

COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Fitzpatrick and Annunziata  
Argued at Alexandria, Virginia

VINCENT LLOYD VIRGIL STAUP

v. Record No. 2897-95-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JOHANNA L. FITZPATRICK  
OCTOBER 22, 1996

FROM THE CIRCUIT COURT OF CLARKE COUNTY  
James L. Berry, Judge

James A. Drown (Larrick, Larrick & Drown,  
P.C., on brief), for appellant.

Linwood T. Wells, Jr., Assistant Attorney  
General (James S. Gilmore, III, Attorney  
General, on brief), for appellee.

Following a bench trial, Vincent Lloyd Virgil Staup (appellant) was adjudged to be an habitual offender pursuant to Code § 46.2-351. Appellant contends that the trial court erred in using a 1990 West Virginia conviction as one of his predicate convictions because it did not substantially conform to the provisions of Virginia law by failing to specify under which statutory section he was convicted. Finding no error, we affirm.

On August 7, 1995, the Circuit Court of Clarke County declared appellant to be an habitual offender pursuant to Code § 46.2-351. The predicate convictions for the determination were three driving while intoxicated convictions: (1) the West Virginia conviction of December 6, 1990 which is the subject of

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

controversy in this appeal; (2) a Virginia conviction of August 8, 1991; and (3) a Maryland conviction of January 3, 1995.

The trial court specifically found that § 17C-5-2(d) of the West Virginia Code substantially conformed to Code § 18.2-266. The evidence supporting the West Virginia conviction consisted of a copy of the Uniform Traffic Ticket and Complaint, appellant's criminal case history, and a certified transcript from the Department of Motor Vehicles.<sup>1</sup>

This case is factually indistinguishable from and controlled by our decision in Honaker v. Commonwealth, 19 Va. App. 682, 454 S.E.2d 29 (1995). The other state's law does not have to "substantially conform in every respect to Code § 18.2-266." Rather, in order to adjudicate a defendant an habitual offender based upon a conviction from another state, "[o]nly that prohibition of the other state's law under which the person was convicted must substantially conform [to Code § 18.2-266]." Honaker, 19 Va. App. at 684, 454 S.E.2d at 30 (citations omitted). The record in this case clearly established the nature of appellant's conviction for "DUI (.121) w/ accident." This fact was unrebutted.

The Commonwealth established a "prima facie presumption" that the convictions are valid "by introducing the certified DMV

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<sup>1</sup>The Uniform Traffic Ticket and Complaint showed that on December 1, 1990, appellant was charged with "DUI (.121) w/accident" in violation of West Virginia Code § 17C-5-2, and "Failure to Maintain Control" in violation of West Virginia Code § 17C-6-1.

transcript listing the three requisite convictions against [defendant]." Moffitt v. Commonwealth, 16 Va. App. 983, 986, 434 S.E.2d 684, 687 (1993). "Once the Commonwealth has established a prima facie case, it is entitled to judgment, unless [defendant] goes forward with evidence that refutes an element of the Commonwealth's case or rebuts the prima facie presumption." Id. "This shift in the burden of producing evidence occurs because of the presumption that the Commissioner of the Division of Motor Vehicles has kept accurate records and has made at least a tentative determination of conformity." Bouldin v. Commonwealth, 4 Va. App. 166, 169, 355 S.E.2d 352, 353 (1987) (citing Davis v. Commonwealth, 219 Va. 808, 812-13, 252 S.E.2d 299, 301 (1979)).

Appellant produced no evidence that as a matter of law rebutted the Commonwealth's prima facie case. Accordingly, the trial court did not err in considering appellant's West Virginia conviction to be a predicate conviction for purposes of adjudging appellant an habitual offender.

Affirmed.