

FILE COPY

Supreme Court of Appeals

Record No. 5229

**In the
Supreme Court of Appeals of Virginia
at Richmond**

HERMAN VALENTINE

v.

COUNTY OF BRUNSWICK

FROM THE CIRCUIT COURT OF BRUNSWICK 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.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5229

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 4th day of October, 1960.

HERMAN VALENTINE,

Plaintiff in Error,

against

COUNTY OF BRUNSWICK,

Defendant in Error.

From the Circuit Court of Brunswick County

Upon the petition of Herman Valentine a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Brunswick County on the 26th day of April, 1960, in a prosecution by the County of Brunswick 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 } Virginia:

At a regular meeting of the Board of Supervisors, held for the County of Brunswick, on the 24th day of August, 1936.

Present: D. S. Delbridge, Chairman, M. S. Barrow, W. B. Moseley, E. E. Vaughan and L. S. Purdy, Supervisors.

* * * * *

“AN ORDINANCE

(Approved August 24, 1936)

To Prohibit and make it unlawful for any person to drive or operate any motor vehicle, engine or train in the County of Brunswick, 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 while under the influence of any other self-administered intoxicant or drug of whatsoever nature; to prescribe fines and other punishments for violations of this ordinance; and to require convictions under this ordinance to be reported to the Director of the Division of Motor Vehicles.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF BRUNSWICK:

1. That the driving or operation of any motor vehicle, engine, or train, in the County of Brunswick, by any person, 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 while under the influence of any other self-administered intoxicant or drug of whatsoever nature is hereby prohibited, and it shall be unlawful for any person to drive or operate any motor vehicle, engine or train in the County of Brunswick while under the influence of such liquid, beverage, article, intoxicant or drug.

* * * * *

(on back)

County of Brunswick

v.

Herman Valentine

Ex. No. 1 for County.

C. E. H., Judge.

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• • • • •

At a Circuit Court held for the County of Brunswick on the 14th day of April in the year of our Lord one thousand nine hundred and sixty.

This day came the Attorney for the Commonwealth and as such Attorney for the County of Brunswick, and Herman Valentine appeared in Court according to the condition of his recognizance, and came also Henry Cook and James S. Easley, his attorneys, in prosecution of his appeal from a certain judgment rendered on January 12, 1960, in the County Court and pleaded not guilty to the charge contained in the warrant and thereupon in person waived a trial by a jury and with the concurrence of the Attorney for the Commonwealth and the court, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence, the argument of counsel doth take this case under advisement for a period of twenty one (21) days from this date.

And the bond of the accused together with the surety thereon is continued until the further order of this court.

And this case is continued.

CARLTON E. HOLLADAY, Judge.

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page 8 }

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April 18, 1960

Mr. Thomas E. Warriner, Jr.
 Attorney for the Commonwealth
 Lawrenceville, Virginia

Mr. W. Henry Cooke
 Attorney at Law
 South Hill, Virginia

Mr. J. S. Easley
 Attorney at Law
 South Boston, Virginia

Re: Commonwealth v. Valentine

Gentlemen:

At the conclusion of the argument in the above styled case in Lawrenceville I stated to you gentlemen that I would take the case under advisement. I have had the opportunity to look at some law pertaining to this question. I refer you first to Opinions of the Attorney General, page 198 (Almond) July 1, 1950 to June 30, 1951.

This matter was specifically ruled on by the Attorney General in this opinion. It is as follows:

“MOTOR VEHICLES—“Drunken Driving” offense need not take place on highway. F-353.

July 25, 1950

Honorable Charles G. Stone
 Commonwealth's Attorney for Fauquier County

This is in reply to your letter of July 22, 1950, which reads as follows:

“In your opinion, is it a violation of Section 18-75 of the Code for a person, while intoxicated, to drive an automobile over or along the paved driveway of a filling station which borders on and is contiguous to a public highway?

“Said statute makes it an offense to operate an automobile while intoxicated, but puts no limitation on the place of operation.”

page 9 } Continuing the quotation:

“Section 18-75 of the Code of Virginia of 1950 provides as follows:

“No person shall drive or operate any automobile or other motor vehicle, car, truck, engine or train while under the influence of alcohol, brandy, rum, whiskey, gin, wine, beer, ale, porter, stout or any other liquid beverage or article containing alcohol or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature.”

As you have pointed out in your letter, this statute makes no reference to the place in which the prohibited acts must take place in order to constitute the offense.

In 5 American Jurisprudence, at page 918, the following general rule is set forth:

“* * * under a statute prohibiting the operation of a motor vehicle while in an intoxicated condition, it is not required, and is not an element of the offense, that the driving be done on a public highway.”

The same rule is found in 61 *Corpus Juris Secundum* at page 722 in these words:

“* * * a statute which provides that no person shall operate a motor vehicle while in the prohibited condition does not require, as an element of the offense, that the driving shall be done on a public highway. Under such a statute commission of the offense in a private place has been held to be within its terms.”

It is my opinion that it would be a violation of this statute to operate a motor vehicle within the territorial jurisdiction of this State while intoxicated, regardless of whether such operation took place on a highway or otherwise.

This conclusion is bolstered by the fact that the Legislature in other instances, for example, the reckless driving statutes and speeding statutes, include as an element of the offense the provision that the act must take place, “upon a highway” and it would appear that had the legislature intended to so limit the “drunken driving” statute they would have done so in this same manner.”

While I am of opinion that the foregoing covers the direct point in this case and it certainly would not be necessary for the Attorney General to rule otherwise on that point, due to the trend of the argument which you gentlemen made in this

case, I refer you further to Opinions of the Attorney General from July 1, 1952 to June 30, 1953 (Almond) on page 148 of the Opinions which is as follows:

page 10 } “* * * I would like to have an opinion from you as to whether or not a farm tractor would be a motor vehicle within the contemplation of the laws relative to operating a motor vehicle under the influence of intoxicants.”

Your attention is invited to Section 18-75 of the Code, which makes it unlawful to drive or operate any motor vehicle under the influence of alcohol.

Section 46-1(13) “Motor Vehicles”—Every vehicle as here-in defined which is self-propelled or designed for self-propulsion.

I am of the opinion that the driving of a farm tractor under the influence of alcohol is in violation of Section 18-75. This, however, should not be interpreted to mean that a farm tractor should be licensed or titled under the provisions of the Motor Vehicle Code.”

Due to the argument advanced by counsel in the case, I further refer you to to Opinions of the Attorney General July 1, 1957 to June 30, 1958 (Harrison) which is as follows:

“MOTOR VEHICLES—Farm Tractors—Conviction of Drunk Driving—Person May Not Operate After. (1)

July 1, 1957.

Honorable E. Garnet Mercer, Jr.
Commonwealth's Attorney for Lancaster County

This will reply to your letter of June 12, in which you state that an individual who had previously been convicted of operating a motor vehicle while under the influence of alcohol was recently arrested for driving a farm tractor on a public highway which ran through the farm upon which he was working. You inquire whether or not Section 18-75 of the Virginia Code, which prohibits the operation of certain vehicles while under the influence of alcohol, includes “those vehicles exempt from license and registration in Sections 46-45 and 46-348 of the Code, and if so, may a person convicted for operating such vehicle while under the influence of alcohol be prosecuted under Section 18-78 of the Code for driving a motor vehicle (farm tractor) so exempted during the period prescribed in Section 18-77.”

I am of the opinion that both of your inquiries should be

answered in the affirmative. Section 18-75 of the Virginia Code prohibits the operation, while under the influence of alcoholic intoxicants, of "any automobile or other motor vehicle, car, truck, engine or train." This office has previously ruled that a farm tractor is a motor vehicle within the meaning of this section of the Virginia Code. See, Report of the Attorney General (1952-53) page 148. Punishment for a violation of Section 18-75 is specified in Section 18-76 of the Code, while Section 18-77 prescribes:

"*The judgment of conviction* if for a first offense under Sec. 18-75, or for a similar offense under any city or town ordinance, *shall of itself operate to deprive* the per-
 page 11 } son convicted of *the right to drive or operate* any
 such vehicle, conveyance, engine or train in this State for a period of one year from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction thereof. If any person has heretofore been convicted of violating any similar act of this State and thereafter is convicted of violating the provisions of Sec. 18-75, such conviction shall for the purpose of this and the preceding section be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted." (Italics added).

The provisions of the above quoted statutes are self-executing and no action or order of a court or other officer is necessary to put them into effect. *Commonwealth v. Ellett*, 174 Va. 403. Upon conviction of a charge of driving under the influence of alcohol in violation of Section 18-75 of the Code, the judgment of conviction itself operates to deprive the person so convicted of "*the right*" to drive a motor vehicle during the periods prescribed in Section 18-77 and violations of the provisions of the statute in question are punishable under Section 18-78 of the Code. I am, therefore, of the opinion that a person who has been convicted of operating a motor vehicle while under the influence of alcohol may be prosecuted under the provisions of Section 18-78 of the Virginia Code for operating a farm tractor during the period within which he is deprived by Section 18-77 of the right to operate a motor vehicle.

True it is that Section 46-416(2) and 46-417 of the Code require the Commissioner of the Division of Motor Vehicles to revoke—and not thereafter reissue during certain prescribed periods—the license of any person convicted of a

violation of Sections 18-75 or 18-78 of the Code, and that Section 46-348 exempts from the requirement of obtaining an operator's or chauffeur's license any person operating certain specified vehicles, including farm tractors. However, I am of the opinion that these sections of the Virginia Code which are embodied in the Virginia Operators' and Chauffeurs' License Act, have no effect upon the self-executing provisions of Section 18-77 of the Virginia Code."

Counsel for the accused argued and cited from American Jurisprudence, but did not cover the definite, specific point in issue. The Attorney General has cited this succinctly, and I do not think it is necessary to refer to it further. An examination of the specific American Jurisprudence citation will disclose that this work states its conclusions as cited without equivocation.

The C. J. S. citation is from Vol. 61, page 722. I cite the caption of paragraph 629 on page 629. Nothing could be more on the point which counsel have raised in this case. It is as follows:

page 12 } "Where the statute so provides, operation of a
vehicle on a public street or highway is an essential element of the offense, but operation of a vehicle in a private place is sufficient to constitute the offense where the statute penalizes the operation of a motor vehicle while intoxicated."

In examining American Jurisprudence you will find a direct reference to A. L. R. on this subject. I did not have time on the occasion I was looking it up to run it down through all of the indexes. However, you will find citations in 42 A. L. R., page 1502; 13 A. L. R., page 1394; 68 A. L. R., page 1359. See also 68 A. L. R. page 1503.

The cited case in 42 A. L. R. at page 1506 "hits the nail squarely on the head." It is as follows:

"Under a statute prohibiting the operation of a motor vehicle while in an intoxicated condition, it is not required, and it is not an element of the offense that the driving be done on a public highway. The particular section of the statute in question is not a road regulation but a prohibition against an intoxicated person driving an automobile. *State v. Pike*, 312 Mo. 27, 278 S. W. 725."

You will be interested in reading an excerpt from *State v. Thompson*, 276 N. W. 619, 224 Iowa 499, cited in the footnotes of 61 C. J. S., page 721, as follows:

“The statutory definition of “operator,” for the purpose of the statute relating to operators’ and Chauffeurs’ automobile licenses is not applicable to criminal statute making it an offense to operate an automobile while intoxicated.”

I have not examined any of the other citations in A. L. R. except the above cited case because of the lack of time. However, in view of the fact that the Attorney General of Virginia has ruled as set out in the foregoing opinion dated July 25, 1950, and in view of the fact that all three of the major legal treatises adopt the view of the Attorney General, and the view which I have in the matter, I think it unnecessary to go further in the citation of authority.

The foregoing authorities are in accordance with my view on the subject. I adopt them as the law in this case.

I, of course, do not want to find the accused guilty or not guilty except in open court. I, therefore, ask that you gentlemen have the defendant in Court on the opening page 13 } day of the term which is Tuesday, April 26th, at ten o’clock, and we will dispose of this case early in the day.

I am sending the original of this letter to Mr. Henry Turnbull, Clerk, to be filed with the papers in this case.

With best wishes, I am

Sincerely,

CARLTON E. HOLLADAY.

CEH/nwr

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At a Circuit Court held for the County of Brunswick on the 26th day of April in the year of our Lord one thousand nine hundred and sixty.

This day came again the Attorney for the Commonwealth and as such Attorney for the County of Brunswick, and Herman Valentine appeared in Court according to the condition of his recognizance, and came also Henry Cook his attorney.

The Court having considered the evidence, doth find the defendant guilty of unlawfully operating a certain motor vehicle while under the influence of intoxicants or self ad-

ministered drug, and fixes his punishment at a fine of \$100.00.

Whereupon it is accordingly considered by the court that the County of Brunswick recover of the said Herman Valentine the fine of \$100.00 and its costs by it in this behalf expended in this Court as well as in the County Court.

Thereupon the accused by counsel excepted to the judgment aforesaid and moved the Court to suspend execution of the judgment until June 25, 1960, in order that he may apply to the Supreme Court of Appeals for a writ of error, which motion the court doth grant.

And the defendant was recognized in the sum of \$250.00 for his personal appearance before this Court on June 25, 1960, to submit to the judgment as aforesaid.

CARLTON E. HOLLADAY, Judge.

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NOTICE OF APPEAL.

To Hon. M. Henry Turnbull, Clerk of the Circuit Court for Brunswick County:

Herman Valentine, the defendant, pursuant to the provisions of Rule 5:1, Section Four (4), Rules of the Supreme Court of Appeals of Virginia, hereby gives notice of appeal from a final judgment of the Circuit Court for Brunswick County, Virginia, entered in the above captioned criminal proceeding on 26 April 1960.

HERMAN VALENTINE,
Defendant
By W. HENRY COOK
Address South Hill, Virginia.
His Counsel.

Dated at South Hill, Virginia, this the 10th day of June, 1960. W. Henry Cook, p. d.

Filed June 13, 1960.

M. H. TURNBULL, Clerk.

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CERTIFICATE.

I certify that on 10 June 1960 a true and correct carbon copy of the foregoing Notice of Appeal was mailed to Hon. Thomas E. Warriner, Jr., Commonwealth Attorney for Brunswick County, Virginia, at Lawrenceville, Virginia.

Signed: W. HENRY COOK.
Attorney for Herman Valentine.

Filed June 13, 1960.

M. H. TURNBULL, Clerk.

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* * * * *
ASSIGNMENTS OF ERROR.

Herman Valentine, the defendant in the above captioned criminal proceeding, pursuant to the provisions of Rule 5:1, Section Four (4), Rules of the Supreme Court of Appeals of Virginia, hereby makes his assignments of error:

1. The Trial Court committed error by overruling a motion, first made by the defendant upon conclusion of the Commonwealth's evidence, and renewed when all the evidence had been taken, to strike out the evidence for the Commonwealth.
2. The judgment of the Trial Court was contrary to the law and the evidence and without evidence to support it.

HERMAN VALENTINE,
Defendant
By W. HENRY COOK
Address South Hill, Virginia.
His Counsel.

Filed June 13, 1960.

M. H. TURNBULL, Clerk.

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CERTIFICATE.

I certify that on 10 June 1960 a true and correct carbon copy of the foregoing Assignments of Error was mailed to Hon. Thomas E. Warriner, Jr., Commonwealth Attorney

for Brunswick County, Virginia, at Lawrenceville, Virginia.

Signed: W. HENRY COOK.
Attorney for Herman Valentine.

Filed June 13, 1960.

M. H. TURNBULL, Clerk.

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NOTICE OF TENDER OF STATEMENT OF ORAL
TESTIMONY AND OTHER INCIDENTS OF TRIAL,
TOGETHER WITH A STIPULATION MADE BY ALL
PARTIES IN INTEREST.

To Honorable Thomas E. Warriner, Jr., Commonwealth Attorney for Brunswick County, Lawrenceville, Virginia.

Notice is hereby given pursuant to Rule 5:1, Section Three (3), Subsections (e) and (f), Rules of the Supreme Court of Appeals of Virginia, that Herman Valentine, the defendant in the above captioned criminal proceeding, will tender a statement of the oral testimony and other incidents of trial, together with a stipulation made by all parties in interest, to Honorable Carlton E. Holladay, Judge of the Circuit Court for Brunswick County, Virginia, at Wakefield, Virginia, on Saturday, 25 June 1960, at the hour of 10:00 A. M., of that day.

Notice is further given that on Friday, 24 June 1960, a written statement of the oral testimony and other incidents of trial, together with a stipulation made by all parties in interest, will be delivered to the Clerk's Office of the Circuit Court for Brunswick County, Virginia, at Lawrenceville, Virginia, where it will be left for examination by Honorable Thomas E. Warriner, Jr., Commonwealth Attorney for Brunswick County, Virginia.

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CERTIFICATE.

I certify that on 23 June 1960 a true and correct carbon

copy of the foregoing Notice to Tender Statement of Oral Testimony and Other Incidents of Trial, Together With a Stipulation Made by All *Parties* in Interest, was mailed to Hon. Thomas E. Warriner, Jr., Commonwealth Attorney for Brunswick County, Virginia, at Lawrenceville, Virginia.

Signed: W. HENRY COOK
Attorney for Herman Valentine.

Filed June 24, 1960.

M. H. TURNBULL, Clerk.

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A criminal proceeding, instituted by a County warrant, wherein the County of Brunswick, Commonwealth of Virginia, alleged that Herman Valentine, the defendant, on 18 December 1959, unlawfully operated a certain motor vehicle on a public highway, within said County and State, while under the influence of intoxicants or self-administered drugs. The warrant was made returnable to the Brunswick County Court, at Lawrenceville, Virginia.

After the warrant, upon motion of the Commonwealth Attorney, had been amended to allege a second or subsequent offense, a trial of the case was had in the Brunswick County Court on 12 January 1960.

page 22 } The case came to the Circuit Court by an appeal made from a conviction had in the County Court for Brunswick County, Virginia.

STATEMENT OF ORAL TESTIMONY AND OTHER INCIDENTS OF TRIAL.

page 28 } INSERT "A" supplied by the Court to be inserted ahead of the word "evidence" in the center of the page at the top of Page 22.

"Upon the calling of this case and before the accused entered any plea the County of Brunswick moved the Court to amend the warrant by striking therefrom the words "on the public highway" which amendment the Court allowed over the objection of the accused, it having been stated in argument on the motion by both counsel for the County of Brunswick and the accused that it was conceded that the

accused operated his truck at the time of the alleged offense in the private yard and driveway of one George J. Pierce, the Court being of opinion that the amendment came within the class permitted under the statutes governing the trial of criminal appeals; and that the ordinance of the County of Brunswick filed in evidence prohibited the operation of a motor vehicle while under the influence of intoxicants regardless of whether it was on a public highway or on a private driveway or in a private yard. Thereupon the accused, having been tendered a continuance of his case and having declined such continuance, excepted to the ruling of the Court.

Whereupon the accused pleaded not guilty to the charge contained in the warrant, and waived trial by jury, the attorney for the County of Brunswick and the Court concurring.

EVIDENCE OF COUNTY OF BRUNSWICK.

page 29. } INSERTION B supplied by the Court to be inserted at the beginning of the evidence immediately after words "Evidence County of Brunswick."

At the beginning of the trial of the case the existence and validity of the ordinance of the County of Brunswick was admitted, counsel for defendant stating that the defendant admitted the existence of a validly enacted County ordinance and that it follows the state statute, and it was agreed that the copy of the ordinance was a true and valid copy, and that either the original as exhibited by Mr. Warriner or a photostatic copy or copy otherwise made may be filed in evidence to which there could be no objection by the defendant. The attorney for the County of Brunswick then observed with respect to the admission of defense counsel that it was not material whether the ordinance did or did not follow the Virginia statute.

Thereupon counsel for the accused stated that he would admit the validity of the ordinance only because it does follow the statute, and that the Board of Supervisors had no authority to adopt any other kind of an ordinance.

Thereupon the attorney for the County of Brunswick stated that he would prove the ordinance. Thereafter Mr. M. H. Turnbull, Clerk of the Circuit Court of the County of Brunswick, Virginia, and also Clerk of said County and of the Board of Supervisors, was called as a witness and testified that the County of Brunswick had adopted the ordinance, that the copy presented in evidence was a true copy. And the same was attested by the Clerk. The attorney for the defendant

William Earl Hill.

stated that he had no objection to the introduction of the ordinance in evidence.

page 22 }
(Continued)

Three (3) witnesses were introduced by the County of Brunswick and the oral testimony given by these three witnesses will be hereinafter summarized separately in the order in which the respective witnesses appeared in the Circuit Court for Brunswick County, Virginia:

1. WILLIAM EARL HILL,

William Earl Hill, Sheriff of Brunswick County, Virginia, testified that he made an arrest of Herman Valentine, the defendant, on 18 December 1959, in the early evening of that day, in response to a call made to his office by one, George J. Pierce. The witness did not remember the exact time when the arrest was made, but stated that he received the call after dinner, and that the arrest was made at a service station approximately four miles east of the Incorporated Town of Lawrenceville, Virginia.

page 23 } The witness testified that, at the time the arrest was made, Herman Valentine, the defendant, was drunk

~~under the influence of intoxicants.~~ The witness further stated that he had no knowledge of any operation of a motor vehicle done by Herman Valentine, the defendant, and could as

testify ~~only~~ to the condition of the defendant with respect to sobriety when the arrest was made.

page 30 } INSERTION C to be inserted immediately after the "summary" of Sheriff Hill's testimony at top of page 23.

That as the arresting officer he offered him a blood test and complied with the statute pertaining to rendering such assistance to the accused; that the accused told him: that Franklin drove the truck from Lawrenceville to Mr. Pierce's drive; that Franklin left him there, and he went on in to get his eggs; that somebody else was with him; that he didn't say who; that Franklin left him at the road; that the truck was then at the turn into Mr. Pierce's—at the intersection of Mr. Pierce's Lane and Route 58—the highway; that he didn't

George J. Pierce.

say whether he was in the lane or on the highway; that Franklin got out, and he drove the truck himself into Mr. Pierce's and got the eggs; that Mr. Pierce was guiding him and he was backing out and that he backed in the ditch; that Mr. Pierce wanted to pull him out with his tractor; that he didn't want the tractor to pull his truck out and that he had gone up to the service station to call a wrecker. The sheriff further testified: that he talked to Franklin in the presence of Valentine and that was also the statement of Franklin. The sheriff further testified that he asked Valentine what he had been drinking and he said that he had had nothing to drink since that afternoon.

page 23 }
(Continued)

2.

GEORGE J. PIERCE,

George J. Pierce, a person of middle age, testified that he resided approximately three miles east of the Incorporated Town of Lawrenceville, Virginia, where he had lived for some time. The witness further stated that he resides in a brick dwelling house situate upon the south side of Virginia State Highway No. 58 and the Atlantic and Danville Railway, and that the railroad runs between his home and the highway. ~~The distance from the home of the witness to Highway No. 58 is seventy-five (75) yards or more.~~

The witness was in his home on 18 December 1959, at or about the hour of 6:00 P. M., of that day, when he became aware that a motor vehicle was upon his driveway adjacent to the north or northwest side of his dwelling house. The dwelling house fronts in a northerly direction toward the railroad and the highway. Darkness prevailed, the sky was cloudy and rain was falling intermittently.

page 24 } The witness discovered that the vehicle standing in his driveway was a pickup truck. Herman Valentine, the defendant, was under the wheel, and another person, unknown to the witness, was also seated in the cab of the truck.

The witness, in addition to other farming operations, is in the egg business, that is to say, the production and sale of eggs. The defendant, Herman Valentine, according to the witness, wanted to buy eggs and the witness stated that he had sold the defendant eggs on a number of other occasions.

George J. Pierce.

Some argument developed about the price of the eggs, according to the witness, and the witness stated that Herman Valentine, the defendant, later took a position under the steering wheel of the truck and backed it for a distance of approximately one hundred (100) feet along his driveway until a portion of the truck went off the open end of a culvert which ran under the driveway.

The witness offered the use of his tractor to pull the truck from the rather deep ditch at the end of the culvert but, according to the witness, the defendant, Herman Valentine, thought that such an operation might damage the truck, and then the witness, in his own motor vehicle, carried the defendant, Herman Valentine, to a service station where the defendant called the garage of Jones Motors, Incorporated, Lawrenceville, Virginia, for a wrecker to remove the pickup truck.

page 25 } Thereafter the witness called the Sheriff's Office at Lawrenceville, Virginia, and made complaint that the defendant was under the influence of intoxicants, and the witness so testified.

page 31 } INSERT D supplied by the Court to be inserted at the end of the testimony of George J. Pierce at the top of Page 25.

The witness testified that at night he could tell when eating at his table from the reflection of the lights when a car was coming in his driveway; that he went to the door; that he thought he was right in saying that he (Herman Valentine) turned the motor off as he (the witness) opened the door; that the windshield wipers were still running; that Herman Valentine was at the wheel; that the front of his house is approximately 150 feet from the center of the A and D Railroad; that the railroad has 50 feet on either side from the center of the railroad; that he has an easement from the railroad company permitting him to have his private driveway from Route 58 across the railroad to his home; that Valentine's truck was stopped at the west end of his residence with its front end even with the south side of the residence; that the pictures introduced by the accused as exhibits 1, 2, 3, and 4 correctly depicted his house, yard, and driveway and also the railroad and the edge of Route 58 in front of his house, all of which at the instance of Counsel for the accused he pointed out to the Court on the pictures.

Theodore Franklin.

page 25 }
(Continued)

3. THEODORE FRANKLIN,

The witness, Theodore Franklin, testified that on 18 December 1959 he was an employee of Herman Valentine, the defendant. The witness and other employees, together with their employer, Herman Valentine, had been in Lawrenceville during the late afternoon of 18 December 1959.

The witness drove a pickup truck owned by Herman Valentine, and occupied by the witness, Herman Valentine another

and ~~Elija Macklin~~, from Lawrenceville, Virginia, in an easterly direction, along Virginia State Highway No. 58, for a distance of approximately three miles, and then drove the vehicle into the private lane or driveway of one, George J. Pierce. After the witness had operated the vehicle into the driveway, the witness relinquished the wheel, left the truck, and walked down the railroad track toward his home.

The witness further testified that the defendant, Herman Valentine, talked right much, that he had drank some, and was under the influence of intoxicants at the time when the witness left the truck while it was in the private-
page 26 } ~~lane or driveway of one, George J. Pierce.~~

page 32 } INSERT "E" supplied by the Court to be inserted at the conclusion of the summary of the evidence of Theodore Franklin at the top of Page 26.

The witness testified that he drove the truck at the request of Herman Valentine because Herman had had a drink; that as they approached the driveway of Mr. Pierce, Valentine told him to drive in to Mr. Pierce's house so that he could get some eggs; that he told Valentine that he didn't want to go up to Mr. Pierce's; that Valentine told him to turn in there anyway; that he turned into Mr. Pierce's driveway and drove up to the railroad but not on the railroad, but off the highway, pulled on the emergency brake, and told him, "This is all the far I am going. You can go if you want to. I'm going to walk. You can pick me up when you come on."

EVIDENCE OF HERMAN VALENTINE, THE
DEFENDANT.

The defendant introduced no evidence, except the four photographs exhibits 1, 2, 3, and 4.

Other Incidents of Trial.

page 33 } INSERT F to be inserted after words "other
Incidents of Trial" on page 26.

At the conclusion of the evidence of the County of Brunswick, the defendant moved the Court to strike the evidence on the ground that the testimony showed conclusively that Herman Valentine was operating his automobile exclusively on private premises and not on the highway and that defendant contended that section 18-75 of the Code of Virginia is limited to the highways of the state and streets of the cities and towns.

The motion was overruled and exception was noted.

The accused then rested his case and renewed the motion to strike the evidence on the same grounds, which was overruled and exception again taken.

page 26 }
(Continued)

~~At the conclusion of the evidence for the County of Brunswick, the defendant, by counsel, moved to strike out the evidence for the County of Brunswick upon the ground that such evidence, as a matter, of law was not sufficient to sustain a conviction.~~

~~The Court overruled the motion.~~

~~Thereupon, the defendant rested, and the defendant, by counsel, renewed the motion to strike out the evidence for the County of Brunswick.~~

Deleted.

C. E. H., Judge.

The matter was taken under advisement by the Court and thereafter, that is to say, on 26 April 1960, the Court entered a judgment of conviction whereby the defendant was convicted of a first offense of operating a motor vehicle while under the influence of intoxicants, and adopted an opinion reflected in a letter addressed to counsel for all parties in interest on 18 April 1960.

page 27 } STIPULATION.

Herman Valentine, the defendant, by W. Henry Cook, his counsel, concedes that on 18 December 1959 Herman Valentine operated a motor vehicle while under the influence of

intoxicants, and the County of Brunswick, by Thomas E. Warriner, Jr., Commonwealth Attorney, concedes that such operation was confined to the private lane or driveway upon the premises of one, George J. Pierce, and was not done upon a highway.

COUNTY OF BRUNSWICK
By THOMAS E. WARRINER, JR.,
Commonwealth Attorney for
Brunswick County, Virginia.
Address Main & Street
Lawrenceville, Virginia
Its Counsel.

HERMAN VALENTINE,
Defendant
By W. HENRY COOK
Address South Hill, Virginia
His Counsel.

Filed June 2nd 1960.

M. H. TURNBULL, Clerk.

page 34 } While the proceedings in this case were recorded under direction of the Court by the Clerk acting as court reporter at the request of counsel on the regular Dictaphone machine furnished the Circuit Court of Brunswick County, Virginia, the record was tendered to me this 25th day of June, 1960, without a transcript of the evidence, a proposed summary of the evidence of the witnesses for the Commonwealth being embodied in the record and signed by the Attorney for the Commonwealth and the attorney for the accused.

The record as tendered was received this 25th day of June, 1960.

The Court takes the ten days allowed by the rules to consider and examine the record including the evidence to determine whether or not the record is sufficiently complete and accurate.

CARLTON E. HOLLADAY, Judge.

page 35 } Since receiving the record as transmitted to me on June 25, 1960, I have procured the "dictabelts" upon which the evidence and proceedings of the trial in this case were recorded and deem it necessary to make the

indicated corrections in the proceedings and "summary" of the evidence and to add Insertions A, B, C, D, E and F. With these insertions and corrections, I certify that the foregoing is an accurate statement of the oral evidence and other incidents of the trial and that the same is authentic.

Witness my hand this 4th day of July, 1960, within 70 days after the entry of the final order herein on the 26th day of April, 1960.

CARLTON E. HOLLADAY
Judge, Third Judicial Circuit of
Virginia.

Filed July 5, 1960.

M. H. TURNBULL, Clerk.

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A Copy—Teste:

H. G. TURNER, Clerk.

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