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, 1923, upon their oaths do presant that Andrew J. Crawford within one year next prior to the finding of this indictment, in the said County of Rockingham, did unlawfully and feloniously manufacture, sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise and receive orders for ardent spirits,

[redacted]

against the peace and dignity of the Commonwealth of Virginia.

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

We the jury find the accused, Andrew J. Crawford, guilty as charged in this indictment and fix his punishment at four months in jail and a fine of $100.00

S. L. Hess
Foreman

Viol. Pro.Act

COMMONWEALTH
v.
ANDREW J. CRAWFORD

A FELONY

A TRUE BILL

FOREMAN

D. W. EARMAN
COMMONWEALTH'S ATTORNEY

Commonwealth vs. Crawford

Commonwealth vs. Carper.

MEMO. OF THE COURT.

These two cases are heard on motion of defendant in each case to set aside the verdict of guilty and grant him a new trial, on the ground that the evidence on which he was convicted was inadmissible because obtained by an illegal search, made in each instance under an illegal search warrant.

In neither case was the affidavit upon which the search warrant issued produced in evidence. The warrant itself does not have to show the grounds of the complaint, or of affiant's belief, so I cannot say whether the warrants were founded on a sufficient affidavit or not, unless it can be said that the matter appearing on the face of the warrants shows affirmatively that they were issued without probable cause. I don't remember what the warrants show in this respect, and for present purposes it is unimportant, because the motion will be denied for other reasons.

In the Crawford case there is a reason for denying the motion for a new trial that does not exist in the Carper case. The evidence was that as the officers approached Crawford's house to execute the search warrant, and, before the house was entered or the warrant was read, Crawford ran from the house carrying a guano sack which contained the cans or fruit jars of "moonshine" whiskey, and that he was about to throw them down, apparently to break them, when the officers, seeing his movements and distinguishing the imprint of the jars on the bag, seized him and took the bag away from him; and the jars which were in the bag, and the liquor contained in them, were the jars and liquor produced in court. Crawford was here violating the law in the presence of the officers, in the unlawful possession and transportation of ardent spirits, and the court is of opinion that the violation of

the law was sufficiently apparent to the officers to justify them in arresting without a warrant of any sort.

I am furthermore of opinion, as applicable to both cases (considering the arrest of Crawford as not justifiable as for an offense committed in the presence of the officers), that evidence obtained in the execution of a defective or illegal search warrant or without warrant is not inadmissible on the trial of the accused because of such defect or illegality.

This view of strongly sustained by Professor Wigmore. III Wigmore on Evid. sec. 2183 and notes, page 2955 and seq. Same volume, sec. 2264 and notes, pages 3125 - 3127.

Mr. Wigmore attributes the decisions contrary to his view to an expression he says is an obiter dictum in Boyd v. U. S., 116 U. S. 616; (29 L. Ed. 746), which dictum he says is erroneous though the decision itself was right, since in that case the evidence which consisted of private papers of the defendant, in which the government had no interest and which were of value only as evidence, was produced from the possession of the accused atthe trial, by an order of the Court, so that the defendant was in truth required to give evidence against himself in violation of his privilege under the 5th amendment. See sec. 2264, and note 4 on pages 3125 and 3126.

In support of the proposition that evidence obtained on a search under a defective search warrant, or a search warrant issued without a sufficient affidavit, should be excluded on the trial of the accused, I have been referred to Weeks v. U. S., 58 L. ed. 652; Gouled v. U. S., 255 U. S. (65 L. ed. 647); Amos v. U. S. ~~xxxxx~~ 255 U. S., (65 L.ed. 654).

These cases were grounded upon the dictum in Boyd v. U. S., supra, which is assailed by Mr. Wigmore in the sections and notes above referred to.

In the case of Gouled v. U. S., 65 L. ed. 647, the court on page 653, deals with the question of the application of the 5th amendment, in answer to "the fourth question." The fourth question as there set out reads as follows:

> "If such papers, so taken, are admitted in
> "evidence against the person from whose house or
> "office they were taken, <u>such person then being on trial</u>
> "<u>for the crime for which he was accused in the affidavit</u>
> "<u>for warrant</u>, -- is such admission in evidence a violation
> of the 5th amendment." -- (Italics or underscoring mine).

To this question the court answered as follows:

> "The same papers being involved, the answer to this
> "question must be in the affirmative; for, they having
> "been seized in an unconstitutional search, to permit
> "them to be used in evidence would be, in effect as
> "ruled in the Boyd case, to compel the witness to become
> "a witness against himself."

In the Gouled case, there was no search warrant at all, but the papers were obtained by a federal officer without a search warrant. If that officer was acting under an order of the court in which the defendant was on trial at the time (and the question is predicated upon the fact that the accused was then on trial), then the ruling would fall within the principle stated by Mr. Wigmore, which as he says justifies as right the decision in the Boyd case, though the <u>obiter dictum</u> in that case was wrong. But if the court meant to say in that case that it would be in contravention of the 5th amendment to admit in evidence on a trial of the accused evidence which was obtained by a search warrant which was unlawful because in violation of the 4th amendment, concerning searches and seizures, then, with all deference to that great court, I should have to reject the authority

of that decision in a case where it was not of binding force. I should have to reject it because it is manifest that, so far as the 5th amendment is concerned, and the corresponding provision in our own Bill of Rights, by which the privilege of being exempt in any criminal proceeding from giving evidence against himself is guaranteed to the accused, it can make no sort of difference whether the evidence offered was obtained under a valid or an invalid search warrant. The question of whether one is being required to give evidence against himself can not depend on any such consideration as that, for in either case the evidence is obtained against his will, on a search made in invitum, and this is as true in case of a valid search warrant as it is in the case of an invalid search warrant, for he is as much compelled to give evidence against himself in the one case as in the other. There can be no valid process of any kind to compel a man to give evidence against himself.

The conclusion is necessary and irresistable that if the evidence found in the execution of a search warrant would be admissible if gotten under a valid search warrant, it cannot be rejected as in contravention of the 5th amendment when gotten in an illegal search; the evidence produced by a search under an illegal search warrant can no more be evidence given by the accused against himself than the same evidence would be if produced under a valid search warrant. If such evidence is excluded, it must be solely on the ground that evidence gotten under a search warrant issued in violation of the 4th amendment relative to searches and seizures is inadmissible.

As to the admissibility in evidence of evidence gotten under an illegal search warrant, or by an officer without any warrant, thirty-four states are tabulated in X Virginia Law Review, p. 153, which hold contrary to the Supreme Court of the United States in the Amos and Weeks cases, supra, with eleven states holding the same as the U.S.Supreme

Court. Among the thirty-four is Virginia, which in Lucchesi v. Commonwealth, 122 Va. 872, expressly rejected the authority of Weeks v. U. S., 58 Law ed. 652, which after the Boyd case is the foundation authority relied on in the Gouled and Amos cases.

The Lucchesi case is parallel in its facts to the Crawford case now under consideration.

See cases cited X Va. Law Review 154; also Williams v. State, 28 S. E. 624; 53 S. E. 814; 29 S. E. 527; 122 Va. 872; 3 Wig. Ev. secs. 2183, 2264; and same secs. in V Wigmore; and, also, 35 CYC, 1271; 8 R.C.L. 196.

In answer to"The 5th Question," on page 653, 65 L. ed., in the Gouled case, the court implies if it does not say that evidence obtained under an illegal search warrant can not only not be used against the defendant when brought to trial for the offense on suspicion of which the search was made, but that evidence so obtained could not be used against him when on trial for a different offense. The court says that evidence obtained under a valid search warrant could be used against the same party when on trial for a different offense, and implies strongly that it could not be so used if the search warrant was invalid. From the language of the court, and as a logical result of the decision in the Amos case, at least, it would appear that if an officer searched a house for stolen property or counterfeit money under an invalid search warrant (or without any warrant), and in the course of his search found the dead body of a murdered man, this discovery would not be admissible in evidence on the trial of the occupant of the home for murder, because it was obtained under an invalid search warrant under the 4th amendment, and was inadmissible also under the 5th amendment, as compelling the defendant to give evidence against himself. I cannot think it would be so held in Virginia or anywhere else.

The case of Zimmerman v. Bedford, 134 Va. 787, has been referred to by counsel for defendants as tending to support his position. I do

not think it does. The court does point there to the fact that sec. 10 of our Constitution, relating to searches and seizures, is not identically the same as the 4th amendment, and ~~while~~ it says the act of 1920 relating to search warrants (Acts 1920 p. 516) puts into our statute law much of what is in the 4th amendment to the U. S. Constitution, but it does not follow that the court would give to a mere statute the construction that it would give to the same or a similar provision in the Constitution, or that, if it were to do so, it would adopt the construction given by the U. S. Supreme Court to the 4th amendment to the Federal Constitution, a construction which our Court and many others have disapproved and rejected.

It would have been easy for the General Assembly to declare in the Act of 1920, relating to search warrants, that evidence obtained under an illegal of defective search warrant should not be receivable at the trial, if that had been the intention. It did not so declare, but it did not neglect to provide a sanction for the law; it declares ~~that~~ what the penalty or consequence shall be for violating it, providing heavy penalties for an officer who searches without a warrant, and for a justice of the peace who issues a search warrant without the required affidavit. Expressio unius exclusio alterius est.

Ifthe fruits of a search made under a defective warrant, or defective affidavit, are to be excluded from evidence, the effect will be far reaching; for such warrants, and the affidavits on which they are issued, are often prepared by unskilled persons, and their defects, as often as not, are due to ignorance or want of skill rather than to insufficient grounds in point of fact.

The motions to set aside the verdicts are denied.

(Copy) (Signed). T. N. H.

Com
v
J.R. Crawford

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

BE IT REMEMBERED that on the 21 day of July 1923,
L. F. Fann, Andrew Crawford
came before me H W Bertram Bail Commissioner
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
L. F. Fann in the sum of
One Thousand Dollars
good and lawful money of the United States, and the said Andrew Crawford severally
in the sum of One Thousand 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
L. F. Fann shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound L. F. Fann
do and shall personally appear before the Circuit Court of Rockingham on the 1st day of the August Term next thereof, being the 20 day of August 1923, at the Court-house thereof, and then and there answer the Commonwealth of Virginia concerning a certain Misdemeanor whereof the said L. F. Fann 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.

H W Bertram B. C.

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 say: the said _____ in the sum of _____ 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 _____ shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound _____ do and shall personally appear before the Circuit 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 _____ stands charged, and shall not of the said _____ 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.

_____

$1.00 paid

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

BE IT REMEMBERED that on the 29 day of June 1923, Andy Crawford & L. F. Lam came before me L 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 Andy Crawford and L. F. Lam in the sum of One Thousand Dollars good and lawful money of the United States, and the said L. F. Lam in the sum of One Thousand 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 Andy Crawford shall make default in the performance of the conditions underwritten.

The condition of the above recognizance is such that if the above bound Andy Crawford do and shall personally appear before the Circuit Court of Rockingham on the 20 day of the August Term next thereof, being the 1st day of Aug Term 1923, at the Court-house thereof, and then and there answer the Commonwealth of Virginia concerning a certain Misdemeanor whereof the said Andy Crawford 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.

L H Bruce J.P.

Bd'
Andrew Brownfield

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

Be it Remembered that on the 29 day of June 1923

Andy Brownfield & Effie Brownfield

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 say: the said

Andy Brownfield and Effie Brownfield

in the sum of

Five Hundred Dollars

and lawful money of the United States, and the said

Andy Brownfield & Effie Brownfield

the sum of

Five Hundred 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

Andy Brownfield

shall make default in the performance of the conditions underwritten.

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

Andy Brownfield

do and shall personally appear before the Circuit Court of Rockingham on the 23rd day of the September Term next thereof, being the 17th day of Sept 1923, at the Court-house thereof, and then and there answer the Commonwealth of Virginia concerning a certain Trespass where-of the said

Andy Brownfield

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.

W. T. Turner

Commonwealth of Virginia—City, County of, Rockingham to-wit:

To the Prohibition Inspectors, Sheriffs, Sergeants, and all Police Officers and Constables of the State of Virginia—Greeting:

WHEREAS H. D. Brown, a state Inspector of the said City County has this day made complaint and information on oath before me, R. H. Bridges (Name of Magistrate.) J. P. (Title.) of the said City County that he verily believes, that in the said City County and State:

(a) That Ardent Spirits are being unlawfully manufactured, sold, kept, stored, possessed, held, used and concealed in a certain dwelling house & out buildings (Here describe the place, house, room or boat, as the case may be) by one Andy Crawford, located near Elkton. (Give name, if name unknown, say, "Whose name is to the informant unknown")

(b) A still, still cap, worm, tubs, fermenters and other appliances connected with such still and used, and mash and other substances, capable of being used, in the manufacture of Ardent Spirits, are unlawfully in the possession of, and unlawfully used by one Andy Crawford (Give name; if name unknown, say, "Whose name is to the information unknown") in a certain dwelling house & out buildings (Here describe place as in (a) above)

(c) Ardent Spirits are being unlawfully kept, held, stored, concealed, used, sold, and unlawfully transported in certain baggage or a certain vehicle, to-wit: a certain _____ (Here describe vehicle, auto, wagon, carriage, buggy, boat, baggage or what not) by one _____ (Here give name, or describe as in (a) above)

And there being reasonable cause for such belief:

THESE ARE, THEREFORE, IN THE NAME OF THE COMMONWEALTH OF VIRGINIA, to command you, with all necessary and proper speed and assistance, to search the house, place, baggage, boat or vehicle herein designated, either in day or night, and seize such ardent spirits and their containers and other things apparently possessed or used in violation of law, and bring the same and the person or persons, in whose possession they are found, and also any person resisting, impeding, obstructing, or in any manner hindering or delaying you in the execution of this warrant before me, or some other officer having jurisdiction of the case, to be disposed of and dealt with according to law; and make return of this warrant showing all acts and things done thereunder, with a particular statement and sufficient description of the things seized and the name of the person in whose possession found, if any, and if not found in the possession of any one, so state in your return, and post a true copy of this warrant and the return thereof, as required by law.

Given under my hand and seal this 29th day of June 1923

R H Bridges (SEAL)

_____
Title of Magistrate.

DIRECTIONS

1. If only Ardent Spirits and containers be seized, the Magistrate shall **fix a time not** less than 10 nor more than 30 days from the date of return, for the hearing of said return. If no claimant appear, the Ardent Spirits and articles are to be forfeited to Commonwealth. Any person claiming any of same must file a **written claim** stating particularly the character and extent of his interest therein, whereupon the Magistrate shall certify the warrant, **written claim** and articles claimed, to the Circuit or Corporation Court, as the case may be, for determination, and declare the unclaimed articles forfeited.

2. If still, still cap. worm, tubs, heater, fermenters, or any appliance connected with a still and used, or mash or other substance capable of being used, in the manufacture of Ardent Spirits, be seized, the mash (after taking a sample) shall be destroyed, and the facts and articles seized reported to the Prohibition Commissioner and Commonwealth's Attorney. (A copy of this warrant and proper return will be a sufficient notice and report.) Ardent Spirits and containers disposed of as in No. 1 above.

3. If Ardent Spirits are being transported in an automobile, boat, wagon. buggy, or other vehicle, the Ardent Spirits and containers shall be preserved and the vehicle shall be delivered to the Sergeant of the City, the facts reported to the Prohibition Commissioner and Commonwealth's Attorney and Ardent Spirits and containers disposed of as provided in No. 1 above. (A copy of this warrant and proper return will be a sufficent report.)

4. A copy of this warrant and the return thereon must be posted at the front door of the house, or on the door of the room, or on the premises at the place the Ardent Spirits may be found.

See Sections 21 1-2, 22, 23, 23 1-2, 57 and 57 1-2. Acts of Assembly, 1918, Page 578.

WARRANT TO SEARCH FOR ARDENT SPIRITS, ETC.

Commonwealth of Virginia

vs.

Andy Crawford

Executed the within warrant this 29th day of June, 1923, by searching the within stated .....

(Here state house, room, place,

and by seizing the following described Ardent Spirits and other things therein found (and arresting the above named person found in possession thereof) and by posting a true copy of this warrant and the return hereon on the .....

(Here say place, house, room, boat,

auto or baggage, or as case may be)

as front door of house, door of room or premises)

Description of Ardent Spirits and other things seized 1/2 gallon of liquor

Executed this 29th day of June 1923

Given under my hand this 29th day of June, 192.3

J. W. Lambert Jr.

Title Prohibition Inspector

The following named officers and persons assisted me in the execution of this warrant:

.....

.....

.....

.....

Other than above stated the following are witnesses:

.....

.....

.....

This matter set for hearing on the.....day of ..... 192....

No claim of ownership or interest in any of the said things seized having been filed herein in compliance with the law, the same are hereby adjudged and declared confiscated and forfeited to the Commonwealth.

Given under my hand this.....day of....., 192....

.....

Title of Magistrate.

Written claim of ownership or interest having been filed to certain of the said things herein seized. this warrant, the said claim and the things in the claim particularly described, are hereby certified to the ..... Court of this.....for determination' and the said things unclaimed are hereby adjudged and declared confiscated and forfeited to the Commonwealth.

Given under my hand this.....day of ....., 192....

.....

Title of Magistrate.

NOTE.—Unless warrant issued for Ardent Spirits being transported in vehicle, boat or baggage. it is to be returned to the jurisdiction from which issued. If issued for Ardent Spirits so transported, it can be executed in any part of the State, and returned to any justice in any county or city through which they were carried.

News-Record,
Harrisonburg, Va.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

H. T. Repsode, J. L. Hirting & L. H. Bruce.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House, at 10 o'clock, a.m., on the 15th *day of* Oct. *19*23

to testify and the truth to say in behalf of the Commonwealth before the Grand Jury

vs.

Andrew J. Crawford.

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 9th *day of* Oct., *19*23 *and in the* 147 *year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

Comr.
vs.
Andrew J. Crawford

W.L.D.

SHERIFF FEE $ 1.50

Executed on all of the within named
Persons Oct 12 - 1923 W.L. Hilland S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon W. T. Repsode, J. L. Dieting, J. W. Fisher, L. W. Bruce, & H. W. Hoover,

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 18th *day of* Dec 1923, *to testify and the truth to say in behalf of the Commonwealth against*

A. G. Crawford

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 12th *day of* Dec., 1923, *and in the* 148th *year of the Commonwealth.*

J. F. Blackburn, *Clerk.*

News-Record, Harrisonburg, Va.

Executed on W J Rutrodt the Hour
V G Dunting a copy of this summon
Dec 14-1923 W L Tickle S.R.C

Com.
vs.
A. G. Crawford

Executed By delivering to
J H Fisher the within summons
Personally this the 19 day of December
1923 Wm Edward Schwartz for W L Willard
Sheriff Kanawha Co W Va

SHERIFF FEE $ 2.50

~~Com. vs. A. D. Long 12/18/23~~

+ Com. vs. L. F. Ham 12/18/23

+ Com. vs. A. J. Crawford 12/18/23

Com. vs. Elsie Pence 12/19/23

+ " " C. E. Cooper 12/20/23

~~" " Brent Bowman 12/20/23 continued~~

" " A. W. Graves 12/20/23

" " Cut Good 1/2/24

" " Milton Grim 12/21/23 - sum. 12/3/23.

" " [illegible]

S. A. White

J. E. Swank

Dec 18 1923

We the jury in the case of
A. J. Crawford fix his punishment
at four months jail and $100.00 fine
S L Hess

Foreman

J. K. Mauzy	2.50
S. L. Hess	2.20
J. R. Swantz	2.10
Roy Auey	2.70
L. P. Sowder	3.50
	13.00

December Term #23
1923

ANDREW CRAWFORD

ads Indictment for a Felony

COMMONWEALTH

Sheriff Fee

Search Warrant	100
Arrest	150
Bren Fee	1000
Grand Jury	150
Trile Cost	250
Imp Jury	150
Exator Fee 200	18.00

Bushnell

QUALITY WORKMANSHIP

20-4446