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Record No. 5743

In the
Supreme Court of Appeals of Virginia
at Richmond

CLAUDE ROGER ROWLAND

v.

CITY OF RICHMOND

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

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. 5743

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of October, 1963.

CLAUDE ROGER ROWLAND, Plaintiff in error,
against

CITY OF RICHMOND, Defendant in error.

From the Hustings Court of the City of Richmond
W. Moscoe Huntley, Judge

Upon the petition of Claude Roger Rowland a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 25th day of March, 1963, in a prosecution by the City of Richmond 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

* * * * *

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

*To: The Clerk of the Hustings Court of the City of Richmond,
Part I:*

The attorney for Claude Roger Rowland, the defendant in the above-styled case in the Hustings Court of the City of Richmond, Part I, hereby gives notice of appeal from the decision entered in this case on March 25, 1963, and sets forth the following assignments of error:

1. That the Court erred in refusing to grant the defendant's motion to strike the evidence at the conclusion of the Commonwealth's case.
2. That the Court erred in refusing to set aside the verdict and grant a new trial on the grounds that the verdict was contrary to the law and evidence.

LEONARD A. PARIS

Attorney for Claude Roger Rowland

* * * * *

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* * * * *

NOTICE OF TENDERING TRANSCRIPT TO JUDGE

*To: Roland B. Kelley, Assistant Commonwealth's Attorney
for the City of Richmond*

You are hereby notified that on 30 day of April, 1963, at 9:30 A. M., or as soon thereafter as I may be heard, in the Hustings Court of the City of Richmond, Part I, the undersigned will tender to the Honorable Moscoe W. Huntley, Judge, a narrative of the evidence, reduced to writing in the above-styled case, and respectfully ask the Honorable Moscoe W. Huntley, Judge, to certify the same as a true copy of the evidence presented in the above-styled case.

LEONARD A. PARIS

* * * * *

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CITY OF RICHMOND }
Commonwealth of Virginia } To-Wit: No. 6347

TO ANY POLICE OFFICER:

WHEREAS, A. T. Austin has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that Claude R. Rowland did on the 29th day of Jan. 1963.

Did unlawfully operate a certain automobile while he then being under influence of intoxicants or some self administered drug. . . .

These are, therefore, to command you, in the name of the City of Richmond, to apprehend and bring before the Traffic . . . Court of the City of Richmond, the body of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon A. T. Austin. Sgt. V. C. IACOPINELLI PC. Address as witnesses.

Given under my hand and seal, this 29th day of Jan. 1963.

LEONARD J. LANE, [Seal]
Justice of the Peace

(Reverse side)

CITY OF RICHMOND—Commonwealth of Virginia, to-wit:

I, C. W. Lester, a Justice of the Peace in and for the City aforesaid, Commonwealth of Virginia, do certify that Claude R. Rowland, address — and A. A. Bonding Co. Alfred Connie Elkin, as his surety, have this day acknowledged themselves indebted to the City of Richmond in the sum of three hundred Dollars (\$300.00), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the City to be rendered, yet upon this condition: That the said party shall appear before the Traffic Court of the City of Richmond, on the 6th day of February, 1963, at 2 p. m., to answer for the offense with which he/she is charged, and shall not depart thence without the leave of said court; and upon the further

Supreme Court of Appeals of Virginia

condition that he/she shall keep the peace and be of good behavior in the meantime.

Given under my hand, this 30th day of Jan. 1963.

C. W. LESTER, Justice of the Peace.

BAIL FEB. 6th. 1963.

BOND \$300.00 1/29/63.

Docket No. 13141

9:15 P. M./L. J. LANE, J. P.

CITY OF RICHMOND

WARRANT OF ARREST

vs.

CLAUDE R. ROWLAND

3812 HAWTHORNE AVE.

Executed this, the — day of Jan. 29th. 1963, by arresting the within named party, and, by summoning the within named witnesses to appear in Traffic Court _____, 19—.

A. T. AUSTIN

Upon examination of the within charge, I find the accused
Feb. 25, 1963

Guilty, \$200.00 cost, 90 days suspended.

THOS. A. WILLIAMS, JR.
Substitute Judge

T. A. W., JR.

Court 2/25/63.

Form T. C. 7 CS 140918

Asie Gormus agt surety \$300.00

IN TRAFFIC COURT, CITY OF RICHMOND

Feb. 25, 1963.

This is to certify that the within named Claude R. Rowland was this day tried by me for the charge set forth within this warrant, and that upon said trial he, the said Above party was duly convicted of The within charge and sentenced to confinement in the City Jail for a term of 90 days suspended, and to pay a fine \$200.00 dollars and costs 7.25 dollars, from which sentence he, the said Above party appeals to the next term of Hustings Court.

Given under my hand this 25 day of Feb. 1963.

THOMAS A. WILLIAM
Judge of the Traffic Court

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* * * * *

Pleas at the Courthouse of the City of Richmond, before the Hustings Court of the said City, on the 30th day of April, 1963.

Be it remembered that heretofore, to-wit; on the 25th day of March, 1963, the following order was entered, to-wit;

* * * * *

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City and being arraigned he pleaded not guilty to operating a motor vehicle while he then being under the *incluence* of intoxicants or some self-administered drug, as charged. And with the consent of the accused, given in person, and the concurrence of the Court and the Attorney for the City of Richmond, the Court proceeded to hear and determine this case without a jury. And having heard the evidence of the City of Richmond, the said defendant, by counsel, moved the Court to strike the evidence of the City of Richmond as not being sufficient for the finding of a judgment of guilty, which motion the Court doth overrule and the said defendant excepts. And having heard all of the evidence and arguments of counsel, the Court doth find the said defendant guilty as charged and doth assess his fine at two hundred dollars and ascertains his term of confinement in the City Jail at ninety days.

And thereupon the said defendant by counsel, moved the

Court to set aside its judgment as being contrary to the law and the evidence and grant him a new trial, which motion the Court doth also overrule, and to which action of the Court in overruling his said motions the said defendant notes an exception and time is allowed him not exceeding sixty days in which to file his bill of exceptions.

page 4] Whereupon it is considered by the Court that the said Claude R. Rowland pay and satisfy a fine of two hundred dollars and costs and be confined in the City Jail for a term of ninety days, and on his motion the execution of the said jail sentence is suspended during his good behavior for the next twelve months. And it is further ordered that he not operate a motor vehicle for a period of one year.

The said 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 May 28, 1963.

The said defendant then entered into a recognizance in the sum of five hundred dollars with Lyde L. Rowland, 3812 Hawthorne Avenue, as surety, 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 May 28, 1963, and in the meantime keep the peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue. And thereupon the said defendant is released.

* * * * *

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Narrative of testimony on trial of above-styled case
before Honorable W. Moscoe Huntley, Judge

March 25, 1963

Appearances:

Mr. Roland B. Kelley
Assistant Commonwealth's Attorney

Mr. Leonard A. Paris
Attorney for the Defendant

page 6] *The Clerk:* Claude Roger Rowland, charged on January 29, 1963, did unlawfully operate a certain automobile while then being under the influence of intoxicants or some self-administered drug. Do you plead guilty or not guilty?

Claude Roger Rowland: Not guilty (jury waived).
Officer Aubrey T. Austin, Police Department of the City of Richmond, Virginia, being first duly sworn, testified that on January 29, 1963, he received a call to come to the corner of Claremont and Brook Road to investigate an accident. He responded to the call and arrived at the scene at approximately 8:12 P. M. and found that a 1959 Rambler automobile heading East on Claremont had collided with a parked car which was facing West on Claremont. Mr. Rowland admitted driving the 1959 Rambler automobile. He did not know what time the accident happened.

The defendant, Claude Roger Rowland, was sitting in an automobile occupied by two Park Policemen when Officer Austin arrived. He took the defendant over to his own patrol car, and since the defendant appeared to have been drinking, he called Sergeant V. C. *Iocopinelli* of the Richmond Police Department. Sergeant *Iocopinelli* arrived at approximately 8:45 P. M.

The defendant stated that he had drank a fifth of whiskey since 7:30 P. M. all by himself. He also stated that he had drank nothing since the accident. The defendant had a small abrasion on his forehead but it could not be determined how the injury occurred.

Sergeant *Iocopinelli* attempted to give coordination tests but the defendant could not walk well enough.

The defendant was advised of his rights to take a blood test and readily consented. He was taken by Officer Austin to the Medical College of Virginia and the doctor refused to extract any blood from the defendant since the defendant's signature on the hospital's "permission" form was illegible.

(The sheet was not introduced and further evidence of the doctor's statements was objected to).

page 7] *Sergeant V. C. Iocopinelli,* Police Department of the City of Richmond, Virginia, being first duly sworn, testified that he arrived on the scene at about 8:45 P.

M. The defendant was in Officer Austin's car at that time. The defendant had a strong odor of alcohol on his breath, and had a sleepy look in his eyes. He said that he had drunk a fifth of whiskey and two martinis since 7:30 P. M. that evening. He further stated that he had drunk nothing since the accident. The defendant appeared to be coherent.

Sergeant *Iocopinelli* said he attempted to give coordination tests but the defendant could not step away from the car to walk. He placed Mr. Rowland in the back seat of the police car and Mr. Rowland leaned forward and rested his head on his arms on the front seat. His arm kept slipping off.

The defendant was advised of his right to take a blood test and consented to do this. Sergeant *Iocopinelli* did not accompany the defendant and Officer Austin to the Medical College of Virginia.

... The Commonwealth rested ...

A Motion to strike the evidence on the grounds that the Commonwealth had failed to carry the necessary burden of proof, and that the defendant was deprived of his right to take a blood test, was made and overruled.

Mr. Claude Roger Rowland, the defendant, being first duly sworn, testified that he lived at 3812 Hawthorne Avenue, Richmond, Virginia, and was employed as a school teacher at New Kent High School in New Kent County, Virginia.

He stated that on January 29, 1963, he was at home due to illness, namely, cervical arthritis, for which he had been admitted to the hospital three days after the accident, for eight days.

At about 2:00 P. M. he stated he drank an ounce and one-half miniature bottle of rum which a friend had brought from Jamaica. At 4:00 P. M., one of his students and his mother came to visit and stayed until around 5:30 P. M. His mother had fixed supper but he did not eat anything, nor had he eaten all day.

He said the pain in his shoulder was so bad that he lay down on the living room sofa until 6:30 P. M. He told
page 8] his mother that he was going to the drug store for medicine. He drove to the drug store, a few blocks from his home, ordered the prescription, but since the pain in his arm and shoulder hurt so bad he didn't wait for it to be filled. He started home with his arm and shoulder hurting so bad that he must have blacked out.

The defendant said he didn't remember much until about 7:00 A. M. the following morning when he woke up at the police station. He went home and immediately called his doctor

to arrange to go to the hospital. On February 2, 1963, the doctor obtained a bed and then he was hospitalized for eight days, taking treatment for arthritis.

The defendant stated that he did not drink as much as a fifth of whiskey in a year.

On cross examination, the defendant said that his signature was not ordinarily illegible. He said this after displaying his driver's license to Mr. Kelley. The license was not introduced into evidence. However, the defendant did say that since his arthritis trouble he sometimes has trouble writing.

Mrs. O. M. Rowland, witness for the defendant, being first duly sworn, testified that she was the mother of the defendant and lived at the same address as the defendant.

She stated that Mr. Rowland had been feeling bad all day, complaining of his arthritis. He had company, one of his students and his mother from 4:00 P. M. until 5:30 P. M. She remembered when they left because she had supper ready and thought the company would never leave.

She said that Mr. Rowland, however, did not eat, nor had he eaten all day. He stretched out on the sofa and slept until around 6:30 P. M. He left the house around 7:00 P. M. to get some medicine, and she didn't see him any more until the next morning.

She was with him all day and didn't see him drink anything.

She said for the next three days the defendant acted strangely, stumbled around, didn't eat much, and appeared to be dizzy. He went to the hospital on February 2, 1963, and stayed eight days.

page 9] . . . The Defense rested. . .

Arguments were made by Mr. Paris and Mr. Kelley and the Court found the defendant guilty as charged, fixing his punishment at \$200.00 fine, ninety days in jail, the execution of which was suspended, and revoked his operator's license for one year.

The defendant, Claude Roger Rowland, through his attorney, Mr. Leonard A. Paris, thereupon moved to set aside the judgment of the Court as being contrary to the law and evidence, which motion was overruled.

The defendant excepted and objected and execution of the sentence was suspended until May 28, 1963, in order that the evidence could be written down and presented to the Court for approval.

page 10] **ATTORNEY'S CERTIFICATE**

The undersigned Attorneys for the City of Richmond and the defendant, Claude Roger Rowland, respectively, in the case of the City of Richmond vs. Claude Roger Rowland heard in the Hustings Court of the City of Richmond, on the 25th day of March, 1963, hereby affix our signatures to the foregoing statement of facts, testimony, and other incidents of the trial to the end that the same may become part of the record on appeal.

Given under our hand this 30 day of April, 1963.

ROLAND B. KELLEY
(Attorney for the City of Richmond)
Assistant Commonwealth's Attorney

LEONARD A. PARIS
Attorney for the Defendant

CERTIFICATE OF TRIAL JUDGE

The undersigned, W. Moscoe Huntley, Judge of the Hustings Court of the City of Richmond, who presided over the trial of the City of Richmond vs. Claude Roger Rowland, on the 25th day of March, 1963, hereby affixes his signature to the foregoing statement of facts, testimony and other incidents of the trial which were tended to him within sixty (60) days after final judgment was rendered on the 25th day of March, 1963 and is signed within seventy (70) days after the date of said judgment, this 30th day of April, 1963.

W. MOSCOE HUNTLEY, Judge of the
Hustings Court of the City of Richmond,

W. MOSCOE HUNTLEY

CERTIFICATE OF CLERK

I, L. A. Schumann, Deputy Clerk, of the Hustings Court of the City of Richmond, certify that the foregoing narrative of the testimony and other incidents of the trial was this day received and made a part of the record in this case.

Given under my hand this 30th day of April, 1963.

L. A. SCHUMANN,
Deputy Clerk

* * * * *

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And now at this Hustings Court held for the City of Richmond, at the Courthouse April 30, 1963, the following order was entered; to-wit;

* * * * *

The transcript of the evidence adduced, the objections to evidence and other incidents in the trial was this day signed and sealed by the Court and delivered to the Clerk of this Court and hereby made a part of the record in this case.

A Copy—Teste:

H. G. TURNER, Clerk.

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