

DEFENSE OF TRAFFIC CASES IN GENERAL DISTRICT COURT

Paul D. Merullo, Presiding Judge
Virginia Beach Bar Association CLE
September 29, 2024

Common traffic charges in Virginia Beach General District Court:

- Reckless Driving, Va. Code 46.2-852 through 46.2-865
- Speeding, Va. Code 46.2-870, et. seq.
- Various other infractions
- Violate learner's permit restrictions, Va. Code 46.2-335
- Driving suspended, Va. Code 46.2-301
- Driving unlicensed, Va. Code 46.2-300
- Driving after being revoked DUI-related, 18.2-272
- Driving without court ordered ignition interlock, Va. Code 18.2-272
- Driving after revoked for multiple DUI convictions, Va. Code 46.2-391
- Driving under the influence, Va. Code 18.2-266, et. seq.

Two common approaches to traffic court representation:

“The Fighter”



Pleads “not guilty”, strives for dismissal, challenges on the merits, wants to hear officer’s evidence, moves to strike when officer fails to establish element of offense, objects to inadmissible evidence.

“The Schmoozer”



Pleads “guilty” or “no contest”, strives for a reduction to a less serious charge or a dismissal based on mitigation such as driver improvement class, insurance, good driving record, good grades, military service and other good character traits.

My observations from the bench: Situations in which defendant found “not guilty” or guilty of lesser offense

- Officer fails to establish necessary element: Venue, i.d. defendant, establish posted speed limit, offense committed within a year, defendant as driver, posting of highway signs, school zone signs
- Officer fails to provide calibration for radar/lidar when asked by defense
- Driving behavior charged as reckless driving does not amount to recklessness (example: defendant was weaving in and out of his lane while following behind slow traffic, eating snack bar while driving and failed to yield right of way which resulted in fatality, accident but no evidence of reckless driving behavior)
- Officer fails to offer DMV transcript in a prosecution for driving suspended/unlicensed/revoked
- DMV transcript does not prove the status as charged (i.e. date of offense does not fall within the period of suspension/revocation, status of revocation not clear from DMV transcript)
- Lack of proof of notice that driver was suspended/revoked, or questionable notice
- Issues with posting of speed limit, school zone signs and other highway signs
- Officer fails to establish statutory elements of a stopped school bus
- Officer did not witness accident and did not subpoena/produce a witness or relate statement of defendant
- Hit and run: no evidence of damage

27429908 VIRGINIA UNIFORM SUMMONS

DEPARTMENT OF STATE POLICE

CASE NO. PT240213-78-00

HEARING DATE AND TIME

PROSECUTING ATTORNEY (NAME)
Louka
 DEFENDANT'S ATTORNEY (NAME)
 NO ATTORNEY
 ATTORNEY WAIVED
 NO ATTY JAIL WAIVED BY CT

YOU ARE SUMMONED TO APPEAR IN THE (CITY OF / COUNTY OF)
Virginia Beach

NAME LAST FIRST MIDDLE
Odoniel, Aaron, Thomas

THE ACCUSED WAS THIS DAY:
 TRIED IN ABSENCE
 PRESENT
 CERTIFIED PURSUANT TO § 19.2-190.1

GENERAL DISTRICT COURT (TRAFFIC) A
 GENERAL DISTRICT COURT (CRIMINAL)
 JUVENILE & DOMESTIC RELATIONS DISTRICT COURT

RES. ADDRESS RES. JURIS.
1336 Linkhorn Cir 12S
CITY/TOWN STATE ZIP
VA Beach VA 23451

THE ACCUSED PLEADED:
 NOT GUILTY
 NOLO CONTENDERE
 GUILTY PREPAYMENT

ADDRESS
2425 Wimmo Pkwy VA Beach VA 23456

RACE SEX D.O.B. HT. WGT. EYES HAIR
W M 03 16 05 5 11 20 BR BR

AND WAS TRIED AND FOUND BY ME:
 FINDING SUFFICIENT-DEFERRED \$
 NOT GUILTY 462862
 GUILTY AS CHARGED
 GUILTY OF imprison
 COMPLIED WITH LAW UNDER \$

ON 14 Jun, 2024 AT 8:30 A.M. P.M.
FOR VIOLATION OF

CDL # (IF CRIMINAL OFFENSE OR NO LICENSE, USE SSN) STATE
A61686713 VA

DESCRIBE CHARGE R.D. Speed (80/55) (Paced)
VA. CODE 46.2-862 LOCAL CODE
 FINDING SUFFICIENT-DEFERRED \$
 NOT GUILTY 462862
 GUILTY AS CHARGED
 GUILTY OF imprison
 COMPLIED WITH LAW UNDER \$

COMMERCIAL MOTOR VEHICLE YES NO
HAZARDOUS MATERIALS YES NO
RESULTED IN FATALITY YES NO
HIGHWAY SAFETY CORRIDOR YES NO

CDL HOLDER YES NO A61686713 STATE VA
VEHICLE YEAR MAKE TYPE LICENSE NO. YEAR STATE
13 Honda 40 TLN7330 25 VA

IN ADDITION I FIND THE ACCUSED WAS:
 DRIVING A COMMERCIAL M.V.
 CARRYING HAZARDOUS MAT.
 A CDL HOLDER

I PROMISE TO APPEAR AT THE TIME AND PLACE SHOWN ABOVE. SIGNING THIS SUMMONS IS NOT AN ADMISSION OF GUILT. I CERTIFY THAT MY CURRENT MAILING ADDRESS IS AS SHOWN BELOW
X SIGNATURE

JURISDICTION OF OFFENSE DATE OF OFFENSE DAY OF WEEK TIME
12S 5-5-24 Sun 1020 P.M.

AND THE OFFENSE:
 RESULTED IN A FATALITY
 WAS IN A HWY. SAFETY COR.
 I ORDER THE CHARGE DISMISSED
 I ORDER A NOLLE PROSEQUI ON COMMONWEALTH'S MOTION

YOU MUST APPEAR AT TRIAL (JUVENILES MUST APPEAR WITH PARENT/LEGAL GUARDIAN).
 YOU MAY AVOID COMING TO COURT ONLY IF THIS BLOCK IS CHECKED AND ALL INSTRUCTIONS ON DEFENDANT'S COPY ARE FOLLOWED.

DIRECTION ACCIDENT WEATHER ROUTE NUMBERS/STREET
EB YES CLR I-264

I IMPOSE THE FOLLOWING SENTENCE:
 FINE CIVIL PENALTY OF \$ 100 WITH \$ _____ SUSPENDED.
 JAIL SENTENCE OF _____ WITH _____ SUSPENDED. CONDITIONED UPON BEING OF GOOD BEHAVIOR AND KEEPING THE PEACE.
 ON PROBATION FOR _____
 DRIVER'S LICENSE SUSPENDED _____
CONSECUTIVE SUSPENSION UNDER §46.2-301 YES NO
 RESTITUTION OF _____ PAYABLE TO _____
BY _____ AS CONDITION OF SUSPENDED SENTENCE.
 OTHER: _____
DATE SEP 05 2024 JUDGE man

ONLY CALL 757-385-8531 IF MORE HELP IS NEEDED.
MAILING ADDRESS: SAME AS ABOVE AT RIGHT CHANGE FROM D.L.
P.O. BOX/STREET CITY/TOWN STATE ZIP
TPB. H. Buren 11511

LOCATION OF OFFENSE: AT Rosemont
ARREST DATE ARREST LOCATION
Same

110/201 FINE	\$ <u>100</u>	121 TIA FEE	\$ _____
114/129/237 CIVIL PENALTY	\$ _____	244 C.H. SECURITY FEE	\$ <u>20</u>
460 FIXED TRAFFIC INFRACTION FEE	\$ <u>61</u>	120/217 CT. APPT. ATTY.	\$ _____
461 FIXED MISDEMEANOR FEE	\$ _____	113 WITNESS FEE	\$ _____
462 FIXED MISDEMEANOR FEE - DRUGS	\$ _____		<u>243</u> <u>5</u>
	\$ _____		<u>165</u> <u>5</u>
	\$ _____	TOTAL	\$ _____
APPEAL BOND \$ _____		109 INTEREST CHARGE	\$ _____
<input type="checkbox"/> APPEAL NOTED ON _____		TOTAL WITH INTEREST	\$ _____
<input type="checkbox"/> APPEAL WITHDRAWN _____			

27429908

Possible reduction to infraction from original charge of Reckless Driving:

Reckless Driving (Class 1 Misdemeanor, 6 DMV demerit points, 11 years on DMV record):

- 46.2-870 Speeding 20+ over (6 DMV demerit points, 5 years on DMV record)
- 46.2-870 Speeding 19 over (4 DMV demerit points, 5 years on DMV record)
- 46.2-870 Speeding 9 over (3 DMV demerit points, 5 years on DMV record)
- 46.2-869 Improper driving (3 DMV demerit points, 3 years on DMV record)
- 46.2-816 Following too closely (4 DMV demerit points, 3 years on DMV record)
- 46.2-804 Fail to obey lane markings (4 DMV demerit points, 3 years on DMV record)
- 46.2-830 Fail to obey highway sign (3 DMV demerit points, 3 years on DMV record)
- 46.2-1003 Defective equipment (non-moving violation, no DMV demerit points)
- 46.2-844 Passing stopped school bus (4 DMV demerit points, 3 years on DMV record)

Practice tip: After presenting your mitigating evidence, tell the judge specifically what you are asking for as an alternative to a reckless driving conviction. Asking for a specific disposition may be more persuasive than simply submitting it to the court for a decision.

Strategies to avoid jail where circumstances typically warrant a jail sentence:

- Appear on behalf of client and ask for “Waive Jail/Trial in Absence”: If judge waives jail and conducts trial in absence, court may not impose active or suspended jail. See, Va. Code 19.2-160. If court denies request for trial in absence, ask judge to continue to one of officer’s future court dates so client can be present.
- Stress unique mitigating factors, examples: Lengthy clean DMV record, age of defendant, traffic school, community service, pseudo-emergency at time of offense.
- Suggest supervised probation in lieu of active jail (CCP can monitor for any new traffic charges)
- Other tips relating to being heard at the beginning or at the end of the docket
- Request a delayed report or weekend jail before noting appeal to avoid client going into custody from the courtroom
- Reduce time in jail for hours by requesting a later time for delayed report (inmates who report at 9:00 a.m. and released from jail just as those who reported 12-hours later at 9 p.m.)

DMV transcripts are routinely admissible and used at trial to prove defendant's licensure status, license history, prior convictions, incidents of suspension/revocation, notice of suspension/revocation.

§ 46.2-215. Certification of certain records and admissibility in evidence.

...Any copy, transcript, photograph, or any certification purporting to be sealed or sealed and signed by the Commissioner or his designee or imprinted with the Commissioner's name **may be admitted as evidence without any proof of the seal or signature or of the official character of the person whose name is signed thereto.** If an issue as to the authenticity of any information transmitted by electronic means is raised, the court shall require that a record attested by the Commissioner or his designee be submitted for admission into evidence.

Practice tip: To prove that a driver's status is suspended/revoked/unlicensed, it is not sufficient for officer to merely testify that he ran the driver's information or that the driver "did not have a license". A DMV transcript is almost always necessary to prove the defendant's status.

II. SAMPLE DRIVER HISTORY TRANSCRIPT

Transcript Type and Production Date

Request Information


Transcript Highlights

Customer Information

License Status Information

Prior Name and/or Address Information

License History



Virginia Department of Motor Vehicles
P.O. Box 27412 Richmond, Va. 23269-0001

TRANSCRIPT OF DRIVER HISTORY RECORD AS OF 09/07/2012 PAGE 1
LAW ENFORCEMENT

REQUESTED FOR: VA DEPARTMENT OF MOTOR VEHICLES
2300 WEST BROAD STREET
RICHMOND, VA 23220 TRIAL DATE REQUEST RECEIVED
02/07/2013

REQUESTED BY: VA DEPARTMENT OF MOTOR VEHICLES
2300 WEST BROAD STREET
RICHMOND, VA 23220 TRIAL DATE REQUEST RECEIVED
02/07/2013

INFORMATION PROVIDED BY REQUESTOR: T00-00-0000

*** ATTENTION: FR REQUIRED - DOUBLE MINIMUM LIMITS FR44 ***

*** ATTENTION: PREVIOUS DWI ***

*** COURT ORDERED ID THEFT PASSPORT ISSUED ***

RICHMOND, VIRGINIA ANNE BIRTH DATE: 01/14/1972 SEX: FEMALE
15008 REHOBOTH RD WEIGHT: 100 HEIGHT: 5 00
DOSWELL, VA 23047-2174 EYES: BROWN HAIR: BROWN

RESIDENT JURISDICTION: HANOVER COUNTY
ADDR CHG DATE: 07/16/2012

CUSTOMER NUMBER: T00-00-0000

DRIVER LICENSE STATUS: NOT LICENSED COURT RESTRICTION(S): YES
COMMERCIAL DRIVER STATUS: REVOKED/DISQUALIFIED + C DRIVER POINT BALANCE: -19

COURT RESTRICTIONS: TO/FROM WORK TO/FROM ASAP MEETINGS
DURING WORKING HOURS IGNITION INTERLOCK

PRIOR NAMES 02/17/2002 RICHMOND, VIRGINIA ANNE
02/11/2002 RICHMOND, VIRGINIA ANNE-LOU
02/11/2002 RICHMOND, VIRGINIA ANN
01/24/2002 RICHMOND, VIRGINIA ANNE

PRIOR ADDRESS 03/23/2012 1732 HOLLAND ROAD
RICHMOND, VA23218
RESIDENT JURISDICTION: AMHERST

DWELLING ADDRESS 06/10/2000 13090 DAWN DR
HALLWOOD, VA23359-2446

CURRENT LICENSE DATE ISSUED: 10/27/2012 EXPIRES: 10/28/2020
LICENSE TYPE: DRIVERS LICENSE ISSUE TYPE: ORIGINAL

PREVIOUS LICENSE DATE ISSUED: 03/04/2010 EXPIRES: 08/31/2014
LICENSE TYPE: DL LEARNER'S PERMIT

CLASS: NONE
ENDORSEMENTS: NONE
RESTRICTIONS: NONE
SURRENDERED: 12/06/2010 SURRENDERED RSN: DL REQUEST

CUSTOMER NUMBER: T00-00-0000 NAME: RICHMOND, VIRGINIA ANNE

CONVICTED ON 07/11/2012 DRIVING WHILE INTOX ALCOHOL, 1ST
OFFENSE DATE: 05/26/2012
JUV & DOM REL CT WINCHESTER CITY
DEMERIT PTS: 6 CODE SECTION: 18.2-266
COUNSEL: INFO NOT AVAILABLE DEFENDANT: PRESENT
SUSP PERIOD: 1 YEAR(S)

COURT RESTRICTIONS:
TO/FROM WORK TO/FROM ASAP MEETINGS
IGNITION INTERLOCK
RESTRICTION BEGIN DATE: 07/20/2012
RESTRICTION END DATE: 07/10/2013
ASAP ENROLL DATE: ASAP COMPLETED DATE:
ASAP REVOKED DATE:
CDL HOLDER: NO

CONVICTED ON 09/01/2012 DRIVING WHILE INTOX ALCOHOL, 1ST
OFFENSE DATE: 08/13/2012
OUT OF STATE COURT: NORTH CAROLINA
DEMERIT PTS: 6
COUNSEL: INFO NOT AVAILABLE DEFENDANT: INFO NOT AVAILABLE
SUSP PERIOD: 1 YEAR(S)
CDL HOLDER: YES

CONVICTED ON 08/10/2005 SPEEDING BUS/RES DIST 15-19 MPH
OFFENSE DATE: 06/13/2005
GENERAL DISTRICT CT ACCOMACK COUNTY
DEMERIT PTS: 4 CODE SECTION: 46.2-874
COUNSEL: NONE DEFENDANT: PRESENT
CDL HOLDER: NO

SUSPENSION ISS: 07/31/2012 EFFECTIVE: 07/11/2012
FOR DD SUSP VASAP/REST 1ST
CONVICTION: 07/11/2012 JUV & DOM REL COURT WINCHESTER CITY
ORDER DELIVERY DATE: ORDER PENDING RESP
IGNITION INTRLOCK INSTALLED: PERIOD:
REMOVAL DATE:

SUSPENSION ISSUE: 04/11/2012 EFFECTIVE: 04/03/2012 TERM: 07/26/2012
FAIL PAY CT FINE/COST/FEES
CONVICTION: 03/19/2012 GENERAL DISTRICT CT WINCHESTER CITY
NOTIFIED: 03/19/2012 BY COURT DC225
NOTIFIED: 05/06/2012 BY LAW ENFORCEMENT (DSA10)
OFFICER CD: 435 JURIS: FREDERICK
ORDER DELIVERY DATE:
COMPLIED WITH THIS ORDER: 07/26/2012

SUSPENSION ISS: 06/25/2012 EFFECTIVE: 07/25/2012
FOR FAIL ANS CITATION EX-VA
ORDER DELIVERY DATE: ORDER 1ST CLS MAIL

DRIVER IMPROVEMENT COMPLETION DATE: 08/02/2012 REASON: VOLUNTARY
DESC: CLINIC CLINIC: SMC

DRIVER IMPROVEMENT ISSUED: 07/24/2012 DI CLINIC REQUIREMENT
EFFECTIVE: 10/22/2012
ACTION: CLINIC INTERVIEW
DMV UPDT: 08/02/2012
NOTICE DELIVERY DATE:
COMPLIED WITH THIS ORDER: 08/02/2012

ACCIDENT ON 04/04/2010 IN PRINCE WILLIAM COUNTY RESULTING
IN PERSONAL INJURY WITH VISIBLE SIGNS OF INJURY
OWNER/OPERATOR: DRIVER AND OWNER

ANY ACCIDENT INFORMATION FURNISHED ON THIS TRANSCRIPT IS NOT
INTENDED, NOR SHOULD BE INTERPRETED TO INDICATE OR PRESUME
FAULT OR NON-FAULT FOR SUCH ACCIDENT.

Practice tip: To be admissible by statute as a DMV Transcript, there must be an attestation similar to the one shown here, signed or imprinted with the name of the DMV Commissioner or his designee.

End of Transcript & Certification

CUSTOMER NUMBER: T00-00-0000 NAME: RICHMOND, VIRGINIA ANNE PAGE 3

THIS IS TO CERTIFY, IN ACCORDANCE WITH SECTION 46.2-215 OF THE CODE OF VIRGINIA, THAT THIS MACHINE PRODUCED TRANSCRIPT, TRANSMITTED BY ELECTRONIC MEANS TO [REDACTED], IS AN ACCURATE DEPICTION OF THE DRIVING RECORD OF [REDACTED] DL NO. [REDACTED] AS MAINTAINED BY THE VIRGINIA DEPARTMENT OF MOTOR VEHICLES AS OF THE DATE PRINTED ABOVE.

GERALD P. LACKEY
COMMISSIONER

PLEASE NOTE: IT IS UNLAWFUL TO USE THE INFORMATION FURNISHED ON THIS TRANSCRIPT FOR ANY PURPOSE OTHER THAN THAT STATED AS YOUR REASON.

THIS ENDS TRANSMISSION.

Other miscellaneous issues:

- Failure to appear, show cause, capias
- Recall of capias
- Client preparation
- Client attire: First impression bias
- Whether to proffer or have client testify
- Officer court dates
- Continuances/Pre-continuances
- Check in and turn in attorney slip
- Attorney fees
- Busy docket/light docket
- Bond for appeal