

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF

Victim,

Plaintiff,

v.

Tortfeasor ,

Defendant.

**PLAINTIFF'S SUPPLEMENTAL MOTION *IN LIMINE* PURSUANT TO VA. CODE § 8.01-418 TO ALLOW EVIDENCE THAT THE TRAFFIC COURT FOUND DEFENDANT GUILTY IN ABSENTIA**

NOW COMES the Plaintiff, xxxxxx by counsel, and files her Supplemental Motion *in Limine* Pursuant to Virginia Code § 8.01-418, as Amended, to Allow Evidence that the Traffic Court Found Defendant Guilty in Absentia of the traffic infraction charged.

On (date) Plaintiff received a copy of the Virginia General District Court (Traffic)'s ("Traffic Court") file pertaining to the proceeding in which Defendant was charged with violating Virginia Code § 46.2-825 ("Left turn traffic to yield right-of-way") as a result of the MVA that is the subject of this civil suit. The traffic court's file contained the summons and (date) (**Ex. 1**); and Defendant's pre-payment receipt. **Ex. 2**.

**BACKGROUND**

Plaintiff filed her original Motion in *Limine* dated (date). Plaintiff argued that Va. Code § 8.01-418 permitted introduction of evidence from the traffic court's file relating to the disposition of Defendant's traffic ticket to prove that Defendant entered a guilty plea in traffic court when she

elect to prepay the traffic infraction fine and costs and not contest the ticket.<sup>1</sup> See Va. Code § 19.2-254.1 (“[T]ender of payment shall itself be deemed ... entry of guilty plea.”).

In addition to the arguments in Plaintiff’s original Motion in *Limine*, which are hereby restated without waiver, this Supplemental Motion in *Limine* requests that the Court allow Plaintiff to introduce evidence from the traffic court’s file to prove that Defendant was found guilty in absentia of the traffic infraction.

Plaintiff and Defendant were involved in a motor vehicle accident that occurred at the intersection of xxxxxxxxxxxx. The City of Virginia Beach police charged Defendant with a traffic infraction for violating Virginia Code Section 46.2–825:

The driver of a vehicle, intending to turn left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction if it is so close as to constitute a hazard.

Defendant was summoned to appear in traffic court on (date) to respond to the charge. See Court’s copy of Summons attached as **Ex. 2**.

Defendant voluntarily prepaid the traffic ticket. (*see* copy of Court Prepayment Receipt attached as **Ex. 1**). She did not appear on (date), which was the return date set in the Summons. **Ex. 2**. During the hearing on (date) the traffic court found Defendant guilty in absentia, reciting in its Order that:

The Accused Was This Day: Tried In Absence;  
The Accused Pleaded: Not Guilty;  
And Was Tried And Found By Me: Guilty As Charged.

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<sup>1</sup>The traffic court’s payment receipt (**Ex. 1**) establishes conclusively and unambiguously that on (date) Defendant did tender and prepay \$136, which was the total amount of the fines and costs for the traffic infraction charged. Therefore, for purposes of Virginia Code §19.2-254.1 and Code §8.01-418, the traffic court’s file shows unambiguously that Defendant prepaid the traffic infraction, which was deemed to be entry of a guilty plea and evidence of said plea shall be admissible in this related civil case.

**Ex. 2.**

Plaintiff subsequently filed this civil lawsuit, which arises out of the same occurrence that was the subject of above-described proceedings in traffic court and in which Plaintiff seeks to have admitted evidence of Defendant's guilty plea and finding that she was found guilty in absentia.<sup>2</sup>

**II.  
ARGUMENT AND AUTHORITIES**

**A. Defendant's Prepayment of the Traffic Ticket Operated as an Entry of a Guilty Plea to the Infraction Charged and Evidence of the Guilty Plea as Shown in the Traffic Court's file Shall Be Admissible.**

Plaintiff repeats without waiving the arguments raised in her original Motion in *Limine*. The original argument as summarized is that Defendant's pre-court payment (**Ex. 1**) was deemed Defendant's entry of a guilty plea as a matter of law in accordance with Virginia Code Section 19.2-254.1:

When an accused tenders payment without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

Evidence that Defendant tendered and prepaid the fine and costs for the charged traffic infraction (**Ex. 1**) shall be admissible in this civil case as a party admission as set forth in Virginia Code Section 8.01-418:<sup>3</sup>

Whenever, in any civil action, it is contended that any party thereto pled guilty or nolo contendere, was found guilty in absentia, or suffered a forfeiture in a prosecution for a criminal offense or traffic infraction which

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<sup>2</sup> The traffic court clerk authenticated **Ex. 1 & Ex 2** as true copies of records from the Virginia Beach Traffic Court. *See* Va. R. Evid. 2:1005(c). There are no other evidentiary foundations necessary to have records from the traffic court file admitted.

<sup>3</sup> Defendant's traffic infraction charge and this civil action arose out of the same occurrence, which was the (date) MVA.

arose out of the same occurrence upon which the civil action is based, evidence of said plea, finding, or forfeiture as shown by the records of the criminal court shall be admissible....

Evidence of Defendant's entry of her guilty plea as shown by the records of the City of Virginia Beach traffic court file shall be admissible in this civil proceeding arising out of the same occurrence.<sup>4</sup> *Id.*

**B. Plaintiff is Also Permitted to Present Evidence that Defendant Was Found Guilty In Absentia Pursuant to the July 1, 2023 Amendment to Virginia Code Section 8.01-418**

Plaintiff is also entitled to present evidence that Defendant was “found guilty in absentia” as shown by the records of the traffic court pursuant to the recently amended Code section. The General Assembly amended Virginia Code Section 8.01-418, effective July 1, 2023, to state:

Whenever, in any civil action, it is contended that any party thereto pled guilty or nolo contendere, *was found guilty in absentia*, or suffered a forfeiture in a prosecution for a criminal offense or traffic infraction which arose out of the same occurrence upon which the civil action is based, *evidence of said plea, finding*, or forfeiture as shown by the records of the criminal court shall be admissible.

(emphasis added). The amendment added language that if a party in a related civil case “was found guilty in absentia,” then evidence of said finding as shown by the records shall be admissible in the civil case.

The traffic court's copy of the Summons and Court Order (**Ex. 2**) shows conclusively and without ambiguity that the traffic court found Defendant guilty in absentia as charged for violating Virginia Code Section 46.2-825. The traffic court's Order states on its face that:

The Accused Was This Day: Tried In Absence;

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<sup>4</sup> Va. Code § 8.01-418 requires that proof that Defendant entered a guilty plea or was found guilty in absentia must be “as shown by the records of the [traffic court].” The traffic court records are admissible to satisfy this evidentiary foundation.

The Accused Pleaded: Not Guilty;  
And Was Tried And Found By Me: Guilty As Charged.

**Ex. 2.**

Applying the Code's recently amended language to the dispositive and unambiguous documents in the traffic court's file is not a matter of complex legal analysis to decide Plaintiff's motion. The traffic court's file demonstrates beyond question that Defendant was found guilty in absentia and evidence of said finding **shall be** admissible in this civil case.

**IV.  
CONCLUSION**

Plaintiff respectfully moves the Court to grant her Motion *in limine* and Supplemental Motion *in limine* and permit Plaintiff to introduce evidence from the traffic court file (**Ex. 1 & 2**) that shows that Defendant entered a guilty plea in traffic court and was found guilty in absentia as charged.

Respectfully submitted,

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I, John S. Wilson, hereby certify that I sent a true copy of the foregoing Supplemental Motion in *Limine* via email and U.S. Mail on this (date) to: