

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Bray and Fitzpatrick  
Argued at Richmond, Virginia

MARK ANDREW LANKFORD, S/K/A  
ANDREW MARK LANKFORD

v. Record No. 0581-95-2

MEMORANDUM OPINION\* BY  
JUDGE RICHARD S. BRAY  
MARCH 26, 1996

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF HALIFAX COUNTY  
William L. Wellons, Judge

Andrea C. Long (Charles C. Cosby, Jr.; Boone,  
Beale, Carpenter & Cosby, on brief), for  
appellant.

Leah A. Darron, Assistant Attorney General  
(James S. Gilmore, III, Attorney General, on  
brief), for appellee.

Mark Andrew Lankford (defendant) was convicted by the trial court of driving under the influence of alcohol (DUI), third offense. On appeal, defendant complains that this conviction was barred by a related conviction for reckless driving. We agree and reverse the conviction.

The pertinent facts are uncontroverted. At approximately 11:00 p.m. on the evening of March 19, 1994, Trooper D. J. Cline observed a Toyota being driven erratically at a "high rate of speed." Cline pursued the vehicle in his police cruiser and signaled the driver to "pull . . . over." When the Toyota only "slowed down," Cline "pulled up beside" the car, and the driver

---

\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

then stopped along a dirt road. However, as Cline walked toward the vehicle, it "took off," and Cline quickly resumed the chase, during which the Toyota again stopped and sped away. Following a final pursuit at speeds in excess of eighty miles per hour, the Toyota was trapped by a "rolling roadblock," and the operator, defendant, was arrested for reckless driving, DUI, and other offenses. The entire incident spanned approximately twenty minutes. Defendant admitted that he attempted to escape because he was intoxicated<sup>1</sup> and an habitual offender.

At trial in the general district court, defendant pled guilty to reckless driving and not guilty to DUI, but was convicted of both offenses. On appeal of the DUI to the trial court, defendant unsuccessfully argued that Code § 19.2-294.1 required dismissal of that charge following the reckless driving conviction.

Code § 19.2-294.1 provides that  
[w]henever any person is charged with a violation of  
§ 18.2-266 or any similar ordinances of any county,  
city, or town and reckless driving growing out of the  
same act or acts and is convicted of one of these  
charges, the court shall dismiss the remaining charge.

(Emphasis added). Thus, although DUI and reckless driving are "separate and distinct" violations, Padgett v. Commonwealth, 220 Va. 758, 760, 263 S.E.2d 388, 389 (1980), a "conviction of one offense . . . preclude[s] conviction of the other, whenever both

---

<sup>1</sup>The sufficiency of evidence to sustain the DUI conviction is not in issue.

'gr[o]w' from the same 'continuous, uninterrupted course of operation of a motor vehicle.'" Harris v. City of Virginia Beach, 19 Va. App. 214, 216, 450 S.E.2d 401, 402 (1994) (quoting Padgett, 220 Va. at 760-61, 263 S.E.2d at 389-90). "It is the commonality of the underlying offending conduct, the continuous, uninterrupted operation of a motor vehicle, that invokes the preclusive effect of the statute." Id. at 216-17, 450 S.E.2d at 402.

Here, defendant was charged and convicted of both offenses resulting from the continuous operation of a motor vehicle, recklessly and while intoxicated, during an uninterrupted police pursuit. The charges were, therefore, "intimately related in time and distance, arising from and connected by one continuous, uninterrupted operation of defendant's motor vehicle," thereby constituting a single offense within the intendment of Code § 19.2-294.1. Id. at 217, 450 S.E.2d at 402.

Accordingly, we reverse the DUI conviction.

Reversed and final judgment.