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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7158

In the Supreme Court of Appeals of Virginia at Richmond

RUFUS JACKSON

v.

CITY OF ROANOKE

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

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. 7158

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 21st day of January, 1969.

RUFUS JACKSON, Plaintiff in error,

against

CITY OF ROANOKE, Defendant in error.

From the Hustings Court of the City of Roanoke
Richard T. Edwards, Judge

Upon the petition of Rufus Jackson a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 11th day of June, 1968, in a prosecution by the City of Roanoke 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 } State of Virginia
City of Roanoke

To-Wit: To all or any of the Police Officers of said City:

Whereas, J. M. Renick, Roanoke Police Dept. has this day made complaint and information on oath, before me, the undersigned, that Rufus Jackson, 2013 Chapman Ave, S. W. on or about the 17 day of April, 1968, at said city, did unlawfully drive and operate a motor vehicle in and upon the public streets of the City of Roanoke while under the influence of intoxicants and narcotics drugs, having been previously convicted of a similar offense; in violation of Sec. 76, Chap. 1, Title 18, Roanoke City Code.

These are, therefore, in the name of the City of Roanoke, to command you forthwith to apprehend and bring before the Municipal Court for the City of Roanoke, Virginia, the body of the said Rufus Jackson to answer said complaint and be further dealt with according to law. And moreover, upon the arrest of the said Rufus Jackson by virtue of this Warrant, I further command you in the name of the City of Roanoke to summon the herein afternamed witnesses to appear in the said Municipal Court, to testify in behalf of the City of Roanoke, against the said Rufus Jackson and have then and there this Warrant, with your return thereon.

Witnesses: (Name) (Address)

Given under my hand and seal this 2 day of May, 1968.
George B. Dillard (SEAL) Judge of the Municipal Court for the City of Roanoke, Va.

Municipal Court—Form 1-63

* * * * *

City of Roanoke
vs.
Rufus Jackson

2013 Chapman Ave, S. W.
Roanoke, Va.

WARRANT OF ARREST

The within-named Rufus Jackson was brought before me this 2 day of May, 1968, and on the evidence of J. M. Renick is found guilty of Driving under the influence (subsequent offense) as charged in the within warrant and I do adjudge that the within-named defendant be confined in the jail of the City of Roanoke for 30 days, pay a fine of $350.00, and costs of $12.50, O. L. revoked for 3 years

George B. Dillard, Municipal Judge

* * * * *

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* * * * *

At a Hustings Court of the City of Roanoke, Virginia, at the Courthouse thereof, on the 11th day of June, 1968.

* * * * *

This day came the Attorney for the Commonwealth and Rufus Jackson appeared in court according to the condition of his recognizance and pleaded not guilty to the charge of Driving under influence (Sub. offense) alleged against him in the warrant, waived trial by a jury and with the consent of the Attorney for the Commonwealth and the court, submitted the case to the court for determination.

Whereupon the court having heard the evidence the defendant, by counsel, moved the court to strike the Commonwealth's evidence on grounds of insufficient evidence which motion the court overruled and the defendant, by counsel, excepted. Having heard all the evidence the court doth find the defendant, Rufus Jackson guilty and fixes his punishment to be $250.00 fine and thirty (30) days in jail.

It is therefore considered by the court that the defendant be fined the sum of $250 and be confined in the jail of the City of Roanoke for a term of thirty (30) days and it is ordered that the City of Roanoke have and recover of the defendant $250 fine and all of its costs in this behalf expended.

Thereupon the defendant, by counsel, moved the court to set aside the above judgment which motion the court takes

under advisement for a period of five (5) days and the defendant is continued on bond.

The defendant is permitted to serve the above sentence for 5 consecutive weekends (10) days, in jail then the balance of the sentence is suspended.

* * * * *

page 5 }

* * * * *

In the Hustings Court of the City of Roanoke on the 17th Day of June, 1968.

* * * * *

This day again came the Attorney for the Commonwealth and Rufus Jackson who was sentenced to 30 days in jail and given $250 fine on June 11, 1968 on a charge of Driving under influence.

Thereupon the Court having maturely considered the motion to set aside the above judgment doth hereby overrule said motion and the defendant, by counsel, excepted.

* * * * *

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

* * * * *

Please Take Notice that the undersigned appeals this action in which final judgment was entered on June 11, 1968 and intends to apply to the Supreme Court of Appeals for a writ of error and *supersedeas* in regard to the aforesaid judgment; and for that purpose, the undersigned assigns the following as error:

(1) The failure of the Court to strike the evidence of the City and enter summary judgment of acquittal in accordance with the motion of the defendant after the City rested her case.

(2) The failure of the Court to strike the evidence of the City and enter summary judgment of acquittal in accordance with the motion of the defendant made at the conclusion of all the evidence.

(3) The failure of the Court to sign or deliver to the Clerk the statement of facts containing a narrative of the testimony and other incidents of trial of this action on June 11, 1968, which statement of facts was tendered to the trial judge by the defendant pursuant to Rule 5:1 §3 (f).

Rufus Jackson

By John H. Kennett, Jr.
Counsel

* * * * *

Received Aug. 9 1968 and filed, Ruth Dillard, Deputy Clerk.

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STATEMENT OF FACTS

The trial of the law action involving a charge against the defendant, Rufus Jackson, for driving a motor vehicle in the City of Roanoke under the influence of alcohol against the peace and dignity against the City of Roanoke, Virginia was held at a session of the Hustings Court of the City of Roanoke, Virginia, beginning at 2:00 o'clock P. M. on June 11, 1968. The Honorable Richard T. Edwards, Judge of the Hustings Court, presided. Samuel A. Garrison, III, assistant Commonwealth's Attorney for the City of Roanoke represented the City of Roanoke. John H. Kennett, Jr. represented the defendant, Rufus Jackson.

The warrant was read by the Clerk and a plea of not guilty was entered by the defendant. The City of Roanoke and the defendant waived trial by jury and the Judge consented to hearing the evidence for determination without intervention of a jury.

BENJAMIN B. HARDEN

A witness called on behalf of the City, after being duly sworn, testified as follows:

Mr. Harden lives at 1011 Lafayette Boulevard, Northwest, Roanoke, Virginia. On April 17, 1968 at approximately 2:30 o'clock P.M. he was in his backyard and could not see the street or Lafayette Boulevard. He heard a loud crash resembling a motor vehicle colliding with something and immediately ran to the front of his house. He observed a 1967 G.M.C. truck which had collided with a telephone pole across the street. The driver did not get out of the truck. He went into his house and telephoned the police. While he was in the house, he did not observe what was page 11 } taking place outside. He returned outside after telephoning the police and was only gone for a short period of time. He remained on his front porch and watched the events until the police officer came and talked to the defendant who had been the driver of the truck.

Mr. Harden testified that Mr. Jackson was in a dazed condition. He did not cross the street and did not get close enough to the defendant to smell his breath. He did not observe the witness for the defendant, Luther Watkins, or his stationwagon; and he did not observe the witness for the City, Stuart A. Jenkins.

STUART A JENKINS

A witness called on behalf of the City, after being duly sworn, testified as follows:

He lives at 2641 Staunton Avenue, Northwest, Roanoke, Virginia, near the ten hundred block of Lafayette Boulevard, Northwest, Roanoke, Virginia. He was setting on the steps of a house in the ten hundred block of Lafayette Boulevard and noticed a 1967 G.M.C. truck driven by the defendant jump the curve and crashed into a telephone pole. The defendant remained in the truck for a long period of time. Mr. Jenkins became concerned because he thought the defendant may have hurt himself and ventured to the truck. The defendant stated he was not hurt and wanted someone to fix the broken power line pole. Mr. Jenkins went into a church nearby and called the Appalachian Power Company. Subsequently, he came back to the area and waited until the police arrived. The entire elapse of time from the collision to the arrival of the policeman was less than one-half of an hour.

Mr. Jenkins stated that the defendant was unsteady on his feet and in a dazed condition. He did not smell any odor of alcohol from the defendant but explained this failure was because he did not get close enough to the defendant to smell his breath one way or the other.

page 12 } J. M. RENICK

A witness called on behalf of the City, after being duly sworn, testified as follows:

Mr. Renick is employed by the City of Roanoke Police Department and assigned to its traffic bureau. On April 17, 1968 at 2:33 o'clock P.M., he was patroling the northwest area of the City of Roanoke on a motorcycle and was called over the radio to investigate an automobile accident in the ten hundred block of Lafayette Boulevard, Northwest, Roanoke, Virginia. On arrival of the scene, he found a 1967 G.M.C. truck had collided with a power line pole of Appalachian Power Company. A crew from the power company arrived several minutes thereafter and began working on the pole. Mr. Renick found the defendant who admitted he had driven the truck which had crashed into the telephone pole. The defendant was in a condition which made Mr. Renick suspect he had been driving under the influence of alcohol. The defendant denied having any alcoholic beverages to drink except a beer earlier in the day. The provisions of the complied consent law were complied with and the sample of the defendant's blood was taken, was sent to the State Medical Examiner, and was returned to the Clerk of the Municipal Court of the City and introduced into evidence. The weight of alcohol in the blood of the defendant according to the blood test was 0.21 per centum.

Thereafter the City of Roanoke and the defendant stipulated to the existence of an ordinance designated as Section 76, Chapter 1, Title 18 of Roanoke City Code which parallels Va. Code §18.1-54 and prohibits driving a motor vehicle in the City of Roanoke while under the influence of alcohol. The City of Roanoke and the defendant also stipulated to a record of a conviction of Rufus Jackson seven years previously for driving a motor vehicle under the influence of alcohol.

The City rested her case. The defendant moved to strike the evidence for the City and enter summary judgment of acquittal for the defendant on the grounds that, while the City had proved the defendant was under the influence of alcohol at the time of his arrest approximately one-half of
page 13 } an hour after the collision, the City had not proved the defendant was in that condition at the time he was driving the automobile immediately before the collision. The motion was overruled and the defendant excepted.

RUFUS JACKSON

The defendant in his own behalf, after being duly sworn, testified as follows:

The defendant is a colored male fifty -five years of age and operates a paving company. On April 17, 1968 at approximately 2:00 o'clock P.M., he had left his crew and was returning to his headquarters near the downtown area of the City of Roanoke. Upon driving southward on Lafayette Boulevard, he swerved to the right making a wider arc in the turn to the left than necessary. He explained he did this because of oncoming traffic even though the street is very wide. His right tires hit the gutter causing him to lose control of the truck which ran off the curve and into a telephone pole breaking the pole. He hit his head against the dash board of the truck and was in a dazed condition from that time onward.

After the accident, the defendant sat in the driver's seat of the truck for sometime because he was dazed. He vaguely remember talking to Mr. Jenkins. He vaguely remembered getting out of the truck talking to Mr. Watkins who gave him a bottle of Scotch whiskey out of which he took several drinks. He vaguely remembered talking to the police officer but did not recall having a blood sample taken from him or any particular conversation about his drinking.

LUTHER WATKINS

A witness called on behalf of the defendant, after being duly sworn, testified as follows:

Mr. Watkins is a colored male in the business of installing driveways. He is in a business similar to the business of the defendant, Rufus Jackson, who is a paving contractor. Mr. Watkins was well acquainted with the defendant but had no financial involvement with him. On April 17, 1968, Mr. Watkins was driving his stationwagon southward
page 14 } along Lafayette Boulevard and saw the defendant standing outside his truck which had apparently struck a power line pole. He stopped his car and talked to the defendant. The defendant asked Mr. Watkins to call the Appalachian Power Company and report the broken pole. The defendant stated his head hurt severely. Mr. Watkins offered him a drink from a bottle of Scotch whiskey which he had with him. The defendant drank several swallows of whiskey from the bottle of Scotch whiskey and Mr. Watkins left the scene to call the power company and

report the broken pole. At the time Mr. Watkins was at the scene, he did not observe Mr. Harden, Mr. Jenkins or Officer Renick although several people were standing around.

The defendant rested his case.

The City called one rebuttal witness.

BENJAMIN B. HARDEN

A witness previously called by the City of Roanoke, testified again as follows:

Mr. Harden came to his front yard from his backyard immediately upon hearing the crash and thereby surveiled the scene within seconds after thoe collision. While he went into the house to call the police, he was only gone for a short period of time and then returned to his front porch and continue to observe the defendant until the arrival of the police. He did not see Mr. Watkins drive up in his station-wagon or see the defendant drink anything.

The City of Roanoke rested her rebuttal.

At the conclusion of all the testimony, the defendant moved again to strike the evidence of the City and enter summary judgment for an acquittal on the grounds that, while the City had proved the defendant was under the influence of alcohol at the time of his arrest approximately one-half of an hour after the collision, the City had not proved the defendant was in that condition at the time he was driving the automobile immediately before the collision. The motion was overruled and the defendant excepted.

Thereafter, the Judge found the defendant page 15 } guilty and fixed his punishment at $250.00 fine and thirty days in jail to be suspended after serving ten days by serving two days each on five consecutive weekends.

The trial was completed at this point.

The undersigned Judge of the Hustings Court of the City of Roanoke does hereby certify the above statement of facts is a true and correct narrative of the testimony and other incidents of trial in the law action of the *City of Roanoke* v. *Rufus Jackson* held on June 11, 1968.

Received on 8-10-68
Certified on 8-12-68

Richard T. Edwards
Judge of the Hustings Court

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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