

Record No. 5811

In the
Supreme Court of Appeals of Virginia
at Richmond

THOMAS JUNIOR LOWERY

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF HALIFAX COUNTY

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. 5811

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of December, 1963.

THOMAS JUNIOR LOWERY, Plaintiff in error,
against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Halifax County
Gus E. Mitchell, Jr., Judge

Upon the petition of Thomas Junior Lowery a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Halifax County on the 9th day of July, 1963, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor.

And it appearing that a suspending and *supersedeas* bond in the penalty of five hundred dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 22nd day of January, 1964.

THOMAS JUNIOR LOWERY, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

Upon a petition for writ of error and *superse-
deas* to a judgment rendered by the Circuit
Court of Halifax County on the 9th day of
July, 1963.

This day came again Thomas Junior Lowery, by counsel, and it appearing to the court that J. Willard Greer, Esquire, who represents the plaintiff in error in this court has been appointed Commonwealth's Attorney for Halifax County, and it further appearing that the said plaintiff in error has now employed David F. Guthrie, Esquire, to represent him, leave is hereby granted the said J. Willard Greer to withdraw as counsel for the plaintiff in error in this case.

RECORD

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STATE OF VIRGINIA }
COUNTY OF HALIFAX } To-Wit: No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, Sgt. C. J. Francis has this day made complaint and information on oath before me, Charlie Guthrie Justice of the Peace of the said County, that Thomas Junior Lowery — W-M 331 Leigh St., South Boston, Va. in the said County did on the 23rd day of August, 1962: Unlawfully Operate a motor vehicle license number 614-836 on the streets of the City of South Boston, Va. in a careless and reckless manner while under the influence of alcohol or some form of self administered drug.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the County Court of the said County, the body (bodies) 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:

Officer C. R. Tuck color — Address South Boston, Va. ☐
as witnesses.

Given under my hand and seal, this 1st day of February, 1963.

CHARLIE T. GUTHRIE (Seal)
(Title of Issuing Officer)
JP

(Reverse side)

STATE OF VIRGINIA — COUNTY OF HALIFAX to-wit:

I, Charlie T. Guthrie a Justice of the Peace in and for the County aforesaid, State of Virginia, do certify that Thomas Junior Lowery and _____, as his *suret* _____, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of Recognized Dollars (\$ _____), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to

be rendered, yet upon this condition: That the said _____, shall appear before the Circuit, County Court of Halifax County, on the 8 day of Feb., 1963, at 10 A.M., at Halifax, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart thence without the leave of said court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that the said _____ shall keep the peace and be of good behavior for a period of _____ days from the date hereof. Nonappearance shall be deemed to constitute a waiver of trial by jury.

Given under my hand, this 1 day of Feb., 1963.

CHARLIE T. GUTHRIE, J.P.

May Term 1963

DOCKET NO. A-5987

COMMONWEALTH

vs. { WARRANT OF ARREST
 { THOMAS JUNIOR LOWERY— W-M-
 331 Leigh St., South Boston, Va.

Executed this, the 1st day of February, 1963.

SGT. C. J. FRANCIS

Upon the examination of the within charge, I find the accused guilty and fine him \$200.00 and costs of this prosecution and operator's license revoked for a period of 12 months this 8th day of February, 1963. An appeal is noted.

HENRY W. McLAUGHLIN,
Substitute County Judge

License revoked for 12 months. Appeal noted.

Filed Feb 22, 1963

C. G. CONNER
Deputy Clerk Circuit Court
Halifax County

Fine	\$200.00
Costs	6.75
Total	\$206.75

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ORDER

On May 29, 1963, came the Attorney for the Commonwealth, the Attorney for the City of South Boston and the defendant appeared in obedience to his recognizance, and plead not guilty to the warrant, and with the consent of the defendant and the concurrence of the Commonwealth's Attorney and of the Court entered now of record, the Court proceeded to hear and determine this cause without the intervention of a jury, and the evidence being fully heard, the Court doth find the said Thomas Junior Lowery guilty of operating a motor vehicle on the streets of the City of South Boston, Virginia, while under the influence of alcohol as charged in the warrant, and doth fix and ascertain his punishment to be a fine of \$200.00, and the revocation of his driving privileges for one year.

Whereupon, the said Thomas Junior Lowery, by his Attorney, moved the Court to set aside the verdict as being contrary to the law and evidence and find for the defendant as a matter of law, which motion the Court overruled, to which ruling of the Court the said Thomas Junior Lowery excepted.

Therefore, it is considered by the Court that the Commonwealth recover against the said Thomas Junior Lowery the sum of \$200.00, the fine by the Court herein assessed against him, and its cost about this prosecution expended.

And on motion of the said Thomas Junior Lowery by his Attorney, the Court grants a stay of execution for sixty (60) days in order that the defendant may apply to the Supreme Court of Appeals of Virginia for a writ of error, conditioned on the defendant paying bond in the penalty of \$500.00 conditioned according to law with surety approved by the clerk of this Court.

Enter 7/9/63

G.E.M., Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To the Clerk of the Circuit Court of Halifax County:

Counsel for Thomas Junior Lowery, the defendant in the above-styled case in the Circuit Court of Halifax County, Virginia, hereby gives notice of appeal from the order entered in this case on July 9, 1963, and sets forth the following assignments of error:

1. That the verdict is contrary to the law and evidence:

(a) That there was no lawful authority for the arrest in the City of South Boston on August 23, 1962.

(b) That the warrant officer of the City was without judicial authority to act for the City or the State.

(c) That the defendant was unlawfully detained and unlawfully advised that the law required him to permit a sample of his blood for testing.

(d) That the evidence obtained under the void City warrant was not admissible in the prosecution under the State warrant.

(e) That the defendant should have been found not guilty as a matter of law.

J. WILLARD GREER

Counsel for Thomas Junior Lowery

Filed Aug 29, 1963

C. G. CONNER
Deputy Clerk Circuit Court
Halifax County

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STIPULATION OF EVIDENCE AND OTHER
INCIDENTS OF TRIAL

It is agreed and stipulated that the following statement in narrative form constitutes the evidence and other incidents of the trial in the above styled captioned matter heard by the Honorable G. E. Mitchell, Jr., Judge of the Circuit Court of Halifax County on May 29, 1963.

Thomas Junior Lowery was arrested on August 23, 1962, by Sgt. C. J. Francis of the Police Department of the City of South Boston. A city warrant (Exhibit No. 1) was issued on that day charging Lowery with unlawfully operating a motor vehicle on the streets of said city while under the influence. The warrant was signed by A. W. Jones, Warrant Officer, of said city.

Before and after the warrant was issued, the arresting officer informed the defendant that the law required him to take a blood test and that if he unreasonably refuses, his driver's license will be revoked. The defendant was also advised by the warrant officer that his unreasonable refusal to consent to the blood test constituted an offense in and of itself, punishable by suspension of his driver's license for ninety (90) days. The warrant officer gave the defendant a copy of the form containing a brief statement of the law, a declaration of refusal, and spaces for the signatures of the defendant and a witness (Exhibit No. 2). The de-
page 6] fendant's counsel was called to the Police Station within two hours after his arrest and also advised the defendant that the law required him to submit to the blood test. The defendant submitted to the test.

Before the trial in the Police Justice Court of said city, it was discovered that the city ordinance had not been amended

to conform with the minimum fine of \$200.00 required by §18.1-58 and therefore no prosecution could be held under the ordinance because of the requirements of §15-553. The City warrant was *nolle prosequied*.

A state warrant (Exhibit No. 3) was issued on September 14, 1962, charging the defendant with the same offense on August 23, 1962. This warrant was issued by Charlie T. Guthrie, Justice of the Peace. Upon the appeal of this warrant to the Circuit Court, the Assistant Commonwealth's Attorney of Halifax County *nolle prosequied* the warrant at the January Term of said Court.

Another state warrant was issued on February 1, 1963, charging Lowery with the same offense on August 23, 1962. This warrant was issued by Charlie T. Guthrie, Justice of the Peace. The warrant officer of said city A. W. Jones, is not a Justice of the Peace and has no authority to issue state warrants.

The defendant was tried before the Court without a jury on the state warrant issued on February 1, 1963. The Commonwealth was permitted by the Court to introduce the blood alcohol test certificate which showed the results of the blood sample which the defendant had submitted to as the result of his being charged on the city warrant issued August 23, 1962. Said certificate showed an alcoholic content of 0.20%.

The defendant made a timely motion to suppress the introduction of the blood test result on the grounds that there had been no lawful arrest in the City of South Boston on August 23, 1962, that the warrant officer of the city was without judicial authority, that the defendant had been
page 7] unlawfully detained and unlawfully advised that the city ordinance complied with the general state statutes. The Court overruled the defendant's motion and exceptions were duly taken.

The Court found the defendant guilty as charged in the warrant and fixed his punishment at a fine of \$200.00 and revoked his driving privileges for one year. Thereupon the said defendant moved the Court to set aside the verdict as being contrary to the law and evidence and find for the defendant as a matter of law, which motion the Court overruled, to which ruling of the Court the said defendant excepted, and on motion of the defendant, the Court granted a stay of execution for sixty (60) days in order that the defendant may apply to the Supreme Court of Appeals of Virginia for a writ of error.

The foregoing is a narrative statement of the facts and other incidents of the trial, also objections and exceptions in the above-captioned case.

Received and signed this 5th day of September, 1963.

G. E. MITCHELL, JR., Judge

James S. Easley
Attorney for the Commonwealth
South Boston, Virginia

Lester L. Dillard
City Attorney
South Boston, Virginia

J. Willard Greer
Counsel for Defendant
South Boston, Virginia

A Copy—Teste:

H. G. TURNER, Clerk.

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