CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
OCT 20 1978
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0567

JIMMY DAVIS,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

APPENDIX

J. Gray Lawrence, Jr.
HOWELL, ANNINOS, DAUGHERTY & BROWN
808 Maritime Tower
Norfolk, Virginia 23510
Counsel for Appellant

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Information filed November 15, 1977

INFORMATION

BE IT REMEMBERED that Joseph H. Campbell, Attorney for the Commonwealth for the said City of Norfolk, on this day gave the said Court here to understand and be informed that on the 2nd day of October, 1977, he received the certified transcripts or abstracts of the conviction record as maintained in the Office of the Division of Motor Vehicles, Richmond, Virginia of JIMMY DAVIS, copies of which are attached hereto.

ACCORDINGLY, it is alleged that on the 5th day of July, 1977, in the said City of Norfolk said JIMMY DAVIS was convicted of Speeding which said conviction is subsequent to June 28, 1968, and within ten years of all other offenses included in the aforementioned transcripts, in violation of Section 46.1-387.2 of the Code of Virginia of 1950, as amended.

WHEREFORE, the said Attorney for the Commonwealth prays that this Honorable Court shall enter an Order, which incorporates the aforesaid transcripts or abstracts, and direct the same to the said JIMMY DAVIS requiring the said JIMMY DAVIS to appear on the 27th day of January, 1978, and show cause why he should not be barred from operating a motor vehicle on the highways of this State, a copy of such show cause order and such transcripts or abstracts to be served on the said JIMMY DAVIS in the manner prescribed by law for the service of such notices.

ORDER

THIS DAY came Joseph H. Campbell, the Attorney for the Commonwealth and advised the Court that an information was filed in the Circuit Court of the City of Norfolk, on the 9th day of November, 1977, requesting that JIMMY DAVIS be barred from operating a motor vehicle on the highways of this State, since the said JIMMY DAVIS was convicted of Speeding on the 5th day of July, 1977, in the City of Norfolk, Virginia and which said conviction is subsequent to June 28, 1968, and within ten years of all offenses included in the certified transcripts or abstracts of the conviction record maintained in the Office of the Division of Motor Vehicles, Richmond, Virginia, relating to the said JIMMY DAVIS and in violation of Section 46.1-387.2 of the Code of Virginia of 1950, as amended.

It appearing to the Court that said Information is in proper form, it is therefore Ordered that a certified copy of this Order together with a certified transcripts or abstracts of conviction record maintained in the Office of the Division of Motor Vehicles, Richmond, Virginia, relating to the said JIMMY DAVIS be served upon the said JIMMY DAVIS, 2640 Monrovia Drive, Norfolk, Virginia, ordering him to appear in Circuit Court of the City of Norfolk, on the 27th day of January, 1978 at 10:00 A.M. to show cause why the said JIMMY DAVIS should not be barred from operating a motor vehicle on the highways of this State, in accordance with Section 46.1-387.2 of the Code of Virginia of 1950, as amended.

JIMMY DAVIS, 2640 Monrovia Drive, in the City of Norfolk,

Please Take Notice that the foregoing Order will be published once a week for four successive weeks in the Virginia Observer, a newspaper having a general circulation in the City of Norfolk.

VIRGINIA: IN THE OFFICE OF THE DIVISION OF MOTOR VEHICLES AT RICHMOND

I, H. W. RANSON, Evaluator of the Driver Licensing and Information Department, of the Division of Motor Vehicles, Commonwealth of Virginia, being duly designated by the Commissioner for the purpose of attesting and certifying pursuant to the provisions of Section 46.1-34.1 of the Code of Virginia (1950), as amended, do hereby certify as required by Section 46.1-387.3 of the Code of Virginia (1950), as amended, that the attached are true copies of:

Drivers License Record Check received from the Division of Motor Vehicles of the State of North Carolina, certifying that Jimmy Davis, 1631E Call St., Tallahase, Fl., was convicted in the District Court of Jackson, North Carolina, on March 26, 1975, of "DR WHILE INTOX," in the District Court of Jackson, North Carolina, on August 27, 1975, of "DR WHILE INTOX," and in the District Court of Winton, North Carolina, on August 29, 1975, of "SPEEDING 67/55."

Abstract of Conviction received from the Municipal Court, Part II, of the City of Norfolk, Va., certifying that Jimmy Davis, 2720 Fabian St., Norfolk, Va., was convicted in that court on April 29, 1975, of "Speeding 42/30."

Official Summons and Arrest Report received from the State of South Carolina, certifying that Jimmy (None) Davis, 625 Chapel St., Norfolk, Va. 23504, was convicted in that State on February 23, 1976, of "Driving Under The Inf. Of Intoxicants."

Order of Revocation and Suspension dated May 14, 1976, issued against Mr. Jimmy Davis, 625 Chapel St., Norfolk, Virginia, as result of his conviction of DRIVING WHILE INTOXICATED on February 23, 1976.

Abstract of Conviction received from the Norfolk General District Court, (Traffic Division), of the City of Norfolk, certifying that Jimmy Davis, 2640 Monrovia Drive, Norfolk, Va., was convicted in that court on July 5, 1977, of "Speeding 37/25."

Order of Revocation and Suspension dated October 7, 1977, issued against Mr. Jimmy Davis, 2640 Monrovia Dr., Norfolk, Va. 23504, as result of his convictions of DRIVING WHILE INTOXICATED on March 26, 1975, August 27, 1975, and February 23, 1976.

which are on file and of record in this office.

It is further certified that according to the records of the Division of Motor Vehicles the most recent address of Jimmy Davis is 2640 Monrovia Drive, Norfolk, Virginia 23504.

GIVEN UNDER MY HAND and under the Seal of the Division of Motor Vehicles this 1st day of November, 1977.

NORTH CAROLINA DIVISION OF MOTOR VEHICLES

DRIVERS LICENSE RECORD CHECK FOR ENFORCEMENT AGENCIES

NAME AND ADDRESS	LICENSE NUMBER	RACE	OPERATOR RESTRICTION CODE	OPERATOR ISSUE DATE MTH DAY YR	OPERATOR DUPLICATE DATE MTH DAY YR	OPERATOR EXPIRATION DATE MTH DAY YR	SEARCH DATE
JIMMY DAVIS 1631E CALL ST TALLAHASE, FL.		NEGRO					SEP. 13,1977
	09 27 41 MTH DAY YR BIRTH DATE	MALE SEX	CHAUFFEUR RESTRICTION CODE	MTH DAY YR CHAUFFEUR ISSUE DATE	MTH DAY YR CHAUFFEUR DUPLICATE DATE	MTH DAY YR CHAUFFEUR EXPIRATION DATE	01 PAGE NUMBER

MAIL DATE OF SUSPENSION MTH DAY YR	EFFECTIVE DATE OF SUSPENSION MTH DAY YR	DATE ELIGIBLE FOR REINSTATEMENT MTH DAY YR	SUSPENSION OR REVOCATION	NATURE OF RECORD OR REASON FOR SUSPENSION OR REVOCATION	OCCURRENCE DATE MTH DAY YR	CONVICTION DATE MTH DAY YR	COURT LOCATION	COURT TYPE
				ORDER UNCLAIMED	10 09 75			
09 29 75	08 27 75	08 27 79	REVOCATION	DRIVING UNDER THE INFLUENCE 2ND OFFENSE-G.S.20-17-2 & 20-190				
				ORDER UNCLAIMED	09 23 75			
09 11 75	09 26 75	INDEF.	SUSPENSION	FAILURE TO DEPOSIT SECURITY-G.S.20-279.5				
				SPEEDING 67/55	08 29 75	08 29 75	WINTON	DISTRICT
				DR WHILE INTOX BOND FORFEITUR	05 31 75	08 27 75	JACKSON	DISTRICT
				ORDER UNCLAIMED	05 13 75			
05 01 75	05 11 75	05 11 76	REVOCATION	DRIVING UNDER THE INFLUENCE-G.S.20-17-2				

Department of Motor Vehicles SEP 20 1977 VIRGINIA

MOTOR VEHICLES SEP 20 1977

I certify that the foregoing is a true copy of the Driver's License record of the within named person on file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed: Robert V. Hocutt, Jr.
Director, Driver License Section

SEP 21 1977

** THIS DRIVING RECORD DOES NOT INCLUDE ACCIDENTS. THIS INFORMATION MAY BE OBTAINED FROM-THE TRAFFIC RECORDS SECTION OF THE DIVISION OF MOTOR VEHICLES, RALEIGH,N.C., 27611.

7.

NORTH CAROLINA DIVISION OF MOTOR VEHICLES

DRIVERS LICENSE RECORD CHECK FOR ENFORCEMENT AGENCIES

NAME AND ADDRESS	LICENSE NUMBER	RACE	OPERATOR RESTRICTION CODE	OPERATOR ISSUE DATE MTH DAY YR	OPERATOR DUPLICATE DATE MTH DAY YR	OPERATOR EXPIRATION DATE MTH DAY YR	SEARCH DATE
JIMMY DAVIS 1631E CALL ST TALLAHASE, FL.		NEGRO					SEP. 13,1977.
	09 27 41 MTH DAY YR BIRTH DATE	MALE SEX	CHAUFFEUR RESTRICTION CODE	MTH DAY YR CHAUFFEUR ISSUE DATE	MTH DAY YR CHAUFFEUR DUPLICATE DATE	MTH DAY YR CHAUFFEUR EXPIRATION DATE	02 PAGE NUMBER

MAIL DATE OF SUSPENSION MTH DAY YR	EFFECTIVE DATE OF SUSPENSION MTH DAY YR	DATE ELIGIBLE FOR REINSTATEMENT MTH DAY YR	SUSPENSION OR REVOCATION	NATURE OF RECORD OR REASON FOR SUSPENSION OR REVOCATION	OCCURRENCE DATE MTH DAY YR	CONVICTION DATE MTH DAY YR	COURT LOCATION	COURT TYPE
				DR WHILE INTOX	03 08 75	03 26 75	JACKSON	DISTRICT

SEP 20 1977 VIRGINIA

I certify that the foregoing is a true copy of the Driver's License record of the within named person on file in the Driver License Section of the N.C. Division of Motor Vehicles.

Signed Zeb V. Hewitt, Jr.
Director, Driver License Section

SEP 19 1977

** THIS DRIVING RECORD DOES NOT INCLUDE ACCIDENTS. THIS INFORMATION MAY BE OBTAINED FROM-
THE TRAFFIC RECORDS SECTION OF THE DIVISION OF MOTOR VEHICLES. RALEIGH,N.C., 27611.

751420976

DAVIS JIMMY

2720 FABIAN ST.

NORFOLK, VA

RACE	SEX	WEIGHT	HEIGHT FT	IN	CODE
B	M		5	6	

EYES	HAIR	BORN	MO.	DAY	YEAR
BR	BK		9	27	41

VEH	YEAR	MAKE	TYPE
	67	FORD	4DR

VEHICLE LICENSE NUMBER	YEAR	STATE
FVE 400	75	VA

AMPHB OCCUPATION SLMALONE
ELECTRICIAN HELPER

INSERT FIRST NAME FIRST AND COMPLETE ADDRESS IF OPERATOR DOES NOT HAVE AN EMBOSSED OPERATORS' OR CHAUFFEURS LICENSE

OPERATORS OR CHAUFFEURS LICENSE NUMBER: D120-420-41-347-061

OFFENSE CHARGED: Speeding 42/30R

JURISDICTION OF OFFENSE: Norfolk, Va 117

LOCATION OF OFFENSE	DATE	TIME	DAY OF WEEK	WEATHER
1500 BLK VA BEACH BLVD	4-4-75	730C	FRI	CLEAR

STREET OR ROUTE NO.	DIRECTION	NO. LANES	LOCATION OF ARREST
	E	4D	

ARRESTING OFFICER: LT Bennett

CODE OR BADGE: CATS

DATE OF TRIAL: 4/29/75

PLEA:

CONVICTED OF: Speeding 42/30

SENTENCE: 10.00 COSTS: 1.50

PERIOD LICENSE SUSP.

LICENSE CARD SURRENDERED YES NO

CITY OF NORFOLK, VA.

NAME OF COURT: Municipal Court Part II

MAY 1 1975

44-47 CONV. CODE

48 CHET

This copy is filed by the Commonwealth of Virginia

7 0 1 2 0 0 0 1 7

OFFICIAL SUMMONS AND ARREST REPORT

STATE OF SOUTH CAROLINA

CITY OR COUNTY OF [illegible] VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Simon	(non)	DAVIS

STREET AND NO.	CITY	STATE
61 CHAPEL ST	Norfolk	VA

OCCUPATION OF DRIVER	STATE LICENSED	DRIVER'S LICENSE NO.
CONSTRUCTION	VA	[illegible]

VEHICLE LICENSE NO.	State	Mk. of Veh.	Year	Auto	Truck	Comb.
FVE 410	VA	FORD	67	Motorcycle		Other

YOU ARE SUMMONED TO APPEAR FOR TRIAL OR

NAME OF TRIAL OFFICER	STREET AND NO.	CITY
Brodley	Town Hall	Norfolk

DATE OF TRIAL	TIME OF TRIAL	STATUTE OR ORDINANCE NO.
04 22 1976	10:00 A.M. P.M.	46-343

NATURE OF OFFENSE

Driving under the influence of intoxicants

OWNER OF VEHICLE	DATE OF ARREST
Same as above	02 22 1976

ADDRESS OF OWNER	DATE OF VIOLATION
Same as above	02 22 1976

BAIL	WEATHER	ATTITUDE	COUNTY
[illegible]	Good	Good	Norfolk

NAME OF OFFICER	RANK	BADGE	DEPARTMENT
[illegible]	[illegible]	[illegible]	[illegible]

Offense Detected By: Personal ☐ Mechanical ☐

DAY	S	M	T	W	T	F	S
	1	2	3	4	5	6	7

DATE BAIL REC'D BY 2 28 1976 [illegible]

TIME OF VIOLATION: 1 A.M. 2 P.M.

CASE BEFORE

County Judge ☐ Magistrate ☐ Recorder-Mayor ☑

Federal Judge ☐ Mil. Court ☐ State Court ☐

DISTANCE IN FEET FROM NEAREST INTERSECTION

DISPOSITION

Not Guilty ☐ Forfeited Bail ☐ Tried in Absence ☐

Nolle Prossed ☐ Sent Higher Ct. ☐ Turned to Mil. ☐

Guilty ☑ Change of Venue ☐

Miles	N	E	S	W
	1	2	3	4

DESCRIPTION OF ACCUSED

Race	Sex	Birthday	Ht.	Hair	Wt.	Eyes
N	M	9/27/41	5'8"	Blk	165	Brn

ON HWY. NO.	CITY
60	[illegible]

OFFENSE CODE

Sentence of Court	Jail	Susp.	Con't. To
100-30			

Committed To	Arrest as Result of Accident
	No

Test Refused | Blood Alcohol Level

Amt. of Fine	Amt. Susp.
$100.00	$ —

Certified Correct [illegible] Date 2 25

H. B. SMITH APR 21 1976

Division of Motor Vehicles RECEIVED APR 21 1976 VIRGINIA

Certified to be a true and correct copy of the original record on file with the State Highway Department.

[illegible]

E. P. AUSTIN, JR., Director
Motor Vehicle Division

$25 REINSTATEMENT FEE
RECEIPT NO. 288005 DTD. 8/22/77
CLERK 8/30/77
DATE

ORDER OF REVOCATION AND SUSPENSION

MR. JIMMY DAVIS
625 CHAPEL ST
NORFOLK, VIRGINIA

CL NO: NO RECORD
CL NO: 493444061
LIC. PLATE(S): ANY ISSUED IN YOUR NAME

YOUR PRIVILEGE TO OPERATE MOTOR VEHICLES IN VIRGINIA IS HEREBY REVOKED EFFECTIVE MAY 14, 1976, BECAUSE OF THE FOLLOWING CONVICTION (S):

12-23-76 DRIVING WHILE INTOXICATED COURT SOUTH CAROLINA

THE REVOCATION WILL END ON OCTOBER 15, 1976, HOWEVER, THE REVOCATION PORTION OF THIS ORDER WILL BE TERMINATED UPON RECEIPT OF EVIDENCE THAT THE PERIOD OF REVOCATION IMPOSED BY SOUTH CAROLINA HAS TERMINATED PROVIDED YOU HAVE PAID A FEE OF $25 FOR REINSTATEMENT OF YOUR PRIVILEGE AND ESTABLISHED PROOF OF FINANCIAL RESPONSIBILITY.

YOUR PRIVILEGE TO REGISTER MOTOR VEHICLES IN VIRGINIA IS HEREBY SUSPENDED EFFECTIVE MAY 14, 1976, TO CONTINUE UNTIL YOU:

1. PAY TO THIS DIVISION A FEE OF $25 FOR REINSTATEMENT OF YOUR REGISTRATION PRIVILEGE, (ONLY ONE REINSTATEMENT FEE REQUIRED BY THIS ORDER. YOUR CHECK OR MONEY ORDER SHOULD BE MADE PAYABLE TO THE DIVISION OF MOTOR VEHICLES AND MAILED TO THE ABOVE ADDRESS.)

AND

2. ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE. (PROOF MAY BE ESTABLISHED BY HAVING AN AUTOMOBILE LIABILITY INSURANCE COMPANY THAT IS LICENSED TO DO BUSINESS IN VIRGINIA FILE A CERTIFICATE OF INSURANCE, FORM SR 22, WITH THIS DIVISION.)

PLEASE RETURN ANY DRIVER'S LICENSE(S), REGISTRATION CERTIFICATE(S) AND LICENSE PLATES ISSUED BY THIS DIVISION IN YOUR NAME IN THE ATTACHED ENVELOPE. IT WILL BE UNLAWFUL FOR YOU TO OPERATE MOTOR VEHICLES IN VIRGINIA UNTIL THIS DIVISION REINSTATES YOUR OPERATING PRIVILEGE.

ISSUED IN THE OFFICE OF THE COMMISSIONER OF THE DIVISION OF MOTOR VEHICLES, RICHMOND, VIRGINIA, MAY 14, 1976, AS REQUIRED BY SECTIONS 46.1-350, 46.1-351, 46.1-357, 46.1-417, 46.1-418, 46.1-438(C) AND 46.1-466 OF THE VIRGINIA CODE.

VERN L. HILL, COMMISSIONER

BY W. L. McLane
MANAGER
DRIVER IMPROVEMENT DEPARTMENT

TELEPHONE NO: (804) 786-6301

MAY 13 1976

CC: FL D120-420-41-347-001
9/27/41 M 165 5-00 BK BK

REV. 7-1-75 D12-0501

ABSTRACT OF CONVICTION

(Section 46.1-414, Code of Virginia, as amended)

To
COMMONWEALTH OF VIRGINIA
DIVISION OF MOTOR VEHICLES

of Jimmy Davis
[illegible] Tarrenna Drive
Norfolk, VA

Address of Defendant (Street and Number, If Any)

60-71 FOR RESID

Defendant's Operator's or Chauffeur's License Number: SC 3443173 (Give Name of State)

Vehicle Lic. No.: N/A (Give Name of State)

Offense Charged in Warrant: Speeding

Date of Offense: [illegible]

Date of Conviction: 7/25/77

Plea of Guilty or Not Guilty:

Defendant Convicted of: Speeding 37/25

Fine Imposed: Costs

Appeal Taken:

Was License Suspended: No

Period of Suspension from Date of Conviction:

Was License Paid Surrendered:

Name of Officer Making Arrest: E. H. Rohpflin

Notice of Court:

Jurisdiction, County, City, Town of: CITY OF [illegible]

Signature of the Judge or Clerk of the Court: [illegible]

Date of Report: [illegible]

THIS ABSTRACT IS FILED BY THE JUDGE OR THE CLERK OF THE COURT HAVING JURISDICTION OF THE OFFENSE PURSUANT TO SECTION 46.1-413 OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

46-67 CONV CODE | CONV CODE | 66-61 CT SUBP | 66-64 | 66-65

OL 16-8 REV. 6/64

DIVISION OF MOTOR VEHICLES

Richmond, Virginia

See Prev Order

12.

ORDER OF REVOCATION AND SUSPENSION

MR. JIMMY DAVIS
2640 MONROVIA DR
NORFOLK, VA 23504

CL NO: 493444061
CL NO: NO RECORD
LIC. PLATE(S): NO ACTION

COPY

YOUR PRIVILEGE TO OPERATE MOTOR VEHICLES IN VIRGINIA IS HEREBY REVOKED PERMANENTLY EFFECTIVE OCTOBER 07, 1977, BECAUSE OF THE FOLLOWING CONVICTION(S):

02-23-76	DRIVING WHILE INTOXICATED	COURT SOUTH CAROLINA
06-27-75	DRIVING WHILE INTOXICATED	COURT NORTH CAROLINA
03-26-75	DRIVING WHILE INTOXICATED	COURT NORTH CAROLINA

HOWEVER, ON OR AFTER FEBRUARY 23, 1981, YOU MAY PETITION ANY CIRCUIT COURT HAVING JURISDICTION FOR THE REINSTATEMENT OF YOUR OPERATING PRIVILEGE, PROVIDED YOU HAVE PAID TO THIS DIVISION A FEE OF $25 FOR REINSTATEMENT OF YOUR PRIVILEGE AND ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

YOUR PRIVILEGE TO REGISTER MOTOR VEHICLES IN VIRGINIA IS HEREBY SUSPENDED EFFECTIVE OCTOBER 07, 1977, TO CONTINUE UNTIL YOU:

1. PAY A $25 REINSTATEMENT FEE, (ONLY ONE REINSTATEMENT FEE REQUIRED BY THIS ORDER. YOUR CHECK OR MONEY ORDER SHOULD BE MADE PAYABLE TO THE DIVISION OF MOTOR VEHICLES AND MAILED TO THE ABOVE ADDRESS.)

AND

2. ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE. (PROOF MAY BE ESTABLISHED BY HAVING AN AUTOMOBILE LIABILITY INSURANCE COMPANY THAT IS LICENSED TO DO BUSINESS IN VIRGINIA FILE A CERTIFICATE OF INSURANCE, FORM SR 22, WITH THIS DIVISION.)

PLEASE RETURN ANY DRIVER'S LICENSE(S), REGISTRATION CERTIFICATE(S) AND LICENSE PLATES ISSUED BY THIS DIVISION IN YOUR NAME IN THE ATTACHED ENVELOPE. IF YOU FAIL TO SURRENDER YOUR LICENSE(S) AND A REPRESENTATIVE OF THE DIVISION OF MOTOR VEHICLES IS REQUIRED TO SERVE THIS ORDER, AN ADDITIONAL $10 FEE MUST BE PAID BEFORE THE SUSPENSION MAY BE REMOVED.

ISSUED IN THE OFFICE OF THE COMMISSIONER OF THE DIVISION OF MOTOR VEHICLES, RICHMOND, VIRGINIA, OCTOBER 07, 1977, AS REQUIRED BY SECTIONS 46.1-350, 46.1-351, 46.1-357, 46.1-418, 46.1-421(B) AND 46.1-438(C) OF THE VIRGINIA CODE.

VERN L. HILL, COMMISSIONER

BY W. C. McLane MANAGER
DRIVER IMPROVEMENT DEPARTMENT

TELEPHONE NO: (804) 786-8301

B. B. LEWIS
Division of Motor Vehicles
OCT 7 1977
VIRGINIA

CC: S.C.
CC: N.C.
CC: FL 0120-420-41-347-061
9/27/41 M 160 5-00 BK BR

REV. 7-1-76 013-0503 w/photo

Court's opinion letter to counsel filed February 2, 1978

FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

EDWARD L. RYAN, JR.
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

February 2, 1978

J. Gray Lawrence, Jr., Esquire
Howell, Anninos, Daugherty & Brown
808 Maritime Tower
Norfolk, Virginia 23510

Re: Commonwealth v. Jimmy Davis
Case No. L-77-1940

Dear Mr. Lawrence:

This habitual offender proceeding is a civil matter and if defendant has any defenses thereto, the burden of going forward with the evidence and proof is on him. If the foreign laws are not in substantial conformity with Virginia law, then defendant must so show. This would present no great hardship for the defendant as this court may take judicial notice of foreign laws and examine into them. Code § 8.01-386 Cf. Code § 46.1-387.3.

The Commonwealth may present an order for entry, declaring defendant an habitual offender and saving exceptions to defendant.

Sincerely yours,

E. L. Ryan Jr.

Edward L. Ryan, Jr.
Judge

ELRJr:meg

cc: John Zydron, Esquire
Assistant Commonwealth's Attorney

Order complained of filed February 3, 1978

ORDER

This cause came on the 3rd day of February ,19 78 pursuant to a continuance from the 27th day of January, 1978 to be heard upon the information heretofore filed by the Attorney for the Commonwealth, pursuant to Section 46.1-387.4 of the Code of Virginia of 1950, as amended, to show cause why the said defendant should not be barred from operating a motor vehicle on the highways of this State. And it appearing to the Court that the defendant has been duly cited to appear and could not be served with process and that the aforesaid information has been published one a week for four successive weeks in a newspaper with general circulation in the City of Norfolk, And it further appearing that the defendant was present in proper person, and by counsel and none of the parties damanding a jury, the whole matter of law and fact was heard and determined by the Court. And it further appearing that the said defendant was previously conviced of the said offenses in the abstracts as shown in Exhibit C-1 and that the date of the offense most recently committed occurred on and after June 28, 1968, and within ten years of the date of the other aforedaid offenses and it appearing to the Court that the defendant is an habitual offender, pursuant to Section 46.1-387.2 of the Code of Virginia of 1950, as amended, it it Ordered that JIMMY DAVIS , the said defendant, is an habitual offender and shall not operate a

motor vehicle on the highways of the Commonwealth of Virginia for a period of Ten Years from the date of this Order and until the privilege of the said defendant to operate a motor vehicle has been restored by an Order of the Court of record entered in a proceeding as provided by law pursuant to the statutes made and provided. And the defendant is further Ordered to surrender to the Court all licenses and permits to operate a motor vehicle on the highways of this State for a disposal in the manner provided in Section 46.1-425 of the Code of Virginia of 1950, as amended.

Let the Clerk of this Court certify a copy of this Order to the Division of Motor Vehicles which shall become a part of the permanent record of the Division of Motor Vehicles.

It is further Ordered by the Court that the said defendant pay the costs of these proceedings in the sum of $ 64.30

To all of which action of the Court, the defendant, by counsel, notes his exception.

STATEMENT OF FACTS, TESTIMONY, OR OTHER INCIDENTS OF THE CASE

The proceeding to declare Jimmy Davis, the defendant herein, a habitual offender pursuant to Va. Code §46.1-387.2 came on for hearing before the Circuit Court of the City of Norfolk on January 27, 1978.

The Commonwealth offered in evidence certified transcripts or abstracts of convictions, showing or purporting to show that the defendant was convicted of, inter alia, the following offenses at the time and places indicated:

Offense	Time	Court in Which Convicted
"DR WHILE INTOX"	March 26, 1975	North Carolina
"DR WHILE INTOX"	August 27, 1975	North Carolina
"Driving Under The Inf. Of Intoxicants"	February 23, 1976	South Carolina

The Commonwealth rested without offering any additional evidence. Counsel for the defendant moved to strike on the ground that the Commonwealth had failed to prove, as required by Va. Code §46.1-387.2(c), that the North Carolina and South Carolina statutes under which the defendant had been convicted of "DR WHILE INTOX" and "Driving Under The Inf. of Intoxicants"

"substantially conformed" to the Virginia statute on the same subject, Va. Code §18.2-266 *et seq*.

The Court took the matter under advisement and, on February 2, 1978, rendered its letter opinion. The order from which an appeal is sought was entered February 3, 1978.

CERTIFIED this ____ day of _____, 1978.

1. The Court erred in ruling that the burden of disproving substantial conformity between the North Carolina and South Carolina statutes under which Davis had been convicted and the Virginia drunk-driving statute was on Davis.

2. The Court erred in failing to sustain Davis' motion to strike the Commonwealth's evidence on the ground that the Commonwealth had not sustained its burden of proving that the said North Carolina and South Carolina statutes under which defendant had been convicted "substantially conformed" to the Virginia drunk-driving statute as required by Code §46.1-387.2(c).

CERTIFICATE

I certify that on the 20th day of October, 1978, I complied with Rule 5:35 by mailing twenty (20) copies of Appellant's appendix to the Clerk of this Court and three (3) copies to T. Marshall Coleman, counsel for the Commonwealth.

J. Gray Lawrence, Jr.