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

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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:

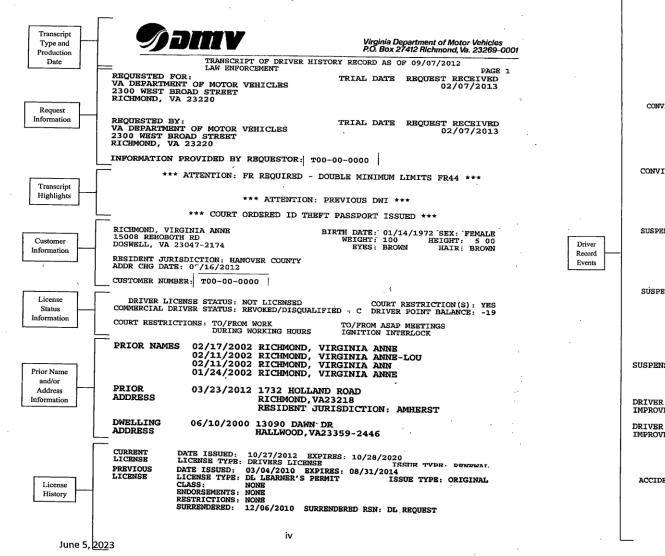
- Appear on behalf of client and ask for "Waive Jail/Trial in Absence": If judge waives jail and conducts trial in absence, court may not impose active or suspended jail. See, Va. Code 19.2-160. If court denies request for trial in absence, ask judge to continue to one of officer's future court dates 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



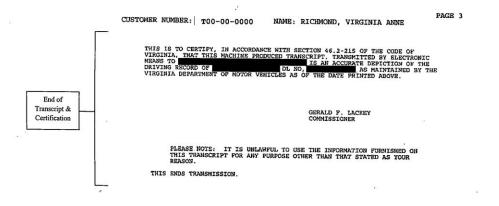
PAGE 2 CUSTOMER NUMBER: TOO-00-0000 NAME: RICHMOND, VIRGINIA ANNE ON 07/11/2012 DRIVING WHILE INTOX ALCOHOL, 1ST CONVICTED OFFENSE DATE: 05/26/2012 JUV & DOM REL CT WINCHESTER CITY CODE SECTION: 18.2-266 DEMERIT PTS: 6 COUNSEL: INFO NOT AVAILABLE DEFENDANT: PRESENT SUSP PERIOD: 1 YEAR(S) COURT RESTRICTIONS: 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 RBL COURT WINCHESTER CITY ORDER DELIVERY DATE: ORDER PENDING RESP IGNITION INTERLOCK 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 COMPLETION DATE: 08/02/2012 REASON: VOLUNTARY IMPROVEMENT DESC: CLINIC CLINIC: SMC ISSUED: 07/24/2012 DI CLINIC REQUIREMENT IMPROVEMENT EFFECTIVE: 10/22/2012 ACTION: CLINIC INTERVIEW DMV UPDTE: 08/02/2012 NOTICE DELIVERY DATE: NOTICE PENDING RESP 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 TRANSCRIFT IS NOT INTENDED, NOR SHOULD BE INTERPRETED TO INDICATE OR FRESUME FAULT OR NON-FAULT FOR SUCH ACCIDENT.

Driver History Transcript Guide

June 5, 2023

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.



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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