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Clerk, Supreme Court of Appeals

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Record No. 7076

In the
Supreme Court of Appeals of Virginia
at Richmond

MACK WAYNE BELCHER

v.

TOWN OF CHRISTIANSBURG

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of 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.

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IN THE

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AT RICHMOND

Record No. 7076

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

MACK WAYNE BELCHER, Plaintiff in error,

against

TOWN OF CHRISTIANSBURG, Defendant in error.

From the Circuit Court of Montgomery County
William S. Jordan, Judge

Upon the petition of Mack Wayne Belcher a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Montgomery County on the 8th day of April, 1968, in a prosecution by the Town of Christiansburg against the said petitioner for a misdemeanor; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs; 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 14 } INSTRUCTION NO. A-1

The Court instructs the jury that you may find any one of the following verdicts:

(1) That the defendant is guilty of driving his automobile while under the influence of alcohol. Driving an automobile while under the influence of alcohol is punishable by not less than Two Hundred ($200.00) Dollars nor more than One Thousand ($1,000.00) Dollars or by confinement in jail for not less than one (1) month nor more than six (6) months, either or both.

(2) That the defendant is guilty of operating his automobile while his ability to so operate is impaired by alcohol. Operating an automobile while such person's ability is impaired is punishable by a fine not exceeding Five Hundred ($500.00) Dollars or confinement in jail not exceeding twelve (12) months or both.

(3) That the defendant is not guilty.

Refused: W.S.J.

* * * * *

page 14A } INSTRUCTION NO. A-2

The Court instructs the jury that if they have a reasonable doubt as to the grade of offense of which the defendant may be guilty, that they shall resolve that doubt in his favor, and find him guilty of the lower grade; to illustrate, if they have reasonable doubt as to whether he is guilty of driving under the influence or impaired driving, they should find him guilty of impaired driving. If they have a reasonable doubt as to whether he be guilty at all, they must resolve that doubt in favor of the accused and acquit him.

Refused: W.S.J.

* * * * *

page 15 } INSTRUCTION NO. A-3

The Court instructs the jury that a person's ability to drive or operate a vehicle shall be deemed to be impaired when

such person has so indulged in alcoholic intoxicates to lack the *clearence* of intellect which he would otherwise possess.

Refused: W.S.J.

* * * * *

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* * * * *

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY, 8TH DAY OF APRIL, 1968.

* * * * *

This day came the Attorney for the Town of Christiansburg, and the defendant, Mack *Waye* Belcher, who stands charged with a misdemeanor, to-wit: operating a motor vehicle while under the influence of intoxicants, appeared in pursuance to his recognizance; and came also Max Jenkins, his attorney. Whereupon the defendant pleaded not guilty to the charge of operating a motor vehicle while under the influence of intoxicants.

Thereupon a panel of eleven jurors, free from exception for the trial of the said defendant, was made up and completed. And the Attorney for the Town of Christiansburg and the Attorney for the defendant having each alternately, beginning with the Attorney for the Town of Christiansburg, stricken from the said panel the names of three of the said veniremen, the remaining five, to-wit: E. C. Sisson, Jr., W. H. Maddy, Richard L. Hummel, Howard Dunn and Rush A. Sutphin, constituted the jury for the trial of the defendant, and were sworn the truth of and upon the premises to speak, and having heard the evidence, the instructions of the Court and argument of counsel, retired to their room to consider of their verdict and after some time returned into Court and presented the following verdict: "*Town of Christiansburg* v. *Mack Wayne Belcher* We the jury find the accused guilty driving a motor vehicle under the influence of intoxicants as charged and fix punishment by fine of $200.00. E. C. Sisson, Jr., Foreman." Whereupon the defendant, by his attorney, moved the Court to set aside the verdict of the
page 18 } jury as contrary to the law and evidence and for other reasons assigned at bar, which motion the Court overruled and the attorney for the defendant excepted.

Whereupon it is Ordered that the Town of Christiansburg recover of the defendant, Mack Wayne Belcher, the sum of $200.00 and its costs by it in this behalf expended.

The defendant, by his attorney, having signified his intention of applying to the Supreme Court of Appeals of Virginia for a writ of error, it is ordered that execution of the foregoing sentence be and the same hereby is stayed for a period of sixty days.

* * * * *

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * * *

Mack Wayne Belcher, the petitioner in the above-styled case, the hearing upon which was held on the 8th day of April, 1968, hereby gives notice of appeal from the final order entered on the 8th day of April, 1968,

The petitioner sets forth the following assignment of error:

(1) The Court erred in its refusal to give Instructions A1, A2, and A3, which instructions pertain to the crime of impaired driving and being a lessor included offense of driving under the influence of intoxicants.

Given under my hand this 30th day of April, 1968.

MACK WAYNE BELCHER

By Counsel

Goldsmith & Jenkins
and C. Tabor Cronk
1067 Norwood Street
Radford, Virginia

By: Max Jenkins
Counsel for Petitioner

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* * * * *

Filed in Clerk's Office Circuit Court of Montgomery County 1st day of May 1968.

John B. Myers, Jr., Clerk.

By Raneeda Turman, D. C.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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