In circuit court for Smyth County

COMMONWEALTH OF VIRGINIA	)	
	)	Case no. CR20-81
	)	
	)	Before Judge Deanis Simmons
Abigail Marie Tulis	)	
Sui juris, accused	)	

In the matter of:
COMMONWEALTH OF VIRGINIA v. Abigail Marie Tulis Case no. CR20-81, Smyth County Circuit Court Appeal of General District Court trial of Feb. 27, 2020, Docket No. GT19020759-00.

MOTION FOR DISMISSAL WITH PREJUDICE AS A MATTER OF LAW; IN THE ALTERNATIVE, TO DISMISS AS A MATTER OF EQUITY AND JUSTICE AND MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE

1. I, Abigail Tulis, come by Appeal to the Circuit Court on a pre-trial motion for 'dismissal with prejudice' as a matter of law or in the alternative a dismissal as a matter of equity and justice. It is a case where I was grossly overcharged and grossly over fined where the evidence offered

by the Commonwealth cannot sustain the elements necessary for reckless driving, Code of Virginia, §46.2-852.

2. I went to train on February 27, 2020 where the Court refused me the ability to make an audio recording of the proceeding. I made a contemporaneous record and sent is as notice to the Commonwealth's Attorney, inviting corrections. I received no reply and presume tacit agreement. I therefore submit as an exhibit of evidence, and move for its addition as evidence to the record, my affidavit transcript of the February 27, 2020 trial and as my Undisputed Statement of Facts upon which this motion relies. (Addendum 1)
3. It is a case where, if the trooper's testimony is true, the trooper had a reasonable pretext for my being stopped. Though my cruise control was set at 69 mph in a 70mph zone, in the rental vehicle I was driving, the officer claimed that he pulled me over for driving too slow, 50 mph in a 70 mph zone. It is a he-says, she-says situation, where the officer says that he and his patrol car were not equipped with what seems the commonly understood contemporary use of recording equipment for State Troopers nationwide.
4. At the time of the trial, I was not aware of the particular slow driving provision of Virginia law and its $30.00 fine according to the Rules Of Supreme Court Of Virginia, Part Three B, Traffic Infractions And Uniform Fine Schedule relating to "§ 46.2-877. Minimum speed limits.
5. Notwithstanding the Virginia statutes providing for driving too slow, and a $50 infraction fee, the officer charged me with the Class 1 Misdemeanor of reckless driving, threatening me with the penalty of up to one year in jail and a

two-thousand, five-hundred dollar fine. The promise of future damage to me in the availability and cost of automobile insurance is egregious, damaging my otherwise clean reputation on the record of my automobile use. I did not know of the infraction provision for driving too slow, but I am sure that the trooper and the Court knew about it.

6. When I challenged the charge in the District Court on wanton due process violations and lack of elements to support the charge, without notice the Court tag-teamed the prosecution offering a new violation of improper driving "where culpability is slight."
7. At the time, I was unaware of the statutory provision in the Virginia Code that may have seemed to have taken the edge off the fine for reckless driving and the stigma of a misdemeanor. However, it none-the-less was a falsehood since there was no culpability at all, and the judgment came with the cash-cow statutory maximum of $500 penalty. The Court justified its penalty not on the basis of culpability as it relates to the requirements of the criminal statute, but based upon the speculation that I was especially dangerous because, "Some people are on the road doing one hundred and twenty miles per hour (120 mph), even one hundred and forty miles per hour (140 mph), and it is extremely dangerous to be doing fifty."
8. It is at least unreasonable for the trooper and the court to ignore the statute providing for slow speed, and to elevate as an offence my conduct to a class 1 misdemeanor just because the statutes have not provided for momentarily

weaving in a lane when no other car is in an adjacent lane or otherwise nearby.

9. The maximum fine as a matter of justice is unreasonable and capricious on a first offence, when otherwise normally available recording equipment is not available for exculpatory evidence, and my conduct if proven did not cause or threaten harm.
10. There was no sign indicating a minimum speed and I can find no minimum speed declared by the Commissioner of Highways for Interstate 81. The police officer and the judge both have a duty to know the provisions of the "Minimum Speed Limits" statute §46.2-877.
11. I am temporarily in the Netherlands for my vocation, while my home of record is Soddy-Daisy, Tennessee. I will be injured without remedy if I am imposed upon to come back to Virginia to correct the errors and injustice in person.
12. The Circuit Court, as I understand it, wears the hats that judges the written law, but also of the sovereign's conscience as chancellor and able to render justice in equity. Even if the factual testament of the trooper is true, and I actually was going only 50 mph by some error of a cruise control feature, I've already suffered by time and money that exceeds even a charge of slow driving. I understand that for this alleged offence that carries with it no jail after the maximum non-jail threshold set by the District Court, that the trial can be in absentia. I appear in good faith by praecipe rather than absentia, though not bodily because of my circumstance. I ask the Court to rule the District Court judgment void and the charges dismissed

with prejudice as a matter of law, or to dismiss it as a matter of justice.

13. Should the charge not be so dismissed, let the Court explain in writing why it should not be dismissed as a matter of law or justice.

II. ARGUMENT, ERRORS, AND VIOLATIONS OF DUE PROCESS IN THE DISTRICT COURT

A. The Alleged Offence Is Grossly Overcharged, Abusively Adjudicated, And Is A Gross Miscarriage Of Justice

14. The Officer testified that the pretext for his stopping me on the highway was because I was driving 50 mph in a 70 mph zone.

15. The statute cited as the misdemeanor violation only provides for "maximum" speeds and does not provide for "*irrespective of the **minimum** speeds permitted by law*":

> "§ 46.2-852 Reckless Driving; General Rule
> Irrespective of the **maximum** speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving. (Emphasis added) Code 1950, § 46-208; 1958, c. 541, § 46.1-189; 1983, c. 380; 1989, c. 727.

16. If the allegation of fact is true, it might warrant a $50 infraction, not driving-record-damaging and lucrative – reckless driving or improper driving penalties.

17. Nowhere in the Code of Virginia, Title 46.2. Motor Vehicles, Chapter 8., Regulation of Traffic, Article 7., Reckless Driving and Improper Driving, can we find driving 50

mph in a 70 mph zone on the list of those particular actions that qualify for reckless driving. (Addendum 2)

18. The Virginia highway has no minimum speed, except if one is too slow in heavy traffic, § 46-2-877, Minimum speed limits, "No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law." There is no evidence by the commonwealth that I impeded the normal and reasonable movement of traffic.

19. Though Mr. Frye testified that I was traveling at 50 miles an hour, his claim is irrational and hardly credible. I testified truthfully that I knew of my legal duty and I had set my cruise control at 69 mph on a 70 mph interstate. The Officer conveniently had no evidence-gathering equipment that is normally afforded troopers in this year 2020. His testimony is self serving, and the idea that I would lengthen the time of my long journey by losing a mile of distance for every four minutes of travel is incredible.

B. The Accusation Of Reckless Driving Is Not Supported By Facts, Or Substantive Allegations By The Trooper In The Charging Instrument

20. The reckless driving law that creates a duty and liability on drivers of vehicles reads as follows:

> "Section 46.2-852. Reckless driving; general rule Irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life,

limb, or property of any person shall be guilty of reckless driving. Va. Code Ann. Section 46.2-852”

21. The reckless driving essential elements to be alleged and proven:

a. Self-propulsion or locomotion in car, truck or motorbike or the driving or operating of a motor vehicle
b. Intent or scienter — “recklessly”
c. Proximity others (“any person”)
d. Acts (“at a speed or in a manner”) that endanger “the life, limb, or property” of people nearby

22. It is necessary to detail the essential elements of reckless driving to suggest that the trooper has a duty to know the law he is enforcing, and to lay out his evidentiary facts in terms of the reckless driving law so bring the accused within the court’s jurisdiction.

> “[I]t is a fundamental principle that ‘criminal statutes are to be ‘strictly construed against the Commonwealth and in favor of [a] citizen's liberty.’” *King v. Commonwealth*, 6 Va. App. 351, 354, 368 S.E.2d 704, 706 (1988) (citation omitted).

23. The Trooper testified that there was nobody else on the highway or in proximity that might be in danger. He testified that there was evidence that my driving abilities were not impaired. There was no testimony or evidence that met the necessary element of endangering life, limb or property.

24. **An accident is not even necessarily reckless driving:**

> “The essence of the offense of reckless driving lies not in the act of operating a vehicle, but in the manner and circumstances of its operation. **The mere happening of an accident does not give rise to an inference of reckless**

driving. However, physical factors associated with impact, including extent of damage to vehicles and property, may be considered as mute evidence of high speed." The court evaluates the totality of circumstances in a case. In Crest, "The drivers who survived the accident both stated that the weather was clear and they could see the traffic was very heavy ahead of them. When the traffic stopped, they, along with the deceased driver in the Mazda Miata, were able to bring their vehicles to a controlled stop without incident. Appellant crashed into the stopped vehicles and failed to control her truck. This factor, combined with the evidence of appellant's earlier aggressive driving behavior allowed the fact finder to infer that appellant was not operating her vehicle in a safe manner immediately prior to the accident." Crest v. Commonwealth, 40 Va. App. 165, 167, 578 S.E.2d 88, 89, 2003 Va. App. LEXIS 147, *1 (Va. Ct. App. March 25, 2003) [Emphasis added]

25. **An accident caused by a defect is not reckless driving**. A wreck caused by a defect one knew about is, however, ground for conviction of involuntary manslaughter.

"Kennedy knew, prior to the accident, that there was a problem with his steering because he had previously experienced difficulty keeping his vehicle under control. Based on his testimony and that of his wife, the trial court could have found that Kennedy was on notice of a defect in his vehicle that could interfere with his ability to maintain proper control, but he continued to operate his vehicle despite this defect." Kennedy v. Commonwealth, 1 Va. App. 469, 473, 339 S.E.2d 905, 908, 1986 Va. App. LEXIS 225, *8-9 (Va. Ct. App. February 18, 1986)

26. Falling asleep behind the wheel isn't necessarily reckless driving:

"'Anyone who falls asleep while operating an automobile on a public road is guilty of a degree of negligence exceeding lack of ordinary care,' and such behavior may be 'sufficient to find the operator guilty of **the offense of reckless driving**.' However, such evidence,

standing alone, will not necessarily support the finding of criminal negligence required for an involuntary manslaughter conviction." Kennedy v. Commonwealth, 1 Va . App. 469 *; 339 S.E.2d 905 **; 1986 Va . App. LEXIS 225 *** [Emphasis added]

27. The testimony of the officer is that I was not impaired, and therefore I did not consider myself impaired. Knowing you are impaired is an essential element to reckless driving:

"Appellant had testified that he had been up for 22 hours without sleep and chose to drive his vehicle. Appellant told the arresting officer that **appellant caught himself drifting four or five times, but that he would snap out of it.** The court found this evidence sufficient for the trier of fact to infer that appellant had the requisite knowledge that his behavior would probably injure another for the behavior to rise to criminal negligence. Criminal negligence was an essential element of involuntary manslaughter." Conrad v. Commonwealth, 31 Va. App. 113, 521 S.E.2d 321, 1999 Va. App. LEXIS 652 (Court of Appeals of Virginia November 30, 1999, Decided). [Emphasis added]

28. I was not drunk. But even driving drunk is merely negligent.

"One who knowingly drives an automobile on a highway under the influence of intoxicants, in violation of statute, is negligent. **No case holds that one driving under the influence of an intoxicant must necessarily be driving recklessly.** Thus, while evidence of intoxication is a factor that might bear upon proof of dangerous or reckless driving in a given case, it does not, of itself, prove reckless driving. One may be both drunk and reckless. One may be reckless though not drunk; one may even be a total abstainer, and one may be **under the influence of intoxicants and yet drive carefully.** Indeed, with knowledge of the condition, a person might, for the time being, drive with extraordinary care. A person **under the influence of intoxicants** may at times conduct oneself with the utmost care and dignity, and the person might do this to an extent which will manifest that which the person hopes to conceal. A

person might tread a line with an exactness which no sober person would feel called upon to attempt." Bishop v. Commonwealth, 20 Va. App. 206, 207, 455 S.E.2d 765, 765, 1995 Va. App. LEXIS 354, *1 (Va. Ct. App. April 11, 1995) [Emphasis added]

29. **Knowledge of terrain and prospect of other travelers is necessary to create a known duty of care for a person traveling over the top of hill at 55 mph.**

> While it may be forcefully argued that a stranger, unaware of the intersection beyond the crown of the hill in question, and therefore unaware of potential peril, would not be guilty of reckless driving when he crossed the crest at fifty-five miles an hour, we do not think the same should be said of **one who is a constant user of the highway at the point involved and who, in the nature of common experience, might anticipate** a vehicle in the act, or on the verge, of turning into the intersection with which he was familiar. While plaintiff himself fixes the rate of speed at exactly the legal limit of fifty-five miles per hour, there can be no doubt that he crossed the crest of the hill at an **unwarranted rate of speed, under the facts** and circumstances of this case, [***14] and that the concurring, if not the proximate, cause of the accident was his violation of section 2154 (108) of the Code of Virginia. Noland v. Fowler, 179 Va. 19, 25, 18 S.E.2d 251, 254, 1942 Va. LEXIS 192, *13-14 (Va. January 19, 1942)[Emphasis added]

30. Still, **complete control at all times is not a known legal duty.**

> "The law does ***not impose the duty upon a driver to keep his automobile under complete control at all times***." Gale v. Wilber, 163 Va. 211, 221, 175 S.E. 739, 743 (1934) [Emphasis added]

31. At trial, I was wrongfully denied the right to cite a Tennessee case that indicated slight movements within a lane are not probable cause for an arrest and are not reckless driving. It is the law as I have been trained to understand

it and the case is evidence of my state of mind. The prosecution showed no Virginia statute to contradict it. Here is the citing:

> "Prior to Officer Kohl's stop of the defendant, the videotape reveals that Garcia was traveling at what appears to be a safe rate of speed in the far right lane of an interstate highway. The videotape also reveals that Garcia slowly **moved his vehicle slightly within his lane of travel approximately twice over a period of approximately two minutes.** At no point does the vehicle exhibit any sharp or jerking movements. While there is a short period of time when the vehicle is not visible on the videotape, we find no testimony in the record suggesting that the defendant exhibited ***any pronounced or exaggerated swerving*** during that brief time period. Moreover, we place little weight on the fact that there was considerable traffic on the interstate on the night of the defendant's traffic stop. The videotape reveals that several cars approached the defendant from the rear and easily passed his vehicle by moving to the next lane. Additionally, the State does not contest that the defendant was driving in compliance with Tennessee Code Annotated section 55-8-123(1) (1998), which states:
>
> > Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic . [a] vehicle shall **be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made safely.**
>
> Accordingly, we hold that as a matter of law there was no reasonable suspicion to stop Garcia. While the defendant's driving **may not have been perfect, we saw no evidence of weaving** on the videotape, and we reiterate that "it is the rare motorist indeed who can travel for several miles without occasionally varying speed unnecessarily, moving laterally from time to time in the motorist's own lane, nearing the center line or shoulder, or exhibiting some small imperfection in his or her driving." *State v. Garcia*, 123 S.W.3d 335, 2003 Tenn. LEXIS 856 (Supreme Court of Tennessee, At Nashville October 1, 2003, Filed)[Emphasis added]

32. **The essential element of nearness of people is not in present and therefore precludes reckless driving, §46.2-852.**

> "It was the duty of a driver under this section when he reached a settlement, where persons were likely to be assembled and where children were apt to be, ***to slow down*** and have his car under such control as to be able to stop if confronted by a sudden emergency. Sheckler v. Anderson, 182 Va. 701, 29 S.E.2d 867 (1964), holding that where there is a failure to comply with this section, the defendant is liable for injuries resulting from a collision, unless the plaintiff is guilty of contributory negligence." *Mayo v. Commonwealth*, 218 Va. 644, 645, 238 S.E.2d 831, 831, 1977 Va. LEXIS 301, *1 (Va. November 23, 1977)

The 1995 case Bishop v. Commonwealth turns on the fact that the man behind the wheel, Bishop, was not moving and endangering people nearby when he was charged and arrested, though he was inebriated. The case holds, too that drunkenness, per se, is not reckless driving. Bishop v. Commonwealth, 20 Va. App. 206, 207, 455 S.E.2d 765, 765, 1995 Va. App. LEXIS 354, *1 (Va. Ct. App. April 11, 1995)

33. **Speed is not reckless driving. It requires criminal conduct, by motive and action:**

> "In Powers v. Commonwealth, 211 Va. 386, 388, 177 S.E.2d 628, 630 (1970), this Court held that 'recklessly' . . . imparts a disregard by the driver . . . for the consequences of his act and an indifference to the safety of life, limb or property' and that speed alone does not constitute recklessness unless it endangers life, limb, or property." *Spencer v. City of Norfolk*, 271 Va. 460, 463, 628 S.E.2d 356, 358, 2006 Va. LEXIS 47, *4-5 (Va. April 21, 2006)

34. The evidence which the Commonwealth has through the trooper's testimony is that there was **no likelihood** of injury

to other users of the highway at the moment of the alleged infraction:

> "What distinguishes a speeding violation from the misdemeanor of reckless driving, and the misdemeanor from the felony of involuntary manslaughter, is ***the likelihood of injury to other users*** of the highways. And the **degree of the hazard** posed by a speeding automobile depends upon the circumstances in each case." *Mayo v. Commonwealth*, 218 Va. 644, 645, 238 S.E.2d 831, 831, 1977 Va. LEXIS 301, *1 (Va. November 23, 1977)

> "The word 'recklessly' as used in Va. Code Ann. § 46.1-189 imparts a **disregard** by the driver of a motor vehicle for the consequences of his act and an indifference to the safety of life, limb or property. Speed alone is not a violation of § 46.1-189, but only becomes so when it endangers life, limb or property." *Powers v. Commonwealth*, 211 Va. 386, 388, 177 S.E.2d 628, 630 (1970)

C. Virginia Statute Requires Bill To Allege All Elements. No Elements Were Alleged

35. The law and court rulings in Virginia establish the right to receive sufficient notice in the charging instrument and to have each element argued and proven in court. Rule 3A:6, the indictment and the information, say the instrument must "[describe] the offense charged" and also "cite the statute or ordinance that defines the offense" and shall omit nothing or make errors that "[prejudice] the accused in preparing his defense."

36. Section 19.2-220, contents of indictment in general, says the narrative of the offense "shall be a plain, concise and definite written statement" of the act, "describing the offense charged" [the act].

> "All essential elements of an offense must be precisely stated in the indictment; inference may not supply an essential element that is lacking. In charging a statutory offense, it is unnecessary to charge guilty knowledge unless scienter is part of the statutory definition of the offense." *Wall Distributors, Inc. v. Newport News*, 228 Va. 358, 323 S.E.2d 75, 1984 Va. LEXIS 312 (Supreme Court of Virginia November 30, 1984).

D. Every Fact To Be Proved Must Be Alleged, and Then Proved

37. Every fact to be proved must be alleged. The Court in this case has a duty to acquit me for the prosecution's want of proof.

> "Due process requires the prosecution 'to prove beyond a reasonable doubt every fact necessary to constitute the crime charged.' *Mullaney v. Wilbur*, 421 U.S. 684, 685, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975). Mullaney held that any rule which has the ultimate effect of shifting the burden of persuasion to the accused upon a critical issue is constitutionally infirm.*** Under well-settled law, 'the burden is on the Commonwealth to prove every essential element of the offense beyond a reasonable doubt.' *Bishop v. Commonwealth*, 275 Va. 9, 12, **[*352]** 654 S.E.2d 906, 908 (2008) ***. This fundamental precept has been the **bedrock of Virginia's criminal jurisprudence since the inception of this Commonwealth**. Id. 'In a criminal case, the defendant is entitled to an acquittal, unless his guilt is established beyond a reasonable doubt.' *Savage v. Commonwealth*, 84 Va. 582, 585, 5 S.E. 563, 564 (1888)." *Williams v. Commonwealth*, 57 Va. App. 341, 702 S.E.2d 260, 2010 Va. App. LEXIS 481 (Court of Appeals of Virginia December 14, 2010, Decided). [Emphasis added]

38. The charging instrument must be the testament against the accused regarding "facts" that would lead the reasonable mind to a conclusion of the violation of an offence. The Court and the accused ought not to be confined to the subjective judgment of the accuser. It is an unconstitutional demand

for the accused to have to provide facts to counter an allegation supported by "zero" facts to support the allegation.

> "Where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment is to charge the offence in the same generic terms as in the definition; but it must state the species, it must descend to particulars. The object of the indictment is, first, to **furnish the accused with such a description of the charge against him as can enable him to make his defence, and avail himself of his conviction or acquittal for protection** against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one is to be had. **For this, facts are to be stated, not conclusions of law alone.** A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances." *United States v. Cruikshank*, 92 U.S. 542, 548, 23 L. Ed. 588, 590, 1875 U.S. LEXIS 1794, *6, 2 Otto 542 (U.S. March 27, 1876) [Emphasis added]

> "In order to prove the crime of escape under § 18.2-477, the Commonwealth must establish that (1) Clemons was confined in jail or was in custody after conviction of a crime; (2) he unlawfully fled or departed from lawful custody; and (3) force or violence was used to effectuate the departure. See 7A M.J., Escape § 1." *Barney v. Commonwealth*, 69 Va. App. 604, 822 S.E.2d 368, 2019 Va. App. LEXIS 5, 2019 WL 122059 (Court of Appeals of Virginia January 8, 2019, Decided).

> "Penetration by a penis of a vagina is an **essential element of the crime of rape**; proof of penetration, however slight the entry may be, is sufficient. And, a conviction of rape may be sustained solely upon the victim's testimony." *Moore v. Commonwealth*, 254 Va. 184, 185, 491 S.E.2d 739, 739, 1997 Va. LEXIS 98, *1 (Va. September 12, 1997) [Emphasis added]

E. The Essential Element of Knowledge Is Missing

39. There is no evidence that the accuser can offer that might show, let alone prove beyond a reasonable doubt, that there was a deliberate attempt by me to go anywhere over or under the speed limit. If I believed that I was going sixty-nine (69) miles per hour according to the setting of my cruise control, and there is no accusation that I was deliberately not going somewhat near but not over the speed limit, the charging instrument is insufficient. The "element" of knowledge does not exist.

> "**Knowledge necessarily is an essential element of the crime**. This does not mean that the person should have positive knowledge of the extent of the damage or injuries inflicted. It does mean that, in order to be guilty of violating the statute, 'the driver must be aware that harm has been done; it must be present in his mind that there has been an injury; and then, with that in his mind, he must deliberately go away without making himself known.'" *Herchenbach v. Commonwealth*, 185 Va. 217 (Va. 1946) citing "5 Am. Jur. 921. See annotations in 16 A.L.R. 1425; 66 A.L.R. 1228; 101 A.L.R. 913; *People v. Graves*, 74 Cal.App. 415, 240 P. 1019; *People v. Hirsch*, 269 N.Y.S. 830; and *State v. Verrill*, 120 Me. 41, 112 A. 673." (Emphasis added)

40. Even in attempted capital murder, the prosecutor can't merely offer a bill saying the accused "attempted to kill" the defendant. There's an essential element missing.

> We conclude that omission of the "overt act" element of the offense of attempted capital murder also constituted error, as the Commonwealth concedes. We addressed this issue in *Goodson*, 22 Va. App. at 77, 467 S.E.2d at 856, in which we held that an instruction requiring **proof merely that the defendant "attempted to kill [victim]"** failed properly to apprise the jury of the essential elements of the offense because it did not require proof of "'**an overt but ineffectual act . . . in furtherance of the criminal purpose.**'" Id. (quoting *Martin v.*

Commonwealth, 13 Va. App. 524, 527, 414 S.E.2d 401, 402 (1992) (en banc)). Thus, here, as in Goodson, the court's failure to instruct on the elements of an "attempt" constituted error. *** We hold that the **omission of material elements of the offense** from the attempted capital murder instruction **was error which was not harmless**. *Herbert v. Commonwealth*, 2001 Va. App. LEXIS 184, 2001 WL 345192 (Court of Appeals of Virginia April 10, 2001, Decided) [Emphasis added]

41. In a forgery case, the prosecution and **judge erred when they gave jury instructions allowing its members to believe that intent was not an essential element.**

> "'When a principle of law is vital to a defendant in a criminal case, a trial court has an affirmative duty properly to instruct a jury about the matter.' *Jimenez v. Commonwealth*, 241 Va. 244, 250, 402 S.E.2d 678, 681 (1991). That duty arises even when "trial counsel neglected to object to the instruction." *Id.* at 248, [*992] 402 S.E.2d at 679. Obviously, the proper description of the elements of the offenses is vital to a defendant. Attaining the 'ends of justice' requires correction of an instruction which allows a jury to **convict a defendant without proof of an element of a crime**. Instruction Eight was so defective that it allowed the jury to convict Campbell of forgery even if the jury concluded that Campbell lacked an intent to defraud. Intent to defraud, however, is **a necessary element** of forgery." *Campbell v. Commonwealth*, 14 Va. App. 988, 421 S.E.2d 652, 1992 Va. App. LEXIS 214, 9 Va. Law Rep. 97 (Court of Appeals of Virginia August 11, 1992, Decided) [Emphasis added]

F. 'Descend to the particulars' to 'furnish the accused'

42. If merely naming the charge is insufficient, as occurred in this case, so, too, is simply alleging the charge in terminology of the law. The trooper was able to name me in his testimony but his naming me did not describe me.

> "It is an elementary principle of criminal pleading, that, where the definition of an offence, whether it be

> at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the **same generic terms as in the definition**, but it must state the species — it **must descend to particulars**. The object of the indictment is — first, to furnish the accused with such a description of the charge against him as **will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution** for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this facts are to be stated, not conclusions of law alone. **A crime is made up of acts and intent; and these must be set forth** in the indictment, with reasonable particularity of time, place, and circumstances." *Pine v. Commonwealth*, 121 Va. 812, 820, 93 S.E. 652, 654, 1917 Va. LEXIS 76, *1 (Va. September 20, 1917) [Emphasis added]

43. The rules of alleging the essential elements apply not just to straightforward laws, but to complex ones with exceptions.

> "It is elementary that **every ingredient of the crime must be charged in the bill**, a general reference to the provisions of the statute being insufficient. [citations omitted] And 'if the negation of an exception in the enacting clause of a statute is essential to accurately describe the offense, **then the accusations of the indictment must show that the accused is not within the exception.**'" [citations omitted] *Hale v. United States*, 89 F.2d 578, 579, 1937 U.S. App. LEXIS 3530, *3 (4th Cir. W. Va. April 12, 1937) [Emphasis added]

G. From Evidentiary Facts To Ultimate Facts

44. The process of the accusation is to bring the essential elements in the criminal charge to the judge, to give him jurisdiction over the matter, and to give the defendant notice of how to defend herself. The charging instrument, to borrow from Restat 2d of Judgments, § 27, alleges evidentiary

facts to bring the accused into the "ultimate fact" (i.e., the application of law to fact).

> "When considering on appeal the sufficiency of the evidence presented below, appellate courts presume the judgment of the trial court to be correct and reverse only if the trial court's decision is plainly wrong or without evidence to support it. Thus, appellate courts do not substitute their judgment for that of the trier of fact. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, **to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.**" *Kelly v. Commonwealth*, 41 Va. App. 250, 584 S.E.2d 444, 2003 Va. App. LEXIS 419 (Court of Appeals of Virginia August 5, 2003, Decided). *Crowder v. Commonwealth*, 41 Va. App. 658, 588 S.E.2d 384, 2003 Va. App. LEXIS 576 (Court of Appeals of Virginia November 12, 2003, Decided) [Emphasis added]

45. In every criminal case, there must be enough fact in evidence for the jury to consider it. For a jury to consider it, it must be alleged.

> "The rules of evidence give trial judges broad discretion in evaluating whether evidence is probative, requiring only a 'plus value' to make it admissible. Wigmore, supra, § 29, at 976 (Tillers rev. 1983). Once admitted, its value or weight is determined by the jury. As Professor Wigmore characterizes that interplay, the **evidentiary fact** offered does not need to have strong, full, superlative, and probative value and does not need to involve demonstration or to produce persuasion by its sole and intrinsic force but merely needs to be worth consideration by the jury. It is for the jury to give the fact the appropriate weight in effecting persuasion. *United States v. Queen*, 132 F.3d 991, 998, 1997 U.S. App. LEXIS 36283, *20, 48 Fed. R. Evid. Serv. (Callaghan) 599 (4th Cir. Md. December 29, 1997) [Emphasis added]

46. Allegations are not entitled to assumption of truth:

> "**A pleading that offers labels and conclusions or a formulaic recitation** of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders **naked assertions devoid of further factual enhancement.** To survive a motion to dismiss, a complaint must **contain sufficient factual matter,** accepted as true, to state a claim to relief that is plausible on its face. **A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.** The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.
>
> *** **[A]llegations *** , because they are mere conclusions, are not entitled to the assumption of truth.** While legal conclusions can provide the complaint's framework, they must be supported by **factual allegations.** When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 662, 129 S. Ct. 1937, 1939, 173 L. Ed. 2d 868, 868, 2009 U.S. LEXIS 3472, *1, 77 U.S.L.W. 4387, 2009-2 Trade Cas. (CCH) P76,785, 73 Fed. R. Serv. 3d (Callaghan) 837, 21 Fla. L. Weekly Fed. S 853 (U.S. May 18, 2009) [Emphasis added]

H. Lack Of Essential Element More Than Damaging To Prosecution

47. Failure to state a claim is more than just injurious to the state's case.

> "It is necessary for an indictment to set forth **all of the essential elements of a crime** and if any of the elements **are omitted it is fatally defective. ***** When every fact necessary for conviction appears that is enough, and it likewise is sufficient if the facts appear by necessary implication. When an indictment pursues the language of a statute, this is generally

> sufficient. If every fact necessary to constitute an offense is charged or necessarily implied by following the language of the statute, an indictment will undoubtedly be sufficient. *** **An indictment must charge an offense, and if it fails to give the information necessary to enable a defendant to concert a defense,** such information may be supplied by a bill of particulars." *Hagood v. Commonwealth*, 157 Va. 918, 162 S.E. 10, 1932 Va. LEXIS 332 (Supreme Court of Virginia January 14, 1932). [Emphasis added]

I. Essential Elements In Jury Instructions Must Be Beyond A Reasonable Doubt Rather Then Within Speculation

48. The burden is on the Commonwealth of Virginia to prove **every essential element** of the offense beyond a reasonable doubt. In this case, it came to speculation by the judge as to my being the danger on the road should the 2300 hours traffic be unreasonably at 120 to 140 miles per hour.

> Unless those elements are defined by instructions available to the members of the jury during their deliberation, they cannot properly determine whether the commonwealth has carried its burden. "The duty to give such instructions is not discharged by simple reference to the indictment, or by reading the applicable statute to the jury. It is always the duty of the court at the proper time to **instruct the jury on all principles of law applicable to the pleadings and the evidence**, and a correct statement of the law applicable to the case, when the law is stated, is one of the essentials of a fair trial." *Dowdy v. Commonwealth*, 220 Va. 114, 255 S.E.2d 506, 1979 Va. LEXIS 242 (Supreme Court of Virginia June 8, 1979) [Emphasis added]

49. A proper charging instrument listing essential elements is followed by the jury ruling on the essential elements, as well, and the appellate court's asking the same question.

> "The critical inquiry on review of the sufficiency of the evidence *** does not require a court to ask itself whether it believes that the evidence at the trial

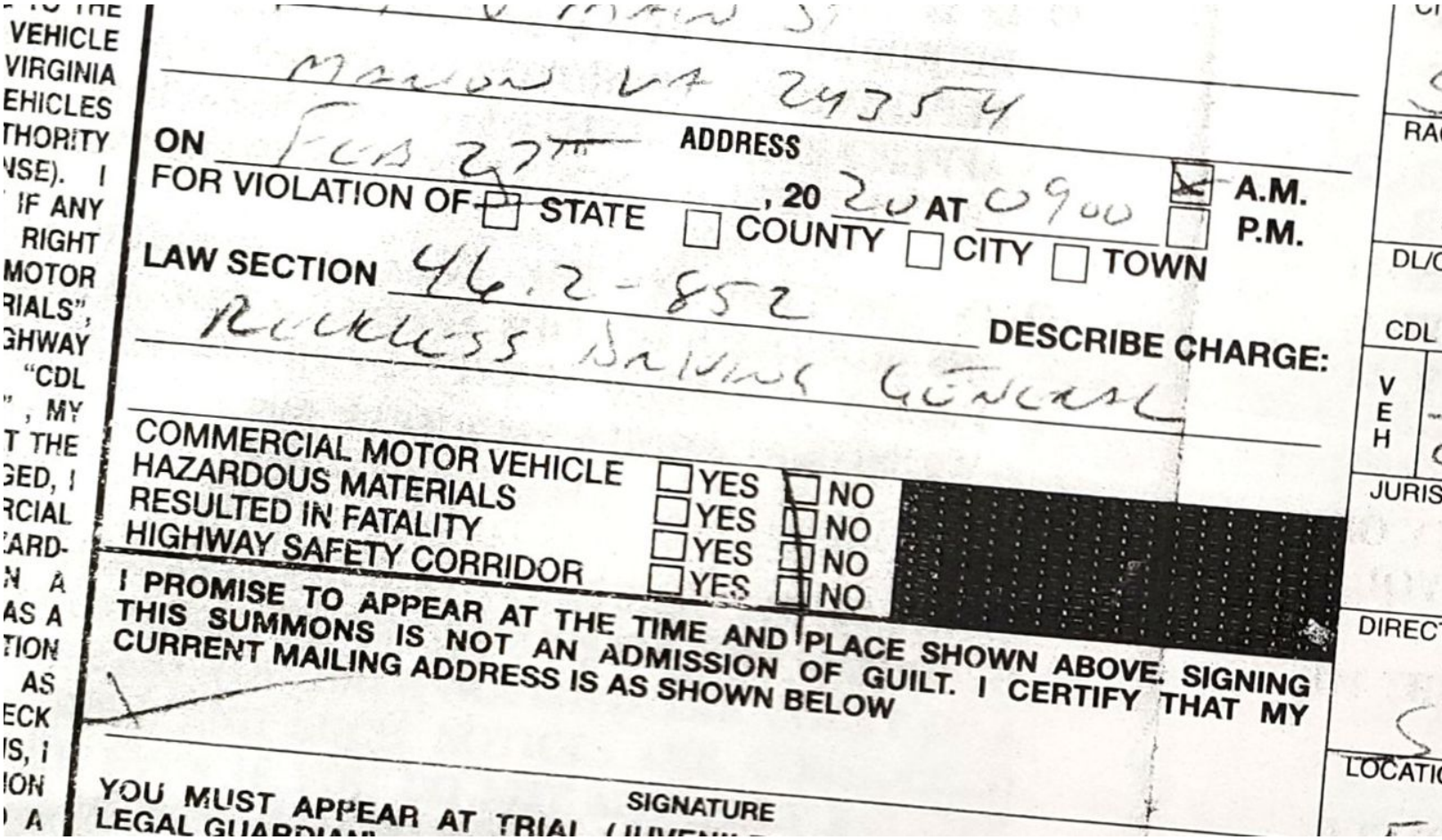
established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 309, 99 S. Ct. 2781, 2783, 61 L. Ed. 2d 560, 567, 1979 U.S. LEXIS 10, *1 (U.S. June 28, 1979) [Emphasis added]

J. 'Raise A Right To Relief Above The Speculative Level'

50. The United States Supreme Court equates the use of labels and **"formulaic recitation" of essential elements to failing to state a claim to relief** and lacking facts to "nudge [the state's] claims across the line" from possible to plausible.

> "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ibid., a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires **more than labels and conclusions**, and a **formulaic recitation of a cause of action's elements will not do**. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true. Applying these general standards to a § 1 claim, **stating a claim requires a complaint with enough factual matter to suggest an agreement.** Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.
> **** Here, the Court is not requiring heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged **their claims across the line from conceivable to plausible**, their complaint must be dismissed. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 548, 127 S. Ct. 1955, 1961, 167 L. Ed. 2d 929, 934, 2007 U.S. LEXIS 5901, *5, 75 U.S.L.W. 4337, 2007-1 Trade Cas. (CCH) P75,709, 68 Fed. R. Serv. 3d (Callaghan) 661, 20 Fla. L. Weekly Fed. S 267, 41 Comm. Reg. (P & F) 567 (U.S. May 21, 2007) [Emphasis added]

K. The State's Charging Instrument Must Include Full Notice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Marion VA 24354

ON Feb 27th ADDRESS

FOR VIOLATION OF ☐ STATE ☐ COUNTY ☐ CITY ☐ TOWN , 20 20 AT 0900 ☒ A.M. ☐ P.M.

LAW SECTION 46.2-852 DESCRIBE CHARGE:

Reckless Driving General

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

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

SIGNATURE

YOU MUST APPEAR AT TRIAL

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This image is a closeup of the key part of the two-page charging instrument in State of Virginia v. Abigail Tulis at her trial Feb. 27 in Smyth County.

51. Clearly, the standard to be met by charging instruments in Virginia is one of full notice. The accused has an absolute right to have *all essential elements of an alleged crime be narrated as evidentiary facts to place her within the claim of the ultimate fact*, that of the statute.

52. Does the Virginia uniform summons serve the interests of justice in the courts of Virginia?

53. As noted in the screengrab above and in this case file, Trooper Brandon Frye writes "46-2-852" when directed to write the law section. Ordered to ***"describe charge,"*** he ***names the statute***, "reckless driving general."

54. Is that describing the charge? Is that descending to the particulars? Does the trooper **give the information necessary to enable a defendant to concert a defense?**

55. The trooper's writing "46-2-852" in the line for "describe charge" denies the accused the basic evidentiary facts that I have as a right to evaluate ahead of trial and to defend against.

L. The 'Lesser-Included Charge' Problem

56. The Commonwealth of Virginia's slapdash treatment in giving notice of the essential elements is in evidence up to the last moment of trial.

57. Judge Lee convicted me of "improper driving," which he says is a "lesser included charge" at § 46.2-869. Improper driving; penalty. It reads:

> Notwithstanding the foregoing provisions of this article, upon the trial of any person charged with reckless driving ***where the degree of culpability is slight***, the court in its discretion may find the accused not guilty of reckless driving but guilty of improper driving. However, an attorney for the Commonwealth may reduce a charge of reckless driving to improper driving at any time prior to the court's decision and shall notify the court of such change. Improper driving shall be punishable as a traffic infraction punishable by a fine of not more than $500. [Emphasis added]

58. The district court imposes a double wrong on me.

59. No evidence exists of any improper act, as no improper act was alleged in the charging instrument. The only essential element of reckless driving established in the instrument and at trial was movement of my car. Without a primary improper act, can there be a lesser?

60. For the law to allow the judge to switch charges after the state closes its case is to spring a trap on me and convict me of a crime not alleged. The statute faces a test from the U.S. supreme court at *Cole v. Arkansas*, 333 U.S. 196, 68 S. Ct. 514, 92 L. Ed. 644, 1948 U.S. LEXIS 2789, 14 Lab. Cas. (CCH) P51,261, 21 L.R.R.M. 2418 (Supreme Court of the United States March 8, 1948, Decided), which **prohibits judicial legerdemain.**

> "No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. *** If, as the State Supreme Court held, petitioners were charged with a violation of § 1 [of Act 193 of the 1943 Arkansas Legislature], it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; it is certain that they were not tried for or found guilty of it. **It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.**" *De Jonge v. Oregon*, 299 U.S. 353, 362. [Emphasis added]
>
> ***[T]he State Supreme Court *** affirmed their convictions as though they had been tried and convicted of a violation of § 1 when in truth they had been tried and convicted only of a violation of a single offense charged in § 2, an offense which is distinctly and substantially different from the offense charged in § 1. To conform to due process of law, petitioners were

> entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court. We are constrained to hold that the petitioners have been denied safeguards guaranteed by due process of law — safeguards essential to liberty in a government dedicated to justice under law.

61. What's more, state law § 46.2-869. Improper driving; penalty, ***imposes a third wrong*** upon me. "Improver driving" lacks an antecedent statute creating a separate liability and legal duty against "improper driving." Improper driving has not been criminalized by statute in the state of Virginia, yet here it is penalized, and that penalty of $500 imposed on me.

62. Improper Driving offense is unconstitutionally undefined and vague. How do I know that I won't be charged again for this offense, under a different conception, as "improper driving" wasn't alleged, argued or proven at my trial, and remains hanging over me as a possible cause of action? What constitutes "slight culpability" in the highway statutes of Virginia? If I did not violate any particulars of any of the code under the sequence of Virginia, Title 46.2. Motor Vehicles, Chapter 8., Regulation of Traffic, Article 7., which spell out the particulars of what constitutes "reckless" driving, how is there any culpability at all?

63. I object to this state of affairs as a matter of law, and ask this court to rule unconstitutional such a penalty provision lacking antecedent liability statute.

64. **I was tried on a charge not made, and convicted on a charge not tried.** I ask this court if such an outcome of district courts across Virginia is lawful, respectful of people's

rights, honoring the state constitution and instilling confidence in public justice.

L. The Complaint Fails To Alleged Subject Matter Jurisdiction

65. I say Judge Lee in district court lacked subject matter jurisdiction because the court's authority was not properly evoked by the accuser. The accuser failed to provide the accused sufficient notice of the alleged offense, failed to allege the essential elements of the crime, and thus failed to sufficiently state a claim to evoke the court's jurisdiction.

66. The Virginia uniform summons is facially unconstitutional in that it forbids the state's agent, the trooper or officer, from fulfilling his duty to properly charge an accused. A **competent** officer would, to maintain the state's peace and dignity, approach an accused on all cylinders, as it were, identifying for the accused **the essential elements of the alleged breach**. The charging instrument in this case, the record shows, doesn't "describe charge" as required. Rather, it states the name of the statute. It provides no narrative and alleges no evidentiary facts. It shows the officer is incompetent, made so by his form he is trained to use.

67. The essential elements of reckless driving are absent as a matter of law from the very moment Trooper Frye pressed the button activating his blue lights.

68. As to facts, the transcript in this case indicates that I prepared for a trial but was rebuffed repeatedly in the exercise of my rights. I was denied counsel of my choice, my father by coverture. I was refused a recording device notwithstanding the Virginia legislature providing the

procedural right. There was no charging instrument. My motion for evidentiary hearing was denied. The Court repeated blocked me in my pursuit of the theory of the case. The Court stymied pleading of statute and rebuffed pleadings of case law.

69. To find me guilty of a "lesser included charge" violates my constitutional rights to notice. It also highlights another lack in Virginia's legal system — that of legal standing. Where is corpus delecti? Where does complainant show it has suffered actual physical injury? Where does the commonwealth, as the alleged injured party, show itself harmed or the public interest aggrieved? Leaving those matters aside, I remind the court I was not charged with improper driving; I did not defend against that charge. I am being unjustly and dishonorably treated by what appears as a back door or escape hatch for district judges serving counties and towns as tax collector.

70. I ask this court to throw out the Virginia uniform summons as unconstitutional on its face, and order the commonwealth to prohibit its use immediately in the interest of justice. I ask this court to order troopers and all others to properly state all essential elements, to narrate offenses in terms of the statute, to allege evidentiary facts to give defendants sufficient legal notice. Proper notice is essential for there to be just and honorable government, and for the due process rights of the people – whether native Virginians or visitors in the state — to be respected, and their liberties and property defended.

M. Even To Have The Court *Sua Sponte* Convert The Charge To Improper Driving, "Reckless Driving" Must Be Proven

71. There needs to be an element of moral turpitude, though slight, before the judge can convert the charge. Changing the charge to "improper driving" was an abuse of discretion since reckless driving is not supported.

N. The Officer And The Court Acted Like A Super-Legislature, Arbitrarily Injecting *Mala Prohibita* Elements

72. The Court (judiciary) and the trooper (executive) in their own imagination, repeal the necessary *mala in se* elements of "endangering life, limb or property of any person" where there was no "person" to injure. They replace it with speculation of what might happen should conditions be different, and inject the statute with invisible ink to correct words that they imagine the General Assembly to have accidentally left out.

73. The Court's and Trooper's subjective lawmaking, violate Virginia Constitution, Article I, Section 5, Article IV, Section 1.

O. The Court Abused Discretion Where The Judge Acted As Tag-Team Prosecutor

74. The District Court judge's offering as his own evidence of speculation, after the trial, acting like a tag-team prosecutor and without me having any adversarial process to rebut it, is an abuse of discretion.

P. The Virginia Uniform Summons Is Unconstitutional

75. The Virginia Uniform Summons is unconstitutional because it violates its own rules and puts the member of the traveling public under a clear, substantial and material wrong.

76. Judge Lee ignored my attack on the form that effectively requires troopers to deny accused parties sufficient notice of the charges against them and to make defense at trial. The form requires the trooper to "describe charge" but gives him (or her) little room for a narrative containing the essential elements of the crime. Thus, the form creates a custom of insufficient charging instrument, violative of the defendant's due process rights, and in violation of the elements of a crime required by the Rules set forth by Virginia's Supreme Court.

77. The form and the practice of its abuse causes the government to injure me in my right under the constitution that requires every accuser to obtain standing to prosecute. The state and its witness obtain legal standing by giving a full accounting of allegations of how petitioner violated the reckless driving law. This requirement for full notice cannot be waived by administrative convenience or a need to save the officer's time and trouble alongside the highway in having to write an account of his charges. But that's what happens on Virginia's highways thousands of times a year — and accused is a victim. The question put to this honorable court is as follows: Is it sufficient for the state's witness and chief accuser, the trooper or officer, merely to *name the charge* in the charging instrument — the uniform summons — and not allege the essential elements? Does it violate a defendant's rights to due process to receive from her accuser nothing but the name of the charge?

Q. Other Due Processes Violations

78. The Court, contrary to Virginia statutory rules for the District Court, refused me the procedural right to record the proceeding with an audio recording device.

79. Judge Lee refused me an evidentiary hearing and notice of the evidentiary facts the state possessed.

80. Judge Lee presumed subject matter jurisdiction that he did not appear to have according to the Rules of the Supreme Court of Virginia and instructions regarding the necessary elements of a charging instrument.

81. Judge Lee denied me counsel of my choice, worsening the effect of ambush testimony from the trooper. It seems to be a matter of practice notwithstanding the relationship of coverture between my father and me.

82. The Court denied me the right to develop my theory of defense.

R. Grave Considerations

83. I believe the main issues dispositive of my claims are above. I put the following into the record to give the courts of appeal a glimpse of what happens in the judicial hinterlands, from whence few appeals come and which appear sorely to need supervision if the state doesn't wish to stand accused of warlordism approved in Richmond.

84. The sketch that is drawn by the facts of the situation, the testimony of the trooper, and the process of guilt-by-speculation, suggests justice is remote and unavailable in the Commonwealth's district courts, for those who know not their rights or are too poor to defend them, and for those who vigorously defend their rights as belligerent claimants in person.

85. Is the judge in the District Court operating a kangaroo court among familiars, extracting fines for county and state. It's a widespread problem across the United States. See Mike Maciag, "*Addicted to fines*[;] small towns in much of the country are dangerously dependent on punitive fines and fees," Governing, September 2019. https://www.governing.com/topics/finance/gov-addicted-to-fines.html.

86. Judge Lee relishes the perjured nugget of "50 mph." According to the transcript, he stressed that he is convinced that I was traveling at 50 mph in a 70 mph zone and says it is "a dangerous speed." He says it is "dangerous to be below the posted limit" and that it is "dangerous to be playing with the radio." "Some people are on the road doing 120 mph, even 140 mph, and it's extremely dangerous to be doing 50," he says. Judge Lee said, "the dangerousness of this conduct" merits a $500 fine. The roadway was empty, and had I been doing 50 mph the trooper could easily have passed me.

87. Judge Lee <u>introduces at the last moment of trial a theoretical threat to public safety — others traveling at 120 mph or 140 mph.</u> If such speeders were anywhere visible to state employee Frye, why was he waylaying a slowpoke at 50? The $30 penalty for driving too slow is for conditions of normal traffic. Yet Judge Lee and Trooper Frye concoct an imaginary "abnormal" traffic flow where those imaginary driver's malevolence imposes upon me that status of a criminal.

III. SUMMARY

88. The arguments, errors and violations of due process listed above warrant the dismissal of the charge against me, with prejudice, as a matter of law. Whether the statute is voided for vagueness or not, or the Court might seem to be constrained by an interpretation of the statute as it applies to the facts, the court in its office as Chancellor has a duty to dismiss the charges as a matter of justice.

89. My treatment below, by the District Court, cries for the following reform from above. The points of ill treatment are:

90. A grant to attorneys to have equipment of their choosing but discriminates against financially poor and pro se / sui juris defendants whose persons and defenses are presumed to account for nothing.

91. Refusal to allow complainant counsel of her choice on grounds he is not a member of the bar

92. Refusal to grant request for an evidentiary hearing prior to trial to obtain sufficient notice and the right to know nature and cause of the accusations

93. Refusal to allow complainant to plead case law from Virginia appellate courts as to the essential elements of the offense

94. Refusal to allow petitioner to develop her theory of the case in the exercise of her due process rights under the 14th amendment

95. Refusal to honor the U.S. Constitution equal faith and credit clause and denial of her claim to the right to cite and quote the Tennessee case State v. Garcia

96. Refusal to allow petitioner to build foundation for questions she set to ask about the evidence.

97. Refusal to allow relief to petitioner from hidden facts sprung in ambush on the complainant, acting sui juris, at trial. Such purported "facts" would have been properly brought into view in the preliminary hearing and allowed her — and her counsel — to evaluate them.

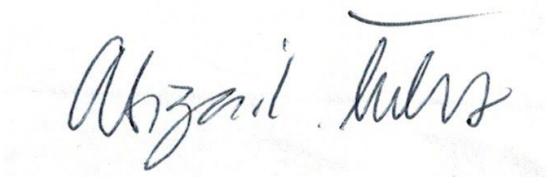
98. Refusal to act justly, fining complainant the maximum fine of $500 on the "lesser included charge" when the state had not met its burden of proof of essential elements of reckless driving, even with perjured testimony in favor (estopped from impeaching the testimony … then relying on it)

99. Refusal to grant accused the presumption of innocence and operating on a preponderance of speculation rather than beyond reasonable doubt.

100. Petitioner asks this court to overlook her rough-hewn pleadings, as she is not practiced in the art of law and argument, and to do the following:

    a. Overturn her conviction for improper driving.
    b. Dismiss with prejudice the charge of Reckless Driving as a matter of law.
    c. Alternatively, dismiss the charge as a matter of justice.
    d. Find the Virginia uniform summons unconstitutional and order it be thrown out to uphold the rule regarding the state's need to allege, argue and prove the essential elements in criminal matters.
    e. Overturn the improper driving penalty statute absent an antecedent liability statute

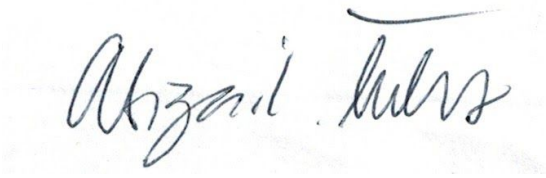
101. Should the charge not be so dismissed, let the Court explain in writing why it should not be dismissed as a matter of law or justice.



Abigail Marie Tulis
in persona propria
10520 Brickhill Lane
Soddy-Daisy, Tenn. 37379
Email: marie.tulis@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that the above motion was sent first-class U.S. mail to the Commonwealth Attorney for Smyth County, 121 Bagley Circle, Marion, VA 24354, on June 15, 2020.



Abigail Marie Tulis