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Record No. 6857

In the Supreme Court of Appeals of Virginia at Richmond

RICHARD HAROLD BASS

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF SMYTH COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6857

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

RICHARD HAROLD BASS, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Smyth County
J. Aubrey Matthews, Judge

Upon the petition of Richard Harold Bass a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Smyth County on the 16th day of June, 1967, in a prosecution by the Commonwealth 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

* * * * *

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* * * * *

STATE OF VIRGINIA)
COUNTY OF SMYTH) To-Wit:

No. .....

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, B. J. Atwood has this day made complaint and information on oath before me, Aubrey R. Wolfe Justice of the Peace of the said County, that Richard Harold Bass in the said County did on the 6th day of January, 1967: Unlawfully operate a motor vehicle over the highways of this State while under the influence of intoxicants or self administered drugs.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Circuit—County—Juvenile & Domestic Relations Court of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon:

..... color ..... Address ..... ☐
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..... color ..... Address ..... ☐
..... color ..... Address ..... ☐
..... color ..... Address ..... ☐

as witnesses.

Given under my hand and seal, this 6th day of January, 1967.

AUBREY R. WOLFE (Seal)
(Title of Issuing Officer)

Justice of the Peace

* * * * *

page 2 } We the jury find the defendant guilty of impaired driving & fix his fine at 275.00.

J. B. MALOYED, Foreman

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* * * * *

CIRCUIT COURT OF SMYTH COUNTY, ON FRIDAY, THE 16TH DAY OF JUNE, IN THE YEAR OF OUR LORD, NINETEEN HUNDRED SIXTY-SEVEN.

PRESENT: THE HONORABLE J. AUBREY MATTHEWS, JUDGE.

* * * * *

On the 8th day of June, 1967 came the Attorney for the Commonwealth, and came also the defendant in person and by his Attorneys, Ervin Solmon and Ralph L. Lincoln; and the Clerk was duly sworn to take down and transcribe the proceedings of this trial.

Thereupon the defendant in person and by Counsel, entered a plea of not guilty to the charge of impaired driving contained in the warrant. Whereupon a panel of 11 *person* was made up and completed who were duly examined and found free from legal exceptions and qualified in all respects to serve as jurors for the trial of this case. And the Attorney for the Commonwealth and the Attorneys for defendant having each alternately struck from the panel the names of three of said jurors, the remaining five, to-wit: J. B. Maloyed, Marvin Blankenbeckler, C. B. Rouse, Jr., Hobart Cook and Charles V. Hash, constituted the jury for the trial of the defendant, who were duly sworn.

Thereupon, out of the presence of the jury, the defendant, by Counsel, moved that the warrant should be quashed and dismissed since the record showed that defendant had been tried in the County Court for driving under the influence of intoxicants and had been found not guilty thereof, but had been found guilty of impaired driving under the provisions of Section 18.1-56.1 from which this appeal was taken; the trial in the Circuit Court being confined to the offense set forth in said Section, grounds for the motion being more fully and at large set forth in the record. The motion was denied by the Court for reasons set forth in the

page 4 } record, and to which action of the Court the defendant, by Counsel, excepts.

Thereupon, evidence was introduced on behalf of the Commonwealth and when the Commonwealth had announced through with its evidence in chief, the defendant, by Counsel, out of the presence of the jury moved the Court to strike the evidence of the Commonwealth on the grounds that under the provisions of the Section above referred to the defendant could not be brought to trial as a separate offense; and because the Officer who had arrested Bass instructed him to the effect that he was required by law to submit to a blood test; because the Officer had failed to warn the defendant of his rights to remain silent, to refuse a blood test, to have the services of an Attorney, and because he was required to walk by the Officer, thereby providing testimony against himself. The motion was denied by the Court for reasons set forth in the record, to which action of the Court the defendant, by Counsel, excepts.

Thereupon, evidence was introduced on behalf of the defendant and when both sides had announced through with evidence in the case, the defendant, by Counsel, out of the presence of the jury, renewed the defendant's motion to strike the evidence of the Commonwealth on the grounds set forth more fully and at large in the record, which motion was overruled by the Court, and to which action of the Court the defendant, by Counsel, excepts.

Thereupon, the Court, out of the presence of the jury, considered the instructions offered by Counsel for the Commonwealth and by Counsel for the defendant and granted and refused certain instructions over exceptions by Counsel for the defendant, which will appear more fully and at large in the record hereof, including the objections and exceptions by Counsel for the Commonwealth and Counsel for the defendant.

Thereupon, the jury were given the instructions of the Court, and during the argument by the Attorney for the Commonwealth he made certain statements, which page 5 } are more fully and at large set forth in the record, concerning the blood test taken by the defendant, which were objected to by Counsel for the defendant, who moved for a mistrial on account thereof, all of which were overruled by the Court, and at the conclusion of all of which, the jury retired to their room to consider of their verdict, and after some time returned into Court and presented their verdict in the following words, to-wit: "We the jury find the defendant guilty of impaired driving and fix his fine at $275.00. J. B. Maloyed, Foreman."

No objections having been found to the form of the verdict the same was accepted by the Court and the defendant was

sentenced to the payment of the fine in the amount found by the jury and the costs, and his driving privilege suspended for a period of Six (6) Months in the Commonwealth of Virginia, and the jury was discharged.

Thereupon, the defendant by his Attorneys, moved the Court to set aside the verdict on grounds set forth in the record, which motion was overruled by the Court and the defendant, by Counsel excepted.

Thereupon, Defendant by his Attorneys moved the Court to suspend the execution of said judgment hereinbefore rendered for Sixty (60) Days from this date to allow defendant time within which to apply to the Supreme Court of Appeals of Virginia for a Writ of Error. Upon consideration whereof, it is ORDERED that the execution of the judgment entered above herein be, and the same is hereby suspended for a period of Sixty (60) Days from this date, the Court considering that the bond heretofore given in the case with approved surety in the penalty of $500.00, conditioned according to law, being sufficient.

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INSTRUCTION NO. 3

The Court instructs the jury that the jury are the sole judges of the weight to be given the evidence, and of the credibility of the witnesses who testified, and in determining the weight to be given the evidence of the witnesses and the credibility of the witnesses the jury may take into consideration the witnesses' demeanor on the witness stand, their manner of testifying, their motive, if any shown, for testifying as they do, and their *interes,* if any is shown, in the result of this trial. And the jury may take into consideration anything else effecting the credibility of the witnesses and give such weight to their testimony as the jury believe it is entitled to.

Granted. J. A. M.

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INSTRUCTION NO. A

The Court instructs the jury that before the defendant can be found guilty in this case the jury must be convinced from the evidence, beyond a reasonable doubt, that the defendant had so indulged in alcoholic intoxicants as to lack the clearness of intellect and control of himself which he would otherwise possess, and if you believe that at the time of his arrest the defendant possessed such clearness of intellect and control of himself that he otherwise possessed, then he cannot be found guilty of impaired driving.

Granted. J. A. M.

page 8 }

* * * * *

INSTRUCTION NO. 2-A

The Court instructs the jury that the law of this State expressly provides that it shall be unlawful for any person to drive or operate an automobile or other motor vehicle while such person's ability to drive or operate such vehicle is impaired by the presence of alcohol in his blood. A person's ability to drive or operate such a vehicle shall be deemed to be impaired by the presence of alcohol in his blood within the meaning of this law when such person has so indulged in alcoholic intoxicants as to lack the intellect and control of himself which he would otherwise possess.

The law further expressly provides that in any such prosecution it appears to the jury that the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood is as much as 0.10 but less than 0.15 per cent by weight it shall be presumed that the ability of the accused was impaired within the meaning of this section.

The Court further instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant operated the motor vehicle while his ability to drive was impaired by the presence of alcohol in his blood, you shall find him guilty of the offense of impaired driving and fix his punishment by fine of not exceeding five hundred

dollars or confinement in jail not exceeding twelve months, or both, in your discretion.

If you find the defendant not guilty, state the same and no more.

Granted. J. A. M.

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INSTRUCTION NO. C

The Court instructs the jury that the law presumes every person accused of a crime to be innocent and this presumption follows the defendant throughout the trial and at every stage thereof and is sufficient to acquit the defendant unless evidence is adduced by the Commonwealth of such clear and convincing nature that this presumption is overcome thereby.

Granted. J. A. M.

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INSTRUCTION NO. 2

The Court instructs the jury that the law of this State expressly provides that it shall be unlawful for any person to drive or operate a motor vehicle in this State while under the influence of alcohol or any other self-administered intoxicant or drug of whatever nature.

The Court further instructs the jury that the law of this State expressly provides that in any prosecution for a violation of the above law, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood shall give rise to the following presumptions:

(1) If there was at that time 0.05 per cent or less by weight of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants;

(2) If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused; provided, however, such facts shall not preclude prosecution and conviction of driving while his ability to do so was impaired as defined below herein;

(3) If there was at that time 0.15 per cent or more by weight of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

The Court further instructs the jury that the law of this State expressly provides that it shall be unlawful for any person to drive or operate an automobile or other motor vehicle while such person's ability to drive or operate such vehicle is impaired by the presence of alcohol in his blood. A person's ability to drive or operate such a vehicle shall be deemed to be impaired by the presence of alcohol in his blood within the meaning of this law when such person has so indulged in alcoholic intoxicants as to lack the intellect and control of himself which he would otherwise possess.

The Court further instructs the jury that in every prosecution for driving under the influence as stated above, that offense shall be deemed to include the offense of impaired driving as stated herein. The law further expressly provides that in any such prosecution it appears to the jury that the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood is as much as 0.10 but less than 0.15 per cent by weight it shall be presumed that the ability of the accused was impaired within the meaning of this section.

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The Court further instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant drove the vehicle while under the influence of alcohol or any other self-administered intoxicant or drug, you shall find him guilty as charged in the warrant and fix his punishment by fine of not less than two hundred dollars nor more than one thousand dollars, or by confinement in jail for not less than one month nor more than six months, either or both, in your discretion.

The Court further instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant was not under the influence of alcohol or any

other self-administered intoxicant or drug of whatever nature, but if you believe, beyond a reasonable doubt, that the defendant operated the motor vehicle while his ability to drive was impaired by the presence of alcohol in his blood, you shall find him guilty of the lesser offense of impaired driving and fix his punishment by fine not exceeding five hundred dollars or confinement in jail not exceeding twelve months, or both, in your discretion.

If you find the defendant not guilty of either driving under the influence or of the lesser offense of impaired driving, your verdict will be as follows: "We, the jury, find the defendant not guilty."

Refused. J. A. M.

page 13 }

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INSTRUCTION NO. B

The Court instructs the jury that regardless of any presumption in law that may be created by the presence of alcohol in the defendant's blood, the Commonwealth must still prove beyond a reasonable doubt that his ability to drive or operate a vehicle was in fact impaired.

Refused. J. A. M.

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INSTRUCTION NO. D

The Court instructs the jury that if they believe from the evidence the defendant did drink alcoholic beverages and the jury further believe from the evidence that the defendant's clearness of intellect and control of himself was not impaired by the presence of alcohol in his blood so as to operate his motor vehicle properly, the jury shall find the defendant not guilty.

Refused. J. A. M.

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To Lloyd E. Currin, Clerk of the Aforesaid Court

Notice is hereby given that the petitioner, Richard Harold Bass, appeals from the final judgment entered by this Court on the 8th day of June, 1967, and announces his intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR

1. The Court erred in denying petitioner's motion to quash the warrants in this case since the petitioner was brought to trial solely on the issue charging that he was guilty of impaired driving, while the statute governing this case (18.1-56.1) is to the effect that "no person shall be arrested, prosecuted, or convicted for violation of this section except as a lesser included offense of a prosecution for violation of 18.1-54 or of any similar ordinance of any county, city or town."

2. The Court erred in refusing to strike the evidence of the Commonwealth at the conclusion of the Commonwealth's evidence on the grounds, (a) that the officer who arrested the defendant told him that the law required him to take a blood test and that pursuant to said instruction, the defendant submitted to a blood test, and, (b) there was no proof that the defendant had so indulged in alcoholic intoxicants "as to lack the clearness of intellect and control of himself which he would otherwise possess," as set forth in Section 18.1-56.1.

page 16 } 3. The Court erred in denying petitioner's motion to strike the evidence of the Commonwealth at the conclusion of all the evidence on the grounds, (a) that the defendant was being tried for impaired driving alone and not as a part of the greater offense of driving under the influence of intoxicating beverages, that is, the said offense was not included as a lesser offense under the charge of driving under the influence, and (b) that the officer had erroneously instructed the defendant, upon arrest, that the law required him to take a blood test, which statement alone is not a correct statement of the law, which caused the defendant to submit thereto.

4. The Court erred in refusing to strike from the record

the evidence of the blood test taken pursuant to the arresting officer's statement that the law required the defendant to submit to a blood test, without further instructing the defendant of his right to refuse the test and the consequences of said refusal.

5. The Court erred in permitting the Commonwealth's Attorney to argue to the jury "regardless of how he appeared under the instructions of the Court, if you believe the blood test results, and you are the trier of the facts, then it is your duty to convict him," and the Court further erred in its refusal to order a mistrial on the basis of the Commonwealth's Attorney's argument.

6. The Court erred in refusing to hold Section 18.1-56.1 unconstitutional.

7. The Court erred in permitting the introduction of the blood test results when the male nurse who took the blood could not remember the actual taking and the procedure used in this particular case.

8. The Court erred in permitting evidence of statements made by the defendant to the arresting officer, when the officer had failed to warn him of his rights.

page 17 } 9. The Court erred in allowing the evidence that the trooper made the defendant walk for the sole purpose of obtaining evidence to be used at the trial.

10. The Court erred in allowing evidence that the arresting officer thought the defendant had too much to drink to drive his car.

11. The Court erred in granting Instruction No. 2-A, offered by the Commonwealth.

12. The Court erred in refusing Instruction No. B., offered by the petitioner.

13. The Court erred in refusing Instruction No. D., offered by the petitioner.

14. The Court erred in refusing to set aside the verdict in granting a new trial on the ground that the verdict was contrary to the law and evidence and the same was without evidence to support it.

RALPH L. LINCOLN
Marion, Virginia
Of Counsel for Petitioner,
RICHARD HAROLD BASS

* * * * *

Filed this 2 day of August 1967.

LLOYD E. CURRIN, Clerk

* * * * *

APPEARANCES:
ROBERT I. ASBURY, ESQ., Marion, Virginia
Counsel for Plaintiff
ERVIN SOLOMON, ESQ., Hot Springs, Virginia
and
RALPH L. LINCOLN, ESQ., Marion, Virginia
Counsel for Defendant

* * * * *

page 3 } The following cause came on to be heard on this the 8th day of June, 1967, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Smyth County, and a jury of five who were duly impaneled and sworn.

The Clerk, Mr. Lloyd E. Currin, was duly sworn to take down and transcribe the proceedings.

Thereupon the defendant in person and by counsel, entered a plea of not guilty to the charge of impaired driving contained in the warrant.

The Court: What is the plea?

Mr. Lincoln: Not guilty.

The Court: I understand you have motions that you want to make out of the presence of the jury?

Mr. Lincoln: Yes, sir.

(Thereupon the following took place out of the presence of the jury)

Mr. Lincoln: May it please the Court. We wish to move that the prosecution of the warrant in this case be quashed because under the terms of Section 18.1-56.1 at the bottom of the second paragraph—well, to go back a little bit further, Mr. Bass was charged originally with driving under the influence and he was found not guilty of driving under the influence but was found guilty of impaired driving.

The Court: Code Section—

Mr. Lincoln: Code Section 18.1-56.1. If the Court will look at the last three lines in the second paragraph,
page 4 } this wording is "No person shall be arrested, prosecuted or convicted for violation of this section except as a lesser included offense of a prosecution for violation of 18.1-54 or of any similar ordinance of any county, city or town." Now, under this prosecution, Mr. Bass is not being prosecuted as an included offense because he has been found not guilty of the greater offense under 18.1-54.

We move the Court to quash the prosecution and the warrant on that ground.

The Court: The motion is overruled, gentlemen.

Mr. Lincoln: Would the Court, for the record, tell us why it is overruled?

The Court: The warrant charged him with driving under the influence under Section 18.1-54, Mr. Lincoln, and he was found not guilty but 18.1-55 is included in that and it is the lesser of the offenses and for that reason the Court overrules your motion.

Mr. Lincoln: We wish to except to the ruling of the Court on the grounds that Mr. Bass is now being prosecuted not as an included offense under Section 18.1-54 but as a separate and distinct offense under 18.1-56.1 and for that reason, under the language of the statute, he cannot be prosecuted or convicted for violation of this section except as an included offense.

Mr. Solomon: For the record we would like to make a motion also that this statute is unconstitutional.

The Court: That motion is likewise overruled.

page 5 } Mr. Solomon: Exception.

(Thereupon the jury returned into the open courtroom whereupon the following proceedings were had)

The Court: You may make your opening statements, gentlemen.

Mr. Asbury: If it please the Court and you members of the jury, you have heard the Court read the charge in this case against Mr. Richard Harold Bass.

The evidence of the Commonwealth will show that on the evening of January the 6th, 1967, Trooper B. J. Atwood, of the Virginia State Police, arrested the defendant upon this charge here in Smyth County.

I believe the evidence will show that the arrest was made at 8:45 P.M. and that the defendant was brought to the Smyth County Jail; that a person qualified to withdraw blood under the circumstances was summoned and brought here and blood samples were taken, an analysis was made of the blood and the blood test results came back .10 and .12.

Now, Trooper Atwood, an experienced State Trooper, will testify as to what he observed concerning the defendant; why he stopped him and what he observed after he stopped him and based on the testimony of Trooper Atwood and of the blood test results, the Commonwealth will ask for a conviction in this case.

Mr. Lincoln: If it please the Court and you, gentlemen of

the jury, I presume that some of you know Mr. Harold Bass who worked here a number of years for a construction company in constructing Route 81. Mr. Bass is our
page 6 } client here and I would like to introduce you to Mr. Ervin Solomon who is an attorney at law practicing in Hot Springs, Bath County, Virginia. He is associated with me or I am associated with him, it might be put more correct, in this case.

As Mr. Asbury has told you, Mr. Bass was stopped out here on the highway by Trooper Atwood at about 8:45 on the day in question. I believe that he will say that his attention was attracted to Mr. Bass because he was weaving slightly but within the lane; he didn't go over the line. You will, of course, hear his testimony and you will hear the testimony of Mr. Bass and other witnesses who will come here and tell you—the first one came to the jail immediately or within a few minutes after the arrest and gave bond for Mr. Bass and he will tell you, I believe, that Mr. Bass possessed the intellect and the control of himself that he usually possessed and if he does then we believe you shall find this man not guilty at the proper time.

Another witness who is also being brought here before you, she will tell you that Mr. Bass was normal in every way. Both of them will tell you that he was entirely normal; that there was nothing wrong with him whatsoever.

Now, he was coming from Covington and was on his way to Nashville, Tennessee at the time that this—that he was stopped by the trooper. He did have a couple of drinks in Covington in company with other people, as we will show you, who also drank from this bottle that he had and that he drove all the way from Covington over to Marion
page 7 } without any trouble whatsoever making one stop, I believe the evidence will show you, in Christiansburg to call Mrs. Cornett who runs the Green House Restaurant to tell her that he would be there for dinner and he was on his way to this restaurant and intended, of course, to stop here at the time he was stopped.

If we show you these facts and these witnesses come here and tell you that Mr. Bass was entirely normal, we will ask that you find him not guilty. Thank you.

The Court: Call your first witness, gentlemen.

Mr. Asbury: Trooper Atwood, come around, please, sir.

Trooper B. J. Atwood

TROOPER B. J. ATWOOD, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Asbury:

Q. Please state your name.

A. B. J. Atwood.

Q. And you are a member of the Virginia State Police?

A. Yes, sir.

Q. How long have you been a state trooper?

A. Approximately eight and one-half years.

Q. And back in January of this year were you stationed here in Smyth County?

A. Yes, sir.

Q. And were you the arresting officer in this case?

page 8 } A. Yes, sir.

Q. Just go forward in your own words and tell the Court and jury what you observed with reference to the defendant and what you did.

A. This offense occurred January the 6th, 1967, on Friday evening at approximately 8:45 P.M. I was traveling west on Interstate 81 near the rest area at the Groseclose interchange when a '64 Chevrolet sedan passed me traveling west also. I accelerated in pursuit of this automobile and checked his speed at between 75 to 80 miles per hour. The vehicle was weaving slightly in the road; it was staying within its lane of traffic except when passing other vehicles but was weaving over to the center line and back over to the outside line or the emergency line.

I followed this vehicle for approximately seven miles from the time that it passed me until—of course, it took me some time to catch back up and maintain an accurate, checking and pace distance behind the vehicle. I checked the vehicle from there to between Exit 16 and 17 which is directly behind the new Appalachian Manufacturing Plant. At this time I stopped the vehicle; the vehicle was driven by Richard Harold Bass of Shelbyville, Tennessee. I asked Mr. Bass for his operator's license and registration for his vehicle and he gave me his operator's license but stated that he did not have the registration; that he did not know that he was required to carry the registration in the vehicle—

Mr. Lincoln: We object to that. The registration

page 9 } has nothing to do with this case.

The Court: Your objection is overruled.

Trooper B. J. Atwood

A. (Continuing) In talking to Mr. Bass, I observed that there was a very strong odor of alcohol about his breath. I asked Mr. Bass to get out of the car and he did and I asked him to walk up the road and back and he did and when he did he was unsteady—

Mr. Solomon: I would like to object to this testimony.
The Court: Objection overruled.
Mr. Solomon: Except. I want to specify that I am objecting to the trooper asking the man to walk.
The Court: Objection overruled.
Mr. Solomon: Except.

Q. You asked him to walk? I didn't hear—
A. I asked him if he would walk up the road in front of my car and back and he did at which time I observed that he was unsteady on his feet. I asked him if he would come back to my car and have a seat and he did. In talking to Mr. Bass, I told Mr. Bass or I stated that "I think you have had too much to drink to be driving this automobile."

Mr. Lincoln: We object.
The Court: Overruled.
Mr. Solomon: Except.

A. (Continuing) "I am placing you under arrest for driving under the influence." He stated that he had
page 10 } had a few drinks but that he did not think that he was too drunk to drive and I told him that, of course, I was placing him under arrest for driving under the influence and that the Virginia law required him to submit to a blood test.

Mr. Solomon: We object to this testimony on the basis that he is not being tried under the statute for driving under the influence.
The Court: Overruled, gentlemen.
Mr. Solomon: Exception.
Mr. Lincoln: If the Court please, we object to it on the additional ground that the law does not require a man to submit to a blood test.
The Court: Overruled.

A. (Continuing) In checking Mr. Bass' vehicle, I found that there was another male passenger with him and his

face was flushed also. I asked him to get out of the car and he did. He had been drinking but not sufficiently to arrest for being—

Mr. Solomon: I object to any testimony as to anybody else in the vehicle.

The Court: Objection sustained. Disregard that, members of the jury.

A. (Continuing) In the right front of the vehicle was a paper bag in the floor of the vehicle and in this paper bag were three 5ths of whiskey.

Mr. Solomon: I object to this testimony being admitted unless the man had a search warrant.

The Court: Overruled, Mr. Solomon.

page 11 } Mr. Solomon: Except.

A. (Continuing) The seal had not been broken on two of the 5ths of whiskey. The third 5th was or is this 5th (indicating). There were two glasses in the car and a coke.

Mr. Solomon: We object to this testimony on the same ground.

The Court: Overruled.

Mr. Solomon: Except.

A. (Continuing) Mr. Bass was brought to the Smyth County Jail and at that time a blood test was taken by Mr. Sampson.

Mr. Asbury: You may ask him.

CROSS EXAMINATION

By Mr. Solomon:

Q. You are Trooper Asbury, sir?

A. Atwood.

Q. Atwood. I am sorry, sir. And this offense happened January the 6th, 1967, and you first saw Mr. Bass at approximately what time?

A. At approximately 8:45 P.M.

Q. That is when you first saw his car?

A. Well—

Trooper B. J. Atwood

The Court: Gentlemen, for the record, did you say January the 6th or January the 7th?

Mr. Solomon: I said the 6th.

Trooper Atwood: January the 6th.

page 12 } Q. At what time did you first see his car?

A. Well, I didn't actually look at my watch at the exact moment that I saw him. This is just an approximate time.

Q. Were you cruising at this time or at a standstill?

A. Cruising at 65 miles per hour.

Q. And he passed you?

A. Yes, sir.

Q. And then you followed him?

A. Yes, sir.

Q. And you followed him for seven miles?

A. Approximately seven miles, yes.

Q. And you stopped him where, approximately?

A. Approximately half way between exit 16 and 17.

Q. Now, you stated that you observed the car weaving slightly, isn't that correct? Those are the words—

A. Yes, sir.

Q. And you further stated that he was never out of his lane other than passing other vehicles?

A. Yes, sir.

Q. In other words, this slight weaving that you are talking about did not take him over the center line or off the right side of the road?

A. No, sir.

Q. Now, how much distance do you have in a lane? Do you know?

A. I believe the lanes are twelve feet wide, sir.

page 13 } Q. Twelve feet. Now, when he passed these other cars—how many other vehicles did he pass in the seven miles?

A. I don't recall how many.

Q. Several?

A. There were other vehicles, yes, sir.

Q. Did he pass these cars properly?

A. Yes, sir.

Q. Did he give a turn signal that he was passing?

A. I don't remember a signal.

Q. I think that you testified to this before, under oath, that he did give a signal.

A. No, sir, I don't think that I did. I think that I testified,

if my memory is correct, that he passed the other vehicles and in passing that he—I believe you asked the question, "Did he create a hazard when he passed", but as far as giving a signal is concerned, I don't recall saying that he gave one.

Q. All right. Did he pass these cars properly?

A. Yes, sir.

Q. Did he pass them and then get back into his proper lane?

A. Yes, sir.

Q. And how many times did he pass these cars? How many cars would you approximate that he passed?

A. I wouldn't attempt to guess.

Q. Well, more than one? More than five?

Mr. Asbury: If it please the Court, he has asked
page 14 } this question twice and the trooper has said twice that he didn't know.

The Court: All right, gentlemen, don't repeat and lets get along.

Q. So, you don't know how many he passed?

A. No, sir.

Q. But you know that he passed some?

A. He passed some vehicles but I don't know how many.

Q. Now, you say that you then stopped the car after seven miles and you asked him for his driver's license and his registration?

A. That is correct.

Q. That is the first thing that you asked him?

A. Yes, sir.

Q. And did you then ask him to get out of the car?

A. Yes, sir.

Q. You asked him to get out?

A. Yes, sir.

Q. And then you told him to walk?

A. Yes, sir.

Q. Did you use the words at any time, under oath, "that he walked as if he were slightly unsteady on his feet?"

A. I don't know, sir.

Q. Well, how did he walk?

A. He was unsteady.

Q. Well, how was he unsteady?

A. Well, he wasn't to the point of what you
page 15 } might say real staggering but he was to the point where it was noticeable to a trained policeman.

Trooper B. J. Atwood

Q. It was noticeable to a trained policeman?
A. Yes, sir.
Q. In other words, the reason that you had him walk was because you didn't know, by first appearance, whether this man—what his condition was one way or the other? You were trying to ascertain and get evidence so you could present it here today and that is why you told him to walk, isn't that correct?
A. Yes, sir.
Q. You were trying to pile up evidence so you could present it here today and that is the sole reason that you had him to walk, isn't that right?
A. Yes, sir.
Q. You didn't know, without him walking, by casual looking, whether he was under the influence or not?
A. Yes, sir.
Q. That is right?
A. Yes, sir.
Q. Now, after he walked you placed him under arrest?
A. No, sir, not until I asked him to have a seat in my car and I talked to him in my car.
Q. Was he—did he give you any trouble?
A. No, sir.
Q. Was he polite?
page 16 } A. Yes, sir.
Q. Did you understand his *speach?*
A. Yes, sir.
Q. Did you have any trouble in understanding his *speach?*
A. No, sir.
Q. Did he slur his words?
A. No, sir. He was very talkative but he didn't slur his words.
Q. Do you know Mr. Bass?
A. No, sir.
Q. So, you don't know whether he was talking by nature or not, do you?
A. No, sir.
Q. Is this the first time that you ever met him?
A. As far as I know it is.
Q. So, all that you know about Mr. Bass—you have no comparisons between how he acts normally and how he acted there for you had never seen him before, is that correct?
A. That is correct.
Q. Before you talked to him and he made the statement about having a couple of drinks did you warn him of his rights?

A. No, sir.

Q. You didn't tell him that he did have the right not to talk or to talk?

A. No, sir.

Q. Or any of his rights?

page 17 } A. The only right that I advised him of was that the law required him to take a blood test.

Q. The law required him. You told him—what, specifically did you tell him about the law requiring him to take a blood test?

A. I told Mr. Bass that he was charged with driving under the influence and that the Virginia law required every person charged with driving under the influence to submit to take a blood sample to determine the blood alcohol content.

Q. All right. Then, after you told him that, he agreed to take it?

A. Yes, sir.

Q. And where did he take the test?

A. At the Smyth County Jail.

Q. At the Smyth County Jail?

A. Yes, sir.

Q. Do you know what type of needle was used?

A. No, sir.

Q. Do you know what solution—

Mr. Asbury: If it please the Court, we have the technician here to describe that.

Mr. Solomon: You do have—

Mr. Asbury: Yes, sir.

Mr. Solomon: All right.

Q. Trooper, if this man drove so as to attract your attention by this weaving and passing in and out, why didn't you stop him before seven miles?

page 18 } A. He was weaving, as I said, within the—within his lane of traffic and it was noticeable. He was also speeding at the time between 75 and 80 miles per hour. At this speed I wanted to make sure that I got an accurate check on his speed so that it would stand up in court. If he was charged—if he had been arrested and charged with speeding then I could testify that he was paced at a sufficient distance to where it would be an accurate check.

Q. Right and that is a truthful statement and I accept that. The thing that attracted your attention was the speed, isn't that correct?

A. That was what attracted my attention first, yes.

Mr. Solomon: That is all.

RE-DIRECT EXAMINATION

By Mr. Asbury:

Q. Trooper, I am not sure stated—you say that you stopped this man opposite or behind the Appalachian Manufacturing Company. That is in Smyth County, isn't it?

A. Yes, sir.

The Court: Anything further from this witness, gentlemen?

Mr. Asbury: I will ask him to stand aside subject to recall.

(Witness excused)

page 19 } Mr. Solomon: Your Honor, I would like to object to the state trooper sitting beside the Commonwealth's Attorney because he is a mere witness in this case.

The Court: Your objection is overruled, Mr. Solomon.

Mr. Solomon: Except.

DAVID SAMPSON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Asbury:

Q. Sir, would you please state your name for the record?

A. My name is David Sampson.

Q. And what is your profession, Mr. Sampson?

A. I am a registered nurse and a certified anesthesist.

Q. Do you specialize in a particular field, sir?

A. Yes, sir, I specialize in anesthesia.

Q. Where did you receive your formal training.

A. I had three years of nurse training at Brooklyn State Hospital in Brooklyn, New York, and eighteen months of anesthesia training in Albany, New York at the Albany Medical Center.

Q. Are you a licensed nurse at this time?

A. Yes.

Q. And where are you employed?

David Sampson

A. I am employed at the Smyth County Community Hospital in Marion.

page 20 } Q. And were you so employed in January of this year?

A. Yes.

Q. I will ask you whether or not you were called to the Smyth County Jail on the evening of January the 6th?

A. Yes, I was.

Q. Were you called there for the purpose of taking some blood from someone?

A. Yes.

Q. Please explain to the Court and the jury the technique and procedure that you followed in taking that blood sample.

A. I have a standard technique that I follow with each case like this. I have a kit which contains a glass syringe—

Mr. Solomon: If your Honor please, I would like to interrupt at this time to make an objection, that objection being that it is not what he uses standardly or routinely but it would be what he used on this specific man and on this specific night.

The Court: Objection sustained, gentlemen. Mr. Sampson, what did you do on this case?

A. (Continuing) On this particular case I had my instruments with me and they contain a glass syringe and a metal needle and several gauze sponges which I have sterilized by the steam and pressure method. With these instruments I explained who I was to Mr. Bass and what I was there for and I was supplied with two packages by the arresting officer, a blue box with a glass vial in it and a brown box with a similar bottle in it and I explained to Mr. Bass

page 21 } what I was there for and I proceeded to clean his arm with soap and water and using a rubber tourniquet above the injection site I withdrew 20cc of blood from his arm and put 10cc in each vial and I sealed the vials and filled out the name and information on the vials and then I put them in the boxes and sealed the boxes and addressed the boxes to the name that was checked off on the list which Mr. Bass checked off.

Q. All right. Now, let me hand you the two vials and will you examine those and state whether or not you can identify them as to the writing on them?

A. This writing is all mine.

Q. And at what time did you take a blood sample from Mr. Bass?

David Sampson

A. According to my notes it was 9:15 P.M.
Q. On what date?
A. January the 6th, 1967.

Mr. Asbury: You may ask him.

CROSS EXAMINATION

By Mr. Solomon:
Q. I didn't catch your name, sir.
A. David Sampson.
Q. Mr. Sampson, you are the technician or nurse—which is your title?
A. Registered nurse.
page 22 } Q. And you are the nurse that took the blood from Mr. Bass?
A. Yes, sir.
Q. What type of needle did you say you used?
A. A metal needle.
Q. Did you sterilize it?
A. Yes.
Q. There at that time?
A. No, I have these things made up in the hospital in a kit form.
Q. And when was this needle sterilized?
A. I can't say exactly but it was within a week or ten days.
Q. A week or ten days before. In other words, you are saying that that would be at about Christmas time?
A. Possibly.
Q. Do you remember when this particular needle, used on this particular man, was sterilized?
A. No, I don't remember.
Q. You don't actually remember—well, let me ask you this way to be fair: Do you actually remember drawing blood from this man?
A. His face is familiar to me and I can't really say that I remember the exact instance.
Q. In other words, you are really testifying as to what you usually do, isn't that correct?
page 23 } A. Well, I can presume that I did this because this is my handwriting on the vial and according to my notes.
Q. Well, your handwriting is on the vial and there is no doubt that you took the blood and we are not questioning that but, you don't remember how you took it or the incident itself, do you?

Trooper B. J. Atwood

A. I don't remember the incident but I am positive of exactly how I did it.

Q. Can you remember January the 6th, 1967, and taking blood from this man?

A. Not accurately.

Mr. Solomon: No further questions.

RE-DIRECT EXAMINATION

By Mr. Asbury:

Q. One other question. You were asked by Mr. Solomon about the technique used in sterilizing the equipment used in taking this blood. Was it the same technique that you use in sterilizing the equipment that you use in surgery?

A. Yes.

Mr. Asbury: That is all. May Mr. Sampson be excused?

The Court: Any objection to excusing Mr. Sampson, gentlemen?

Mr. Solomon: No.

The Court: You may be excused.

(Witness excused)

page 24 } Mr. Asbury: Come back around Trooper Atwood.

TROOPER B. J. ATWOOD, having previously been sworn, was recalled and testified as follows:

DIRECT EXAMINATION

By Mr. Asbury:

Q. Trooper Atwood, were you present at the Smyth County Jail when the blood was taken from Mr. Bass by Mr. Sampson?

A. Yes, sir.

Q. I show you the vials in the boxes in this case. (Hands same to Trooper Atwood) Do you know what was done with them, sir?

A. The vials were sealed and given to me and I mailed the vials at the postal office in Marion.

Q. All right. Now, did the test results come back on these?

A. Yes, sir.

Mr. Solomon: I object to the entry of the results at this time, Your Honor.

The Court: Overruled.

Mr. Solomon: Except.

Q. Are those the two test results (indicating)?

Mr. Solomon: I would like to see them.

Mr. Asbury: Hand them to Mr. Solomon, please. Would you also hand him the two vials and let him examine them.

page 25 } Mr. Solomon: I am not interested in them at this point. When I want them I will ask for them, sir.

Mr. Asbury: All right, sir.

Q. (Blood test results and vials handed to the trooper) All right. Would you examine those vials too. Now, would you state what the blood tests show, please, sir?

A. The blood test from the Office of the Chief Medical Examiner in Richmond is 0.12 percent by weight. The blood test from the Lynchburg General Hospital was .10 percent by weight.

Mr. Asbury: If it please the Court, the Commonwealth offers the two blood vials as Commonwealth's Exhibits one and two and the two test results as Commonwealth's Exhibits three and four.

The Court: Let them be received and marked.

Mr. Solomon: We object to the entry.

The Court: Overruled, gentlemen.

Mr. Solomon: Except.

(Exhibits, as stated above, were marked by the Court)

CROSS EXAMINATION

By Mr. Solomon:

Q. Do you have any knowledge why the Lynchburg General Hospital blood test of .10 is dated January the 24th, 1967, date of report, and the State is January the 10th, 1967?

A. No, sir.

Q. You don't—you have no reason to know why the blood tests vary because you weren't present when they

page 26 } made the tests, were you?

Richard Harold Bass

A. No, sir.

Mr. Solomon: I don't have any further questions.

RE-DIRECT EXAMINATION

By Mr. Asbury:

Q. Trooper, after the blood samples were taken, within what period did you mail them if you recall?

A. I mailed them the following morning because the post office is closed at that time of night.

Mr. Asbury: All right, sir.

(Thereupon the following took place out of the presence of the jury)

Mr. Lincoln: If it please the Court, we move to strike the evidence on behalf of the Commonwealth and particularly to strike the evidence of the blood tests, they having been obtained by the officer who told the defendant that the law required him to take a blood test. We do not believe that the law requires him to take a blood test. The law is that as a condition to driving he is presumed to have consented to the taking of a blood sample which is quite different from saying that the law requires him to take the blood test and we move that the blood tests first be striken and second that the evidence of the Commonwealth as a whole be stricken on the grounds that there is no proof of impaired driving. There has been no proof that the amount of alcohol, if any, that has been drunk by this defendant has rendered him, in page 27 } the words of the statute, so that he does not possess the intellect that he normally has nor the control of himself that he normally has. So, we move to strike the evidence of the Commonwealth.

The Court: The motion is overruled.

Mr. Lincoln: Exception.

The Court: Let the jury come back, Mr. Sheriff.

(Thereupon the jury returned to the open courtroom whereupon the following proceedings were had).

(Thereupon the Commonwealth announced through)

RICHARD HAROLD BASS, having been duly sworn, was examined and testified as follows:

Richard Harold Bass

DIRECT EXAMINATION

By Mr. Lincoln:

Q. What is your name, please?

A. Richard Harold Bass.

Q. What is your age?

A. I am forty-six.

Q. Where do you live, sir?

A. Shelbyville, Tennessee.

Q. And are you presently employed in Virginia?

A. Yes, sir.

Q. Were you so employed in January of this year?

A. Yes, sir.

Q. Where were you employed, sir?

A. I was at Covington, Virginia.

page 28 } Q. And what is your work?

A. Construction work?

Q. Were you arrested on January the 6th by Trooper Atwood?

A. Yes, sir.

Q. Where had you been that day or where did you come from?

A. I was working on a job at Covington and after work I drove toward Marion.

Q. And are you acquainted in Marion?

A. Yes, sir.

Q. Did you do any work here on highways?

A. Yes, sir, I built the Marion by-pass.

Q. At approximately what time did you leave Covington?

A. We normally quit work around five and it had to be after five. I would say 5:30.

Q. Had you taken anything to drink before you left Covington?

A. Yes, sir.

Q. And will you state where, how much and with whom if with anybody else?

A. Well, I stopped at the Covington Motor Company and I had a couple of drinks, not excessive, just—about two drinks, that is all.

Q. Were they normal drinks? How much would you say was in each drink?

A. Well, I would say they were about a fourth

page 29 } of a water glass. We had two water glasses there and I would say that it would be about a fourth of one.

Richard Harold Bass

Q. Do you mean the two drinks?

Mr. Asbury: I am going to object to Mr. Lincoln leading him.

Q. (Continuing) Well, just tell us how much you did drink.

The Court: Refrain from leading, Mr. Lincoln.
Mr. Lincoln: All right.

A. Well, that is as near as I know.
Q. Was anybody else present at that time?
A. Yes, sir.
Q. Who else was present?
A. Mr. Thurm Dyer and Mr. Wallace Bowers and a mechanic at Covington Motor Company.
Q. Did anyone else drink from the bottle that has been exhibited here?
A. Other than the four people?
Q. Yes. Did those four people have a drink from it?
A. Yes, sir.
Q. Then four of you drank what is gone from that bottle, is that right?
A. As far as I know, yes, sir.
Q. Now, from Covington to Marion did you have any trouble about driving whatsoever?
A. No, sir.
Q. Did you drink anything else between Cov-
page 30 } ington and Marion?
A. No, sir.
Q. Did you make any stops on the way?
A. I stopped at Christiansburg and called the Greenhouse Restaurant and ordered two steaks.
Q. And did you talk to anyone there?
A. No, sir. It was a pay station.
Q. All right. Then where did you go?
A. I proceeded to Marion.
Q. And were you stopped by the officer?
A. Yes, sir.
Q. Where was that?
A. It was on Interstate 81 on the back side of Marion or near Brunswick, behind Brunswick.
Q. Had you been conscious of anyone being behind you prior to that time that you were stopped?
A. No, sir, I had not.

Richard Harold Bass

Q. All right. What happened when you were stopped?
A. Well, he turned his lights on and I pulled over.
Q. Was anyone in the car with you?
A. Yes, sir.
Q. Who was that?
A. Mr. Thurm Dyer.
Q. What happened after he stopped you?
A. Well, he asked me to get out and I did. He asked me to walk up the road which I did and then he told
page 31 } me that he thought that I had had too much to drink and that he was charging me with driving under the influence.
Q. And was anything said about a blood test?
A. Yes, sir. He told me that the law required a blood test.
Q. And did you submit to a blood test?
A. Yes, sir.
Q. After he told you that?
A. Yes, sir.
Q. Did he tell you at any time that you were entitled to the services of a lawyer?
A. I don't think the lawyer was mentioned, no, sir.
Q. All right. Then where did you go after he stopped you?
A. He took me to the Smyth County Jail.
Q. Who did you—did you see anyone else there or did you call anyone to come there?
A. Yes, sir.
Q. Who was that?
A. Mr. Dave Greear.
Q. And at what time would you say that he got there?
A. I would say approximately 9:30 or near that.
Q. What happened after he got there.
A. I asked him if he would go on my bond for the charge that I had been charged with.
Q. And did he do so?
A. Yes, sir.
page 32 } Q. What happened after that?
A. We went to the Greenhouse Restaurant and ate supper.
Q. Did you see anyone there that you know?
A. Yes, sir.
Q. Who was that?
A. Mrs. Cornett.
Q. Now, at the time that you were arrested, was your driving in any way impaired?

Richard Harold Bass

Mr. Asbury: I object to that, your Honor. That is a conclusion, calls for—

The Court: Objection sustained, gentlemen.

Q. Was there anything wrong with your driving that you know of?

A. No, sir.

Q. Was there anything wrong with your driving that you know of?

A. No, sir.

Mr. Lincoln: All right. That is all.

CROSS EXAMINATION

By Mr. Asbury:

Q. You ordinarily drive within the speed limit, I take it, Mr. Bass?

A. Yes, sir.

Q. In your opinion did you think that you were driving within the speed limit at this time?

page 33 } A. Except when I accelerated. I had all intentions of staying within the speed limit, yes, sir.

Q. And as far as you know you were staying within the speed limit, is that correct, sir?

A. Yes, sir.

Q. Do you know how fast you were driving from the Groseclose area up there down to where you were stopped?

A. No, sir.

Q. But you intended to drive within the law during that time?

A. Yes, sir.

Q. And as far as you are able to determine you were normal in every respect at the time the trooper stopped you, is that correct?

A. Yes, sir, it is.

Q. Now, did you work on this day, Mr. Bass?

A. Yes, sir, I did.

Q. What time did you get off from work?

A. Approximately—between four and five o'clock.

Q. And then you had, you say, two drinks in Covington before you started home, I take it?

A. Yes, sir, I did.

Q. And that is all that you had had to drink prior to being arrested on this date?

A. Yes, sir.

Richard Harold Bass

Q. Now, was Mr. Dyer drinking?

A. Yes, sir, he had had a couple of drinks.

page 34 } Q. Where did he take those?

A. In Covington. He took two drinks in Covington.

Q. Did you have two glasses, a coke and an opened whiskey bottle in the car with you at the time the trooper stopped you?

A. Yes, sir.

Q. Did you drink from either of those glasses or from that bottle during that time?

A. No, sir, I did not.

Q. Did Mr. Dyer drink from it?

A. I don't know.

Q. Now, I believe that you said that you are in the highway construction business and that you built the Marion by-pass, is that correct?

A. Yes, sir.

Q. How far up did you build, Mr. Bass? All the way by Marion?

A. Yes, sir.

Q. Now, you had stopped at Christiansburg, Virginia and called the Greenhouse Restaurant and ordered dinner, is that right?

A. That is correct.

Q. And after that time you didn't take an appetizer or anything to get ready for a big steak, is that correct?

A. No, sir, I did not.

Q. Now, having constructed the highway over here around Marion, you, of course, were familiar with it, is

page 35 } that correct?

A. That is correct.

Q. And during the time that you were building this highway over a period of what? Months?

A. Yes, sir.

Q. And you ate frequently at the Greenhouse Restaurant, is that correct?

A. Yes, sir.

Q. Now, if you had already ordered dinner and you built the highway and was familiar with it and familiar with the Greenhouse Restaurant, why did you not turn off at Exit 17 and come on over to the restaurant?

A. I was going to the 16 interchange and come back that way and get gasoline.

Q. You were going to drive through town and come back up, is that correct?

David A. Greear

A. That is correct.
Q. But yet, after dinner, you planned to go on west and on to Tennessee?
A. Yes, sir.
Q. At approximately what time of the day did you take these two drinks that you referred to?
A. I would imagine it was around 5:00 or 5:30.
Q. Was it your whiskey that you were drinking?
A. Yes, sir.
Q. And when had you purchased this whiskey?
A. I think it was on the same day.
page 36 } Q. Was it on the evening of that day?
A. I think so.
Q. At 5:30.

Mr. Solomon: He said 5:00 to 5:30.
Mr. Asbury: Five to five-thirty, all right. I believe that is all.

(Witness excused)

DAVID A. GREEAR, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lincoln:
Q. What is your name, please, sir?
A. David A. Greear.
Q. And where do you live, Mr. Greear?
A. In Marion.
Q. And do you have a business here?
A. Yes. I have a photography and merchandising business.
Q. Do you know Mr. Richard Harold Bass?
A. Yes.
Q. How long have you known him?
A. About five years.
Q. And did you see him on January the 6th, 1967?
A. Yes.
Q. Where did you see him?
page 37 } A. At the Smyth County Jail.
Q. How did you happen to go there?
A. He had called me and said that he needed someone to go on his bond and I immediately went to the jail to see him and to go on his bond.

David A. Greear

Q. And you saw him and talked to him in the jail?
A. Yes, sir.
Q. After you had gone on his bond where did you go?
A. I took Mr. Bass and his partner up to the Greenhouse Restaurant.
Q. And did you go into the restaurant with them?
A. Yes, I went in and immediately went out, I believe. I didn't stay at that time.
Q. Now, from the time you saw Mr. Bass in jail and going on to the Greenhouse Restaurant and in going into the restaurant, would you tell us what his condition was relative to having clearness of intellect and control of himself?
A. He seemed—I had known him for quite a while and he seemed perfectly normal as far as I was concerned other than when I met him at the jail he had a certain amount of anxiety. He is a little bit of a wiry sort of a person anyhow that I have known quite a while but he seemed perfectly normal as far as intellect is concerned.
Q. And what about the control of himself, his walk and his talk?
A. Yes, it was normal.
Q. Was his *speach* slurred in any way?
page 38 } A. No, it was not slurred but Harold talks fast as a normal way of talking.
Q. What about his walk? Did he stagger in any—
A. Not that I could see.
Q. And as you observed Mr. Bass at both places you would say that he was entirely normal, normal in his walk, in his talk, in control of himself and his intellect, is that right?
A. Yes, I would.

Mr. Lincoln: I believe that is all.

CROSS EXAMINATION

By Mr. Asbury:
Q. Mr. Greear, you went to the Smyth County Jail for the purpose of posting bond for Mr. Bass, is that correct?
A. Yes.
Q. When you went to the jail on this occasion did you make any particular effort to observe him as to his condition?
A. Well, I think that I would normally because he had called me and said that he was in a little trouble, that he was down at the jail and that he needed—I think that I

would have. I remember being a little surprised that he was considered drunk because he seemed normal to me.

Q. He didn't seem drunk to you, is that correct?

A. No.

Q. Did you observe any odor of alcoholic beverages about him?

page 39 } A. No. There was—no, not—

Q. Did you—

A. (Continuing) None whatever.

Q. Did you sniff at him or try to smell to see if you could smell any alcohol about him?

A. No, but I took him and his partner in my car to the Greenhouse Restaurant and that is as close to sniffing that I would have done.

Q. But did you make any effort to see if you could smell alcohol about his breath? That is what I am getting at.

A. No.

Q. You didn't make any effort to do that?

A. No, I didn't. I didn't see any cause *too*.

Q. But you did make an effort to observe how he walked, is that correct?

A. I didn't make an effort but I observed because when I walked in the jail, if you want detail, he walked out toward me and said "Dave—", he apologized for calling me and causing the trouble, he said "I hate to call on you at night to come down here but I need somebody to go on my bond." He walked out the door toward me as I went in and then went back in and sat down.

Q. And as he walked out the door toward you, you specifically observed him to see how he was able to walk, is that correct?

A. I observed him. I wasn't trying to analyse his walking.

page 40 } Q. Did you try to analyze his walking? That is my question.

A. No.

Q. You didn't try to *analyse* his *speach* either, did you?

A. No, but I am use to hearing him and use to seeing him walk.

Q. All right. Really, you just came down to help out a friend and that was your purpose, wasn't it?

A. Yes, and, of course, I was concerned when he said that he was charged with driving drunk and I observed that he didn't seem drunk to me or didn't seem that he had had much to drink at all.

Wadie R. Cornett

Mr. Solomon: I would like to—

Q. Did Mr. Bass, himself—

Mr. Solomon: Excuse me, please. I would like to renew my objection again that being the state policeman being at the table with the Commonwealth's Attorney and giving him instructions because he is merely a witness and should not be at this table.

The Court: Your objection is overruled.

Mr. Solomon: Except.

Q. Mr. Greear, did Mr. Bass himself call you?

A. Yes, he did.

Q. And did he tell you where he was?

A. Yes.

Q. Did he tell you where his car was?

A. I am not sure whether he did then or not but page 41 } he did there at the jail. When he called me he said "I am down at the Smyth County Jail and have been stopped for driving while intoxicated and I need somebody to go on my bond." Later, I am sure, he told me where his car was.

Q. Did you make some attempt to find his car later on?

A. After I took him and his friend to the restaurant—the other attorney asked me if I left—I left and went to my home, picked up my son and went over on the highway, he told me where his car was, and I had my son drive his car back to the restaurant and I drove back.

Q. Now, you didn't come to the police department to ask them where the car was, did you?

A. No, I didn't need to.

Q. I take it that this is one of the few occasions that you have been called to come to the jail to post bond, is that right?

A. One of a few.

Q. One of the few.

Mr. Asbury: All right.

Mr. Lincoln: That is all.

(Witness excused)

WADIE R. CORNETT, having been duly sworn, was examined and testified as follows:

Wadie R. Cornett

DIRECT EXAMINATION

By Mr. Solomon:

Q. State your name for the record, please.

A. Wadie R. Cornett.

page 42 } Q. Would you speak a little louder so the Court and the jury can hear you?

A. Wadie R. Cornett.

Q. And you live here in Marion, Smyth County?

A. Yes, sir, I do.

Q. And how long have you lived here? All of your life?

A. No, I have been here for about twenty years.

Q. Do you know Mr. Harold Bass, the defendant here?

A. Yes, I do.

Q. How long have you known him?

A. About five years.

Q. And did he eat during these years in your place?

A. Yes, sir.

Q. While he was working here on the Interstate. Is that how you knew him?

A. Yes, sir.

Q. When he was here would he come in frequently or not?

A. Yes.

Q. Now, on January the 6th, 1967, on that evening, did you have an occasion to see Mr. Bass?

A. Yes, sir.

Q. At about what time?

A. It was somewhere between 9:30 and 10:00.

Q. Did you talk with him that night?

A. Yes, sir.

Q. Did he tell you that he was in the toils of the law?

A. He told me that he had been picked up.

page 43 } Q. Now, you say that you know Mr. Bass. In comparison between the way you know him normally and with this night, did he talk normal? Was his disposition, *speach* and walk normal?

A. Yes, sir.

Q. Did you see him walk?

A. Yes, sir.

Q. And you say that you talked to him?

A. Yes, sir.

Q. Was there anything out of the way at all with him?

A. No, sir, not that I could tell.

Q. Anything abnormal?

A. No, sir.

Richard Harold Bass

Q. Were you the recipient of his phone call from Christiansburg?
A. Yes, sir.
Q. And what did he say to you on the phone?
A. Well, he wanted to know what time I closed and he told me that he was coming by to have a steak dinner, he and a friend of his.
Q. And he did finally come?
A. Yes, sir.
Q. And he did have a steak dinner?
A. Yes.

Mr. Solomon: Your witness.

CROSS EXAMINATION

By Mr. Asbury:

page 44 } Q. Mrs. Cornett, you are in business and operate a restaurant here in Marion as you have already testified, is that correct?
A. Yes, sir.

Mr. Asbury: I believe that is all.

(Witness excused)

RICHARD HAROLD BASS, having previously been sworn, was recalled and testified as follows:

DIRECT EXAMINATION

By Mr. Lincoln:
Q. Mr. Bass, after dinner at the Greenhouse, where did you go?
A. I went to Shelbyville, Tennessee.
Q. Who drove?
A. I did.

Mr. Lincoln: All right.
The Court: Anything further, gentlemen?
Mr. Lincoln: No, sir. We rest.

(Thereupon the Court, Attorney for the Commonwealth, counsel for defendant, and court reporter retired to chambers to consider the Instructions to the jury whereupon the following took place out of the presence of the jury)

The Court: All right, gentlemen. We are on the record now and I believe you gentlemen indicated that you had another motion that you wanted to make at the conclusion of the trial.

page 45 } Mr. Lincoln: Yes, sir. The defendant, by counsel, moves again to strike the evidence of the Commonwealth on the ground that the defendant is being tried for impaired driving and this trial for impaired driving is not a part of the greater offense of driving under the influence—is not included as a lesser offense thereunder and further that the Commonwealth's Attorney has indicated, in chambers, that he agrees with that point of view and has offered instructions that he has to be tried for driving under the influence or he cannot be tried. Further, I move the Court to strike any evidence that the law requires any defendant to take a blood test and we move to strike the evidence of the Commonwealth because that was permitted and we do not believe that that is required under the laws of the State of Virginia.

The Court: Your motion is overruled. The Court is of the opinion that he has been found not guilty of driving under the influence by the County Court of Smyth County and that has been adjudicated. The county court found him guilty of impaired driving and the charge as read to the accused at the beginning of the trial was a charge of driving an automobile while his ability to drive was impaired. You may note your exception to the ruling of the Court on that.

Mr. Lincoln: The defendant, by counsel, does except to the ruling of the Court.

The Court: Thereupon the Commonwealth's Attorney offered Instructions 1, 2, and 3. Any objections to Number One, gentlemen?

page 46 } Mr. Lincoln: Yes, sir. Number One is—

The Court: Number One is refused because this is not driving under the influence.

Mr. Lincoln: Yes, sir.

The Court: Number Two, gentlemen, is refused. Number Three. Any objections to Number Three, gentlemen?

Mr. Lincoln: I haven't seen that one yet.

The Court: Number Three is granted. If you have any objections you may state them for the record.

Mr. Asbury: I also offer 2-A.

Mr. Solomon: Where is Number Three?

The Court: Three is on the credibility of the witnesses.

Mr. Lincoln: Oh, we have no objection to that.

The Court: All right. Thereupon the Attorney for the Commonwealth offered Instruction 2-A. Gentlemen, 2-A is granted and you may note your exception.

Mr. Solomon: We would like to except to the granting of Instruction 2-A. First, it is not in the wording of the statute. Second, that in the second paragraph where it states ". . . chemical analysis of the accused's blood is as much as 0.10 but less than 0.15 per cent by weight it shall be presumed that the ability of the accused was impaired within the meaning of this section," there should be added, in the words of the statute on driving under the influence, "that such facts may be considered with other competent evidence in determining the guilt or innocence of the accused."

page 47 } Mr. Lincoln: We would like to add a further objection to the granting of Instruction 2-A. Under Section 18.1-57, "Presumptions from alcoholic content of blood", as stated under sub-section 2, "If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic *intocicants,* but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused; provided, however, such facts shall not preclude prosecution and conviction under Section 18.1-56.1."

We believe that—

The Court: Which is impaired driving.

Mr. Lincoln: Which is impaired driving and we believe that if the Court tries the defendant under impaired driving alone then, under that Section, he cannot take part of the sentence and leave out part of the sentence, thereby taking a part of the sentence that is favorable to the Commonwealth and leaving out the part of the sentence which is favorable to the accused and therefore there can be no presumption under this Section.

The Court: All right, gentlemen, the Court has granted 2-A. Now, do you have any instructions?

Mr. Lincoln: We except to the Court granting Instruction 2-A.

The Court: Thereupon, the defendant, by counsel, offered Instructions A, B, C, and D. Do you have any

page 48 } objections to Instruction A?

Mr. Asbury: Yes, sir.

The Court: What is *you* objection?

Mr. Asbury: I think that under the statute here with the presumption of a blood test that this is not a proper instruction based on the evidence in this case. Even if the evidence did indicate that he lacked a clearness of intellect and control of himself which he otherwise possessed, he could still be, and should be, convicted based on the evidence in this

case, on the presumption. It appears that presumption is between .10 and .15.

Mr. Solomon: That is the very point which we excepted to the Commonwealth's instruction. He—

The Court: Instruction A is granted, gentlemen, with the striking out of "driving under the influence of intoxicants".

Mr. Solomon: Yes, sir.

The Court: I think the record will show that you'll have no objections to—

Mr. Solomon: That is right.

The Court: Instruction B.

Mr. Asbury: I object to Instruction B as being in conflict with the instruction on presumption. If this law and instruction means anything at all the Instruction B is certainly incorrect and it is directly in conflict with it. The statute does not say that this is—

The Court: I am going to refuse Instruction B.

page 49 } Mr. Lincoln: We would maybe want to offer another one in its place—

The Court: I think it is the presumption; that you have to present evidence to overcome that presumption.

Mr. Lincoln: We think that we have presented evidence to overcome the presumption, by Mr. Dave Greear and by Mrs. Cornett. Any presumption is rebuttable, we think.

The Court: Note your exception.

Mr. Lincoln: We except to the action of the Court in refusing Instruction B.

The Court: In objection to C?

Mr. Asbury: No objection.

The Court: Instruction C is granted. Gentlemen, Instruction D is repetitious of A and it will be refused. You may note your exception.

Mr. Solomon: The defendant, by counsel, excepts to the refusal of Instruction D in that it clearly states the case that a man can have alcohol in his blood but if he has clearness of intellect and control of himself, which is the wording of the statute, and was not impaired by the presence of alcohol in his blood so as to operate his motor vehicle properly then the jury shall find the defendant not guilty. In the defendant's view point this is not repetitious of A and correctly states the law.

(Discussion off the record)

(Thereupon the Court, Attorney for the Commonwealth, counsel for defendant and the court reporter re-

page 50 } turned into the open courtroom whereupon the following took place in the presence of the jury)

(Thereupon the Court instructed the jury at the conclusion of which the following took place)

The Court: You will be given 15 minutes to the side.

Mr. Asbury: Gentlemen of the jury, you have now heard the evidence in this case and you have heard the Court's instructions as to the law to be applied and needless to say this is a very serious and a very important case. It is a very important case to the defendant but I want you to keep in mind that there are two parties to this proceeding and the other party being the people of this Commonwealth and needless to say this is an important case to the people too.

By the very uncontradicted testimony of Trooper Atwood, here is a man driving on the main thoroughfare through Smyth County, passing other vehicles, driving at a speed of between 75 and 80 miles per hour. Now, why is it important to the people of Smyth County or the people of the Commonwealth to bring such a case as this before the bar of justice? The answer is obvious.

Now, to review very briefly the testimony and evidence in this case. Trooper Atwood was patroling on Interstate 81 and he was out there for a specific purpose and I want you to remember throughout this case that he was there for a specific purpose and that was to observe the operation of motor vehicles in the area where he was then patrol-
page 51 } ing and if there was anything to call his attention to something being amiss in the operation of a vehicle then it was his duty to investigate. I hope that you will also recall the attention that he gave to this duty at this time. The manner in which Mr. Bass, the defendant, was driving got the trooper's attention. Did he haul him over immediately and place him under arrest? He followed him for a considerable distance and he stopped him. Did he make an arrest immediately? No. He observed him. The lawyer asked him on cross examination, "you were looking at him and having him to walk so that you could collect evidence," and the trooper said "yes, sir." Is that not his job? What type of officer would place an arrest against a citizen without first obtaining evidence? And he told you what he observed; how he drove, his appearance, how he talked, the smell of alcohol about him, his statement that he was drinking alcoholic beverages, and that he was unsteady on his feet. Would it make a stronger case to say that he was driving from one side of the road to the other? Of course it would but that is not the truth and he didn't testify to any such thing. He said that he stayed within the limits although he was weaving and that is the reason that he continued to observe.

Being fully mindful of his rights to a blood test and the scientific evidence, at the time he made the charge he brought him to the Smyth County Jail. A person qualified to take blood was called and you heard the details of how he attended to his duties in taking the blood from the defendant and you heard the blood test results, .10 and .12.

page 52 } Now, what is the Court's instruction on that point? You will find it in Number 2-A. "The law further expressly provides that in any prosecution it appears to the jury that the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood is as much as .10 but less than .15 per cent by weight it shall be presumed that the ability of the accused was impaired within the meaning of this section." If he had that much alcohol in his blood, his ability is presumed to be impaired because a person with that much alcohol, I submit to you, his ability is impaired to drive an automobile.

That, in a nutshell, is substantially the evidence of the Commonwealth in this case. It is not long and I submit to you that it is to the point and it was given by people who took the evidence, who took the blood, intentionally because they were looking for these things.

I will remind you before I stop at this time, that in the opening by the defense, which is not evidence, but it is merely an outline of what they intend to show, they intended to show that the defendant was normal in every way.

I will complete the argument for the Commonwealth after the defense has argued.

(Thereupon Mr. Solomon presented closing argument for the defense whereupon the following objection was interposed)

Mr. Solomon: Now, gentlemen, on the evidence. The Commonwealth's Attorney said that the trooper's evidence was uncontradicted. Now, I heard Mr. Greear, he was

page 53 } on this stand and he said, gentlemen, under oath which is the same oath that the trooper took, that this man did not stagger when he walked; that he was normal and his *speach* was normal. Mrs. Cornett took the stand under the same oath that the trooper took and she told you that he was normal.

Now, gentlemen, there are a few factors here that I would like to call to your attention. What did this defendant state and where is your variance? Now, this trooper said that he saw this man and followed him for seven miles. If there was

impaired driving—you are not trying this case on whether the man drank or not. He can drink and drive; he is allowed too under the law. He is not charged with driving under the influence for he was acquitted of that and this is the Commonwealth's second bite at the apple. He was acquitted of driving under the influence and this is their second bite at the apple.

Mr. Asbury: If it please the Court, I object to that argument.

The Court: Objection sustained, gentlemen. Disregard that, gentlemen of the jury. He is not being tried for driving under the influence.

Mr. Solomon: Yes, sir, that is what I said.

The Court: Disregard the remarks of the attorney concerning driving under the influence, all of them.

Mr. Solomon: I except. Do I understand the Court's ruling that I can't mention to the jury that he has been acquitted of driving under—

The Court: Disregard that, gentlemen. He is page 54 } not being tried for driving under the influence.

Mr. Solomon: I except. This is evidence in this case, your Honor.

The Court: The Court has ruled, Mr. Solomon. You may proceed under the ruling of the Court and you may note your exception if you have any.

Mr. Solomon: Yes, sir, I do note our exception and I will note it out of the presence of the jury so that we will not jeopardize.

(Thereupon Mr. Solomon continued closing argument for the defense whereupon the following objection was interposed)

Mr. Solomon: Gentlemen, what did this man do? Assuming that you were charged with this offense—

Mr. Asbury: I object to that.

Mr. Solomon: Assume that anyone was charged. What would they do?

(Thereupon Mr. Solomon completed closing argument whereupon Mr. Lincoln present closing argument for the defense and there were no objections)

Mr. Asbury: It is always interesting how the defense counsel anticipate what I am going to say about the witnesses. Gentlemen, you are the judges of the testimony of the witnesses.

Here is an interesting point. According to the defendant, he took two drinks up there in Virginia somewhere between 5:00 and 5:30 yet the blood was not taken from him, according to the evidence, until 9:15. Now, how much
page 55 } time is that? The test results were as you have already *hear;* both within the definition set out by law that it is presumed that his ability was impaired.

Now, what have they shown you to indicated that his blood test results were not that much? They say that these presumptions can be overcome. I haven't heard anyone point to any evidence that says that these blood test results are not accurate and correct. Regardless of how he appeared, under the instructions of the Court, if you believe the blood test results, and you are the trier of the facts, then it is your duty to convict him.

Mr. Solomon: I object to that. That is not the proper law.

The Court: Gentlemen, you have heard the law of the Court and you will have it in the room with you.

Mr. Solomon: I move for a mistrial at this point on the basis of misstatement.

The Court: Overruled.

Mr. Solomon: Except.

Mr. Asbury: Lets turn our attention—I touched briefly before on the testimony of the trooper and if I indicated that his testimony was uncontradicted then I was referring only as to the speed and the manner the defendant was driving. He told you that he didn't know this man before so he couldn't compare his condition then with what it was on some other day.

Lets look at the evidence to show that in ad-
page 56 } dition to the test results and what he observed that there was something affecting this man and I suggest to you that it was what he had had to drink.

You have two men driving along in this speeding automobile and in there there were two glasses, a broken bottle of whiskey, by that I mean that the top had been removed and apparently some taken out, and a coke, yet he says that he did not drink any since he left up there from his place of work.

The next point is that he said that he drives within the limits of the law and intended to be doing that at this time. What was causing him to drive 75 and 80 miles per hour if he was intending to be driving within the speed limit? I would say that there was something wrong with his ability somewhere along the way.

Lets take the next point. He tells you that he stopped and order steaks by telephone, which no doubt he did and I

would say that he did, and he was looking forward to that yet he wouldn't stop at the most—it was suggested that he was afraid that they were going to close before he got there yet if that was the situation why did he not drive off of the highway at the most direct route out there? He was going on by the place when the trooper stopped him and he is very familiar with this highway because he built it.

I would call your attention to the testimony of Mr. Greear and Mrs. Cornett and I don't suggest to you for a minute that either one of them would tell you anything wrong but I would suggest this to you: that they are not as

page 57 } qualified to observe and make the determination that the trooper is. They had no such purpose when they did make the observation and how did they testify? Primarily to yes and no questions that were propounded by counsel whereas the trooper testified straightforward and direct as to what he observed.

Mr. Solomon: I object to this. I think that Mr. Greear—

The Court: Objection overruled.

Mr. Solomon: May I give the reason? Mr. Greear testified fully on cross-examination and I am sure that it was not yes and no questions. I object to this as prejudicial.

The Court: Overruled.

Mr. Solomon: Except.

The Court: Gentlemen, you heard him testify.

Mr. Asbury: I am making reference to his testimony on direct examination.

I thought it was also noteworthy to note that counsel referred to something about the defendant's face being flushed when the trooper didn't know it before. You heard the testimony and I heard it too and I don't recall him making any statement that the defendant's face was flushed.

It would appear that counsel is very familiar with prosecution of this type—

Mr. Solomon: I would like the record to show that he did say that it was flushed.

The Court: Gentlemen, you heard the evidence and you are the judges of the facts.

page 58 } Mr. Solomon: I would stake the case on it.

The Court: Lets dispense with the comments.

Mr. Solomon: I am sorry.

The Court: Proceed.

Mr. Asbury: You have the Court's instructions and the evidence in the case. What you do or do not think about the testimony of the witnesses is something that you took an oath to decide. The trooper has done his part in this matter, I have done mine, the Court has done its part, and the defense

has done its part and now it is up to you. The case is now in your hands.

The Court: Gentlemen of the jury, the Court is not telling you want to find or how to find but as to the form of your verdict. In the event you find the defendant guilty, "We the jury find the defendant guilty of impaired driving and fix his punishment at" whatever you determine and have your foreman sign it. In the event you find the defendant not guilty, "We the jury find the defendant not guilty" and have your foreman sign it. You have the instructions, four exhibits, and a sheet of paper on which to write your verdict and when you have concluded your work just knock on the door.

(Thereupon the jury retired to consider of their verdict and after some time returned to the open courtroom)

The Court: Gentlemen, have you arrived at a verdict?

The Foreman: Yes, sir.

The Court: Pass it up. Mr. Clerk, will you read it please.

The Clerk: "We, the jury, find the defendant
page 59 } guilty of impaired driving and fix his fine at
$275.00. J. D. Maloyed, Foreman."

The Court: Is that your verdict, gentlemen?

The Jury: Yes.

The Court: So say you all. Let the verdict be received. Do you have any objection to the form of the verdict, gentlemen?

Mr. Lincoln: Not to the form.

(Thereupon the Court discharged the jury)

The Court: You may proceed, gentlemen.

Mr. Solomon: If your Honor please, we would like to make a motion to set aside the verdict as contrary to the law and contrary to the evidence on the basis that this was handled as a trial *de novo* in this court for impaired driving because the original warrant charged only driving under the influence and the man was tried—the defendant was tried in this court under the impaired driving statute which would be a trial *de novo* here; the statute does not specify this.

Secondly, that the evidence was insufficient to convict him of impaired driving.

Thirdly, that improper evidence was allowed as to the tests.

Fourthly, that prejudicial statements of the Commonwealth's Attorney in his closing argument when he said that the blood tests—that presumption of the blood tests was all

that they need to believe. This is not the law and
page 60 } on mistrial the Court overruled. Again, I want to
bring this up on the motion to set aside and the granting, of course, of the instructions and the refusal to grant certain instructions offered by the defendant.

The Court: Anything further, gentlemen?

Mr. Solomon: No, sir.

The Court: Your motion is overruled.

Mr. Solomon: We would like to except, please, sir.

Mr. Lincoln: We move the Court to suspend the judgment for a period of—

The Court: Sixty days?

Mr. Lincoln: Sixty days.

Mr. Asbury: I don't have any objection.

The Court: All right, gentlemen. Should the Court not sentence him at this time and then suspend the execution of the sentence for a period of 60 days?

Mr. Solomon: I think that is proper.

The Court: All right. Mr. Bass, stand up. In accordance with the verdict of the jury, the Court sentences you to forfeit a fine of $275.00 and the costs of this proceeding and further that your driving privileges or operator's license is revoked for a period of 6 months in the Commonwealth of Virginia and the Court suspends the execution of that sentence for a period of 60 days on motion of your attorney; that they, I take it, desire to apply to the Court of Appeals for a writ.

Mr. Asbury, I take it that the bond is sufficient
page 61 } that he is now under?

Mr. Asbury: Yes, sir.

The Court: All right.

These were all the proceedings had and evidence introduced in the trial of this case.

Filed this 17 day of July 1967.

LLOYD E. CURRIN, Clerk

page 62 } The foregoing transcript of evidence and incidents of trial, pages 1-61, inclusive, approved.

ROBERT I. ASBURY
Counsel for Plaintiff

EARLE L. LINCOLN
Of Counsel for Defendant

Tendered and received Aug. 7, 1967, within sixty days of final judgment.

J. AUBREY MATTHEWS, Judge

Signed Aug. 16, 1967, within seventy days of final judgment.

J. AUBREY MATTHEWS, Judge

Received and filed August 16, 1967

LLOYD E. CURRIN, Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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