

**Transcript of Commonwealth of Virginia v. Abigail Tulis,
Feb. 27, 2020, Smyth County courthouse
Affidavit by Abigail Tulis**

DEFENDANT'S STATEMENT OF UNDISPUTED FACTS

I, Abigail Tulis, of Soddy-Daisy, Tennessee, temporarily residing in Vianen, The Netherlands, hereby testify and verify that the following information is true to the best of my ability and recollection:

1. I appeared in person at the Smyth County courthouse, Smyth County District Court on February 27, 2020. I appeared as the accused in the case docketed as GT19020759-00, for the trial scheduled for that day.
2. The presiding judge was Travis Lee.
3. I brought to the hearing a device to make a digital recording of the proceedings.
4. Judge Travis Lee, twice denied me the right to make an audio recording of my trial.

The Code of Virginia says:

“§ 16.1-69.35:2. Recording of proceedings in district courts.

An audio recording of proceedings in a general district court may be made by a party or his counsel.

1985, c. 378; 2014, c. 268.

5. I made this account of the trial in lieu of having a recording that was unlawfully denied to me.
6. I submitted an account to the Commonwealth Attorney on March 4, 2020. The Commonwealth Attorney received it and has not replied nor rebutted the notice and transcript that I provided. Tacit agreement is presumed by the Commonwealth's non-response.
7. I began the trial by declining to enter a plea, saying that I did not understand the charges and wanted to learn more about the nature and cause of the accusations.
8. I asked if my filings were in the record. I had sent several of them by mail.
9. I said, "So I will understand these proceedings, are we in criminal, or administrative and civil jurisdiction?"
10. The judge Travis Lee said that his court is involved in both criminal and civil cases.
11. I followed up, asking whether the matter is criminal and whether the burden of proof on the state and is beyond a reasonable doubt. The judge said that standard was beyond a reasonable doubt and that reckless driving is a criminal matter.

12. I asked if I had a right to counsel. Judge Lee said, "Yes."
13. I asked if I had a right to a counsel of my choice. Judge Lee said, "Yes."
14. I said that my counsel of choice is my father, David Tulis, who was present in the courtroom, as my next friend and counsel.
15. Judge Lee asked me if my father was a member of the Virginia bar and licensed to practice law?
16. I asked, "So, is your answer to my question 'No'?"
17. Judge Lee said that no one can be counsel in Virginia who is not a member of the bar.
18. I said, "So you are denying me counsel of my choice?"
19. Judge Lee repeated that only licensed lawyers can assist as counsel or represent a person in court.
20. I objected to the denial of my father being my next friend and counsel.
21. I asked for an evidentiary hearing, saying I wanted to learn what the state has as evidence against me, and "if there is enough in the state's evidence to properly evoke the court's subject matter jurisdiction?" I cited judicial

economy as a reason to have an evidentiary hearing, "to save the trouble of having a trial."

22. Judge Lee denied my request and ordered the trial.
23. I asked if submissions that I made by mail are in the record. I got an affirmative reply from the judge with no discussion of any particular document.
24. Commonwealth's Attorney Jill Lawson made an opening statement.
25. In my opening, I quoted a Virginia court case imposing the standard on the proceedings.

To convict, the Commonwealth of Virginia must prove every essential element of the offense beyond a reasonable doubt, with evidence which excludes every reasonable hypothesis of innocence and consistent only with guilt. *Thompson v. Commonwealth* 27 Va . App. 720 *; 501 S.E.2d 438 **; 1998 Va . App. LEXIS 385 ***

26. I said that I had a known legal duty in the use of my rental car to care for other people, property and cars near me as I used my rental car on the highway. I averred that I did not violate that duty.
27. I cited the obligation of the state to prove the essential elements of reckless driving, including conditions, intent, my actions in my car and proximity of others.

28. I quoted Va. Code 46.2-852 saying, 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. § 46.2-852. I said, "This law, properly applied, protects the innocent from abuse by those in power."

29. I said, "The totality of circumstances of my arrest do not meet the burden of proof of reckless driving."

Trooper Lawson Takes The Stand

30. Ms. Lawson put Trooper Frye on the stand. Trooper Frye swore to tell the truth. He identified himself and said that the accused was in the right lane and "traveling at a slow rate of speed" in a posted 70 mph zone. "Miss Tulis was swerving and crossing the line in her vehicle," he says. He came up beside her, he says, and she was "glancing into her lap" and there was a glow from an area in front of her. He said he pulled me over and charged me with reckless driving.

31. My efforts to qualify Trooper Frye as a witness were largely denied. According to my script, I sought to determine if he gets private gain for transportation stops, whether he was hurried in an attempt to gain points or merits, and

whether he had my safety and welfare in mind or his own purse and career. This line of questioning was denied, including whether he had read the law lately or any court cases.

32. I asked, "Do you have any specialized training in law?"

33. Attorney Lawson objected on relevance grounds. The Court sustained the objection.

34. I asked, "How many traffic stops did you make the evening of Dec 21st?"

35. Attorney Lawson objected and the Court sustained.

36. I asked, "What is my name?"

37. Officer Frye said, "Abigail Tulis."

38. I asked, "Could you describe this person for the judge?"

39. Mr. Frye read the description that he obtained from my license.

40. I asked, "Do you have any evidence to testify to that there was an accident in which I was involved?"

41. Mr. Frye said "No."

42. I asked, "Do you have any evidence to testify to that I injured anybody the night of Dec. 21?"

43. Mr. Frye said, "No one."

44. I asked, "Do you have any evidence to testify to that you, being close to me, were injured or endangered by my use of the road?"

45. Mr. Frye said, "No."

46. I asked about his evidence regarding the essential element of conditions.

47. I asked, "Do you have any evidence that there was much traffic on the road?"

48. Mr. Frye said, "No other traffic."

49. I asked, "Do you have any evidence that there were pedestrians nearby?"

50. Mr. Frye said, "There were no pedestrians on U.S. 81."

51. I asked, "Do you have any evidence you can testify to that I was carrying any passengers or any occupant?"

52. Mr. Frye said, "You were alone in the car."

53. I asked, "Do you have any evidence that anyone's property was near?"

54. Mr. Frye appeared to become confused.

55. I asked, "Do you have any evidence that I passed anybody who was pulled over on the side of the road with his or her property?"

56. Mr. Frye said words to the effect that no one was in the tire changing lane.
57. I asked, "Do you have any evidence you can testify to that I passed other drivers while you were behind me?"
58. Mr. Frye said, "You did not pass anyone."
59. I asked, "Do you have any evidence you can testify to that this was a road with two-way traffic?"
60. Mr. Frye said, "The interstate is two lanes one way."
61. I asked, "Do you have any evidence you can testify to that there were high winds?"
62. Mr. Frye said, "No winds."
63. I asked, "Do you have any evidence that the roads were wet?"
64. Mr. Frye said, "No wet roads."
65. I asked for evidence from the trooper about my actions. "Do you have any evidence to testify to that I crossed any lanes of traffic while you were following me?"
66. Mr. Frye said that my tires touched the white line.
67. I asked, "Do you have any evidence to testify to that I illegally passed another vehicle?"
68. Mr. Frye said, "No."

69. I asked, "Do you have any evidence to testify to that I followed too closely?"

70. Mr. Frye said, "Not following anyone too closely."

71. I asked, "Do you have any evidence to testify to that I committed a violation regarding use of the turning signal?"

72. Mr. Frye said, "No. You did not turn on the turn signal."

73. I asked, "Do you have any evidence you can testify to of my speed?"

74. Mr. Frye said, "You were traveling at 50 mph."

75. I asked, "Do you have any evidence as to the posted speed limit?"

76. Mr. Frye said, "The posted speed is 70."

77. I asked, "Do you have any evidence you can testify to that I was holding my phone?"

78. Mr. Frye said, "No evidence." But he said that my face was illuminated with light from either the dashboard or a wireless phone out of his view.

79. I asked, "Do you have any evidence as to the brightness and screen of the cars radio and control system?"

80. Mr. Frye said, there was glare and that "The screen on the console was pretty bright."

81. I asked, "Do you have any evidence you can testify to that you ran up to my car after you pulled me over?"
82. Mr. Frye said, "No, I didn't run up to the car. I walked up to it as I usually do."
83. I asked, "Do you have any evidence you can testify to that I was sober and alert when you spoke with me?"
84. Mr. Frye said, "You gave no indications of DUI."
85. I asked, "Did you ask if I was having a medical problem?"
86. Mr. Frye said, "You seemed fine."
87. I asked, "Do you have evidence that you did any sort of investigation of the causes and conditions of my car's adjustments before charging me with a criminal offense?"
88. Mr. Frye said, "No investigation was required. It was obvious what I had to do. You were swerving many times over the line and were traveling at 50 mph."
89. I asked, "Do you have any evidence to testify to that you spent more than 90 seconds looking into the situation before you charged me?"
90. Mr. Frye indicated the traffic arrest was routine in all aspects.
91. I asked, "Do you have any evidence you can testify to, Officer Frye, about your body cam?"

92. Mr. Frye said that he had no body cam.
93. I asked, "Do you have any evidence you can testify to about car dash cam?"
94. Mr. Frye said the car did not have a camera.
95. I asked, "Do you have any evidence you can testify to as to whether the defendant left the road and grass beyond?"
96. Mr. Frye said, "You did not leave road and go onto the grass."
97. I asked, "Do you have any evidence you can testify to as to whether the defendant left the road and went into the tire-changing lane?"
98. Mr. Frye said, "No, you didn't do that."
99. I asked, "Do you have any evidence you can testify to based on your training, as to whether defendant was jerking the car about?"
100. Mr. Frye indicates negative, stating that I was "swerving."
101. I asked, "Do you have any evidence you can testify to that the defendant made aggressive movements in the car?"
102. Mr. Frye indicated no. The red car was just not perfectly in the center.
103. I asked, "Do you have any evidence you can testify to that either left tires or right tires touch the white line?"

104. Mr. Frye said, "Her tires touched a white line."

105. I asked, "Do you have any evidence you can testify to as to distance or time you traveled behind the accused?"

106. Mr. Frye said, "A short period of time."

107. I asked, "Do you have any evidence you can testify to that slight adjustments within the lane were wobbling, swerving?"

108. Mr. Frye indicated negative.

109. I asked, "Do you have any evidence you can testify to that there was anything beyond momentary movement and variation in lane?"

110. The DA enters objection to question as repetitive.

111. I asked trooper Frye to state my name.

112. "Abigail Tulis."

113. I asked, "How would you describe me?"

114. After an objection by Ms. Lawson, he says, "I will describe you based on your driver license." He says she has blue eyes, fair skinned and blonde.

115. I asked, "Is the uniform police report a routine part of your job?"

116. Mr. Frye said, "It is a standard document for troopers."

117. I asked, "Do you believe this form gives the accused sufficient awareness of her alleged crime so that she might defend against your accusation of having broken a law?"

118. The Commonwealth's attorney Lawson objects to the question, saying it is asking the witness to make a legal conclusion.

119. I asked, "Do you have any evidence you can testify to that there are any other charging instruments in this case?"

120. Mr. Frye said, "There are no other charging instruments."

121. I asked, "Are there any other documents that the accused is to have by way of notice?"

122. Mr. Frye said, "Negative."

123. I asked, "Do you have any evidence you can testify to that the charging instrument relates the charge to the facts?"

124. Commonwealth's Attorney objected that this is a legal question. The judge sustained the objection.

125. I asked, "Does your charging instrument narrate the alleged facts in terms of the statute?"

126. The Commonwealth's Attorney objected and the judge agreed.

127. I asked, "Do you remember what you wrote on the form?"

128. Mr. Frye said that he wrote the code number.

129. I asked, "Please look at the form. What does it say right here?"

130. Mr. Frye says it says "describe charge."

131. I asked, "Did you do that?"

132. Mr. Frye said that he wrote the name of the charge,
"reckless driving, general."

133. I asked, "Would you say that writing "46-2-852, reckless
driving, general" is describing the charge?"

134. Officer Frye was confused. The Commonwealth's Attorney made
an objection.

135. I asked, "When I asked you to describe me, did you say,
'Abigail Tulis'?"

136. Mr. Frye said, "I don't understand what you are talking
about. I don't understand."

137. I asked, "Do you feel you don't have to properly notify the
defendant and describe what she did to violate the law?"

138. The Commonwealth Attorney objected, saying that the form is
approved by the general assembly. Sustained.

139. I asked, "Do accused people have a right to have charges
against them given in writing?"

140. Mr. Frye answer "Yes," and the he gave me the form.

Abigail Tulis Takes The Stand

141. I took the stand.

142. I submitted a phone record indicating no use of my phone prior to my arrest at 11 p.m. The record was attached to an affidavit of my brother, Josiah Tulis, keeper of the record of my phone account, and he averred its accuracy. It showed that I made a phone call at 11:07 – after the encounter with the trooper. I testified that I was on the side of the road and called her my mother in Tennessee.

143. The judge denied me the right to enter my affidavit of the encounter into the record, but said that I could consult it or draw from it to testify.

144. I testified that I had set cruise control at 69 mph, that I had been on the road enroute to Tennessee for 10 hours, and that I had taken frequent breaks. I testified that around the time of being trailed by Trooper Frye, my bluetooth had stopped because I had plugged my phone in for power. I testified that I was flipping through looking for a radio station on the car's standard equipment.

145. I testified that I was aware of my surroundings, and that I had known of my legal duty to be careful, mindful, watchful and attentive to the use of a car.

Final argument - Commonwealth

146. Ms. Lawson rehearsed a final argument, saying that I was weaving dangerously, was traveling at 50 mph in a 70 mph zone, and was looking down from time to time to some area out of view of the officer in the car next to hers.

147. She said, "Tulis should be found guilty of reckless driving."

Final Argument - Abigail Tulis

148. In my final argument, I said there have been no facts to show that my actions met the three essential elements of the statute, and I recited the elements. Though I did not read the statute, I highlighted in argument the essential elements:

- a. Irrespective of the maximum speeds permitted by law*
- b. any person who drives a vehicle on any highway recklessly.*
- c. or at a speed or in a manner*
- d. so as to endanger the life, limb, or property of any person*
- e. shall be guilty of reckless driving. Va. Code Ann. § 46.2-852.*

149. I highlighted road conditions from testimony of Trooper Frye. Dry. No winds. No adverse weather.

150. I highlighted the intent element of my testimony, stating I possessed a known legal duty in using a car or operating a

motor vehicle, and that I had not violated that duty in any way.

151. I made mention of the fourth element required to be put into the state's evidence to win conviction: Namely, that I needed to have "endangered life, limb or property of any person."

152. I said that there had to be other people near me in my alleged weaving against whom I imposed a danger.

153. I noted Trooper Frye admitted no other people were proximate to me as I traveled down the highway.

154. I stated that the evidence from Trooper Frye was as follows:

- a. Evidence shows traveler not speeding.
- b. Evidence shows no one was near the car as the cruiser trailed it down the freeway.
- c. Evidence shows no threat or injury to anyone.
- d. Evidence shows no accident, crash or injury.
- e. Evidence shows no evidence Trooper Frye obtained any damage.
- f. Evidence shows the officer admitted he had no body and no dash camera evidence against me.

g. Evidence shows no damage or threat or injury to his person.

155. I said that if there is no damage or corpus delecti, there is no crime and that the state has no standing to prosecute the case.

156. I said that the proceeding, being in criminal court, has to be the "beyond reasonable doubt standard."

157. I argued that no proper charge was filed because the officer provided no narrative by which to provide evidentiary facts that would put me within the operation of the reckless driving law. I highlighted that the trooper failed to "describe charge" in his charging instrument, but rather "names" the charge ("reckless driving, general"), indicating he is incompetent and an incompetent witness.

158. I pointed out that in the testimony he showed that he knew the difference between "naming" something and "describing" it. He failed to properly fill out the form with a description of the alleged crime, denying me due process of notice as to the alleged crime. The alleged crime "needs to be told exactly," I said.

159. I said that I was not notified of the essential elements of the charge and that I was from the beginning "baffled" by the case.

160. I attempted to cite the Tennessee case *State v. Garcia*. But Judge Lee prevented me from quoting it. I objected, citing the full faith and credit clause of the U.S. constitution pursuant to a notice that I had entered into the record with the clerk.

161. Judge Lee said that this provision applies to marriage and driver licenses and to judgments – and not to court cases.

162. I cited the Virginia case *Spencer v. Norfolk*, 051044 (Va. 2006), and paraphrased its holding that "speed alone does not constitute recklessness unless it endangers life, limb, or property."

163. I quoted another case: "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

164. I said that the court has a duty to find me not guilty.

Judge Lee ruling

165. Judge Lee said that he was going to bring into the case a new charge.

166. I objected, saying that the state rested its case – and voiced as a question, “Now a new crime is being alleged? and I’m going to be found guilty under a different statute?”

167. The judge said he is authorized to amend the accusation to “improper driving,” which he says is an infraction and not a crime.

168. I asked if it required me to come back to the U.S. for a class, and he says it doesn’t.

169. Changing the charge, he says, is something he can do as judge.

170. Judge Lee thought about his verdict for two or three minutes.

171. Breaking silence, Judge Lee recited a narrative of the night of Dec. 21, citing Trooper Frye testimony that Abigail Tulis “was weaving in her lane” and “weaving out of the lane” and doing 50 mph. He says Trooper Frye observed her and saw her looking down and that there was a glare on her face from a light.

172. Judge Lee cited the Tulis testimony that the car was a rental, had a bright display and that she was looking for a radio station.

173. Judge Lee cited the evidence of a phone record showing that no phone call had been made between 7:58 and 11:07, but until after the arrest was over and I called my mother.

174. Judge Lee said that "hearing the evidence" he does "feel that the conduct is guilty," citing 869, the improper driving statute.

175. Judge Lee asked if there is any evidence that applies to the sentencing.

176. I entered my driving record from department of safety in Tennessee, and it says "No history."

177. Judge Lee said the accused faces up to a \$500 fine.

178. He ruled me guilty of improper driving, saying "it's not an easy decision." He stressed that he is convinced that I was traveling at 50 mph in a 70 mph zone and said 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." He said, "Some people are on the road doing 120 mph, even 140 mph, and it's extremely dangerous to be doing 50," he says.

179. Judge Lee said, "the dangerousness of this conduct" merits a \$500 fine.

End of transcript

180. The above transcript is a true record of events that occurred in the Feb. 27, 2020, trial in State of Virginia v. Abigail Marie Tulis. The transcript is based on my extensive trial notes, my trial preparation scripts, and notes taken by an observer, David Jonathan Tulis, a reporter at 92.7 FM in Chattanooga, my father and eyewitness. This account was provided as a transcript and submitted to commonwealth attorney Jill Kinser Lawson on March 3, 2020, with request that she make amendments and corrections. It was not written in first person as this document is, but has the same detail. Ms. Lawson made no corrections of the record within the 10 days allotted, nor up to the date of this filing. See attached email copies for details regarding the transcript.

181. I, Abigail Tulis, do solemnly swear under the penalty of perjury under the laws of the United States of America and the laws of Virginia, United States of America, that foregoing testimony is true to the best of my recollection and knowledge.



June 10, 2020

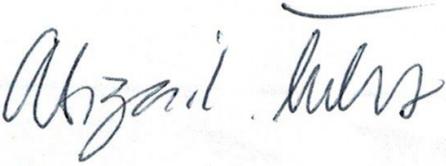
Signed:

Date:

Abigail Marie Tulis, sui juris

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.

A handwritten signature in cursive script that reads "Abigail Marie Tulis". The signature is written in black ink on a light-colored background.

Abigail Marie Tulis