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Supreme Court of Appeals
Richmond, Va.

Record No. 5232

In the Supreme Court of Appeals of Virginia at Richmond

RUTH E. TINSLEY

v.

CITY OF RICHMOND

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5232

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 5th day of October, 1960.

RUTH E. TINSLEY, Plaintiff in Error,

against

CITY OF RICHMOND, Defendant in Error.

From the Hustings Court of the City of Richmond

Upon the petition of Ruth E. Tinsley a writ of error and *supersedeas* is awarded her to a judgment rendered by the Hustings Court of the City of Richmond on the 11th day of April, 1960, in a prosecution by the City of Richmond against the said Ruth E. Tinsley for a misdemeanor; upon the petitioner, or some one for her, entering into bond with sufficient surety before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release her bond if out on bail.

RECORD

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

Notice is hereby given that Ruth E. Tinsley appeals her conviction in this case and will apply for a writ of error and *supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR.

The following are the errors assigned:

1. The Court erred in refusing to strike the evidence of the Commonwealth and dismiss this prosecution on the ground that the statute, as applied, abridges the right of defendant to freedom of assembly and deprives her of the equal protection of the laws guaranteed by the Constitution of the United States.

2. The Court erred in regusing to strike the evidence of the Commonwealth on the ground that the ordinance involved is unconstitutional on its face in that it requires the defendant to, in the alternative, commit an act which is impossible of performance.

3. The Court erred in refusing to strike the evidence of the Commonwealth on the ground that the ordinance involved required the defendant to commit an act, which in the other alternative, required her to commit an act at the capricious whim or inclination of any police officer without any guide or limitations and is therefore unconstitutional in its application.

4. The Court erred in refusing to dismiss the warrant and in convicting the defendant on the ground that the ordinance involved is impossible of performance and grants unlimited and unfettered authority to any police officer in the City of Richmond, Virginia, to require citizens on the street to separate or move on, without limitations, and therefore violates the Constitution of Virginia and the First and Fourteenth Amendments to the Constitution of the United States.

See: *Marsh* v. *Alabama,* 326 U. S. 501, 66 Sup. Ct. page 2 } 276 .

5. The Court erred in convicting defendant of a violation of Section 24-17 of the Code of the City of Rich-

mond on the ground that said section is so vague as to violate the Constitution of the State of Virginia and the Constitution of the United States.

RUTH E. TINSLEY
Defendant
By MARTIN A. MARTIN
Of Counsel.

MARTIN A. MARTIN, Esq.
118 East Leigh Street
Richmond 19, Virginia.

Attorney for Defendant.

* * * * *

page 2-A }

* * * * *

WHEREAS, D. L. Nuckols has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that Ruth E. Tinsley-CF did on the 23rd day of February, 1960: Unlawfully refuse to move on when told to do so by Police Officer D. L. Nuckols in violation of Section 24-17 of the City Code.

* * * * *

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* * * * *

Pleas at the Courthouse in the City of Richmond, before the Hustings Court of the said City, on the 17th day of May, 1960.

Be it remembered that heretofore, to-wit; on the 11th day of April, 1960, the following order was entered in the trial on the charge in the foregoing warrant;

City of Richmond,

v.

Ruth E. Tinsley, Dft.

APPEAL.

The said defendant was this day set to the bar in the custody of the Sergeant of this City and being arraigned pleaded not guilty to refusing to move on when told to do so by Police Officer D. L. Nuckols in violation of Section 24-17 of the City Code, as charged. And thereupon the said defendant, by counsel, moved the Court to dismiss the warrant on the ground that the said Statute is on its face and application unconstitutional, which motion the Court doth overrule, and to the action of the Court in overruling her said motion the said defendant notes an exception. And with the consent of the accused, given in person, and the concurrence of the Court and the Attorney for the City of Richmond, the Court proceeded to hear and determine this case without a jury. And having heard the evidence the said defendant renewed her motion to dismiss the charge on the grounds as stated and on the additional grounds that the evidence of the City of Richmond was not sufficient to support a conviction, which motion the Court doth overrule and to which action of the Court in overruling her said motion the said defendant notes an exception and time is allowed her not exceeding sixty days in which to present her bills of exceptions. The Court doth find the said defendant guilty as charged and assess her fine at ten dollars.

Whereupon it is considered by the Court that the said Ruth E. Tinsley pay and satisfy a fine of ten dollars and costs.

And thereupon the said defendant moved the Court to suspend the execution of the sentence to allow her to appeal her case to the Supreme Court of Appeals, which motion the Court doth grant and the execution of the said sentence is suspended to June 6, 1960 and her bail set at one hundred dollars. The said defendant then, with leave of the Court, entered into a recognizance in the sum of one hundred dollars, with Neverett A. Eggleston, 600 Edgehill Road, as surety, conditioned that if the said Ruth E. Tinsley, shall appear before this Court June 6, 1960, or any other day to which this case may be continued until finally disposed of, to abide by and perform the judgment of this Court entered this day, in the event the writ of error is refused or the judgment of this Court affirmed, and in the meantime keep the peace and be of good behavior and violate none of the laws of this Commonwealth.

And thereupon the said defendant is released.

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* * * * *

And at another Hustings Court held for the City of Richmond, at the Courthouse, on the 17th day of May, 1960, the following order was entered;

City of Richmond,

v.

APPEAL.

Ruth E. Tinsley, Dft.

The transcript of the evidence, the objections to evidence and other incidents in the trial was this day signed and sealed by the Court and delivered to the Clerk of this Court and hereby made a part of the record in this case.

* * * * *

page 3 } The Clerk: Stand up, Ruth E. Tinsley. You stand charged in this warrant with the refusing to move on when told to do so by Police Officer D. L. Nuckols in violation of Section 24-17 of the City Code on the 23rd day of February.

What do you plead, guilty or not guilty?

Ruth E. Tinsley: Not guilty.

The Clerk: Do you want to be tried by the Judge or do you prefer a jury trial?

Ruth E. Tinsley: By the Judge.

Note: All witnesses are now sworn.

Mr. Wilkinson: At this point I would like to introduce the City Code, 24-17 of the Code.

Mr. Martin: If Your Honor please, this warrant charges this defendant with failing to move on when told to do so by a Police Officer D. L. Nuckols in violation of Section 24-17 of the City Code.

If Your Honor please, I could not make this motion before the ordinance was introduced. As I understand it, the City

ordinance would have to be introduced in evidence.

The ordinance, if Your Honor please, reads as
page 4 } follows: "Any person loitering or standing on the street, sidewalk or curb, shall move on or separate when required to do so by any member of the Police Bureau and shall cease to occupy such position on the street, sidewalk or curb."

That is the extent of the ordinance, if Your Honor please.

We move to dismiss the warrant in this case upon the ground that that ordinance is unconstitutional on its face. It is unconstitutional in its application in this particular case.

If Your Honor will recall the ordinance is any person loitering or standing on the street shall move on—two things are required, one of the two things he is required to do is he shall move on or separate, when required to do so by a Police Officer.

Now, it is apparent any one person cannot separate. The ordinance itself is so vague as to be unconstitutional. It is impossible of compliance by any person.

In the first place, a person cannot separate. In the second place, it gives a Police Officer unfettered authority without any guide to go by to order any citizen, any person in the City of Richmond, to move on. An ordinance and statute law such as this, which gives unfettered authority, not
page 5 } only to a Police Officer but to any Governmental Agency, unfettered authority without any guide without any limitations whatsoever have always been declared as violating the constitutional rights of the citizens.

I believe the ordinance violates the Virginia Constitution, as well as the First and Fourteenth Amendment to the United States Constitution.

On those two grounds, one is, that it is impossible of performance in its language, and it is too vague as to be unconstitutional, and also it gives unfettered authority to a Police Officer under this ordinance, if Your Honor please, a Police Officer could meet any citizen, myself for instance, in front of the City Hall and order me to move on, and I would move ten feet or a half a block, and the Police Officer under this ordinance could follow me up there and order me to move on, and I could move another block and the Police *Office* would have a perfect right under this ordinance to order me to move on, and could have me walking all over town.

In this case when he ordered me to move on and I failed to do so, I have been guilty of a crime.

I believe that ordinance is so broadly drawn, as this one is, that it gives a Police Officer or any other person such un-

Lt. L. H. Griffin.

fettered, unbridled authority as that it violates the
page 6 } Constitution of the State of Virginia and the Constitution of the United States.

For that reason, if Your Honor please, we move to dismiss the warrant on the ground that the ordinance, under which it is drawn, is unconstitutional.

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Mr. Martin: If Your Honor please, if I might just state this in rebuttal.

I too have checked the law and gone as far as I could in that direction. All of the cases, and in not one single case, have I been able to find a single ordinance which reads as this which says any person loitering or standing on the street shall be required to move on, when requested to do so by a Police Officer.

Every ordinance that I have ever seen, and I think the Commonwealth's Attorney will agree with me, says if two or more persons standing on the street, or congregating on the street—indicating that they are probably blocking the sidewalk or annoying other people.

Then the Police Officer certainly has the right to break up that congregation and order them to move on.

But I have been unable to find a single ordinance
page 9 } anywhere in the United States which reads as this one does which says any one person standing on the street can be required to move on when it is not violating any other law, shall be required to move on when ordered to do so by a Police Officer.

I think this ordinance was very inexpertly drawn. I think it is so inexpertly drawn as to be unconstitutional. I have found no case where any other ordinance is drawn similar to this one in the United States.

The Court: The Court overrules your motion at this time. I think the Commonwealth should be allowed the privilege to develop the facts in the case.

Mr. Martin: Exception.

LT. L. H. GRIFFIN,

a Richmond City Police Officer, a witness testifying in behalf of the City, first being duly sworn, testified as follows:

Lt. L. H. Griffin.

DIRECT EXAMINATION.

By Mr. Wilkinson:

Q. Please state your name and occupation to the Court.

A. L. H. Griffin, Lietutenant, Richmond Police Department.

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Q. Were you employed by the Richmond Police Department on the 23rd day of February, 1960?

A. Yes, sir.

Q. In your capacity as being employed by the Richmond Police Department what were some of your duties on that day?

A. I was assigned to the vicinity of Thalhimers Department Store on account of the pickets, pickets walking up and down the street with those placards, they would come up and reverse their positions and go back the other way.

We had a detail of men up there. Major Hanna was the Officer in charge of the detail.

Q. Did you work direclty under Major Hanna at the time?

A. Yes, sir.

Q. Were the orders issued by the Police Department to keep everyone moving at that time?

A. Yes, sir. There is a bus stop in the middle of the block in front of Thalhimers there, and due to these pickets walking, and it was a large number of them, Major Hanna issued orders that to not allow any loitering on that block, whether it would be one, maybe, two, three, four, six and so on.

If the people said they were waiting for the bus, he told the officers to ask them to stand out at the bus stop.

And all of the officers were given orders by Major Hanna not to allow any loitering on that block on account

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of the pickets going up and coming back, and we were trying to keep the sidewalk open as much as possible for the pedestrian travel.

Q. The only people allowed to stand on that block were people actually waiting for the bus?

A. Waiting for the bus. And the officer was instructing them to stand out at the bus stop and not against the buildings.

Q. What was the reason for this order?

A. It could have been several reasons. I mean, one reason as I have said was to keep the sidewalk open. We didn't want to have any trouble up there, and we figured by maybe crowds gathering it could encourage trouble.

Lt. L. H. Griffin.

We were in hopes we wouldn't have any trouble, and we haven't had any. We kept our officers walking.

We had plain-clothes men there, and when Major Hanna issued instructions to them to keep walking, because the general public, not knowing that they were police officers, might admonish the department for allowing Joe Blow or Joe Dokes to remain and bother them.

So even the plain-clothes men were required to keep moving.

Q. Could you estimate the number of pickets that were downtown at that time?

A. No, sir. I will be honest with you, I don't
page 12 } know about that, I didn't know I was going to be here this morning. I was up there several days, and finally the Captain said that he needed my assistance with him, and instructed me to put a sergeant up there with Major Hanna to help supervise.

And I know at the beginning of this to-do there were large numbers.

Of course, it tapered off as the days went along, but I know there were large numbers. They were walking very close together, only a few feet between them. Large numbers of them.

Q. Do you know what the pickets were walking up and down the street for?

A. They were carrying placards with different inscriptions on them.

Q. Had there been any other demonstrations down there prior to this?

A. Yes, I understand so. I was not on duty at the time, but I understand so. I was told so.

I came on that evening. I believe the demonstration happened around lunch time, and I didn't come on until the evening. I was working the evening relief that day and that week.

Q. The reasons for keeping everyone moving on Broad Street were twofold, is that what I understand you to say?

A. Yes, sir.

page 13 } Q. One to keep the public sidewalk open?

A. Yes.

Q. And the other was to avoid any sort of disorder?

A. That is right.

Q. Where is Thalhimers Department Store located?

A. It covers almost a complete City block. But where we were trying to center our attention was on the southside of Broad Street between Sixth and Seventh Streets. Of course,

Lt. L. H. Griffin.

as the pickets moved around sometimes they would cover on Seventh and cover over around on Grace and sometimes on Sixth. We would move our men along with them, let them kind of go along, make sure that everything was peaceful and orderly.

Q. Were you downtown on the 23rd day of February, 1960?

A. Yes, working evenings that day.

Q. Were many people down there that day?

A. Yes, it was.

Q. A crowd?

A. Yes, sir.

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CROSS EXAMINATION.

By Mr. Martin:

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Q. The pickets themselves were continuously moving?

A. Yes. We had them continuously moving. They were given their instructions not to walk two abreast, because that would monopolize the sidewalk.

They were told to go single file. I remember that day very well, it was a large number of pickets, and it was very little distance between each picket.

Q. And they were circling the entire block?

A. They would go down against the building on the right-hand side, and when they got to Seventh Street they would reverse and come back, and they would go to Sixth,
page 16 } and then they would reverse again and go back down.

Just continuing to do that. When we heard that they had begun to circle the block, then we instructed our men to go along, too. We were protecting them and protecting the general public.

Q. Was there any disorder at all?

A. I saw none.

Q. Was anybody else arrested for disorderly conduct, or

for any other violation of the law in that particular block at that time?

A. Not as I know of.

Q. Were you present at the time Mrs. Tinsley was arrested?

A. I was on the block and I didn't know that she had been arrested until I saw her going across. She had crossed Broad Street with two officers, one on each side, and they were crossing Broad Street at Sixth, and she had her feet up in the air, and appeared from a distance to be laughing. Just the expression on her face. Feet were drawn up under her.

Q. Would you say her feet were drawn up under her something like that?

A. That I didn't see. That is not the one that I saw (Looking at photograph). The one that I saw is the one that I saw in Life Magazine. That is the one that I saw with my own eyes, was with her feet drawn up under page 17 } her. And they did get my picture walking up the sidewalk. I was reminded of that by some of my friends, but I didn't know of it, of the arrest, until I happened to look up.

I was walking along too, and I do not remember whether I had any thumbs in my belt this way (Indicating by putting thumbs in belt), or how I was, but I was walking along, and when I happened to look up I saw the two officers had her, and they had crossed over. I imagine the eastbound lane, and they were in the westbound lane almost to the sidewalk.

Q. But until that time she had done nothing to call your attention to her?

A. Not to my attention, no. I was trying to help under the instructions of Major Hanna, trying to help out, asking everybody to kindly move on, please, and where we were allowed one, had we done so then it may be two, and if you allowed two then it may be four, then you got so you would have a crowd. It would go on like that. So we were asking everyone kindly if they would move on, and they had no objection, I take it, and I don't know of any of the other men that had any objections from anybody else about moving on.

* * * * *

page 18 } D. L. NUCKOLS,

a Richmond City Police Officer, testifying in behalf of the City, first being duly sworn, testified as follows:

D. L. Nuckols.

DIRECT EXAMINATION.

By Mr. Wilkinson:

Q. Please state your name and your occupation.

A. Patrolman D. L. Nuckols. I am employed by the Richmond Police Department, City of Richmond, Virginia.

Q. Are you employed by the Richmond Police Department, that is were you on the 23rd day of February, 1960?

A. Yes, sir.

Q. What part of the Department of Police are *your* assigned to?

A. The newly organized K-9 squad.

Q. You are a member of the K-9 squad?

A. Yes, sir.

Q. What do you mean by that?

A. Well, we have four trained attack dogs. We have four trained attack dogs and I am one of the officers assigned to it.

Q. Do you have a dog that goes on duty with you when you go on duty?

A. Yes. I have been with the force the last two
page 19 } years.

Q. Is that dog with you at all times when you are on duty?

A. Yes. Unless he is sick.

Q. Is he part of your police equipment?

A. Yes, sir.

Q. Were you on duty on the 23rd day of February, 1960?

A. Yes, sir.

Q. Where was your station at that time?

A. We were assigned to the Thalhimers area, which is located between Sixth and Seventh on Broad Street.

Q. Did you have your dog with you that day?

A. Yes, sir.

Q. What were your orders up there at Thalhimers on that day?

A. Orders received from Major Hanna to keep everybody moving because of a large number of people around the area picketing.

Q. How many pickets could you see, could you estimate, that were down there that day?

A. In exact figures I could not, but it was one of the largest number that we had had up there since it had been going on, except the Saturday evening.

Q. What time did you come on duty that day, sir?

D. L. Nuckols.

A. 10:00 A. M.

page 20 } Q. Were you assigned to walk up and down that block?

A. Yes, sir.

Q. To keep everyone moving?

A. Yes, sir.

Q. Did you keep everyone moving up there that day?

A. Yes. I even had the paper boy on the corner to move off, so there wouldn't be anybody standing around there.

He went to the News Leader and I think it was the News Leader or the Times Dispatch, one of those papers, and had one of the officials to come down there and Captain Tucker gave him permission to sell papers, to stand on that corner and sell papers.

That was at Seventh and Broad in front of Thalhimers Candy Shop.

Q. What was your beat that day, so to speak, where were you supposed to walk?

A. In the area of Thalhimers.

Q. Did that take in the whole block of Thalhimers?

A. Well, yes. We were ordered to keep circling the block, and to circle, some few of us, the block, and the others were assigned to Broad Street. But generally that area.

Q. Were there many people downtown that day?

A. Yes, sir, it was quite a few.

Q. Had you had occasion to tell anybody else to move prior to seeing Mrs. Tinsley?

page 21 } A. Yes, sir.

Q. Did they move?

A. Yes, sir.

Q. Approximately what time of day was it when you approached Mrs. Tinsley?

A. Approximately 3:55 P. M.

Q. Which way were you walking on Broad Street at that time?

A. I was walking west on Broad Street from Seventh Street on the southside of the street.

Q. Tell the Court exactly what happened as you approached Mrs. Tinsley?

A. Well, before I got to Mrs. Tinsley I had asked some people were they waiting for the bus, and they said that they were. I said would you mind waiting for the bus at the bus stop. They moved over there, and I passed the Sixth Street door and Mrs. Tinsley was standing there, and I said that she would have to keep moving on. She stated why have I

D. L. Nuckols.

got to move. I said "Do you mind, please, to keep moving on?" She said how about them people there? I said that I hadn't got to them yet. By that time it was two gentlemen standing at the corner and they moved.

She said are you going to tell me the reason why I have got to move. I said move, said that in a tone of voice where she was sure to hear, if she had been hard of hear-
page 22 } ing she certainly could have heard it. She had some packages in her hand, handbag, and she did like this (Indicating by stamping foot).

Q. So you asked her to move twice, please to move on?

A. The first time I asked her "Would you mind, keep moving." The second time "Please move." And the third time I said "Move."

Q. Did she move?

A. No, sir. I placed her under arrest.

Q. Exactly where was she standing on that block?

A. It was the closest door coming out of Broad, coming out onto Broad to Sixth, which is one window next to the end and then you have your corner window. She was standing in front of that first window west of the door closest door to Sixth Street.

Q. The door to Thalhimers?

A. That is right, sir.

Q. Approximately how far was she from the curb there?

A. Oh, she was leaning her back against the building.

Q. How about the east curb of Sixth Street, how far was it back of that?

A. The curbline I would say as far as from here to the wall, just about maybe a little further.

page 23 } Mr. Martin: Would you estimate that?

Q. Would you mind estimating the distance?

A. About thirty or thirty-five feet, I would say.

Q. Then from the south curbline of Broad Street how far was she from that?

A. Maybe I misunderstood you in your question. What was it?

Q. I was talking about the east curbline of Sixth Street, first.

A. East curbline of Sixth Street?

Q. Yes.

A. That is correct.

D. L. Nuckols.

Q. How far was she from the south curbline of Broad Street?

A. Oh, it was the distance of the sidewalk.

Q. Could you estimate that?

A. Well, I know it is wider than this here. Not that I want to dispute Lieutenant Griffin. I would say it was from this platform to the beginning of the chairs back there. It is a very wide sidewalk.

Mr. Martin: Will Your Honor let us measure that?

The Court: Step off about the distance you think it covered, Officer. We would like to get it in the record.

Note: Witness now steps off the distance.

page 24 } A. I got size 13 shoes (Stepping it off)). Sixteen and a half steps. That is about the distance.

Note: Mr. Martin and Mr. Wilkinson confer.

Mr. Martin: If Your Honor please, the Commonwealth and the defense stipulate the distance the witness just stepped off as being approximately sixteen and a half feet, as being the width of the sidewalk.

Q. After you asked and ordered Mrs. Tinsley to move on, you placed her under arrest?

A. Yes, sir.

Q. Tell the Court what happened after that.

A. Well, I took her to the curb, and as well as I remember the light said don't walk. So I waited a few minutes, and by that time Officer Moon had come up to take hold of her left arm, and we proceeded across Broad Street, taking her to the lockup at Sixth and Marshall.

Q. How many blocks was there between where she was arrested to Sixth and Marshall?

A. Well, it is approximately a block. And when we got to the westbound lane of Broad Street traffic going west she just proceeded to fold her feet up under her. She dropped down. And we kept her from hitting the ground.

We took her to the curb, and after we got on the sidewalk I leaned down and asked her, I said "Are you all right?"

She said "I do not want to walk." So we took page 25 } her on to the station house.

Q. Did you in any way threaten her with your dog prior to that?

D. L. Nuckols.

A. No, sir.

Q. So far as you know her refusing to walk was of her own volition?

A. Yes, sir, that came right out of her own mouth.

Q. On that date you kept everyone moving on Broad Street?

A. Yes, everyone.

CROSS EXAMINATION.

By Mr. Martin:

Q. Mr. Nuckols, you had the dog with you during the entire time you were there, is that correct? You had the dog with you?

A. No, sir, one day he was at the vets, to be wormed.

Q. I mean on this particular day.

A. Yes, sir.

Q. How did you have your dog, on a leash?

A. Yes, and a choke chain.

Q. What kind of a dog is that?

A. Pure bred German shepherd.

Q. In describing the dog when you first started testifying, what kind of dog did you say you had? He was trained to do what?

page 26 } A. Trained attack dog.

Q. What do you mean by attack dog?

A. Trained to attack on command.

Q. These pickets that you have been mentioning, who were walking around Thalhimers were students at Virginia Union University?

A. I do not know.

Q. You have heard that they were students?

A. I have heard a lot, but I cannot testify to that.

Q. Was anybody disorderly on that corner or in that vicinity at that particular time?

A. No, sir.

Q. Nobody was arrested for being disorderly?

A. I cannot testify to that, either. A lot of police officers up there.

Q. Why did you have your dog up there?

A. To prevent any trouble.

Q. When you arrested Mrs.Tinsley you had the dog with you?

A. Yes, sir.

Q. The time you were dragging her from there down to the Police Station you had your dog with you?

D. L. Nuckols.

A. No, sir.
Q. What did you do with the dog?
A. I wasn't dragging her.
page 27 } Q. Walking her down, then. The dog was walking along with you?
A. Yes, sir.
Q. Now, I believe you stated that she was standing with her back to the wall at Thalhimers at the time you ordered her to move on?
A. No, sir.
Q. How was she standing?
A. She was standing against the glass.
Q. Against the glass?
A. Against the glass.
Q. The glass front window of Thalhimers building?
A. Yes, it is not the wall.
Q. The glass, the window, is a part of Thalhimers building?
A. Yes, sir.
Q. She wasn't out in the middle of the sidewalk?
A. No, sir.
Q. She was by herself, was she not?
A. So far as I could tell and observe.
Q. She was not one of the pickets?
A. I do not know about that, either.
Q. You didn't see any sign on her?
A. No, sir, wasn't any sign on her.
Q. She had a shopping bag and a *picketbook* as
page 28 } most women carry?
A. Yes, sir.
Q. And she was just standing out beside the glass window, you said?
A. Yes, sir.
Q. Doing nothing else?
A. No, sir.
Q. Not talking to anybody?
A. No, sir.
Q. She was not disorderly in any way?
A. No, sir.
Q. The only reason you ordered her to move was because of the orders that you had received from Major Hanna?
A. Yes, sir.
Q. To keep everybody moving?
A. Yes, sir.
Q. Why didn't you keep everybody moving?

D. L. Nuckols.

A. I did, sir.

Q. I thought you testified that a young man selling newspapers down on the corner, you gave him permission to stand there and sell newspapers, didn't you?

A. I did not.

Q. Who did?

A. He went to the newspaper company for whom he works, and Captain Tucker came back and gave him
page 29 } authority, because he wasn't involved in anyway at all.

Q. She was not, either, was she?

A. I do not know.

Q. Anyway, he was given permission to stand there?

A. From my superiors.

Q. All other persons were required to move?

A. Yes, sir.

Q. And he stood there and was not arrested, is that correct?

A. Well, I had made him move, and it was later on that afternoon he came back.

Q. Later on that afternoon when he came back and was selling newspapers you saw him standing there selling newspapers, did you not?

A. Yes, sir.

Q. And you didn't order him to move?

A. I was given orders that he was, that he could stay there and sell newspapers.

Q. You didn't order him to move then?

A. After I was told that he could sell newspapers on the corner.

Q. You didn't arrest him?

A. No, sir.

Q. And was anybody else around Mrs. Tinsley at that time, or was she by herself?

page 30 } A. People were walking up and down the sidewalk.

Q. Nobody was blocking the sidewalk were they?

A. No, sir.

Q. And I believe you have testified that the sidewalk at that particular place was about sixteen and a half feet wide, and she was approximately thirty-five feet from the corner?

A. Curbline.

Q. From the curbline?

A. Yes, sir, approximately.

Q. And the only thing that happened was you ordered her,

D. L. Nuckols.

I think on two occasions, twice on the same occasion, to move, and each time she asked you why.

Why must she move. You never did tell her why she should move, did you?

A. No, sir.

Q. And then you just arrested her without telling her why she was required to move at all?

A. Everybody else was moving.

Q. But you arrested her without telling her why you were arresting her, or why she was required to move?

A. (Pause) No, I didn't tell her why she had to move.

Q. You say you didn't drag her across the street and down to the Police Station?

page 31 } A. No, sir.

Q. I show you a photograph and ask you if you recognize the persons in that photograph?

A. Yes, sir, I recognize the photograph.

Q. Who are they?

A. Officer Moon, Mrs. Tinsley, the Captain and myself, so far as I can tell.

Q. Who is that?

A. I said the Captain.

Q. Captain?

A. Yes, sir.

Q. That is the dog (Indicating).

A. Yes, sir.

Mr. Martin: I am sorry. If Your Honor please, I would like to offer that in evidence.

Note: This photograph is marked and filed as Defendant Exhibit 1.

Q. Officer Nuckols, where were you when this particular photograph was taken?

A. It was probably in the westbound lane of Broad Street.

Q. In the middle of the street?

A. Westbound lane.

Q. In the driving lane?

A. Yes, sir.

page 32 } Q. You said you didn't drag her. What do you call that? What is happening there?

A. Do you mind getting your other picture and I will show you what happened?

Q. This one first. What were you doing there?

D. L. Nuckols.

A. That is when she dropped down.
Q. In the street?
A. Yes. You see Officer Moon and I were trying to keep her from hitting the ground. Can't you see that?
Q. You had her on one side and Officer Moon had her on the other side?
A. Yes, sir.
Q. You didn't stop right there in the middle of the street?
A. No, sir.
Q. You carried her across the street?
A. Yes. Lifted her up and carried her across the street.
Q. Was her feet touching the ground?
A. At that point, not at that point when the picture was taken.
Q. Was her feet touching the ground from *them* until you got across the street?
A. No, sir. When she dropped down we carried her.
Q. You don't call that carrying her?
page 33 } A. No, sir. She had had her feet bent up under her.

Mr. Wilkinson: I think the witness has the right to use his own terminology.
The Court: I should think so.

Q. That I believe you said was approximately 3:55 in the afternoon?
A. Yes, sir, approximately.

Mr. Martin: That is all.

RE-DIRECT EXAMINATION.

By Mr. Wilkinson:
Q. Was Mrs. Tinsley selling newspapers up there at Sixth and Broad Streets?
A. She wasn't hollering five o'clock paper or anything like that. No indication of it, no, sir.
Q. She didn't have any newspapers with her?
A. She may have had them in the bag, but she didn't have them visible so far as I could see.
Q. So far as you could see she wasn't selling newspapers or anything like that?
A. No, sir.
Q. Other than this one newspaper man that was down at

Seventh and Broad, you had no other trouble with anybody else that you told to move on?

A. No, sir.

page 34 } Q. This picture that the defense just introduced in evidence, had you or Officer Moon or the dog, Captain, I believe is his name, did you all bother her or strike her in any way?

A. No, sir.

Q. You mean after she was placed under arrest she fell down like this?

A. Not until she got into the westbound lane.

Q. Did she walk from the curbline over to the westbound lane all right?

A. No, sir, we carried her to the sidewalk and there is where I asked her was she all right, could she walk.

Q. She was on the southside of Broad Street when she was arrested?

A. Yes, sir, she walked to the westbound lane.

Q. She walked to the westbound lane. And she was all right?

A. Yes, sir.

Q. Did she know that she was under arrest at that time?

A. I stated it very clearly.

Q. And then that is when this picture came about, when you got in the westbound traffic lane?

A. Yes, sir.

Q. And she hadn't been struck by anything?

A. No, sir.

page 35 } Q. The dog hadn't bothered her?

A. No, sir.

Q. So far as you know of her own volition she just picked up her feet?

A. Yes, sir.

• • • • •

page 36 } RUTH E. TINSLEY, the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:

Q. Will you please state your name, address, Mrs. Tinsley?

A. Mrs. Ruth E. Tinsley, 531 N. Fourth Street.

Ruth E. Tinsley.

Q. How old are you?
A. 58. Birthday coming up the 21st of April.
Q. How long have you lived at 531 N. Fourth Street?
A. Since 1934.
Q. Are you married?
A. Yes, sir.
Q. What is your husband's name?
A. Dr. J. M. Tinsley.
Q. He is a dentist?
A. Yes, sir.
Q. How long has he been practicing here in Richmond?
A. Since the fall of 1925. October, 1925.
Q. And he is still practicing dentistry here in Richmond?
A. Yes, sir.
Q. And you and your husband are living together at the present time?

page 37 } A. Yes.

Q. Mrs. Tinsley, were you down on Broad Street near Sixth Street in front of Thalhimers on February 23 this year?

A. Yes. I had started down the street to pay a bill at Thalhimers.

Q. Were you walking?

A. I was walking on the northside of the street, and when I got to I think it was Fifth Street—I cannot remember about that, Fifth and Broad, a student or someone was passing out hand bills, and they gave me one of these hand bills, which said don't buy where you cannot eat, and turn your charge plate in, and something else on it.

So then I was on my way to Thalhimers, and some other places to pay some bills. I was puzzled.

I said to myself I am not going in the store, so when I got to Sixth and Broad there were people on both sides of the street. So I crossed from the northside to the southside, and the red light caught me more or less at the corner of Miller & Rhoads.

Well, there were so many people all over the street I said that I wanted to get to a point where I could be seen, but where there would be the fewest number of people. But all around the curbs and everywhere people were everywhere. I wanted to get out of the crowd of people.

So under that clock there, I had stood at that

page 38 } corner many times waiting for people. I said there is a good spot, I would stand there.

Q. Where is that clock?

Ruth E. Tinsley.

A. The clock is at Sixth and Broad Streets. Thalhimers.

Q. On Thalhimers Building?

A. Yes. That is where I usually stand to wait for people. And I think it was about four or five people, a policeman standing almost under the clock, then there were three other white men standing near by. I didn't want to be in anybody's way, so I stood over there to get out of the way. I didn't want to get in the door, because I wasn't going in the store.

So I got as far from the door and as far from anybody where I wouldn't be bothering anybody, and I wasn't blocking the sidewalk or anything.

And I was too early to meet this friend of mine.

Q. You mean you were standing there waiting for somebody?

A. I was waiting for someone, because I was to go to the store there and pay this bill, and then when she got off from work we were to go on Grace Street.

Q. Where were you supposed to meet her?

A. At the corner of Sixth and Broad Street. Well, we usually met at Sixth and Broad Street, people
page 39 } usually know where the clock is there, Thalhimers, where most of us stand.

Q. Had you done this before?

A. Hundreds of times. Because almost every other day they tease me about going down to the stores. I stood there, out of the way of everyone, and I wasn't there long enough to see, I couldn't tell you who was picketing or what they were carrying or anything.

Q. Did you know they were picketing before that time?

A. I didn't know until I got down the street, because I hadn't been in contact with anybody that day, and I was going in to pay this bill.

Q. You had no contact with the pickets at all?

A. No contact with the pickets. I had nothing to do with the pickets one way or the other.

Q. Where were you standing, near the curb or near Thalhimers?

A. I was standing—I imagine about the last window from the corner.

Q. Near the building?

A. Near the building. I was near the building, because I was getting out of the way of everyone, as I thought, and I had just stood there, because these other people when the light caught me, these men were standing there. They were

Ruth E. Tinsley.

not moving. They were standing still. And I stood
page 40 } about, I would say, three feet from them, because I
was getting out of the way of everybody.

I was standing there by myself so I could be seen. I was debating in my mind whether to go on further, or stand there and wait until this girl was to meet me.

And before I got standing good this policeman came along and said to move on. I said I am waiting for someone, and he said move on. And I said other people are standing here, why do I have to move.

And he said move on. The next thing I knew two of them had me and were carrying me onto the curb, and I had lost my balance, the dog got under my feet.

I do not care what anybody else says, the dog got under my feet, and I lost my balance almost as soon as I got off the sidewalk.

And I kept trying to get my balance. I suffer at times with spasms in the back. One of these spasms struck me, and I couldn't get myself together.

And I got across the street, before I could get myself together. And I stood with them, and I put my feet on the ground, and that is the only time they ever said to me—I was across the street there, and I stopped, I stopped in my tracks trying to get myself together, that is the truth, and so then I got myself together and I walked from there to the rest of the
distance.

page 41 } Q. At that time when the officer arrested you,
did you know what he was arresting you for?

A. I didn't know. I didn't know why, because there were people everywhere. I couldn't understand it, because I had been downtown just the day before and I stood on that very corner, have done it hundreds of times, and I wondered why, I wanted to know why. If he had told me to move over to the curb, or that this place was out of bounds, that is all he would have had to say to me, because I always have been a law abiding citizen.

I just didn't know why. I wanted to know why I had to move on, and that is all I have ever said to him, was why I had to move on.

And when we got in the magistrate's office I was still asking why. He never told me why until after the magistrate told me to stop talking, and let him tell his side, then he would give me a chance to tell my side. And he sat on the corner there and he said they were having some trouble on the street, but until then I didn't know why.

Ruth E. Tinsley.

And still when he said that, I still didn't know why, because when I was on the street everything was peaceful, and I didn't see anything out of the ordinary.

Q. Was the sidewalk blocked there in front of you?

A. It was no block. It was at least fifteen feet for people to pass anywhere they wanted to pass, because page 42 } the curbs were filled with people. I would say probably two or three feet of curb was still filled, and people were standing on the curb all the way around, because when I crossed I could see, going down Sixth Street there, there were people all along the curb, and they were standing. They weren't moving.

Q. Had you ever been arrested before?

A. Never been in a Court before in my life. Never been in a lockup before in my life.

Q. Did you have any intention of violating any law?

A. I had no intention. That is why I wanted to know why.

Q. Did you know you were violating any law?

A. I didn't know I was violating a law, because I thought you could ask why. That is all I wanted to know, was why. And if he had told me why, then of course I would have been willing to move right over then and there, because I think I was doing the right thing, and I have sense enough to know if a person tells me why to move on. I didn't know why, and that is all I wanted to know, is why.

Q. You said the reason that you were down, and they were holding you as shown in that photograph, was because the dog that he had had been running around?

A. When I first hit the curb this dog snarled and got under my feet, and I lost my balance and anger, too. I was angry then, because I think that I was doing right, I was page 43 } merely asking why, and they couldn't tell me why I had to move on.

I didn't know where I had to go. People were crossing the street. There were people on the curb. There were people around everywhere. I wanted to know why that I had to move on.

CROSS EXAMINATION.

By Mr. Wilkinson:

Q. You said you did not know anything at all about these pickets being downtown?

A. No, sir. I didn't know. I knew that the students had been arrested, I knew that, but I hadn't been in contact with

anyone during the day to find out what was going on.

I did not know until I started down the street, I didn't know.

Q. At that particular time you knew it was right much tension down in the downtown area of Richmond, did you not?

A. It hadn't crossed my mind that it was considerable tension, because I have been places where they had pickets and things. I never thought anything about pickets.

Q. At Fifth and Broad Streets you had been given a leaflet, I believe you said?

A. That was on the northside of the street.

Q. Did you read that leaflet?

page 44 } A. Yes, I read it.

Q. And so then you knew it was some people—

A. Yes, I answered that, and said that after that I didn't think that I would go into Thalhimers. I was on my way to Thalhimers to pay a bill. When they gave me that I said well, I am not going in the store, because—

Q. Did you have your glasses on that day?

A. Yes, I had them on.

Q. With your glasses is your eyesight all right?

A. Sure, my eyesight is all right.

Q. Did you see the pickets down there?

A. I wasn't there long enough to see what was going on. I didn't stay there half a minute before the policeman got to me, and I couldn't swear that I saw the pickets. I knew something was happening, but I couldn't swear I saw any pickets, because I wasn't there long enough.

Q. Then prior to this you knew it was something going on down at Sixth and Broad, between Sixth and Seventh on Broad Street?

A. Yes, I knew something was going on. That is why I wanted to know why I had to move on. That is just why I wanted to know why.

Q. Didn't the officer tell you that when you talked about these other two men, he said when I get to them they are going to have to move on, too?

page 45 } A. But they were standing there when I came across the street.

Q. He was going west on Broad Street, wasn't he, when he came up to you?

A. Yes, but they were standing there.

Q. Were not these two men west of where you were standing?

Ruth E. Tinsley.

A. Yes.

Q. So he came to you first?

A. Yes, but they were standing when he went down the street, they were standing there, because the light caught me on the west side of Broad Street by Miller & Rhoads, and those men were standing there, and he was going down the street, and he turned.

I couldn't say where is the block he turned, but he turned and came directly back when I took my stand. I was standing away from the men and everybody, as I thought.

Q. Did I understand your testimony correctly that you were on the west side of Sixth Street at Sixth and Broad, waiting for the light?

A. Yes.

Q. You saw Officer Nuckols up on the east corner of Sixth and Broad Street?

A. Yes, sir.

Q. And then two men were standing there?

page 46 } A. Three.

Q. Where did Officer Nuckols go from there?

A. I do not know. He just went down the street and turned around and came back.

Q. So he went down the street. Do you know how far he went down the street?

A. I said I couldn't tell you how far down the street he went. I couldn't tell you. I know he didn't go all the way down.

But, now, how far, I couldn't measure and tell you how far.

Q. Where was Officer Nuckols standing on the corner the first time that you saw him?

A. He was moving from the—let me get my directions. From the west to the east—down the street, from west to east. When I crossed, when I stood at Miller & Rhoads at the corner there, he was coming west, and before the light changed he was going east, and when I stood he turned and came back west.

Q. Where abouts exactly on the corner was he moving? Was he up to the curbline?

A. No.

Q. I thought you testified to a lot of people standing on the curbline?

A. It was.

page 47 } Q. How did you see Officer Nuckols?

A. He was out there by himself. He was near

Ruth E. Tinsley.

the building side. It was no people standing near the building side except you know this clock, under this clock.

Q. It was no people standing—

A. All that part of the street was practically clear, and a few people were walking up and down the street, but the crowds were nearer to the curb.

Q. They were waiting just like you were to cross the street, weren't they, for the walk light?

A. No, I do not think all of them were waiting.

Q. When the light changed they moved over?

A. No, they did not. Some of them were still standing.

Q. Still standing there?

A. That is right. In the area where I was standing there wasn't but just these three or four of them.

Q. Where you were standing it was nobody standing there but you and these three men?

A. That is right, and I thought I was standing out of the way of everybody.

Q. Do you know whether the three men moved or not?

A. No, I do not.

Q. After you were placed under arrest, being taken down to the Sixth Street Station, when you were going
page 48 across Broad Street, you said that the dog got under your feet and tripped you?

A. When I hit the curb, when I left Thalhimers, that is when I lost my balance.

Q. Did you lose your balance?

A. I lost my balance, when I hit the curb.

Q. Did the dog—

A. The dog was kind of moving around back and forth, back and forth.

Q. What side was Officer Nuckols on?

A. I couldn't tell you that.

Q. When you got to the other side, the northside of Broad Street, do you recall Officer Nuckols asking you if you were all right?

A. No. I heard him say to the other one "You think she can walk?" I didn't open my mouth to them, until I got in the magistrates' office, and then when the magistrate said what is she being booked for, I kept on talking, and he can verify that, and the magistrate can verify that. I kept on talking.

And the magistrate said "Wait, I haven't done anything to you. I will let you tell your side of the story."

And then was when I found out, found out part of why.

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Said they were having trouble down there, and I told him all I wanted to know then was why. That is all I had
page 49 } ever said. I wanted to know why. I wanted to know why I had to move on, I had nothing else other than that in my mind, wanted to know why I had to move on, because I just couldn't understand why I had to move on when all these other people were around.

That is all I wanted to know.

Q. Did you talk with your husband about this situation prior to the time you were arrested?

A. No, he didn't know anything about it, and when I got to the magistrate's office—

Mr. Martin: Just answer his question. We will get along better.

Q. You hadn't talked to anybody about that, about what was going on?

A. No, sir.

Q. You didn't actually see the pickets?

A. No, sir.

Q. But you did see Officer Nuckols all this time?

A. I wouldn't say I didn't see the pickets, but I couldn't tell you what they had on or what the signs were saying. This all happened in a split second. I couldn't tell you how many, whether two, three, four or six, all I could tell you was it was a lot of people on the street.

Q. There were a lot of people down there that day?

A. Yes.

Q. A big crowd?
page 50 } A. To me it was.
Q. You do not deny you heard the officer, Officer Nuckols, tell you to move on, do you?

A. No, I don't deny that.

Q. He told you to move on, told you three times?

A. Yes, but I still wanted to know why.

Mr. Wilkinson: That is all.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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