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Record No. 5019

In the Supreme Court of Appeals of Virginia at Richmond

EUGENE HARLOW DICKERSON

v.

TOWN OF CHRISTIANSBURG

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY

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. 5019

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 6th day of April, 1959.

EUGENE HARLOW DICKERSON, Plaintiff in Error,

against

TOWN OF CHRISTIANSBURG, Defendant in Error.

From the Circuit Court of Montgomery County

Upon the petition of Eugene Harlow Dickerson a writ of error and *supersedeas* was awarded him by one of the justices of the Supreme Court of Appeals on the 2nd day of April, 1959, to a judgment rendered by the Circuit Court of Montgomery County on the 8th day of December, 1958, in a prosecution by the Town of Christiansburg 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 his bond if out on bail.

RECORD

* * * * *

page 2 } State of Virginia,
Town of Christiansburg, to-wit:

To G. A. Teel, Chief of Police, or any Police Officer of the said Town:

Whereas, Teel and Altizer, Police Officers of the said Town has this day made complaint and information on oath before me D. C. Shores, Justice of the Peace of the said County, that Eugene Harlow Dickerson in the said Town did on the 23rd day of August, 1958 unlawfully and in violation of an ordinance of the said Town operate a motor vehicle while under the influence of alcohol, brandy, rum, whiskey, gin, wine, beer, lager beer, ale, porter, stout or any other liquid beverage or article containing alcohol or under the influence of any other self administered intoxicant or drug of whatsoever nature. 2nd offense. The said Eugene Harlow Dickerson having been heretofore convicted of driving under the influence of intoxicants, etc. on April 18, 1955. In Trial Justice Court of Montgomery County. Va.

THESE ARE, THEREFORE, to command you, in the name of the Town of Christiansburg, to (Apprehend) or (Summon) and bring before Charles W. Crush, Judge of the said Town the body of the said Eugene Harlow Dickerson to answer the said complaint and to be further dealt with according to law. And you are also directed to summon Grover A. Teel, Officer Altizer as witnesses.

Given under my hand and seal, this 23rd day of August 1958.

D. C. SHORES (Seal)
Justice of the Peace.

(on back)

APPEAL TO CIRCUIT COURT.

On motion of the said Eugene Harlow Dickerson an appeal is allowed him from the within judgment to the Circuit Court of Montgomery Co. Va. and ..... he was thereupon.....

Given under my hand this 30 day of Sept., 1958.

CHAS. W. CRUSH, Judge.

DOCKET NO. .....

Town of Christiansburg,

v.

Eugene Harlow Dickerson.

WARRANT OF ARREST.

Executed this, the 23rd day of August, 1958.
G. Teel, T. Altizer Constable—Sergeant—Sheriff.

Town of Christiansburg, to-wit:

The defendant Eugene Harlow Dickerson upon the evidence on oath of witnesses is found guilty of unlawfully operating motor vehicle while under influence of intoxicants—second subsequent offense as charged in the within warrant and I do adjudge that he pay a fine of $150.00 and $ ..... costs; and that he be confined in the jail of Montgomery County for the term of three months. On serving one month balance suspended.

That he be given a two months suspended jail sentence during his good behavior.

This 22 day of Sept., 1958.

CHAS. W. CRUSH, Judge.

Filed in Clerk's Office Circuit Court of Montgomery County 10th day of October 1958.

A. B. CORRELL, Clerk
By PANELDA TURMAN, D. C.

* * * * *

page 3 }

* * * * *

KNOW ALL MEN BY THESE PRESENTS, That we,

Eugene Harlow Dickerson, principal, and Harless Dickerson, surety, are held and firmly bound unto the Commonweath of Virginia in the just and full sum of Five Hundred & No/100 Dollars ($500.00), to the payment whereof well and truly to be made we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents. And we hereby waive the benefit of our homestead exemptions as to this obligation.

Sealed with our seals and dated this 24th day of August, 1958.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound Eugene Harlow Dickerson shall personally appear before the County Court of the County of Montgomery at Christiansburg, Va., on the 8th day of September, 1958, as well as at any other time or times to which the proceedings in connection with the charge herein specified may be continued or further heard, and before any Court or Judge thereafter having or holding any proceedings in connection with the said charge, then and there to answer the Commonwealth of Virginia for and concerning a certain misdemeanor by him committed, viz: Reckless Driving and Driving Drunk and shall not depart thence without leave of said Court, this said recognizance to remain in full force and affect until said charge shall have been finally disposed of or until it shall have been declared void by order of a Court of competent jurisdiction, then this obligation to be void; otherwise to remain in full force and effect.

Non-appearance of the above bound Eugene Harlow Dickerson shall be deemed to constitute a waiver of trial by jury, in any Court having jurisdiction.

EUGENE H. DICKERSON (Seal)
HARLESS DICKERSON (Seal)

Signed, sealed and acknowledged by each of the above obligors before me, at Christiansburg, Va., this 24th day of August, 1958.

D. C. SHORES
Justice of the Peace, Clerk.

page 4 } INSTRUCTION NO. 1.

The Court instructs the Jury that if you believe from the evidence beyond a reasonable doubt that the accused drove or operated a motor vehicle within the Town of Christians-

burg, Virginia, and that at the time he drove or operated said motor vehicle he was under the influence of intoxicants as that phrase is defined in Instruction No. 2, then in that event you should find the defendant guilty of operating a motor vehicle while under the influence of intoxicants as charged in the warrant in this case, and if you further find from the evidence beyond a reasonable doubt that the accused has been previously convicted of driving under the influence of intoxicants, then you shall fix his punishment by a fine of not less than One Hundred ($100.00) Dollars nor more than One Thousand ($1,000.00) Dollars, and by confinement in jail for not less than one (1) month nor more than One (1) year.

Given.

M. S. J.

INSTRUCTION NO. 2.

The Court further instructs the Jury that if you believe from the evidence beyond a reasonable doubt that the defendant had drunk enough alcoholic beverages to so affect his manner, disposition, speech, muscular movement, general appearance or behavior, as to be apparent to observation, then and in that event, he was "under the influence of intoxicants" as that phrase is used in Instruction Number One.

Given.

M. S. J.

page 5 } INSTRUCTION NO. B.

The Court instructs the jury that the burden is upon the Town of Christiansburg to prove beyond all reasonable doubt that the defendant operated a motor vehicle while under the influence of alcoholic beverages. The Court further instructs the Jury that a person who has drunk enough alcoholic beverages to so effect his manner, disposition, speech, muscular movement, general appearance, demeanor or behavior as to be apparent to observation, shall be *demmed* to be intoxicated.

The Court therefore instructs the jury that unless they believe from the evidence beyond a reasonable doubt that the defendant was under the influence of intoxicants as above defined, the Jury must find the defendant not guilty.

Given.

M. S. J.

page 6 } INSTRUCTION NO. C.

The Court instructs the jury that the accused in a criminal case is presumed to be innocent until his guilt has been proven beyond a reasonable doubt. The burden of proof is upon the Commonwealth, and this burden continues throughout the trial and never shifts. The Court tells the jury that this presumption of innocence is so strong that not only is the accused entitled to the benefits of it, but if the case is a doubtful one, the presumption is sufficient to turn the scale in the accused favor; furthermore, it is not sufficient for a conviction that the evidence create a strong suspicion or probability of guilt, but it must go further and exclude every reasonable hypothesis except that of guilt, nor, where a fact is equally susceptible of two interpretations, one of which is consistent with the interpretation of the accused, may the jury arbitrarily adopt that interpretation which incriminates him. The interpretation more favorable to the accused should be adopted unless it is untenable under all the facts and circumstances of the case.

Given.

M. S. J.

page 7 } INSTRUCTION NO. D.

The Court instructs the Jury that the accused is a competent witness in his behalf. That the Jury is the sole Judge of both the weight of the testimony and the credibility of witnesses; however, you may not arbitrarily or without any justification *therefore* give no weight to material evidence given by the accused merely because he is the accused, and in considering the testimony of the accused, you must weigh and consider it the same as the testimony of any other witness.

Given.

M. S. J.

page 8 } INSTRUCTION NO. E.

The Court instructs the Jury that if you find from the evi-

dence that the defendant has been previously convicted of driving under the influence, you shall not consider that in ascertaining whether or not the defendant is guilty of driving under the influence of intoxicants in the Town of Christiansburg on August 23, 1958; that the fact that he has been previously convicted, if you so find, goes only to the punishments which you may impose, if you believe beyond a reasonable doubt that the defendant was operating his automobile over the streets of the Town of Christiansburg under the influence of intoxicants as defined in Instruction No. 2, and as charged in the warrant in this case.

Given.

M. S. J.

page 9 } INSTRUCTION NO. A.

The Court instructs the jury that although you may believe under the evidence that the accused operated his automobile in a reckless manner, that evidence alone is not sufficient to convict him of operating a motor vehicle while under the influence of intoxicants, but in order to warrant his conviction of the charge contained in the warrant, you must believe from the evidence, beyond all reasonable doubt, that at the time he operated his motor vehicle in the town of Christiansburg, he was under the influence of intoxicants as defined in instruction No. 2.

Refused—No evidence of reckless driving.

M. S. J.

Exception noted.

M. S. J.

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* * * * *

Circuit Court of the County of Montgomery, 8th day of December, 1958.

APPEAL MISDEMEANOR.

This day came the attorney for the Commonwealth, the

attorney for the defendant, and the defendant, Eugene Harlow Dickerson, who stands charged with a misdemeanor, to-wit: operating a motor vehicle while under the influence of intoxicants, appeared in pursuance to his recognizance and plead not guilty to the warrant in this case.

Thereupon came the following jury, to-wit: J. Carl Bussey, Eugene T. Wilson, Frank E. Ashley, Roscoe Martin, Jr. and Ellery D. Stafford, who were sworn to well and truly try and true deliverance make between the Town of Christiansburg and Eugene Harlow Dickerson and a true verdict render according to the law and the evidence. And having heard the evidence, instructions of the court and argument of counsel, the jury retired to their room to consider of their verdict and after sometime returned into court and presented the following verdict: We the Jury find the defendent guilty and fix his punishment by a fine of one hundred ($100.00) Dollars and *confinment* in jail for one (1) month Foreman Carl Bussey We the Jury recommend the jail sentence be suspended." Whereupon the defendant by his attorney, moved the Court to set aside the verdict of the jury as contrary to the law and evidence and for other reasons assigned at bar, which motion the Court overruled, and the attorney for the defendant excepted.

Whereupon it is considered by the Court that the Town of Christiansburg recover of the defendant, Eugene Harlow Dickerson, the sum of $100.00 and its costs by it in this behalf expended and that the said Eugene Harlow Dickerson be confined in the jail of this county for a term of thirty days, but in lieu of serving the said thirty days in jail, it is ordered that the said defendant be confined in the

page 11 } jail of this county for a period of ten days and the remainder of said sentence is hereby suspended. Whereupon the defendant, by his attorney, signified his intention of applying to the Supreme Court of Appeals of Virginia for a writ of error, it is ordered that a stay of execution for sixty days be and the same hereby is granted pending said appeal.

A Copy—Teste:

A. B. CORRELL, Clerk.

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To: The Honorable Julius Goodman
Attorney for the Town of Christiansburg
Christiansburg, Virginia.

Notice is hereby given that the undersigned, Eugene Harlow Dickerson, appeals from a certain final judgment rendered by the Circuit Court of Montgomery County, Virginia, on the 8th day of December, 1958, and will apply to the Supreme Court of Appeals of Virginia, for a writ of error and *supersedeas* to said judgment.

Notice is further given that the undersigned, Eugene Harlow Dickerson, will rely upon the following assignments of error.

1. The Court erred in admitting the testimony of Grover A. Teel, Chief of Police of the Town of Christiansburg, and T. E. Altizer, Officer for the Town of Christiansburg, when the Court did allow them to state their opinion as to the intoxication of the accused, Eugene Harlow Dickerson, for the reasons assigned in the record.
2. The Court erred in refusing to grant the defendant instruction A as offered, for the reasons assigned in the record.
3. The Court erred in failing and refusing to set aside the verdict of the jury as contrary to the law and evidence for the reasons assigned in the record, and for the further reasons that the evidence was wholly insufficient to establish beyond a reasonable doubt the guilt of the offense charged in the warrant in this cause.

page 13 } Respectfully,

EUGENE HARLOW DICKERSON
By KENNETH I. DEVORE
Counsel.

Filed in Clerk's Office Circuit Court of Montgomery County 17th day of December 1958.

A. B. CORRELL, Clerk
By PANELDA TURMAN, D. C.

* * * * *

WRITTEN STATEMENT OF TESTIMONY AND INCIDENTS OF TRIAL.

Grover A. Teel.

Be it remembered that upon the trial of this case after the jury had been duly impaneled and sworn the Town to maintain the issue on its behalf introduced the following evidence, to-wit:

GROVER A. TEEL,

The first witness, Grover A. Teel, Chief of Police, Town of Christiansburg, Virginia, testified as follows:

On August 23rd, 1958, at approximately 5 o'clock p. m., Officer Altizer and myself were patrolling South on Franklin Street in the Town of Christiansburg. I observed an automobile coming out of Second Street into Franklin Street. This automobile had stopped for the Franklin Street traffic and I noticed the defendant sitting in the car, and he appeared to be under the influence of intoxicants. Officer
page 2 } Altizer and I followed this automobile South on Franklin Street to the intersection of Ellett Drive where the car turned left into Ellett Drive. We were unable to stop the car due to two automobiles being between the defendant's car and the police car. The defendant proceeded down Ellett Drive and was weaving back and forth across the road. He would cut to the left of the road and slap on his brakes and then cut back sharply to the right. He proceeded down Ellett Drive and cut right on a dirt road that goes to Circle Drive. I pulled up beside him and blew my horn and he stopped. Officer Altizer went to the defendant's car and asked him to get out. He was staggering and unsteady on his feet and could not talk. He stuttered somewhat. I drove the defendant's car to the Sheriff's Office in Christiansburg, and Officer Altizer brought the Defendant to the Sheriff's Office. The Town Attorney then asked Chief Grover Teel the following question:

"From your observation of the defendant on August 23, 1958, at the time of his arrest as to his manner of speech, disposition, muscular movement, general appearance or behavior, in your opinion, was he, or was he not, under the influence of intoxicants?

page 3 } Counsel for the defendant objected to the foregoing question for the following reasons:

Opinions are inadmissable when the witness can relate the

facts so that the jury will have an adequate understanding of them.

The Jury is as well qualified as the witness to draw inferences and conclusions from the facts as presented by the witness.

A witness will not be allowed to give his opinion on the very question for the jury to decide.

The question as stated calls for an expert and the witness has not been qualified as an expert.

The Court overruled counsel for defendant's objection and he duly excepted.

The witness then testified that in his opinion the defendant was under the influence of intoxicants."

Witness further testified that he found in the automobile of the defendants a bottle of *burboun* whiskey which was introduced as the Towns "Exhibit No. 1," and out of which container approximately two drinks had been taken. Witness further testified from the records of the County page 4 } Court of Montgomery County, which showed that the defendant had been convicted previously of driving under the influence of intoxicants on April 15, 1955, in the County Court of Montgomery, Virginia. Witness further testified that Ellett Drive was a public street, and although a paved street it was bumpy; that the defendant did not appear to be nervous and that he appeared to be under the influence of intoxicants. That he tried to talk to the defendant while in the Sheriffs Office in Montgomery County, Virginia, in Christiansburg, after the arrest but the defendant was unable to talk.

T. E. ALTIZER,

Officer for the Town of Christiansburg, Virginia testified as follows:

That he was an officer of the Town of Christiansburg, on the date of the arrest; that on August 23rd, 1958, at approximately 5:00 o'clock p. m., he was patrolling south on Franklin Street in the Town of Christiansburg, with Chief Grover A. Teel, of the Town of Christiansburg Police Department. That when the police car approached Second Street Chief Teel told him that there was a drunk page 5 } coming out of Second Street; that they followed the defendant's automobile South on Franklin Street to Ellett Drive where the car of the defendants made a left turn; that there was one car in between the defendant's car

and the police car; that he could not testify as to whether or not the defendant gave a left-hand turn signal; that they followed the defendant down Ellett Drive which was a paved street and was not bumpy. That the defendant was weaving back and forth across the road and would veer to the left slam on his brakes and then cut to the right. That he did this several times; that the defendant cut from Ellett Drive on to a dirt street that connected Ellett Drive with Circle Drive that Chief Teel pulled up beside the defendant's car and blew his horn that the defendant stopped; that he went up to the car and asked the defendant for his operators licenses and registeration card and asked the defendant to get out of his automobile; that the defendant did get out of the car and that he asked him to walk and that he staggered; that the defendant had quite a bit of trouble getting his page 6 } drivers licenses and regisetration card out of his pocket book. That he advised the defendant that he was under arrest for driving under the influence of intoxicants. That he put the defendant in his automobile and proceed to the Montgomery County Sheriff's Office in Christiansburg with him. That on the way to the Sheriff's Office the defendant was unable to talk that he asked him what he had been drinking and the defendant mumbled, witness thought, beer and whiskey. That when he arrived at the Montgomery County Sheriff's Office he had to help the defendant out of the automobile and lead him into the jail; that when he got into the Sheriff's Office the defendant handed him his drivers licenses and registeration card. He further testified that the defendant while driving up South Franklin Street and Ellett Drive was driving very slowly, and that the defendant did not appear to be nervous or afraid when arrested. That he had known the defendant approximately twelve or fifteen years and knew that the defendant stuttered quite a bit, but at the time of his arrest he was unable to talk. He further testified that he knew the defend- page 7 } ant had suffered a broken back in 1954, and had some difficulty in walking but that it did not make him stagger. The Attorney for the Town of Christiansburg then asked the witness the following question:

"From your observation of the defendant on August 23rd, 1958, from his mannuer, disposition, speech, muscular movement, general appearance or behavior was he, or was he not under the influence of intoxicants?

Paul Clower's—Edward Lancaster.

Counsel for the defendant objected to the question and assigned the reasons for his objections as the same as for the objections to the question as ask the other witness for the Town of Christiansburg, Grover A. Teel. The Court overruled the objections and Counsel duly excepted." The witness then testified that in his opinion the defendant was under the influence of intoxicants at the time of his arrest.

The attorney for the Town of Christiansburg then indicated to the Court that he would introduce a certified copy of the Town Ordinance of Christiansburg, which made it a violation to operate an automobile over the streets of Christiansburg while under the influence of intoxicants at which time counsel for the defendant advised the Court that he would waive the introduction of the same.

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The Town of Christiansburg then rested its case.

Be it likewise remembered that the defendant to maintain the issue on his behalf introduced the following evidence, to-wit:

PAUL CLOWERS,

testified as follows:

That his name was Paul Clowers, and he resided at Riner, Montgomery County, Virginia, that he had known the defendant for approximately one year and knew that he stuttered in his speech; that he also knew that he had suffered a broken back around 1954. That the defendant came to his home in Riner, Virginia, somewhere around 3:00 o'clock p. m., on August 23rd, 1958, that at the time he arrived he appeared to be normal and was not under the influence of intoxicants as far as he could tell; that he appeared to be as normal as he was at the time of this trial. That the defendant stayed at his home somewhere between forty five minutes and one hour, and that during that time he helped the witness and his brother take a fender skirt off of an automobile so that the tire could be changed. That the defendant did not drink any intoxicating beverages while at his home, and that when he left he thought it was somewhere between 3:30 or 4:00 o'clock p. m.

page 9

EDWARD LANCASTER,

testified as follows:

That his name was Edward Lancaster, and he resided in the

Town of Christiansburg, Virginia, and was employed by the Gulf Service Station located on Route 11 near the New Altamont Hospital on August 23rd, 1958; that he had known the defendant approximately two to three years, and knew that he stuttered in his speech and that he had suffered a broken back somewhere around 1954, which made him walk with a limp; that on August 23rd, 1958, the defendant came to his service station somewhere between 3:30 and 4:00 o'clock p. m., to have his two front wheels changed on his automobile; that the defendant and the witness
page 10 } changed the two front wheels; that when the defendant arrived at the service station he appeared to be normal and the witness could not tell that the defendant had drank any intoxicating beverages whatsoever; that he appeared to be just as normal than as he was at the date of this trial. That as far as he knew the defendant did not drink any intoxicating beverages whatsoever while at the service station; that to the best of his recollection the defendant left the service station at approximately 5 or 10 minutes till 5:00 o'clock p. m., and told the witness that he was going home. That he did not see any intoxicating beverages whatsoever in the automobile of the defendants.

KAULA V. EPPERLY,

testified as follows:

That her name was Kaula V. Epperly and she lives at 322 Circle Drive, Christiansburg, Virginia, and is a next door neighbor to the defendant; that she had known the defendant approximately three to four years and that the defendant was arrested approximately 5:00 o'clock p. m., on August 23rd, 1958, at the edge of the lot where she resides; that
page 11 } she was eating supper with her son on August 23rd, 1958, and was looking through the window and observed the defendant and the officers out near the edge of her lot; that it was approximately forty to fifty feet from where she was sitting looking through the window to where the defendant and the officers were at the time. That the defendant appeared to be normal and she could not tell that he had been drinking anything whatsoever; that he looked all right at a distance. That the defendant got out of his automobile and got into the police car without any assistance from either police officer; that she knew that the defendant stuttered in his speech while talking.

HARLOW DICKERSON,
the defendant, testified as follows:

That his name was Harlow Dickerson, and he resided on Circle Drive in the Town of Christiansburg, Virginia. That on August 23, 1958, at approximately 2:30 or 3:00 o'clock p. m., he left his home on Circle Drive drove his automobile to the Gulf Service Station located on Route 11 page 12 } in the Town of Christiansburg, to meet Edward Lancaster who was to change the wheels on his car. That Edward Lancaster was not there so he left the service station and went to the local ABC Store located on Franklin Street, in the Town of Christiansburg, Virginia, and bought four fifths of a quart of *burboun* whiskey, and started out to see Paul Clowers at Riner, Virginia; that on his way there he stopped on what is known as the "Mud Pike Road" below DeHarts Store and took a drink of the whiskey, and at that time did not use any chaser and drank the whiskey out of the bottle. That he proceeded on to Paul Clowers' home and stayed there approximately forty five minutes to an hour. That he left Paul Clowers' and started back to the Gulf Service Station. That he stopped at the same location and took another drink of the whiskey out of the bottle without a chaser and then proceeded on the Gulf Service Station. That when he arrived at the Gulf Service Station, he, along with Edward Lancaster, changed the two front wheels on his automobile and that he took no other drink of whiskey; that he stayed at the Gulf Service Station approxi- page 13 } mately thirty five to forty five minutes and left there about five (5) minutes of five o'clock p. m., going to his home. That he went by the way of Phlegar Street, turned left on Second Street and went from Second Street up Franklin Street to Ellett Drive, down Ellett Drive and turned off going toward his home at which time he heard a horn blow on the police officers automobile and he immediately stopped. That when the officers stopped him he was approximately one-half of a block from his home. That Officer Altizer came up to the left-hand side of the automobile asked the defendant to get out and walk; that he took approximately three steps and at that time Chief Teel told Officer Altizer to take the defendant to jail and he would drive his car in. That he got out of his automobile; that he walked to the automobile of the police officers and got in the front seat; that he opened the door to the police car and rode to the jail with Officer Altizer; that when he arrived at the jail he got out of the police car and walked into the jail and that Officer Altizer opened the door and he followed the

page 14 } officer in. That he went into the Sheriffs Office and sat down at which time Officer Altizer asked for his drivers licenses and his registeration card at which time the defendant handed them to him. That he had drank no intoxicating beverages whatsoever before leaving his home around 2:30 or 3:00 o'clock p. m., on this date. That he stuttered in his speech and that he walked somewhat with a limp due to a back injury he received in 1954. That all of the whiskey that was drank out of the bottle taken from his car (Town's Exhibit No. 1) was drank by him and that is all of the intoxicating beverages he drank that day. That at the time of his arrest he was not under the influence of intoxicants. That he was not used to drinking and that the whiskey he drank did not effect him.

The defendant then rested.

The jury was then instructed, retired to their room after hearing argument of counsel and returned and submitted the following verdict.

"We the jury find the defendant guilty."

The Court then instructed the jury to retire again and bring in a correct verdict at which time they did retire and then came back with the following verdict:

page 15 } "We the jury find the defendant guilty and fix his punishment at a $100.00 fine and one month in jail and recommend that the Court suspend the jail sentence."

The defendant by counsel moved the Judge to set aside the verdict of the jury as contrary to the law and the evidence and assigned the following reasons:

First: That the Court erred in not granting the defendant's instruction No. A.

Second: That the Court erred in allowing the two witnesses for the Town of Christiansburg to state their opinion as to the intoxication of the defendant.

Third: That due to the verdict as returned by the jury in the first instance it plainly showed there was reasonable doubt as to the guilt of the defendant, as shown by the verdict.

EUGENE HARLOW DICKERSON
By KENNETH I. DEVORE
Counsel.

TOWN OF CHRISTIANSBURG
By JULIUS GOODMAN
Counsel.

CERTIFICATE.

The Court certifies the foregoing to be the evidence and incidents of trial and such evidence and incidents of trial are signed and made a part of the record in this cause.

The Court certifies that the Attorney for the Town of Christiansburg, has had reasonable notice of the time and place of tendering the foregoing testimony and other incidents of trial and reasonable opportunity to examine same before the same was signed by the Court and made a part of the record.

Given under my hand this 19 day of January 1959.

W. S. JORDAN
Judge of the Circuit Court of
Montgomery County, Virginia.

Filed in Clerk's Office Circuit Court of Montgomery County 19th day of January 1959.

A. B. CORRELL, Clerk
By GEORGIA ELLIOTT, D. C.

A Copy—Teste:

H. G. TURNER, Clerk.

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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.

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