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Record No. 7347

In the
Supreme Court of Appeals of Virginia
at Richmond

DANIEL R. LANGTON, ALIAS, ETC.

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

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HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7347

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 24th day of November, 1969.

DANIEL R. LANGTON, ALIAS,
SCOTT DAN BALLARD, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Hustings Court of the City of Richmond
J. Randolph Tucker, Judge

Upon the petition of Daniel R. Langton, alias Scott Dan Ballard, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 6th day of June, 1969, in a prosecution by the Commonwealth against the said petitioner for a felony; 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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* * * * *

In the Hustings Court of the City of Richmond

City of Richmond, to-wit:

The Grand Jurors of the Commonwealth, for the body of the City of Richmond, on their oaths present that Daniel R. Langton alias Scott Dan Ballard on the 16th day of June in the year one thousand nine hundred and sixty eight, at the said City, and within the jurisdiction of the Hustings Court of the City of Richmond.
Being then and there the driver of a vehicle involved in an accident resulting in injuries to the person of one John W. Moore, a pedestrian, then and there unlawfully and feloniously did not immediately stop as close to the scene of said accident as possible without obstructing traffic and give to a police officer or the said John W. Moore, the person injured, his name, address, chauffeur's license number and operator's license number, and the registration number of his vehicle, and unlawfully, and feloniously did not render to the said John W. Moore, the person injured, reasonable assistance, including the carrying of the said John W. Moore, the person injured, to a physician, surgeon or hospital for medical and surgical treatment, it being apparent that such treatment was necessary,

against the peace and dignity of the Commonwealth of Virginia.

V. S. Cook
E. Lavender
Richard W. Duvall Jr.

Witnesses sworn and sent by the Court to the Grand Jury to give evidence.

Thos. R. Miller

* * * * *

A True Bill
Frederick Hiendl
Foreman

* * * * *

page 5 }

* * * * *

And at another Hustings Court held for the City of Richmond, at the Courthouse, on the 6th day of June, 1969, 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 he was represented by Attorney E. W. Taylor and the Commonwealth was represented by Attorney A. Conrad Bareford. And being arraigned the defendant pleaded not guilty to Hit and Run as charged in the indictment, after consultation with counsel. And the Sergeant of this City having returned the writ of *venire facias* heretofore issued by order of this Court, with the names of the persons summoned in pursuance thereof, and of the veniremen so summoned and attending, a panel of twenty qualified jurors, free from exception for the trial of the defendant was made up and completed. And the Attorney for the Commonwealth and the Attorney for the accused, having alternately, beginning with the Attorney for the Commonwealth, each stricken the names of four of the said veniremen, the remaining twelve constituted the jury for the trial of the accused, to-wit: D. T. Lloyd, Jr., H. V. Anderson, A. L. Jackson, D. Austin, J. R. Baker, R. W. Hafling, G. Barbour, J. M. Gary, D. Gandee, E. W. Davis, M. R. Edwards, W. Ford, who were sworn the truth of and upon the premises to speak. And the witnesses having been sworn and the jurors having heard the evidence for the Commonwealth, the said defendant by counsel moved the Court to strike the evidence of the commonwealth as being insufficient for the finding of a verdict of guilty, which motion the Court doth overrule and the defendant notes an exception. And the jurors having heard all of the evidence and arguments of counsel retired to their room in the custody of the Sergeant of this City to deliberate upon a verdict. And after some time they returned into Court and presented a verdict in the following words and figures, to-wit:

"We, the jury, find the accused guilty as charged in the

indictment and fix his punishment at six months in jail and a fine of $500.00." Earl W. Davis, Foreman.

And thereupon the said defendant by counsel moved the Court to set aside the verdict of the jury on the grounds stated in the record, which motion the Court doth overrule and to which action of the Court in overruling his said motion, the said defendant notes an exception and time is allowed him not to exceed sixty days in which to file his bills of exception.

Whereupon it is considered by the Court that the said Daniel R. Langton alias Scott Dan Ballard pay and satisfy a fine of five hundred dollars and be confined in the City Jail for a term of six months.

The 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 of Virginia for a writ of error and *supersedeas*, which motion the Court doth grant and the execution of the said sentence is suspended to August 5, 1969, and bond is set at two thousand dollars. The page 6 } defendant then entered into a recognizance in the sum of two thousand dollars with Connie Elkin, Agent for A. A. Bonding Company, as surety therein, 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 August 5, 1969, and in the meantime shall keep the peace and be of good behavior and violate none of the laws of this Commonwealth, then the said recognizance to become null and void, else to remain in full force and virtue.

And thereupon the said Daniel R. Langton alias Scott Dan Ballard is released.

* * * * *

page 12 } INSTRUCTION NO 6

The Court instructs the Jury that if you believe from the evidence beyond a reasonable doubt that the defendant was the operator of a motor vehicle involved in an accident in which John W. Moore was injured, and you further believe

from such evidence that if any such accident occurred under circumstances that the accused knew, or as a reasonable person should have known, that an injury had occurred, then it was the duty of the defendant to do the following:

(a) Immediately stop as close to the scene of the accident as possible without obstructing traffic;

(b) To render reasonable assistance to John W. Moore if it was apparent that medical treatment was necessary such as the carrying of John W. Moore to a doctor or hospital;

(c) To report to a police officer, his name, address, operator's or chauffeur's license number and registration number of his vehicle.

If you believe from the evidence beyond a reasonable doubt that the defendant failed in any of the duties aforesaid, then you should find him guilty and fix his punishment (1) by confinement in the penitentiary for not less than one nor more than 5 years, or (2) by confinement in jail for not less than 30 days nor more than one year, or (3) by a fine of not less than fifty dollars nor more than five thousand dollars, or (4) by both such confinement in the penitentiary or in jail and such fine.

Given J. R. T.

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page 16 }

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And at the same Hustings Court held for the City of Richmond, at the Courthouse, on the 13th day of June, 1969, the following order was entered:

* * * * *

The said defendant having indicated to the Court his desire to appeal from the judgment of this Court entered herein on June 6, 1969, the Court doth appoint E. W. Taylor, who represented the defendant at the trial of this case, to assist him in perfecting his appeal to the Supreme Court of Appeals of Virginia.

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page 19 }

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ASSIGNMENT OF ERROR

1. The Court erred by ruling accused placed his character in issue.
2. The Court erred by permitting the introduction of testimony that accused had been previously convicted of a felony when accused did not testify or offer any evidence in his behalf.
3. The Court erred by overruling accused's motion to strike the Commonwealth's evidence in that the Commonwealth's evidence was not sufficient to prove accused had violated Code §46.1-176.
4. The Court erred by overruling accused's motion to set aside the jury's verdict as being contrary to the law and evidence.

Daniel Richard Langton

By Edward W. Taylor
Counsel

* * * * *

page 1 }

* * * * *

TRIAL PROCEEDINGS

June 6, 1969

10:35 a.m.

Before:

Honorable J. Randolph Tucker, Judge,
and a jury of twelve

APPEARANCES:

A. Conrad Bareford, Esq., Assistant
Commonwealth Attorney, for the
Commonwealth.

V. Stuart Cook

Hundley & Taylor
By: Edward W. Taylor, Esq., attorney,
of counsel, for the defendant

Daniel Richard Langton, defendant, *pro se*

* * * * *

page 4 }

* * * * *

V. STUART COOK, was sworn, and testified in behalf of the Commonwealth, as follows:

DIRECT EXAMINATION

By Mr. Bareford:

* * * * *

page 7 }

* * * * *

A. ***

* * * * *

page 8 } Upon questioning people at the scene, and witnesses to the accident, I learned that the driver of the vehicle had gotten out of his vehicle, walked up to the victim of the accident, had checked him and went over to a telephone booth which is west, right across the street from the accident scene on the west side of Cowardin Avenue. He was seen in the telephone booth making—

* * * * *

Q. Don't tell us what people told you at the scene of the accident. Were you able to find Daniel Richard Langton alias Scott Dan Ballard?

A. No, sir.

Q. At the scene of the accident, were you trying or did you try, sir, to find out who the driver of the vehicle was?

A. Yes, sir, I did.

Q. Did you ever find the driver of the vehicle?

A. Not that night, no, sir.

Q. All right, what did you do in order to determine who was the operator of the vehicle?

A. I obtained a physical description from witnesses at the scene. We also checked the registration of the ve-
page 9 } hicle which was registered in North Carolina. It had North Carolina license plate CJ486K. Information about the vehicle, who it was registered to—

Q. Who was the vehicle registered to?

A. Wayne Edward Gibten 14 Marlwood Terrace, Charlotte, North Carolina.

* * * * *

A. Yes, sir. There were various pieces of clothing, equipment and personal effects in the vehicle, and upon examination of the effects in the vehicle, most everything in the vehicle showed it belonged to Scott Dan Ballard. There were three or four articles in the vehicle that showed a Dan Langton also had possession of the vehicle. Information received from Charlotte showed that Scott Dan Ballard was the company representative who had the vehicle.

* * * * *

page 10 } Q. Did you see Scott Dan Ballard that night?
A. No, sir, I did not.

Q. And was this accident assigned to you, sir?

A. Yes, sir.

Q. Were any reports ever filed with the police department giving the name, address, license and chauffeur's—

A. No, sir, no information at all regarding the driver of the vehicle.

Q. The night you were dispatched to the scene of the accident, was the name of the driver given to you, sir?

A. No, sir, it was not.

Q. And did you make any effort to determine who the driver of the car was?

A. Yes, sir, I questioned many people at the scene of the accident as to who the driver was, or if he was present. No one came forward to give that information.

Q. Did you see the defendant Daniel Langton alias Scott Dan Ballard at the scene of the accident?

A. No, sir, I did not.

V. Stuart Cook

Q. Did you talk to him at any time in relation to this?
A. No, sir.
Q. Was any report ever filed with the police
page 11 } department?
A. No, sir, no report at all was made with us.
Q. How about the Division of Motor Vehicles?
A. No, sir, no report was made with the Division.

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page 14 }

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CROSS EXAMINATION

By Mr. Taylor:

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page 15 }

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Q. All right, now Officer, you testified that when you arrived, there were a number of people there; can you estimate or approximate the number of people who were there?
A. It was fairly large crowd, I'd say between 40 and 50 people.
Q. Did you have time to go and talk to all 40 or 50 people?
A. No, sir, I did not.
Q. And at the particular time you had never met Mr. Dan Langton, had you, sir?
A. No, sir, I did not.
page 16 } Q. And you didn't see him until approximately February of 1969, did you, sir?
A. That is correct, sir.
Q. That is the first time you had ever met Mr. Langton?
A. Yes, sir.
Q. Mr. Langton could have been standing there in the crowd, couldn't he have, sir?
A. He could have been, but he did not come forward.
Q. Yes, sir—
A. Also there were four or five other officers who were helping me in the accident, questioning witnesses.

Richard W. Duval

Q. You don't know which people they talked to, and which they didn't talk to?
A. No, sir, I didn't talk to all of them.
Q. And there was a witness who did see the driver of the vehicle go to a phone booth, I believe you said that?
A. Yes, sir.

* * * * *

page 17 }

* * * * *

A. Yes, sir. On an accident case, whoever calls is not usually questioned. It's usually the location of the scene, and if anyone is injured, and it goes from there to the officer dispatched to the scene.
Q. Just because the Police Department does not have a record does not mean a call wasn't made?
A. No, sir, we would not know who called.

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page 18 }

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Q. All right, sir, do you know who called the ambulance?
A. No, sir, I do not.

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page 19 }

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RICHARD W. DUVAL, was sworn, and testified in behalf of the Commonwealth, as follows:

DIRECT EXAMINATION

By Mr. Bareford:

* * * * *

Richard W. Duval

page 22 }

* * * * *

Q. Do you all work for the same company?
A. Yes, sir, we do.
Q. He was driving a company car?
A. He was driving a company car, yes, sir.
Q. Did you see him any more that night?
A. No, that was the last time I had seen him.
Q. And where was he living on this day?
A. Living on this day?
Q. On June 16, 1968, what was his address, as you knew it, sir?
A. The only address I knew was in Florida.
Q. In Florida, was he working in Richmond?
A. He had been working in Richmond, yes, sir.
Q. Did he have a residency in Richmond?
page 23 } A. Not to my knowledge, no, sir.
Q. How long had he been in Richmond?
A. I would say off and on between Washington and Richmond, for approximately two months.
Q. Was Richmond your territory?
A. The entire state of Virginia and Maryland, yes, sir.
Q. And was there anyone else with you on this night, sir?
A. No, sir.
Q. Just the two of you?
A. Just the two of us.
Q. And when was the next time you saw Mr. Langton or Mr. Ballard, after the 16th of June?
A. It was the latter part of February. If you can give me the date he was incarcerated.
Q. This is the last time?
A. Yes.
Q. Do you know where he went after the 16th of June, 1968?
A. He told me recently in our conversations he returned to Florida.
Q. But you didn't know at that time, you didn't know until February of 1969?
A. No, sir.
page 24 } Q. Did you know about this accident, sir?
A. Not until I was contacted by the detectives, and the newspaper accounts.
Q. So you made no report to the police?

Richard W. Duval

A. No, sir.

Q. Did anyone in your company make any reports to the police, to the best of your knowledge?

A. I don't know, sir, I couldn't answer that.

Q. But you were the representative here in Virginia and you did not contact them?

A. No, sir.

Mr. Bareford: All right, answer Mr. Taylor.

CROSS EXAMINATION

By Mr. Taylor:

Q. Mr. Duval, can you tell us about how long Mr. Langton has been working with your company?

A. For approximately 13 years.

Q. Mr. Duval, do you know about his educational background?

A. I understand, sir, that he had approximately three to three and a half years at the University of Notre Dame in South Bend, Indiana.

Q. Do you know about his *millitary* background?

page 25 } A. Our records show he has, I believe, four years in the U. S. Navy.

Q. What kind of employee is Mr. Langton?

A. Very good.

Q. Can you testify as to about what his income is?

A. Based on his current position within the company, approximately $15,000.00 to $16,000.00 per year.

Q. What does he do, essentially, how does he make his living?

A. He is a consultant in our local sales office, Richmond sales office, assisting in interviewing, employing and training representatives.

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page 31 }

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page 32 } Mr. Bareford: Judge, now that I have heard the statement, it's pretty much what we have got. I don't care if it comes in. I will withdraw my objection.

Judge, he has put this man's character in issue now, and

I want to, since he has asked these questions about *millitary* record, education, employment record and so forth and so on, I want to know or get a ruling from the Court, I want to ask the witness about this man's criminal record.

Mr. Taylor: I haven't put his character in issue, I am trying to show he is a good employee of this company.

Mr. Bareford: If you don't consider education, employment and so on character—

The Court: This is character evidence.

Mr. Taylor: I haven't intended to ask this witness or any other witness anything about the man's character.

The Court: If what you were asking is not by way of character, then it was irrelevant. I mean I don't know what else it could go to, except character, his educational background, you are trying to show the type of man he is.

Mr. Taylor: I'm trying to show he was employed with the company about 13 years.

The Court: He was an educated man, he had a good *millitary* record. If this doesn't go to character, I don't know what it goes to.

page 33 } Mr. Taylor: That wasn't intended to develop character evidence, it is intended to show he was with this company about thirteen years, and their reasons for hiring him.

The Court: I think you did go into his character. You have gone far enough so I will let the Commonwealth ask his question. Are there any questions, anything else before the jury comes in? The Commonwealth has said you can ask your question, Mr. Taylor.

Mr. Taylor: All right fine. If Your Honor please, before the jury is brought back in, if I might just say something.

The Court: Tell them to hold it a minute.

Mr. Taylor: I understand the Court is going to permit Mr. Bareford to question this witness as to the defendant's character, perhaps any bad character that he may have. I don't want to put words into this witnesses mouth, I don't know what he knows, and what he does not know, and perhaps I shouldn't be discussing this in front of this witness either.

The Court: Mr. Bareford, would you like the witness to step outside while he talks about this aspect of the case?

Mr. Bareford: Yes, sir, Judge.

(The witnesses were excused from the courtroom and the discussion continued in their absence as follows:)

page 34 } Mr. Taylor: The thing that Mr. Bareford is going into, I believe, is the record of the accused.

The defendant does have a record, and for that reason I plan not to put him on the witness stand today. I knew he would be asked a very incriminating question, have you been previously convicted of a felony. This witness does not have any knowledge as to this defendant's record. He may, but I don't know what knowledge he has, but for purposes of argument and conjecture, if the witness does know he has been previously convicted of a crime, I'm going to ask this Court to rule then for the record it cannot be gone into, but we must confine it as to what the witness knows about this record.

Mr. Bareford: I will try to stay within the propriety of the rules of evidence, Judge. I'm not going to try to introduce this record. I'm just asking him if he knows.

The Court: I think that's a proper question. I think it's the only proper question.

Mr. Taylor: Yes. I just wanted to know.

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page 35 }

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RICHARD W. DUVAL, was recalled, and testified further as follows:

CROSS EXAMINATION (Cont'd.)

By Mr. Taylor:

Q. Mr. Duval, I was asking you, sir, what statements did the defendant Dan Langton make to you relative to this accident?

A. Mr. Langton told me that on the night, the date I believe the 16th of June, that as he was proceeding north on U.S. 1, that a man either fell or was struck by another car and fell into his path; he struck the man. He stopped and checked him over; found that he was either seriously injured or dead; went to the telephone and called the police and an ambulance, and he stayed around about a half hour or 40 minutes and he had been to the hospital, the Medical College of Virginia, and then he had, I believe he said he took a bus and went to Orlando or somewhere in Florida.

Q. And does he live in Florida, sir?

A. Yes, sir.

Everett Lavender

Q. What do you know, sir, about his domestic situation?
A. From my conversations with him in the past, and the current, they seemed to have been rather strained.
page 36 } Q. Do you know whether or not he and his wife intended to move and live in Richmond?
A. Yes, sir.
Q. Do you know whether or not they had any plans in that direction?
A. Well, Mr, Langton and I had both, back last May, 1968 or the first part of June, had contacted real estate rental managers relative to him obtaining an apartment in the same area I was in, a three bedroom apartment to move his family into.
Q. Do you know whether or not he was legally separated from his wife, or just physically separated?
A. I don't know that.

Mr. Taylor: That's all.

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page 40 }

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EVERETT LAVENDER, was sworn, and testified in behalf of the Commonwealth, as follows:

DIRECT EXAMINATION

By Mr. Bareford:

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page 41 }

* * * * *

Q. Have you had occasion to see the defendant, Daniel R. Langton, alias Scott Dan Ballard?
A. Yes, sir. First time I seen this gentleman was April 1st.
Q. April 1st what year?
A. This year.
Q. Where did you see him, sir?
A. Lafayette, Louisiana.

Everett Lavender

Q. At the time you saw him, did you have occasion to talk to him, Detective Lavender?

A. Yes, sir, we was driving a car back to New Orleans to get it cleaned.

Q. This was from Lafayette to New Orleans?

A. Yes. I talked to him on the way back, I explained his rights first.

Q. How did you advise him of his rights?

A. I read them.

page 42 } Q. We would like to get this on the record.

Mr. Taylor: We will concede them.

Q. How did you get to that?

A. I read the law requires you have been charged with the following crime, involuntary manslaughter, you have the absolute right to remain silent and that silence will be guarded by the police. Anything you say may be used against you in a Court of law. You have a right to the presence of an attorney during this or any future interviews. If you cannot afford an attorney, one will be appointed for you prior to your being questioned. If you fully understand these rights which I have explained to you, they may be waived and you can, if you so desire, make a statement to us.

Q. Did he seem to understand what you were talking about?

A. He did, yes, sir.

Q. And after you advised him, did he make a statement to you?

A. Yes, sir.

Q. What did he say?

A. If you want, I will read it. He stated that he is kind of glad it's all over with. He is the man we wanted, and he is glad it's over with. The last couple nights is the first time he had a good night's sleep in quite awhile. Then

page 43 } he said on the night of the accident just north of Semmes Avenue, he don't know whether he hit him, or whether someone else hit him and knocked him into him, but he did stop. He got out, looked at the man, went to the telephone and called the police and ambulance. He went back, stood in the crowd. He seen the police officer come up. He heard one man make a statement it sure wasn't his fault, the man walked into his auto, but he did not get the man's name. He stayed for awhile; when the ambulance ar-

rived and took the man to the hospital, he got a ride to the hospital. He asked the doctor a question, how is that man that got hit in the accident in south Richmond. He said, the doctor said d.o.a. He asked what does that mean, he said dead on arrival. He left the Medical College Hospital and caught a bus out of the city.

Q. Is that all?

A. Yes, sir.

Mr. Bareford: Answer Mr. Taylor.

CROSS EXAMINATION

By Mr. Taylor:

Q. Detective Lavender, do you remember whether he said anything about his family situation to you during that time?

page 44 } A. Well, he said one time he had domestic trouble, and he was going to Florida, but he didn't say he left for Florida when he left from the bus terminal or not.

Q. Was Mr. Lanton cooperative with you?

A. Yes, sir, every way.

* * * * *

page 45 } REDIRECT EXAMINATION

By Mr. Bareford:

Q. Detective Cook, from your investigation, has the defendant Daniel R. Langton ever been convicted of a felony?

A. Yes, sir.

* * * * *

page 46 } Mr. Taylor: If His Honor please, of course at this time we respectfully move this Court to strike the Commonwealth's evidence and to release the defendant, and we base our motion primarily on the statutory elements of this offense, and what evidence has been heard by this Court already.

The crime is under 46.1-76 of the Code of Virginia, and as it says under Number 1, that the defendant must fail to stop. There is no evidence before this Court that the defendant did not stop. In fact all the evidence shows that he did stop.

Secondly, the defendant must fail to give a police officer his name, address, license number and registration number

of his car. The evidence before this Court so far is that the defendant went to a phone booth and called the police and the ambulance, and within about a 25 minute period, the ambulance arrived, and within about a 20 minute period, the police arrived.

The police department, according to Detective Cook's testimony, has no record of such a call being made, but according to one witness, and this evidence was brought in, one witness did see the defendant or the driver of this car go to a phone booth, so obviously a call was made. He says he made a call, and that has come in by way of two Commonwealth's witnesses.

Now the Officer has testified that sometimes in the police department a record is not made of calls, and so
page 47 } there is no contradictory evidence to show that he didn't make the call.

I respectfully point out to the Court the burden is on the Commonwealth to prove that the defendant failed to do the things that he is required to do under the statute, and the Commonwealth has not borne the burden of one, showing that he didn't stop and two, that he didn't call the police and give the records and information, and in fact all of the evidence is to the contrary, he did, and the third requirement is he give reasonable assistance. All of the evidence is he did give reasonable assistance; he called the ambulance, he waited according to Mr. Duval's testimony about 30 or 50 minutes until the ambulance arrived, and he went to the Medical College of Virginia, and he found out how he was at that point and at that point the defendant left the City of Richmond.

If Your Honor please, the statute language is very explicit, we feel the Commonwealth has not borne the burden of proof by evidence beyond a reasonable doubt that he failed to do these things, and we respectfully move the Court to strike the evidence.

Mr. Bareford: Well, Judge, I think the evidence is pretty clear. The evidence is he made a phone call. Of course the police department does not have any record, but the duty is on this man to positively identify himself with
page 48 } the police or with the injured person, and he hasn't done it, or to render aid, he hasn't done that either. If he identified himself, the evidence is we arrested somebody else originally. The evidence is he took flight and avoided arrest.

The Court: Motion overruled, Mr. Taylor.

Mr. Taylor: Note my exception.

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page 51 }

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The Court: Any motion, Mr. Taylor?

Mr. Taylor: Yes, Your Honor. If Your Honor please, we would respectfully move the Court to set the jury's verdict aside as being contrary to the law and the evidence and we would also ask the Court to set the verdict aside on the grounds that the case should not have been submitted to the jury, and that the motion to strike should have been sustained.

We respectfully ask the Court to suspend the execution of sentence in this case for a period of 60 days, until such time it can be determined whether or not this defendant will note an appeal of the case. We respectfully ask the Court permission to post an appeal bond in the case page 52 } until it can be determined whether or not an appeal will be taken.

The Court: Motion overruled. I will get to your motion about suspending it in a moment. Have you anything you wish to say for yourself before the Court pronounces judgment in accordance with the law?

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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