Return to
FILE COPY
Clerk Supreme Court of Appeals
Richmond, Va.

201 VA 172

Record No. 4956

In the Supreme Court of Appeals of Virginia at Richmond

ELIZABETH COLE GOOCH

v.

CITY OF LYNCHBURG

FROM THE CORPORATION COURT OF THE CITY OF LYNCHBURG

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel 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. 4956

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 10th day of October, 1958.

ELIZABETH COLE GOOCH, Plaintiff in Error,

against

CITY OF LYNCHBURG, Defendant in Error.

From the Corporation Court of the City of Lynchburg

Upon the petition of Elizabeth Cole Gooch a writ of error and *supersedeas* is awarded her to a judgment rendered by the Corporation Court of the City of Lynchburg on the 8th day of April, 1958, in a prosecution by the City of Lynchburg against the said petitioner for a misdemeanor; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release her bond if out on bail.

RECORD

* * * * *

Conviction and Judgment—No Warrant Issued

Commonwealth of Virginia,
City of Lynchburg, to-wit:

Be It Remembered, that on this 4th day of March 1958, Elizabeth Cole Gooch brought before me, Judge of the City of Lynchburg, charged with a misdemeanor in this, that she did in said city on the 17th day of February 1958, unlawfully operate a motor vehicle while under the influence of intoxicants, in violation of the Ordinances of the City of Lynchburg, she having been previously convicted of a like offense was by me, upon evidence on oath of D. T. Almond et al. found guilty of said offense, wherefore I adjudge that she pay a fine of $125.00 $5.00 Cost + 0.50 Committal Fee and that she be confined in the jail of the City of Lynchburg thirty (30) days.

JOS. P. McCARRON, Judge.

But the said Elizabeth Cole Gooch having prayed an appeal from my said judgment, an appeal is hereby granted to the next term of the Corporation Court of Lynchburg, and the said judgment and conviction, as well as the said appeal, is hereby certified to said court.

Given under my hand this 4th day of March 1958.

JOS. P. McCARRON, Judge.

* * * * *

page 7 }

* * * * *

April 8, 1958.

Upon a charge of operating a motor vehicle while under the influence of intoxicants, 2nd offense, in violation of the ordinances of the City of Lynchburg, we the jury find the

accused, Elizabeth Cole Gooch, guilty and fix the fine at $100.00 and by confinement in jail one month.

EDWIN A. HICKSON, Foreman.

page 8 } Virginia:

At Lynchburg Corporation Court, April 8th, 1958.

City of Lynchburg,

v.

Elizabeth Cole Gooch, (white), Accused.

Misdemeanor. Operate motor vehicle while under influence of intoxicants, 2nd offense.

This day, the day on which this case was set for trial, came the City of Lynchburg by the Commonwealth's attorney, and the said Elizabeth Cole Gooch appeared in court in her own proper person according to the condition of her recognizance, and the said accused also appeared by her attorney, and the accused in her own proper person pleaded not guilty to the charge of operating a motor vehicle while under the influence of intoxicants, 2nd offense, in violation of the ordinances of the city of Lynchburg, and thereupon came a jury, to-wit, Walter A. Garbee, Jr., B. H. Kestner, John R. Taylor, Rush K. Gearhart and Edwin A. Hickson, who having been duly summoned, selected, tried and sworn according to law, and having heard the evidence of the City of Lynchburg, the accused by her attorney moved the court to discharge the said accused on the ground that the record of this case shows that no warrant was issued for her arrest according to Section 52-21 of the Code of Virginia, and the sections therein mentioned, which motion the court overruled, and the accused by her attorney excepted, and said jury having further heard the evidence in full, and having received the instructions of the court, and having heard the argument of counsel, were sent to their room to consult and consider of their verdict, and after some time returned into court and presented their verdict, written on a blank sheet of paper, in the words and figures following, to-wit, "Upon a charge of operating a motor vehicle while under the influence of intoxicants, 2nd offense, in violation of the ordinances of the city of Lynchburg, we the jury find the accused, Elizabeth Cole Gooch,

guilty and fix the fine at $100.00 and by confinement in jail one month. Edwin A. Hickson, Foreman."

Thereupon the accused by her attorney moved the court to set aside said verdict on the ground that it is contrary to the law and the evidence and upon the further grounds that the court erred in not releasing the accused as no warrant was issued against her and she could not be tried without a warrant being issued, and that the court erred in instructing the jury on the penalty of second offense as the first or page 9 } prior conviction was not charged, which motion the court overruled, and the accused by her attorney excepted.

It is therefore considered by the court that the said Elizabeth Cole Gooch, who has been present in her own proper person at all time throughout the trial of this case, forfeit and pay to the City of Lynchburg $100.00, the amount of the fine aforesaid, that she be and is hereby committed to jail for said term of one month, to be computed from the date of this judgment, no time having been spent by the accused in jail awaiting trial, that she pay the costs of this prosecution, and that she be further held in jail until payment of said fine and costs, provided that said last mentioned term in jail shall not exceed two months.

At the instance of the said accused by her attorney who intimated her intention to apply for a writ of error and *supersedeas,* the court doth order that execution of the foregoing judgment be suspended until the first day of June, 1958, term of this court, and the accused is allowed bail.

Thereupon the said Elizabeth Cole Gooch, together with Martyn S. Cole and Elizabeth R. Cole, her sureties, who justified as to their sufficiency, was duly recognized in the sum of $1,000.00, upon condition that if the said Elizabeth Cole Gooch shall make her personal appearance before the corporation court for the city of Lynchburg, at the courthouse thereof, on the first day of the June, 1958, term thereof, at nine-thirty o'clock A. M., to answer the aforesaid charge of operating a motor vehicle while under the influence of intoxicants, 2nd offense, in violation of the ordinances of the city of Lynchburg, and to answer the foregoing judgment upon said charge, and shall make her personal appearance at any time or times to which this case may be continued or further heard, before any court, judge or justice having or holding any proceeding in connection therewith, to answer for said offense and to answer said judgment, and shall not depart thence without leave of court, judge or justice, then said

recognizance to be void, otherwise to remain in full force and effect.

A Copy—Teste:

HUBERT H. MARTIN, Clerk.

L. O. B. 40 p. 406.

page 10 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE IS HEREBY GIVEN, pursuant to Rule 5:1, §4 of the Supreme Court of Appeals of Virginia, that Elizabeth Cole Gooch, the defendant above named, hereby appeals to the Supreme Court of Appeals of Virginia, from the final judgment entered in this case on April 8, 1958.

Pursuant to the aforesaid Rule, the aforesaid defendant makes this her Assignment of Error and alleges that the Court erred:

(1) In refusing to dismiss the defendant on the ground that no warrant was issued against the defendant, and the defendant has not been legally charged with any crime and could not be charged or tried without a warrant being issued;

(2) In instructing the jury on the penalty of conviction of unlawfully operating a motor vehicle while under the influence of intoxicants, second offense, in that the first offense or prior conviction of the same offense was not charged, and therefore under no circumstances could the defendant have been found guilty of an offense providing for a greater penalty than a conviction of a first offense; and,

(3) In refusing to set the verdict aside and enter up judgment for the defendant.

PAUL WHITEHEAD, Attorney at law
409 First Colony Life Building
Lynchburg, Virginia
Attorney for the Defendant,
Elizabeth Cole Gooch

May 26, 1958.

* * * * *

page 2 } Mr. Jester: If your Honor please, can it be stipulated at this time between counsel for the City of Lynchburg and counsel for the accused that on a prior occasion, February 18, 1954, this accused was convicted in the Municipal Court for the City of Lynchburg for the offense of operating a motor vehicle while under the influence of intoxicants?

The Court: Gentlemen, you will receive as a proven fact in this case the stipulation as agreed that this defendant has been previously convicted at the time specified of driving a vehicle on the streets of this city while under the influence of intoxicants.

D. T. ALMOND,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Jester:

Q. You are Mr. D. T. Almond, one of the police officers of the City of Lynchburg?

A. Yes, sir.

page 3 } Q. Were you so employed on the 17th day of February, 1958?

A. Yes, sir.

Q. On that day, Mr. Almond, I believe you were working on that shift of officers who work from 3:20 in the afternoon until 11:20 at night?

A. Yes, sir.

Q. Did you have occasion to place under arrest this accused, Elizabeth Cole Gooch, any time during the evening of February 17th, 1958?

A. Yes, sir.

Q. Where did you arrest her?

A. At Bedford Avenue and Hollins Mill Road.

Q. Is that in the Rivermont section of the City of Lynchburg?

A. Yes, sir.

Q. Now, Mr. Almond, prior to placing her under arrest had you seen her or the automobile in which she was riding?

A. Yes, sir.

Q. Where had you first seen this vehicle?

A. Coming out of Hollins Mill Drive-in down there.

D. T. Almond.

Q. Hollins Mill Drive-in in point of blocks is
page 4 } approximately what distance from the point where you placed her under arrest?

A. About three or four blocks, I imagine.

Q. And that, of course, is located on Hollins Mill Road in the City of Lynchburg, is it?

A. Yes, sir.

Q. Now, what did you first observe about this car which brought your attention to it?

A. I stopped there at Hollins Mill Drive-in to get a cup of coffee.

Q. You mean you were in a police car and drove into Hollins Mill Drive-in to get some coffee yourself?

A. Yes, sir, and I noticed this station wagon pulling out from in there. In fact, I had to pull around when I came in and I noticed this lady was leaning over the wheel.

Q. Will you please indicate to the jury or describe to the jury in greater detail the manner in which she was leaning over the wheel?

A. She had both hands and her head kind of partly laying up on the steering wheel when I pulled in the driveway.

Q. Was the motor vehicle she was then operating in motion or was it standing still?

A. It was standing still.

page 5 } Q. Did she ever move her head away from the steering wheel?

A. Yes, sir.

Q. Tell us what you observed.

A. Well, when I noticed that I jumped out of the car and hollered at her and tried to get her to stop and she wouldn't stop. By the time I got out of the car she pulled on off up Hollins Mill Road, so I jumped back in my car and tried to stop her. From there to the stop light at Bedford Avenue I never could get her attention. I had the red light on and my siren.

Q. When you say you had the red light on will you tell the jury what you mean by that?

A. The red light on top of the automobile.

Q. Is that light some three, four or five inches in diameter up on top of the roof of the automobile?

A. Yes, sir.

Q. You say you were also using your siren?

A. Yes, sir.

Q. Were you riding behind her or beside her when trying to stop her?

D. T. Almond.

A. Behind her because there were a few cars coming down Hollins Mill Road from Bedford Avenue and there page 6 } was snow on the street too and I didn't want to take any chances trying to pass her.

Q. In other words, there was oncoming traffic going in the opposite direction from which you and Mrs. Gooch were going and that prevented you from passing her?

A. Yes, sir.

Q. Did you ever get her stopped?

A. No, sir, not until she ran up on some cars at the stop light at Bedford Avenue and Hollins Mill Road.

Q. You say she ran up on some cars. Do you mean by that there were cars stopped for the stop light at Hollins Mill Road?

A. Yes, sir.

Q. And she came to a stop behind those cars?

A. Yes, sir.

Q. You don't mean to convey the impression she ran into them?

A. No, sir.

Q. What did she do after she brought her vehicle to a stop?

A. She stopped and waited for the other cars to move. I pulled my car up beside her, got out and went around and asked the lady to get out of the car and to let me page 7 } see her driving permit and registration card. When I opened the door she stepped out and staggered all over the street and up aganist my car and the first thing she did was to start hollering and said, "I am not drinking" and I had a very hard time with her. She never did show me her driving permit and registration card.

Q. In your own words I want you to tell us if you can exactly what she said to you at that time.

A. She said she had been convicted one time before and she wasn't going to jail this time. She said she wasn't going to jail so I carried her and put her in my car and when I put her in she wouldn't stay in the automobile. She was raving and cursing a little bit. She was very disorderly, so about that time Officer Roach came down.

Q. Did you smell any alcohol on her?

A. Yes, sir.

Q. What else did you observe about her besides the fact she was loud and cursing and disorderly and that you smelled the odor of alcohol on her? Did you see her walk?

D. T. Almond.

A. Yes, sir.
Q. Did she experience any difficulty in walking?
A. She couldn't walk.
Q. She couldn't walk?
page 8 } A. No, sir.
Q. Did you have to help her to the police car?
A. Yes, sir.
Q. I want you to tell the jury exactly what you mean by having to help her to the police car?
A. I caught her by the arm and led her to the automobile over there.
Q. Would it be a fair statement then that she was staggering or was unsteady on her feet?
A. She was staggering.
Q. Did she appear to you to be drunk at the time?
A. Yes, sir, she was drunk.
Q. All right, sir, how long was it before Officer Roach arrived on the scene?
A. I reckon just about three, four or five minutes maybe.
Q. Was she in your car at that time?
A. Yes, sir. I was standing there holding the door when he arrived.
Q. Did you explain anything to her about her rights to have a blood test?
A. Yes, sir.
Q. Did she say she wanted one?
page 9 } A. Yes, sir, she said she was going to take one.
Q. I want to clear up one point, Mr. Almond. She was the one who was driving the motor vehicle when you stopped her?
A. Yes, sir.
Q. Was anybody else in the car with her?
A. Yes, sir, another lady was in the car and she was laying down in the floorboard.
Q. You mean in the floorboard of the front seat of the car?
A. Yes, sir.
Q. Do you know why she was down on the floor of the front seat?
A. Yes, sir. She was drunk.

Mr. Jester: Witness with you.

D. T. Almond.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. What time were you at the Hollins Mill Drive-in and saw the station wagon pull off?

A. Approximately 7:10 or 7:15 at night.

Q. Of course, it was dark at that time?

A. Yes, sir.

page 10 } Q. And it was a very cold night?

A. Yes, sir.

Q. Was that the week end we had a lot of snow on Saturday and Sunday?

A. I couldn't tell you but there was snow on the ground.

Q. You say you followed her from down at the Hollins Mill Drive-in for about three or four blocks up to Bedford Avenue where she stopped there in a line of traffic. Is that correct?

A. Yes, sir.

Q. She did not hit anything didn't have any wreck with any other car?

A. No, sir.

Q. Then, according to your procedure, you stayed there until the wagon came for her. Is that correct?

A. That is right.

Q. Now then, at that time when you turned her over to the officer driving the wagon then did you see her any more after that time?

A. No, sir.

Q. That was all you did then, just waited there with her until the officer came and you turned her over to the officer?

A. That is right, and had her station wagon pulled in.

Q. You did not have any warrant issued for

page 11 } her?

A. No, sir.

Mr. Whitehead: That is all.

RE-DIRECT EXAMINATION.

Q. You never have a warrant issued for them when you arrest them on the scene, do you?

A. No, sir, never have.

Q. Mr. Almond, one thing further—who put her into the patrol wagon?

A. Officer Tucker and myself. It took both of us to put her in there.

Q. What do you mean by it took both of you to put her in there?

A. She was disorderly and insisted she wasn't going to get into the wagon.

Q. You mean she was resisting your efforts to get her into the patrol wagon?

A. Yes, sir.

Q. Was she talking during that time or being quiet?

A. She was talking and cursing every now and then.

page 12 }

Due to error in numbering pages there is no page of transcript of evidence on Page No. 12.

page 13 } Q. What was she saying?

A. That she wasn't going to get in that damn wagon and wasn't going to jail. I don't know all that she did say. We were trying to get her in without hurting her.

Q. Was her speech like that of a sober person?

A. No, sir. It was like a person under the influence.

Mr. Jester: You may stand aside.

The Witness Stands Aside.

L. T. ROACH,

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Jester:

Q. Please state your name and initials.

A. L. T. Roach.

Q. Are you a police officer for the City of Lynchburg and were you such on the night of February 17th, 1958?

A. Yes, sir.

Q. Were you operating one of the patrol cars—not the patrol wagon—on the night of the 17th of February, 1958?

A. Yes, sir.

page 14 } Q. Did you come up on Officer Almond right after he had placed under arrest Elizabeth Cole Gooch, the defendant in this case?

L. T. Roach.

A. Yes, sir, I did.

Q. I wish you would describe to the jury just exactly what observations, if any, you made at the time.

A. When I arived there she was sitting in the front seat of Officer Almond's car, his police car.

Q. Who was in the front seat?

A. Mrs. Gooch.

Q. This defendant?

A. That is right. I stayed there until the wagon arrived and during that time I directed traffic around the two cars which were parked in the middle of Hollins Mill Road. Several times I had to go back and shut the door on the police car where she kept opening it trying to get out. During that time Officer Almond was up at the station wagon talking to the other lady in Mrs. Gooch's station wagon. I then got Mrs. Gooch's Station wagon and drove it across Bedford Avenue and parked it in the Esso Service Station lot.

Q. Now, did you make any observations of her during the period of time you were there at the scene?

A. Yes, sir, I did. I talked to her several times page 15 } when she would open the door trying to get out. She asked me one time if I knew her. I told her I did not. She was very drunk at that time. I also observed her when she was taken out of the police car and carried to the wagon, which was just a matter of probably ten or fifteen feet, and she was carried between Officer Tucker and Officer Almond.

Q. Could she walk at that time?

A. She could walk but she was very unsteady or very staggering at that time. One had hold to each arm taking her to the wagon.

Q. What about her breath? Did you smell her breath?

A. No, I did not. I was standing on the outside of the car all the time and I was not close enought to smell it.

Q. What you are telling us is the actual things you saw and observed?

A. That is correct.

Mr. Jester: The witness is with you.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Roach, I believe when you came upon the scene

this was at the intersection of Hollins Mill Road and Bedford Avenue.

page 16 } A. That is correct.

Q. That was a very cold night, wasn't it?

A. As well as I remember, it was. There was snow on the ground that night.

Q. Now, did you have any more to do with the case after the wagon came and took her away?

A. No, I did not.

Q. You did not have any warrant sworn out for her, did you?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Jester:

Q. Have you ever sworn out a warant for a person who committed a misdemeanor or offense in your presence?

A. No, sir, I haven't.

Mr. Jester: You may stand aside.

The Witness Stands Aside.

page 17 } A. P. TUCKER, JR.,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Jester:

Q. I believe you are A. P. Tucker, one of the police officers of the City of Lynchburg.

A. Yes, sir.

Q. You were so employed on the 17th day of February, 1958?

A. Yes, sir.

Q. On that occasion were you acting as the emergency officer and operating the patrol wagon?

A. Yes, sir.

Q. Did you have occasion to go to or near the intersection of Hollins Mill Road and Bedford Avenue for the purpose of picking up this prisoner, Elizabeth Cole Gooch?

A. Yes, sir.

Q. Mr. Tucker, when you first arrived at the scene where was Mrs. Gooch at that time?

A. P. Tucker, Jr.

A. She was in the police car which was in front of Frank, Bob and John's service station lot at that time.

Q. You mean their present or their old location?

page 18 } A. Their old location.

Q. Did you make any observation of her?

A. When Officer Almond started getting her out of the car and bringing her to the wagon I helped him and she was unsteady or in a staggering condition. She also had a strong odor of alcohol on her breath.

Q. What was her demeanor and conduct at that time?

A. Very uncooperative and she wasn't going to get in the wagon, was just pulling away and jerking. She was going to stay where she was. She wouldn't make any effort to get in the wagon so we had to put her in the wagon.

Q. Now, what, if anything, did you do with her after she was placed in the patrol wagon?

A. I told her of her rights of a blood test and she said she would like to have one.

Q. What did you then do with her?

A. I had to come to the station first because the other lady in the car was arrested for being drunk and I brought the other lady to the station where she was taken out by another police officer and then I continued on to Lynchburg General Hospital where a blood test was taken.

Q. Was that blood test made within less than two

page 19 } hours after you got there to the scene of the offense?

A. It was made in less than one hour.

Q. Now, I will ask you whether or not a registered nurse took the specimen of blood from the body of Mrs. Gooch?

A. Yes, sir.

Q. Now I show you here a vial which contains a specimen of blood and ask you whether or not this vial and the box it is in, is the box and vial furnished by the office of the Chief Medical Examiner?

A. Yes, sir.

Q. Now, was this box so designed that after the vial was placed on the inside of it that certain flaps could be sealed so as to preclude it from being tampered with in the mail?

A. Yes, sir, a flap right under the bottom here where it is sealed over and the address is put on it.

Q. Now, after this blood was taken from her and placed in this vial was that brought to the attention of Mrs. Gooch?

A. Yes, sir.

A. P. Tucker, Jr.

Q. I show you here this vial which has on it "Blood for alcohol determination name of accused Mrs. Elizabeth C. Gooch—blood taken by L. Harvey, R.N." Is she the Registered Nurse?

page 20 } A. Yes, sir.

Q. It has the address 2907 Dellwood Circle, Lynchburg, Virginia, and it is dated 2/17/58." The time looks like 8:17 P.M. I ask you if that is the vial in which the blood of Mrs. Gooch was placed?

A. Yes, sir.

Q. Now, was that stopper placed in that bottle and were these markings put on it and was it sealed there in the presence of Mrs. Gooch?

A. Yes, sir.

Q. What was done with this vial after the blood was placed into the tube?

A. It was placed into the tube and then it was put in the box in her presence.

Q. In her presence, and was the box then sealed in the manner which you have described?

A. Yes, sir.

Q. What then was done with this box after it had been duly sealed and closed up?

A. After it had been sealed then when I got back to the station I put a stamp on it and took it over to the post office and placed it in the post office?

page 21 } Q. Was this container in your hands continuously from the time the blood was placed therein and it was sealed until it was deposited in the United States mail?

A. No. You see when you come down to the station and you have a prisoner you have to write them up and we leave that at the Desk Sergeant's desk and then we write the prisoner up and then we come out after we have finished and take it to the post office after the stamp has been placed on it.

Q. And then you, yourself, placed it in the mail?

A. Yes, sir.

Q. And you placed it in the mail that same night?

A. Yes, sir.

Mr. Jester: Now I would like to introduce this in evidence as City's Exhibit No. 2.

The Court: Any objection?

Mr. Whitehead: No, sir.

A. P. Tucker, Jr.

By Mr. Jester:

Q. Now, Mr. Tucker, this vial placed in this box, sealed in the manner in which you have mentioned, and stamped, was addressed to whom?

A. To the Chief Medical Examiner in Richmond, Virginia. I don't know his name.

page 22 } Q. You don't know his name but you know that is who it was sent to?

A. Yes, sir.

Q. Now, I show you here a certificate dated February 18, 1958 and ask you if you will state to the jury whether or not that represents the report from the office of the Chief Medical Examiner.

A. Yes, sir, it does.

Q. Now, would you please state whether or not that certificate is to cover the blood specimen of Elizabeth C. Gooch?

A. Yes, sir.

Q. Is there a number stamped on that certificate?

A. Yes, sir.

Q. Would you please read that number to the jury?

A. 580775.

Q. Now, I hand you this box which has already been introduced as City Exhibit No. 2 and ask you whether or not it has also a number on it?

A. Yes, sir.

Q. What is that number?

A. 580775.

Q. Does the number on this box correspond to

page 23 } the number on that certificate?

A. Yes, sir.

Q. Now, I will also ask you to look at the number on this vial and read that to the jury.

A. 580775.

Q. Does that number likewise correspond to the number on the certificate?

A. Yes, sir.

Q. Now, what other information is on that certificate?

A. The accused's name.

Q. What is it?

A. Elizabeth C. Gooch.

Q. Read the entire certificate.

A. "Material submitted by Major R. O. Brooks, Chief of Police, Lynchburg, Virginia"—

Q. Major Brooks is the commanding officer of the Lynchburg Police Department?

A. P. Tucker, Jr.

A. Yes, sir.
Q. Do all communications go out over his signature?
A. Yes, sir.
Q. What else is on there?
A. Examined by Sidney Kaye.
page 24 } Q. Does that show the date of the examination?
A. Yes, sir.
Q. What is it?
A. The date was 2/18/58.
Q. Does it show the time?
A. The time was 10:35 A.M.
Q. What other information is on this certificate?
A. Date of report.
Q. Read that.
A. "Date of Report: February 18, 1958."
Q. What else does it show?
A. "Received at the office of Chief Medical Examiner 10 c.cs. of blood for alcohol content by Grace J. Winstead, signed 2/18/58—time 9:00 A.M."
Q. Then the examination was made within an hour and thirty-five minutes after the blood specimen was received in the office of the Chief Medical Examiner?
A. Yes, sir.
Q. Does that show the result of the alcohol analysis?
A. 0.22 alcohol by weight.
Q. Is that copy attested?
A. Yes, sir.
page 25 } Q. By whom?
A. Harold L. "Beddor", M.D.
Q. And what is his title?
A. Assistant Chief Medical Examiner.
Q. Does this come out over the signature of the Chief Medical Examiner, Mr. Mann?
A. Yes, sir.

Mr. Jester: We would like to introduce this as City's Exhibit No. 1.
The Court: Any objection?
Mr. Whitehead: No, sir.

By Mr. Jester:
Q. Now. Mr. Tucker, did you ask this woman what, if anything, she had had to drink?
A. No, sir, I did not.

A. P. Tucker, Jr.

Q. Did you smell any alcohol on her?

A. Yes.

Q. Did she experience any difficulty walking out at the Lynchburg General Hospital?

A. She was still unsteady. Part of the time I was holding on to her and part of the time I wasn't but when getting back in the wagon I still had to help her in the wagon, had to help put her in the wagon.

page 26 } Q. What was her demeanor and conduct while she was there at Lynchburg General Hospital during the course of the time she was there?

A. She was very uncooperative. I would try to explain the blood test there to her and the steps in it and she was continuously making remarks at me such as "How do you know?" or something of that nature.

Mr. Jester: The witness is with you.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. M*t*. Tucker, do you know what time you drove the wagon out to get Mrs. Gooch?

A. It was approximately 7:39.

Q. After you got in the wagon and left there I understand you drove by police headquarters and then went straight on to the hospital?

A. After I picked her up I went to police headquarters and then to the hospital.

Q. Now, who took this blood from her?

A. Miss Harvey.

Q. Who is she?

page 27 } A. She is a registered nurse at Lynchburg General Hospital.

Q. Now then, after the blood was taken did Mrs. Gooch say anything to you or did you say anything to Mrs. Gooch with reference to the blood?

A. The nurse explained it to Mrs. Gooch and I explained it to her too.

Q. Then the blood was put in the container and put in that box as you have just related?

A. Yes, sir.

Q. Then I believe you say you took Mrs. Gooch down to police headquarters.

A. Yes, sir.
Q. And you also took the blood in that container?
A. Yes, sir.
Q. Then while there you then turned the container over to who?
A. I laid it on the Desk Sergeant's desk.
Q. And you say after you wrote Mrs. Gooch up then you mailed it?
A. Yes, sir.

By the Court:

page 28 } Q. Let me ask you a question. When you returned to the Desk Sergeant's desk upon which you had left that container was it just like you had left it?
A. Yes, sir.
Q. In every way?
A. Yes, sir.
Q. It had not been tampered with in any way?
A. No, sir.

By Mr. Whitehead:
Q. Now, you say you went by the headquarters to write her up. What do you mean by that?
A. That is to make out the arrest sheet.
Q. You write it up in a book?
A. We have a book and we also have just a pad with one little plain sheet about four by eight, something about four inches wide and eight inches long, and that has the date and the defendant's name, the arresting officer and the place and time.
Q. You put that on a pad and then you also have a book in which you write it up?
A. The docket book, yes, sir.
Q. Now then, do you write in the docket book or does someone else do that?
A. Well, most times I will.

page 29 } Q. And you also write it up on the sheet you have referred to. Is that correct?
A. Yes, sir.
Q. Now then, did you then turn Mrs. Gooch over to the people who have charge of the detention place?
A. We have charge of it. We went back in the cell and she wanted to use the telephone and she called you first and then

she called someone else and then she was taken upstairs and put in the cell.

Q. So then after she got to the police headquarters she requested of you permission to use the telephone?

A. Yes, sir.

Q. And she did use the telephone?

A. Twice, yes, sir.

Q. Then after that you took her to the detention cell?

A. Yes, sir.

Q. Now then, at any time did you go before any officer of the court or anyone who can issue warrants and swear out a warrant?

A. No, sir.

Q. Now then, after you put her in the detention cell did you have any more to do with her case or not?

A. No, sir.

page 30 } Q. That was the end of your handling this particular case?

A. Yes, sir.

Q. On that night you were the one that operated the wagon that goes and gets people?

A. That is right.

Q. There is also a man in the police headquarters there at the detention cell who has charge of the keys to let people in and out?

A. That is the Desk Sergeant and the Emergency Officer. At that time I was acting as Emergency Officer.

Q. Then you work with the Desk Sergeant?

A. Yes, sir.

Mr. Whitehead: All right, that is all.

The Witness Stands Aside.

Mr. Jester: The city is through.

The Court: We will take a short recess at this time. Members of the jury, you may be at ease in the jury box or retire to the jury room as you please.

(Recess).

page 31 } (IN CHAMBERS)

Mr. Whitehead: If your Honor please, the defendant, by

counsel, moves the court to dismiss this charge against this defendant on the ground that at this time the evidence shows and the papers in the case show—I would like for your Honor to look at those—that no warrant of arrest has been issued in this matter and it is the position of the defendant that under Section 52-21 of the Code and maybe 22, and also under Section 19-72.1 that a warrant shall be issued before the defendant may be tried and no warrant having been issued that therefore the defendant should be released. I will be gald to go over those sections, if your Honor please. As I understand it, under those sections it is mandatory that a warrant be issued.

The Court: If such be the law it is a radical change from what the law has been since I started practicing law in 1909. The law has heretofore always been that without any warrant an officer may arrest lawfully for a misdemeanor

page 32 } committed in his presence.

The law further has always been that if he made a false arrest it would not shield a criminal against an offence committed by that criminal. Such person, if falsely arrested, has a right to prosecute the officer for the assault and battery, a criminal prosecution against the officer for wrongfully touching him, and to sue civilly for false arrest, but the wrongful conduct of an officer is not a shield behind which an accused may hide. Whether the officer had a right to arrest or whether the officer did not have a right to arrest is not a factor in determining the guilt of the accused of the offense, but I will review those sections and see if there has been any such tremendous change in the law.

Mr. Whitehead: Maybe I do not make myself clear. It is not a question of the right of the officer to arrest, it is a question that no warrant having been issued therefore the defendant must be released.

The Court: That has never been the law heretofore where a prisoner was arrested without a warrant. On his

page 33 } trial before the magistrate or county court if he wishes it he can require that the charges be reduced to writing at that time but so far as the formality of a warrant that has never been heretofore the law of Virginia as a matter of precedent to the trial. That is your point, that the prisoner should be released because of no warrant having been issued.

Mr. Whitehead: She must be released under Section 52-21.

The Court: I will examine that and see if the legislature has made such a change. Have you any decided cases to that effect, Mr. Whitehead?

Mr. Whitehead: Yes, sir, I think I can give you a case.

(The Court Takes Time To Read The Statutes)

The Court: The whole Title 52, and the various chapters therein, are restricted in their application to State Police and I think have no bearing on this case in which the arrest was made by local police officers of Lynchburg. Your motion is overruled.

page 34 } Mr. Whitehead: We want to note an exception to your Honor's ruling for the reasons heretofore stated.

EVIDENCE FOR THE DEFENSE

The Court: Counsel may proceed.

ELIZABETH COLE GOOCH,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Your name is Mrs. Elizabeth Cole Gooch?

A. Yes, sir.

Q. Where do you live?

A. 2907 Dellwood Circle.

Q. Now, on the night of February 17th, 1958 were you in the City of Lynchburg?

A. Yes, I was.

Q. Now, you heard the officers testify as to the point where you were stopped. Now, will you please tell us what, if anything, you had had to drink of an alcoholic nature that day?

A. I had had four highballs early in the after-
page 35 } noon, between 2:30 and 5:00 o'clock.

Q. Had you had anything of an alcoholic nature after 5:00 P.M. on that day?

A. No, I had not.

Q. On the Saturday prior to this Monday where were you working?

A. I was working at Guggenheimer's.

Q. Where did you leave your car?

A. At Central Garage.

Q. Now, on this date, which would be February 17th, did you go down to the Central Garage to get your car?

Elizabeth Cole Gooch.

A. Yes, I did.
Q. Were you able to get it?
A. No, I was not.
Q. What was the condition of the chains?
A. I had had them to put the chans on but someone had transferred another pair of chains and the chains in the car would not fit and they couldn't get them on.
Q. Did you then proceed on to Hollins Mill Drive-in?
A. Yes, sir.

Mr. Jester: I am going to object to the ques-
page 36 } tions as leading.
The Court: Mr. Whitehead, the questions are leading and the objection is sustained.

By Mr. Whitehead:
Q. While at the Hollins Mill Drive-in did you have anything of an alcoholic nature to drink?
A. No. I had a cup of coffee and a cheeseburger.
Q. Now, had you been driving the station wagon you were in up to that time?
A. No, I had not.
Q. When did you start to driving it?
A. Just when I left the Hollins Mill Drive-in.
Q. Now, do you recall the police coming up to you at Hollins Mill Road and Bedford Avenue?
A. I didn't see the policeman until he pulled up beside me at Hollins Mill and Bedford Avenue.
Q. Were you at that time any way under the influence of intoxicants
A. No, I was not.
Q. Tell us when was approximately the last time you had had anything to drink that day.
A. Just about 5:00 o'clock or a little before 5:00.
page 37 } Q. Now, after the police came there they advised you of what they were charging you with?
A. Yes.
Q. Then did they later take you on to the hospital?
A. That is right.
Q. Now then, after they took you to the hospital and then down to police headquarters what did you do as soon as you got to police headquarters?
A. I asked to use the telephone and I made two telephone calls, one to you and one to Mr. McWane.

L. H. McWane.

Q. Later that night did Mr. McWane come down and bail you out?
A. Yes.

Mr. Whitehead: That is all.

CROSS EXAMINATION.

By Mr. Jester:
Q. Mrs. Gooch, as I understand it you did have four highballs that afternoon.
A. That is correct.
Q. What size drinks were they?
A. One jigger. I measured them myself.
page 38 } Q. And you had the last of those four highballs just about 5:00 o'clock that afternoon?
A. Yes, sir.

Mr. Jester: That is all.

By Mr. Whitehead:
Q. I overlooked asking you this question. Were you released from jail that night?
A. Yes, I was.

The Witness Stands Aside.

L. H. McWANE,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:
Q. You are Mr. L. H. McWane?
A. Yes, sir.
Q. Mr. McWane, where do you live?
A. 2909 Dellwood Circle.
Q. On the night of February 17th did you receive a telephone call from Mrs. Gooch?
A. Yes, sir.
page 39 } Q. Did you receive the call at your home?
A. Yes, sir.
Q. Do you live on the same street she does?
A. Yes, sir. I live next door to her.

L. H. McWane.

Q. Now, I will ask you this: Did you recognize her voice when you were talking to her over the telephone?

A. Yes, sir.

Q. How did she talk to you? Did she talk to you like she was drunk or under the influence of liquor?

A. No.

Q. Just tell us how she did talk.

A. She sounded perfectly normal to me on the 'phone.

Q. Then did you later go down to the police headquarters?

A. Yes, sir.

Q. What time did you go down?

A. I imagine it was about 9:20, around 9:20. That would be my guess. I tried to get there before 9:30. I understood Judge Wingo would be there somewhere between 9:30 and 10:00 o'clock.

Q. After you got there did they admit you back to where she was in the detention cell?

A. Yes, sir.

Q. Did you go back there and talk with her?

page 40 } A. Yes, sir.

Q. I will ask you what did you notice about her then? How was her condition with reference to being under the influence of intoxicants?

A. The only indication of being under the influence at that time was the odor of whiskey. I talked to her extensively and she talked perfectly normal and her behavior was perfectly normal.

Q. As soon as the judge came did you go on her surety and bail her out and take her home?

A. Yes, sir.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Jester:

Q. Mr. McWane, as I understand it you saw her after 9:20 P.M. on the night of the 17th of February.

A. That is correct.

Q. Then that would be approximately two hours or longer following her apprehension if she was arrested around 7:15 Is that correct?

A. Yes, sir.

Q. And you could still smell alcohol on her at that time?

L. H. McWane.

A. I smelled alcohol, yes, sir.

page 41 }

Mr. Jester: That is all.

The Witness Stands Aside.

The Court: Do you have any other witnesses, Mr. Whitehead?
Mr. Whitehead: No, sir. We rest.
The Court: Is there any rebuttal?
Mr. Jester: No, sir.

(End of all testimony)

The Court: Do you gentlemen have your instructions written?
Mr. Jester: No, sir, we agreed that the court should instruct orally.
The Court: Do you concur in that, Mr. Whitehead?
Mr. Whitehead: Yes, sir.

page 42 }

INSTRUCTIONS.

The Court: Gentlemen of the jury, the prisoner enters upon her trial presumed to be innocent of all charges against her—
Mr. Whitehead: Your Honor, before you go into that can I make a statement in the absence of the jury?
The Court: All right. Gentlemen of the jury, retire to the jury room.

(JURY OUT)

Mr. Whitehead: Now, if your Honor please, the defendant by counsel wants to again renew its motion which was made when the Commonwealth rested and the defendant, by counsel, further requests that in the instructions in this case, as I understand it from the papers and from the evidence there has been no charge in the papers of driving under the influence, second offense conviction, and therefore we ask, if your Honor please, that when you instruct as to the penalty that the penalty be not for a second conviction but of a first offense.

page 43 }

The Court: Mr. Whitehead, didn't you stipulate before the trial, in order to save time, that she had

been convicted previously?

Mr. Whitehead: Yes, sir.

The Court. And the trial has proceeded on that theory all the way through?

Mr. Whitehead: Yes, sir. I have now looked at the papers and find there is no charge in there of second offense.

The Court: Here is a certificate of conviction.

Mr. Whitehead: Yes, sir. That is a certificate of conviction. That is what she has been convicted of.

The Court: I will read it. The jury is out of the courtroom.

"Be it remembered that on the 4th day of March, 1958 Elizabeth Cole Gooch brought before me, Judge of the City of Lynchburg, charged with a misdemeanor in that she did in the said city on the 17th day of February, 1958, unlawfully operate a motor vehicle while under the influence
page 44 } of intoxicants in violation of the ordinances of the said city, she having been previously convicted of a like offense.

Your motion is overruled.

Mr. Whitehead. If I may say, if your Honor please, I understand that is a conviction of the lower court. We take the position that under Section 18-76 that she must be charged and proved.

The Court: The motion is overruled.

Mr. Whitehead: We want to not an exception to the ruling of the court, if your Honor please.

The Court: Bring the jury in.

(JURY IN)

The Court:

Gentlemen of the jury, the prisoner enters her trial presumed to be guilty of all offenses—

Mr. Jester: Presumed to be innocent.

The Court:

I mean presumed to be innocent of all offenses against her. The offense she is charged with here is driving a motor vehicle on the city streets in violation of the ordinance of the City of Lynchburg after having been previously
page 45 } convicted of a similar offense. In other words, the charge is a charge of second offense of driving while under the influence of intoxicants. Now, she is presumed to be innocent of that.

The burden rests upon the City to prove her guilt beyond a reasonable doubt. There is no burden to prove her guilt to a mathematical certainty nor beyond possibility of mistake but the burden is to prove her guilt beyond a reasonable doubt. If the City fails to bear that burden it is your duty to acquit her. If the City has borne that burden and her guilt has been proven beyond a reasonable doubt it is your duty to convict her.

Now, for a person to be under the influence of intoxicants it does not mean that they have got to be so much under the influence of intoxicants as to be unable to drive an automobile or to affect their driving. In this State a person who has drunk enough alcoholic beverage to so affect his manner, disposition, speech, muscular movements, general appearance or behavior as to be apparent to observation shall be deemed to be intoxicated.

The penalty for operating a motor vehicle under the influence of intoxicants, second offense, is by a fine of not less than $100.00 nor more than $1,000.00 and confinement in jail for not less than one month nor more than one year.

page 46 } Is there any other point of law that the Commonwealth Attorney or defense counsel wish the jury instructed upon?

Mr. Jester: Yes, sir, and that is with reference to the presumption from the alcoholic blood test.

The Court: Yes, sir.

Where with the consent or request of the accused for a blood test a sample of blood is taken in the proper way and sent to the Chief Medical Examiner in Richmond, is examined and his report is made, his certificate is evidence and if that examination shows as much or more than *than* an alcoholic content of 0.15% they are presumed to be under the influence of alcohol. That is a prima facie presumption arising from having that much or more alcoholic content by volume in their blood. It is not conclusive and may be rebutted by evidence that overcomes it if such evidence be offered.

Do you gentlemen wish to argue the case?

Mr. Jester: Yes, sir, briefly.

Note: The jury having heard arguments of counsel retired to the jury room and after due deliberation re-

page 47 } turned their verdict finding the accused guilty and fixing her punishment at a fine of $100.00 and a jail sentence of one month, whereupon the following motion was made:

Mr. Whitehead: May I make a motion, if your Honor please?

The Court: Yes, sir.

Mr. Whitehead: The defendant, by her attorney, moves the court to set aside the verdict of the jury on the following grounds:

(1) The verdict is contrary to the law and the evidence;

(2) The court erred in not releasing the defendant as no warrant was issued against her and she could not be tried without a warrant being issued.

(3) The court erred in instructing the jury on the penalty of conviction of second offense; that the first or prior offense of conviction is not charged.

The Court: The motion is overruled.

Mr. Whitehead: We want to note an exception
page 48 } to your Honor's ruling and would like to ask for a stay of execution for us to apply for a writ of error.

The Court: The evidence is very short. It will be continued to the first day of the June term on a bond of $1,000.00. The motion for a stay of execution is granted until the first day of the June term of this court.

The foregoing transcript of oral testimony and other incidents of trial were stenographically recorded and transcribed by the undersigned court reporter who was first duly sworn according to law.

C. R. McCARTHY
Court Reporter.

page 49 } The undersigned, counsel for plaintiff and defendant, respectively, in the case of City of Lynchburg, Plaintiff, vs. Elizabeth Cole Gooch, defendant, lately pending in the Corporation Court for the City of Lynchburg, Virginia, final judgment wherein was rendered on the 8th day of April, 1958, hereby affix their signatures 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.

ROYSTON JESTER
Counsel for Plaintiff.

PAUL WHITEHEAD
Counsel for Defendant.

page 50 } Tendered on this, the 23rd day of May, 1958, and within sixty days after final judgment.

S. DuVAL MARTIN
Judge of the Corporation Court for the City of Lynchburg, Virginia.

Signed on this, the 26 day of May, 1958, and within seventy days after final judgment.

S. DuVAL MARTIN
Judge of the Corporation Court for the City of Lynchburg, Virginia.

I, Hubert H. Martin, Clerk of the Corporation Court for the City of Lynchburg, Virginia, do hereby certify that the foregoing transcript of the oral evidence and incidents of trial of the case of City of Lynchburg, Plaintiff, against Elizabeth Cole Gooch, Defendant, was received by me on this, the 26th day of May, 1958.

HUBERT H. MARTIN
Clerk of the Corporation Court for the City of Lynchburg, Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Conviction and Judgment	2
Verdict of the Jury	2
Judgment—April 8, 1958	3
Notice of Appeal and Assignments of Error	5
Stipulation	6
Witnesses:	
D. T. Almond	6
L. T. Roach	11
A. P. Tucker, Jr.	13
Elizabeth Cole Gooch	22
L. H. McWane	24
Proceedings	20, 26, 29
Instructions	27
Certificates	30

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel 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.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
JAN 6 1959
RECEIVED
RICHMOND, VIRGINIA