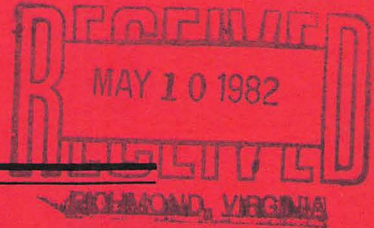


224VA311

CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 812249

HOWARD BROOKS

Appellant

v.

CITY OF NEWPORT NEWS

Appellee

JOINT APPENDIX

Louis J. Richman, Jr.
Attorney at Law
217 - 28th Street
P. O. Box 537
Newport News, VA 23607

Counsel for Appellant

Verbena Askew
Assistant City Attorney
City Hall
25th Street and Washington
Avenue
Newport News, VA 23607

Counsel for Appellee

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WARRANT OF ARREST

VA. CODE ANN. § 19.2-71-72

Newport News
CITY OR COUNTY
(please print or type)

- Criminal
- General District Court Traffic
- Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city, county or town, on or about

April 13th, 1981

did unlawfully:

operate a motor vehicle upon a public highway while under the influence of intoxicants or self administered drugs,

*Dept 10-21
Lester Smith*

*Rlea
Newt Healy
Land Trust
Fence \$900 or cost
6 mos. lic suspension
10-4-81
Lester Smith
prop*

in violation of Section

26-72

, Code or Ordinances of this city, county, or town.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

City Police Officer L. D. Smith

, Complainant.

Execution by summons permitted at officer's discretion not permitted.

April 13th, 1981 4:50 a.m.

DATE AND TIME ISSUED

FORM DC-315 1/80 (114-9-702 7/80)

CLERK MAGISTRATE JUDGE

VIRGINIA: In the Circuit Court for the City of Newport News, Friday, the 2nd day of October, 1981.

PRESENT: Douglas M. Smith, Judge.

City of Newport News

V : Driving Under the Influence
6-9-81

Howard Brooks

This day came the attorney for the City, Verbena Askew, and Howard Brooks (hereinafter referred to as defendant), who appeared according to the condition of his recognizance, and also came Louis J. Richman, Jr. defendant's attorney, and upon advice of counsel, the defendant pleaded NOT GUILTY to the warrant, which plea was tendered by the defendant in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the defendant knowingly and voluntarily waived trial by jury and with the concurrence of the attorney for the City and of the Court, here entered of record, the Court proceeded to hear and determine this case without the intervention of a jury, as provided by law, and having heard the evidence and argument, the Court finds the defendant GUILTY of Driving Under the Influence.

Thereupon, it is ORDERED by the Court that the City recover against the said defendant a fine in the amount of Two Hundred Dollars (\$200.00) and the costs of this prosecution, and the driving permit of the said defendant is suspended for a period of six (6) months, and the defendant is allowed until December 4, 1981, to pay his aforesaid fine and costs.



Judge

WRITTEN TESTIMONY OF FACTS,
TESTIMONY, OR OTHER INCIDENTS

This cause was tried in the Circuit Court for the City of Newport News before the Honorable Douglas M. Smith on October 2, 1981.

Newport News Police Officer L. D. Smith observed the defendant, Howard Brooks, driving a motor vehicle in the City of Newport News, Virginia, in the early morning hours of April 13, 1981, in an erratic manner. Officer Smith testified the vehicle attracted his attention as it straddled the broken white lines between the left and center lanes of Jefferson Avenue. The vehicle weaved back and forth between said lines approximately four times prior to being stopped by Police Officer Smith:

The defendant, Howard Brooks, was identified as the operator of the vehicle. Testimony was given that he had a strong odor of alcohol on his person; his eyes were red and glassy; his speech was slow; and he was unsteady on his feet. Results from the sobriety test revealed that Howard Brooks was unable to perform the stork test, balance test or finger to nose test. When the police officer requested the defendant to count backwards from 35 to 10, Mr. Brooks stated, "I don't know my letters too well."

Police Officer L. D. Smith arrested Howard Brooks, thereafter on April 13, 1981 and followed the proper procedure for informing him of the implied consent law and took the defendant to the Newport News Police Station, where an analysis of his breath was made by D. W. Brown at 5:11 a.m. on April 13, 1981, using test

equipment instrument number 1020382. The Division of Consolidated Laboratory Services had issued their license number 80033227 to D. W. Brown, and on the Certificate of Breath Alcohol Analysis the breath test operator, D. W. Brown, stated that said license expired on March 19, 1981.

Louis J. Richman, Jr., attorney for the defendant, objected to the introduction into evidence of the Certificate of Breath Alcohol Analysis, which showed an 0.11 percent by weight by volume blood alcohol content, on the grounds the license of D. W. Brown expired on March 19, 1981, which was before the date the test was conducted on April 13, 1981. The Honorable Douglas M. Smith overruled the objection of the defendant and admitted the Certificate of Breath Alcohol Analysis into evidence, stating that the purpose of the license was to give training on the machine and that the operator, D. W. Brown, had said training, to which action of the Court the defendant, by counsel, objected.

Whereupon the defendant, Howard Brooks, was convicted by the Honorable Douglas M. Smith of driving under the influence, fined \$200.00 and costs, and his license to drive a motor vehicle in the State of Virginia suspended for a period of six months, to which action of the Court the defendant, by counsel, objected and excepted.

Seen:

Verberna M. Askew, p.q.
Assistant City Attorney

[Signature], p.d.
Attorney for Howard Brooks

ATTORNEY'S
OFFICE
City Hall
West News, VA
23607

I hereby certify that on the 19th day of November, 1981, I mailed a copy of the foregoing Written Statement of Facts, Testimony, or other Incidents to Mr. Louis J. Richman, Jr., Attorney at Law, 217 - 28th Street, P. O. Box 537, Newport News, VA 23607.

Yerbena M. Askew p.g.

DATE FILED: November 20, 1981

*Seen and approved
Nov 24, 1981
Douglas M. Smith*
Judge

QUESTIONS PRESENTED

1. The trial court committed error in admitting into evidence the certificate of breath alcohol analysis dated April 13, 1981, because it states on its face that the analysis was conducted by D. W. Brown, whose license to conduct said test expired on March 19, 1981, and the test was conducted on April 13, 1981.

2. In light of the fact that the certificate of breach alcohol analysis dated April 13, 1981, should not have been admitted into evidence, the court committed error in finding the defendant, Howard Brooks, guilty of driving under the influence.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES
DIVISION OF CONSOLIDATED LABORATORY SERVICES
BUREAU OF FORENSIC SCIENCE

CERTIFICATE OF BREATH ALCOHOL ANALYSIS

4-13-81
Date of Report

NAME OF ACCUSED: Howard Brooks

ADDRESS: 336 48 St

NAME OF COURT: TRAFFIC

ADDRESS: 230 25 St, Newport News VA

BREATH ANALYSIS:

Analysis Conducted By: 2LWB

Division of Consolidated Laboratory Services License No.: 80033227 License Expires: 3-15-81

Date Test Conducted: 4-13-81 Time Sample Was Taken: 0511

Test Equipment Instrument No.: 1020382 was tested for accuracy by Division of Consolidated Laboratory Services on 2-25-81 and found accurate.

RESULTS:

Blood Alcohol Content 0.11 % % by weight by volume.

ATTEST:

I certify that the above is an accurate record of the test conducted; that the test was conducted with the type of equipment and in accordance with the methods approved by the Division of Consolidated Laboratory Services; that the test was conducted in accordance with the manufacturer's specifications, that the equipment on which the breath test was conducted has been tested within the past six months and found to be accurate, and that I possess a valid license to conduct such test. Given under my hand this 13 day of April, 19 81.

2LWB 80033227
Breath Test Operator License Number

State of Virginia, County or City of Newport News VA
Subscribed and sworn to before me 13 day of April, 19 81

ABOVE NAMED PERSON WHOSE BREATH ANALYZED AS INDICATED HEREIN AT 0515 HOURS ON April 13 81.

[Signature] Magistrate
Notary Public
My Commission Expires 12/31/81
04-15-81
OFF. L.D. Smith #668B

OFFICER FURNISHING COPY

Oct 2, 1981
City of Brooks
07 City Exhibit