicted for a felony misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. F. BLACKBURN, Clerk of our said Court, at the Court House, the 11th *day of* Oct. *19* 27 *and in the* 152d *th year of the Commonwealth.*

J. F. Blackburn, *Clerk*

P&L PRESS, Harrisonburg, Va.

Commonwealth

vs

Ewell Breeden
James T. Dean
Lloyd Dean

Sheriff fee 2.50

Oct. 17/27

Executed Oct. 12, 1927 by delivering a true copy of the within Summons to The within named witness in person.

C. W. Dove, S.R.C.

We the Jury find the defendants James D Dean and Lloyd Dean each guilty and fix the punishment of each at thirty days in jail and a fine of Two hundred dollars

Chas D Hoover
Foreman

Russell Hoopdale

Com. v. Damon F. Dean

See following cases:

Warren v. Commonwealth, 35 Va. App. p. 11.

Thompson v. Commonwealth, 35 Va. App. p. 5.

Canter v. Commonwealth 123 Va. 794 - 96 S.E.284

Woods v. Commonwealth 140 Va. 491 - 124 S.E.458.

Cox v. Commonwealth 140 Va. 513 - 125 S.E. 139

Mansfield v. Commonwealth 135 S.E. 700

Ramey v. Commonwealth 117 S. E. 833 136 V. 769

Scharf v. Commonwealth 127 S. E. 303.

Artrip v. Commonwealth 96 S. E. 161

E.J.D.

Com 13 Spos - 2.50
5 Cribs 7.50
1.50
2.25
.25
1.00
Dept 9 mit 8.25
5.55
13.80

Wt 10.40

In the Circuit Court of Rockingham County,

.....*Term 190*.....,

.....*this day presented in Court an account against the Court*

of Rockingham for the sum of $....., *for Service*.....

.....

.....

which being sworn to, was examined and approved by the Court, and ordered to be certified to the Treasurer of this county for payment.

.....*Clerk.*

Form 192—Berlin.

Lecans

E. C. Rhodes 1.50
C. H. Hoover 3.00
~~Hy C Bowen~~ 2.80
S. C. Maxwell 3.00
~~R. P. Wright~~ 2.10
C. C. Huffman 2.60
~~G.~~ E. Kite 3.30

18.30

Nov. 18 - 1907

Come as present than
this day came again the attorney
and the court having considered the motion to
set aside the verdict of the jury and grant the
defendant a new trial, ~~both~~ was ruled ~~to~~
said motion, whereupon the defendant moved
~~the~~ court to suspend the jail sentence on
the ground that the jury had first returned
a verdict fixing the punishment of the
defendant at $250.00 fine, without imposing
a jail sentence, but had been instructed by
the court to return to their room and further
their verdict in connection with a jail sentence,
~~as provided by the statute~~, which was accordingly done;
the jury then brought in a verdict of one month
in jail and and a fine of $200.00; upon
consideration of the statute for such cases made
and provided, the court being of the opinion that
under the provisions of the statute the jury, if they deemed the
violation intentional or inadvertent, were authorized,
~~by the statute~~ in their discretion, to omit the jail sentence - ~~But~~ therefore
~~it is considered by the court that the jail sentence~~
~~be suspended, and, with the consent of the~~
~~defendant, that the fine be $250.00~~ the original verdict of the jury be restored
~~Therefore~~ it is considered by the court that
the Com. recover against the said James
Olson - ~~$250.00~~, the fine aforesaid & the
costs of this prosecution

12
14
48
8
165
1.05
8.40
1.50
.14
6.00
150
21.00
2.10
7
147.0
1.50
.13
4.50
1.50
19.50
18
13
54
18
27
2.40
6
14.40
2.40
7
16.80
54
5
270
27
135

* and that therefore the court erred in
refusing to receive the first verdict of the jury;
it is therefore, with the consent of the accused
in person, considered by the court that the
second verdict of the jury imposing both fine
and imprisonment as aforesaid be set aside
and the original verdict of the jury imposing a
fine of $250, be restored, and it is considered
by the court that the com. recover against
said James T. Kean $250. the fine aforesaid
and the costs of this prosecution

Com. v James T. Dean

On motion to set aside verdict as contrary to the law and the evidence, because no evidence on which to base verdict.

Evidence by Commonwealth,

1- 2½ gals moonshine found at spring house on Dean's premises, about 1 ft from dwelling, in fruit jars buried in ground near which was evidence that one other jar had been taken, leaving print of jar. This testified to by officers and also by Breeden who was indicted with Dean and who claims ownership and who pleaded guilty and was called to testify by Dean,

2- Lawson one of the officers making the search and the arrest of Breeden, testified that Dean had been drinking, or showed evidence of having been drinking at the time Breeden was arrested,

3- Deans premises at corporate limits of town of Elkton at which place a big field day was to be held the day on the morning of which the liquor was found and Breeden arrested,

4- That Dean's reputation and the reputation of his home for handling liquor was bad, and that automobiles were frequently seen going to and coming from there,

5- Breeden was arrested that morning but ~~not~~ neither of the Deans was then taken into custody, According to evidence of officers when Breeden was taken to the automobile, young Dean came and put his head into the car and whispered something to Breeden who then

said to young Mears, Yes, I will take it all on myself.

Later when Breeden was testifying for Mears in answer to question propounded by Mears' attorney, concerning this statement, he said that Breeden had motioned to him to come to the car and then when he put his head inside Breeden said to him, "tell your father to look after my wife and family and I will take it all on myself, and for him not to worry — or words to the effect.

6 — That Breeden run from the officers when he saw them coming, was drunk and had a part of bottle of moonshine on him.

On the other hand Mears, his wife and daughter and Breeden all testify that neither of the Mears knew anything about the liquor being there, that Breeden did not spend the night at Mears house. Breeden claiming that he placed the liquor there in the early part of the night and slept that night in Mears's barn and about seven o'clock, went to Floyd Mears house but does not know whether he ate breakfast or not as he was too drunk to remember. James T. Mears testified that he did not see Breeden that night and the first he saw of him was when he was through breakfast and came out to get his horse to go to Elkton a short while before the arrest of Breeden, when he met Breeden coming from the barn.

Breeden who lived several miles from Mears testified that he came over the evening before the arrest and met a man, whom he did not know, on a road leading from the

mountain towards Klean's residence from the east and brought the liquor,

Klean introduced several witnesses to prove his general reputation for truth, some of whom testified it was good both for truth and as to violation of liquor laws, while others notably Mrs. John Cover said nothing about his reputation for violation of liquor laws, was not strong on his reputation for truth and only "guessed" that he would believe Klean on oath,

Breeden's manner of testifying, as to Klean's evidence

The question is whether the verdict is supported by the evidence.

It is quite evident that the jury did not believe Breeden's testimony as to how, when and from whom he had acquired the liquor, and that Klean knew nothing about it, neither did they believe Klean and his family when they testified that Klean knew nothing about it and that he Klean was not drinking that morning. This was their right. Breeden's manner of testifying, especially his statement that he did not know the man from whom he had bought it and as to where he met this man and his reasons for putting it on Klean's premises, afforded them sufficient reasons, it seems to me, for them not to believe him.

On the other hand the testimony of Klean while confined to a denial of all knowledge

of everything that would connect him with the offence was seemingly straightforward, and I would say that it should have been taken as true by the jury, were it not for the testimony of the officer that Kleam had been drinking, the testimony by the officers and Breeden that one of the grades of liquor had been taken up that morning, the evidence as to the statement by Breeden to young Kleam that James T. Kleam need not fear that he Breeden would take it all on himself, coupled with the request that James T. Kleam take care of his - Breeden's family, and the further evidence as to James T. Kleams reputation,

The liquor having been found on Kleam's premises under the law creates a prima facie presumption of unlawful possession and the burden is on Kleam to rebut this presumption by a preponderance of the evidence.

It is true that when Breeden confesses that he placed the liquor on Kleams premises, that then the location of the liquor there, is not at all inconsistent with the innocence of Kleam, It is also true that the evidence of Kleam having been drinking on that morning taken alone is not inconsistent with his innocence, nor is the evidence as to his reputation so inconsistent.

But on the other hand the location of the liquor on the premises, the drinking of Kleam on that morning, the reputation of Kleam as a violator of the liquor

law, the big crowd expected at Elkton on that day, the statement of Breeden coupled with the request (or it may be condition) that Dean take care of his family, coupled with the further fact that the jury are the sole judges of the truthfulness of the witnesses and the weight of the evidence, taken together, do not, it seems to me to justify the finding that the verdict of the jury is without evidence to support, even though under the law the burden is on the commonwealth to prove guilt beyond a reasonable doubt and the evidence sufficient to convict must not only be consistent with guilt but also inconsistent with innocence.

The jury in this case were fully instructed as to the law, and they are sole judges as to weight of evidence.

As heretofore stated the verdict as to Joyd Dean will be set aside and new trial granted as to him, because the evidence fails to couple him with the offense, but as to James T. Dean the motion will be overruled.

The Cox and Ramey cases cited can be distinguished from this case.

In Cox the proof which was only incriminating fact tending ~~[illegible]~~ accused was fully explained

In Ramey case - incident for wife accused spoke - The only incriminating evidence was the bare fact that the accused was one of several occupants of the premises.

E. L. Rhodes
C. H. Hower
J. C. Hadwell
C. C. Huffman
G. E. Hale

Sheriff Costs
Summons 7.00
Imp. Jury 1.50
8.50

Oct 1927 #439

COMMONWEALTH

VS. Misdr. (Pro.)

EWELL BREEDEN
JAMES T. DEAN
LLOYD DEAN

QUALITY
Bushnell
WORKMANSHIP

20-4446