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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7077

In the Supreme Court of Appeals of Virginia at Richmond

JAMES WARREN DEANER

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

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. 7077

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.

JAMES WARREN DEANER, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond
Samuel B. Witt, Jr., Judge

Upon the petition of James Warren Deaner a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 25th day of March, 1968, 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

* * * * *

page 1 } Commonwealth of Virginia
City of Richmond To-Wit:
TO ANY POLICE OFFICER:

WHEREAS, J. F. Vickery has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that James Warren Deaner did on the 13th day of Jan, 1968: Unlawfully

Fail and refuse to permit a sample of his blood to be taken to determine the alcoholic content thereof as required by law after having been arrested for driving under the influence of alcoholic beverages or some other self administered intoxicant or drug.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Traffic Court of the City of Richmond, the body of the above accused, to answer the said complaint to be further dealt with according to law. And you are also directed to summon

J .F. Vickery PO

as witnesses.

Given under my hand and seal, this 13th day of Jan, 1968.

M. C. Laury, III (Seal)
Justice of the Peace

Docket No. 997

Commonwealth
vs.
James Warren Deaner

1622 Limerick Drive

WARRANT OF ARREST

Executed this, the 13 day of January, 1968 by arresting the within named party, and, by summoning the within named witnesses to appear in Traffic Court ....., 19.....

J. F. Vickery

Upon examination of the within charge, I find the accused Guilty—Feb 23 1968
Op. lic. revoked for 3 months and costs

Herman H. Cooper, Judge

Cont. 2/23/68 10:30 A.M.
Recognized on the sum of $100.00

IN TRAFFIC COURT, CITY OF RICHMOND

Feb 23 1968

This is to certify that the within named James Warren Deaner, was this day tried by me for the charge set forth within this warrant, and that upon said trial he, the said Above party was duly convicted of The within charge, and sentenced Permit suspended for 3 months, and costs 12.25 dollars, from which sentence he, the said Above party appeals to the next term of Hustings Court.
Given under my hand this 23 day of Feb 1968

H. A. Cooper
Judge of the Traffic Court

page 2 } DECLARATION OF REFUSAL TO PERMIT TAKING OF BLOOD SAMPLE

Section 18.1-55.1 of the Virginia Code provides that any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after July one, nineteen hundred sixty-four, shall be deemed thereby to have agreed as a condition of such operation to consent to have a sample of his blood taken for a chemical test to determine the alcoholic content thereof, if he is arrested for operating a motor vehicle while under the influence of intoxicants within two hours of the alleged offense. If the person arrested refuses to permit the taking of blood for such test, the arresting officer must take the person arrested before a committing magistrate. If the person arrested, after having been advised by the arresting officer that the law of Virginia requires a person accused of operating a motor vehicle while under the influence of intoxicants to permit a sample of his blood to be taken so that a test may be made of his blood to determine the alcoholic content thereof

and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of blood for such test and does again so refuse upon being taken before a committing magistrate, and being further advised by such magistrate of the law requiring a blood test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Chief Medical Examiner of Virginia, or refuses or fails to so declare in writing and such fact is certified by the committing magistrate, then no blood sample shall be taken even though the person arrested may thereafter request the same. Conviction of the offense of unreasonably refusing to permit the taking of a blood sample will result in the suspension of the arrested person's license for a period of ninety days for the first offense, and six months for a second or subsequent offense or refusal within one year of the first or other such refusals.

"Having read the above statement, and having been advised by the arresting officer and by the committing magistrate of the law requiring the taking of a blood sample and the penalty for refusal, I refuse to permit the taking of a blood sample and herewith make this declaration of refusal as prescribed by law."

.....

Person From Whom Blood
Sample Is Sought

.....

Witness

.....

Date

CERTIFICATE OF COMMITTING JUSTICE

(To be executed by the committing justice only if the person arrested for driving while under the influence of intoxicants refuses to permit the taking of a blood sample and further refuses to execute the declaration of refusal inscribed above.)

I, M. C. Lowry III, a committing justice of the City of Richmond Virginia, do hereby certify that I advised James

Warren Deaner, who has been arrested for operating a motor vehicle while under the influence of intoxicants and has refused to permit the taking of a blood sample, that his refusal to permit a blood sample to be taken—if found to be unreasonable—constitutes grounds for the revocation of his license to operate a motor vehicle upon the highways of Virginia, and I do further certify that James Warren Deaner refused or failed to execute the declaration of refusal inscribed above.

2;25 am

M. C. Lowry III, Committing Justice

1-13, 1968

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* * * * *

Pleas at the Courthouse of the City of Richmond, before the Hustings Court of said City, on the 23rd day of April, 1968.

Be it remembered that heretofore, to-wit: on the 25th day of March, 1968, the following order was entered:

* * * * *

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City. And being arraigned he pleaded not guilty to failing and refusing to permit a sample of his blood to be taken to determine the alcoholic content thereof as required by law after having been arrested for driving under the influence of alcoholic beverages or some other self administered intoxicant or drug, as charged. And with the consent of the accused, given in person, and the concurrence of the Court and the Attorney for the Commonwealth, the Court proceeded to hear and determine this case without a jury. And the Court having heard the evidence doth find the said defendant guilty as charged and it is ordered that he not operate a motor vehicle for a period of three months and he is required to pay his costs of Court.

The said defendant then moved the Court to suspend the execution of the said sentence to allow him to appeal his case to the Supreme Court of Appeals for a writ of error and

supersedeas, which motion the Court doth grant and the execution of the said sentence is suspended to May 24, 1968. And thereupon the said defendant is recognized on his own recognizance in the sum of three hundred dollars without surety, conditioned that if the said defendant shall abide by and perform the judgment of this Court in the event the Supreme Court of Appeals of Virginia shall refuse to grant him a writ of error and *supersedeas,* or if granted it be later dismissed, and appear before this Court on May 24, 1968, and in the meantime shall keep the peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue. And thereupon the said defendant is released.

* * * * *

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* * * * *

And at *anothre* Hustings Court held for the City of Richmond, at the Courthouse, on the 23rd day of April, 1968, the following order was entered:

* * * * *

A narrative of testimony adduced, the objections to evidence and other incidents in the trial of the above case therein recorded, said narrative was this day signed and sealed by the Court and hereby made a part of the record in this case.

* * * * *

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* * * * *

Narrative of testimony on trial of
above-styled case before Honorable
Samuel B. Witt, Jr., Judge
March 25, 1968

Appearances:

A. Conrad Bareford, Esquire
Assistant Commonwealth's Attorney

Leonard A. Paris, Esquire
Attorney for the Defendant

page 6 } The Clerk: James Warren Deaner, charged on January 13, 1968, that you failed and refused to permit a sample of your blood to be taken to determine the alcoholic content thereof as required by law, after having been arrested for driving under the influence of alcoholic beverages or some other self-administered intoxicant or drug. Do you plead guilty or not guilty?

James Warren Deaner: Not guilty (jury waived).

The Commonwealth introduced the certificate of the committing justice as required by Virginia Code Section 18.1-55.1 (J) of the Code of Virginia of 1950, as amended.

James Warren Deaner: The defendant, being first duly sworn, testified that he was arrested on Broad Street in the City of Richmond at approximately 1:30 A.M. on January 13, 1968, by Patrolman J. F. Vickery, Richmond City Police. Sgt. F. Seagraves was called to the scene and advised the defendant of his rights. Mr. Deaner stated, and it was stipulated by the Commonwealth Attorney, that the temperature was somewhere around eight to ten degrees and it was very windy, along with being cold.

After being advised of his rights, Mr. Deaner told Sgt. Seagraves that he would be glad to take the blood test, but he would like to contact his attorney first in order that he might be apprised of its legal ramifications. Sgt. Seagraves told him that since it was so cold perhaps he should wait until he got to the magistrate's office.

Upon arriving at the magistrate's office, Mr Deaner stated that he was told that since they were so busy he should have a seat and wait until they had time to allow him to use the telephone to call an attorney. He repeatedly told them that he was not refusing to take the blood test, but that he merely wanted the advice of his attorney before doing so. Finally, at 4:30 A.M. he was allowed to call his attorney, but by that time, the time allowed for him to take a blood test had passed.

The defense rested.

Arguments were made by Mr. Paris and Mr. Bareford and

the Court found the defendant guilty as charged and revoked his permit to drive for ninety (90) days.

page 7 } The defendant, James Warren Deaner, through his attorney, Leonard A. Paris, Esquire, thereupon moved to set aside the judgment of the Court as being contrary to law and evidence, which motion was overruled.

The defendant excepted and objected and execution of this sentence was suspended until May 24, 1968, in order that the evidence could be written down and presented to the Court for approval.

* * * * *

Conrad Bareford
Attorney for the City of Richmond

Leonard A. Paris
Attorney for the Defendant

* * * * *

Received this 23d day of April 1968 and made a part of the record in this case.

L. A. Schumann, Deputy Clerk
Hustings Court
City of Richmond

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* * * * *

NOTICE OF APPEAL

To: Clerk of the Hustings Court of the City of Richmond

This day comes James Warren Deaner, the defendant in the above styled case, by his attorney, and hereby gives notice of appeal from the decision entered in this case on March 25, 1968, and sets forth the following assignment of error:

1. The Court erred in refusing to set aside the verdict and grant a new trial on the grounds that the verdict was contrary to the law and evidence.

James Warren Deaner

By Leonard A. Paris
his Attorney

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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