CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

WILLIAM KIDD, JR.

V.

COMMONWEALTH OF VIRGINIA

730786

IN THE

SUPREME COURT OF VIRGINIA

At Richmond

730786

WILLIAM KIDD, JR.

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

E. BEALE CARTER, JR., Boykins (Britt and Carter, Boykins), for plaintiff in error.

ROBERT E. SHEPHERD, JR., Asst. Atty. Gen. (Andrew P. Miller, Atty. Gen.), for defendant in error.

APPENDIX

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COMMONWEALTH OF VIRGINIA,)
COUNTY OF SOUTHAMPTON,) To-Wit

IN THE CIRCUIT COURT OF SAID COUNTY
April 16, 1973

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about the 22nd day of February, 1973, in the County of Southampton, William Kidd, Jr., while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously make, procure, secrete and have in his possession a weapon, to-wit: a broom handle, not authorized by the superintendent, which was capable of inflicting death or bodily injury against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the April 16 Term, 1973, of the Circuit Court of Southampton County, on the evidence of E. C. McGee, Horace Hunt, Avis McAllister and Larry Barbour, witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH OF VIRGINIA,)
COUNTY OF SOUTHAMPTON,) To-Wit

IN THE CIRCUIT COURT OF SAID COUNTY
April 16, 1973

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said county, upon their oaths present: That on or about February 22, 1973 in the County of Southampton William Kidd, Jr., maliciously caused bodily injury to Horace L. Hunt with the intent to maim, disfigure, disable or kill, against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the April 16 Term, 1973, of the Circuit Court of Southampton County, on the evidence of E. C. McGee, Avis McAllister, Horace Hunt and Larry Barbour, witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH OF VIRGINIA,)
COUNTY OF SOUTHAMPTON,) To-Wit

IN THE CIRCUIT COURT OF SAID COUNTY
April 16, 1973

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: That on or about February 22, 1973 in the County of Southampton, William Kidd, Jr., maliciously caused bodily injury to Avis D. McAllister with the intent to maim, disfigure, disable or kill, against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the April 16, Term, 1973, of the Circuit Court of Southampton County, on the evidence of E. C. McGee, Avis McAllister, Horace Hunt and Larry Barbour, witnesses sworn and sent to the Jury by the Court.

VIRGINIA: IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY,

May 21, 1973

COMMONWEALTH

vs. #59-1973

William Kidd, Jr.

This day came again the Attorney for the Commonwealth, and William Kidd, Jr., age 17, born October 23, 1955, who stands indicted for a felony, to-wit: That on or about the 22nd day of February, 1973, in the County of Southampton, William Kidd, Jr., while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously make, procure, secrete and have in his possession a weapon, to-wit: a broom handle, not authorized by the superintendent, which was capable of inflicting death or bodily injury, was again led to the bar in the custody of the Sheriff and came also E. Beale Carter, Jr., his attorney heretofore appointed by the Court to defend him and William Kidd, Sr., his parent.

And the Court having received the report of the Probation Officer, upon the investigation as prescribed in Section 16.1-176 (b) of the Code of Virginia, 1950, as amended, which said report was examined by counsel for the accused and approved by him as being in full compliance with the aforesaid statute; and the Court having fully examined and considered said report is of the opinion that said report fully complies with the statute, and that this

case should not be transferred to the Juvenile Court of this county but that this Court should proceed with the trial thereof under the criminal laws of this Commonwealth, Doth So Decide.

Whereupon, the accused, after private consultation with his counsel and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired and consented to be tried on this day. The Attorney for the Commonwealth also consented. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded not guilty to the indictment, which plea was tendered by the accused in person, and after being first advised by his counsel and by the Court of his right to trial by jury, the accused in person, knowingly and voluntarily waived a trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence and argument of counsel doth find the accused guilty of Possession of an Unauthorized weapon as charged in the indictment.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of EIGHTEEN (18) MONTHS, and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of $232.50 by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorney's fee of $200.00.

The Court advised the defendant of his right to an appeal and instructed his attorney to fully explain to him said rights and the Court also advised the defendant that it would appoint an attorney to represent him on an appeal.

And the prisoner is delivered to a guard from the Southampton Correctional Farm to be returned to that institution.

A Copy, Teste:

/s/ B. A. Williams, Jr., Clerk

Entered: Common Law Order Book
Vol. 25, page 59

VIRGINIA: IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY,

May 21, 1973

COMMONWEALTH

vs. #58-1973

William Kidd, Jr.

This day came again the Attorney for the Commonwealth, and William Kidd, Jr., age 17, born October 23, 1955, who stands indicted for a felony, to-wit: That on or about February 22, 1973, in the County of Southampton, William Kidd, Jr., maliciously caused bodily injury to Horace L. Hunt with the intent to maim, disfigure, disable or kill, was again led to the bar in the custody of the Sheriff and came also E. Beale Carter, Jr., his attorney heretofore appointed by the Court to defend him and William Kidd, Sr., his parent.

And the Court having received the report of the Probation Officer, upon the investigation as prescribed in Section 16.1-176 (b) of the Code of Virginia, 1950, as amended, which said report was examined by counsel for the accused and approved by him as being in full compliance with the aforesaid statute; and the Court having fully examined and considered said report is of opinion that said report fully complies with the statute, and that this case should not be transferred to the Juvenile Court of this county but that this Court should proceed with the trial thereof under the criminal laws of this Commonwealth, Doth So Decide.

Whereupon, the accused, after private consultation with his counsel and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired and consented to be tried on this day. The Attorney for the Commonwealth also consented. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded not guilty to the indictment, which plea was tendered by the accused in person; and after being first advised by his counsel and by the Court of his right to trial by jury, the accused in person, knowingly and voluntarily waived a trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence and argument of counsel doth find the accused guilty of Malicious Maiming as charged in the indictment.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of TEN (10) YEARS, and that the Commonwealth of Virginia do recover against the said defendant its costs in the amount of $524.25 by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary therein to be kept,

confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorney's fee of $200.00.

The Court advised the defendant of his right to an appeal and instructed his attorney to fully explain to him said rights and the Court also advised the defendant that it would appoint an attorney to represent him on an appeal.

And the prisoner is delivered to a guard from the Southampton Correctional Farm to be returned to that institution.

A Copy, Teste:

/s/ H. A. Williams, Jr., Clerk

Entered: Common Law Order Book
Vol. 25, page 60

VIRGINIA: IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY,

May 21, 1973

COMMONWEALTH

vs. #60-1973

William Kidd, Jr.

This day came again the Attorney for the Commonwealth, and William Kidd, Jr., age 17, born October 23, 1955, who stands indicted for a felony, to-wit: That on or about February 22, 1973, in the County of Southampton, William Kidd, Jr., maliciously caused bodily injury to Avis D. McAllister with the intent to maim, disfigure, disable or kill, was again led to the bar in the custody of the Sheriff and came also E. Beale Carter, Jr., his attorney, heretofore appointed by the Court to defend him and William Kidd, Sr., his parent.

And the Court having received the report of the Probation Officer, upon the investigation as prescribed in Section 16.1-176 (b) of the Code of Virginia, 1950, as amended, which said report was examined by counsel for the accused and approved by him as being in full compliance with the aforesaid statute; and the Court having fully examined and considered said report is of opinion that said report fully complies with the statute, and that this case should not be transferred to the Juvenile Court of this county but that this Court should proceed with the trial thereof under the criminal laws of this Commonwealth, Doth So Decide.

Whereupon, the accused, after private consultation with his counsel and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired and consented to be tried on this day. The Attorney for the Commonwealth also consented. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded not guilty to the indictment, which plea was tendered by the accused in person, and after being first advised by his counsel and by the Court of his right to trial by jury, the accused in person, knowingly and voluntarily waived a trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence and argument of counsel doth find the accused guilty of Malicious Maiming as charged in the indictment.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of TEN (10) YEARS, and that the Commonwealth of Virginia do recover the defendant its costs in the amount of $232.50 by it about its prosecution in this behalf expended.

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The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorney's fee of $200.00.

The Court advised the defendant of his right to an appeal and instructed his attorney to fully explain to him said rights and the Court also advised the defendant that it would appoint an attorney to represent him on an appeal.

And the prisoner is delivered to a guard from the Southampton Correctional Farm to be returned to that institution.

A Copy, Teste:

/s/ B. A. Williams, Jr., Clerk

Entered: Common Law Order Book
Vol. 25, page 58

VIRGINIA:

IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY

William Kidd, Jr. (3 counts)	Plaintiff in Error
v.	
Commonwealth of Virginia	Defendant in Error

NOTICE OF APPEAL

ASSIGNMENTS OF ERROR

To: B. A. Williams, Jr., Clerk of the Circuit Court of the County of Southampton

Counsel for William Kidd, Jr., the defendant in the above styled cases, hereby gives Notice of Appeal from three final judgments entered on May 21, 1973.

The said William Kidd, Jr., the defendant in the above styled cases, will apply to the Supreme Court of Appeals of Virginia, for a Writ of Error to said judgments, and herewith sets forth his Assignments of Error as follows:

1. That the Court erred in over-ruling the defendant's motion to quash the indictment charging "that William Kidd, Jr., while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously, make, procure, secrete and have in his possession a weapon, to-wit: a broom handle not authorized by the superintendent which was capable of inflicting death or bodily injury", for the reason that the Circuit Court of Southampton County, Virginia, lacked jurisdiction to try said indictment.

2. That the verdicts in the three charges against William Kidd, Jr., of (a) possession of a weapon, etc., (b) malicious maiming of Horace Hunt, and (c) malicious maiming of Avis D. McAllister, are contrary to the law and to the evidence.

You are further requested to promptly make up the record in this cause in accordance with the Rules of the Supreme Court of Appeals of Virginia.

William Kidd, Jr.

By /s/ E. Beale Carter, Jr.
Of Counsel

E. Beale Carter, Jr.
Britt and Carter
Boykins, Virginia
Counsel for defendant

I hereby certify that the foregoing Notice of Appeal and Assignments of Error was filed with the Clerk of the Circuit Court of Southampton County, Virginia, and that a copy of same was mailed to Richard C. Grizzard, Commonwealth's Attorney for Southampton County, Virginia, this _____ day of June, 1973.

/s/ E. Beale Carter, Jr.
Counsel for Defendant

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 25th day of January, 1974.

William Kidd, Jr., Plaintiff in error,

against Record No. 730786

Commonwealth of Virginia, Defendant in error.

From the Circuit Court of Southampton County

Upon the petition of William Kidd, Jr., a writ of error and supersedeas is awarded him to judgments rendered by the Circuit Court of Southampton County on the 21st day of May, 1973, in prosecutions by the Commonwealth against the said petitioner for felonies (Indictments Nos. 58-1973, 59-1973 and 60-1973); but said supersedeas, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

This writ of error, however, is limited to the consideration of assignment of error No. 1 in each of these cases which reads as follows:

"1. That the Court erred in over-ruling the defendant's motion to quash the indictment charging 'that William Kidd, Jr., while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously, make, procure, secrete and have in his possession a weapon, to-wit: a broom handle not authorized by the superintendent which was capable of inflicting

death or bodily injury', for the reason that the Circuit Court of Southampton County, Virginia, lacked jurisdiction to try said indictment."

On further consideration whereof, it is ordered that the parts of the record to be printed or reproduced in the appendix are to be limited to those parts of the record germane to assignment of error No. 1, and the briefs to be filed shall be limited to such discussion as is relevant to the assignment of error upon which this writ of error is awarded.

The petition for writ of error is refused as to assignment of error No. 2 in each of the cases in the court below.

A Copy,

Teste:

/s/ H. G. Turner, Clerk

MATERIAL EXCERPTS FROM TRANSCRIPT

(Tr. 2, L. 5. to Tr. 5, L. 26.)

(Richard C. Grizzard, Attorney for the Commonwealth

E. Beale Carter, Jr., Counsel for defendant

The Honorable James C. Godwin, Judge)

Mr. Grizzard: Your Honor, this is the case of Commonwealth v. William Kidd, Jr., and he is here on three indictments, two for malicious maiming and one for possession of an unauthorized weapon by an inmate.

Mr. Carter: Your Honor, we have no objection to trying all the cases together, but I do have a motion to make before the arraignment. I would like to further note in the record that the defendant's father is here.

The Court: All right, go ahead, Mr. Carter.

Mr. Carter: If it please the Court, Kidd is charged here today with three charges. One of possession of an unauthorized weapon within the penitentiary system, and two charges of malicious maiming. We have no quarrel with the jurisdiction of the Court on the malicious maiming charges, but, Your Honor, I would call to the Court's attention Section 53-295 of the Code insofar as the jurisdiction of the Court on the possession of unauthorized weapons, and as Your Honor knows, this is the section that pertains to crimes by convicts. Section 53-291, which specifically says it is to "Make, procure, secrete or have in his possession a knife, instrument, . . or other thing not authorized by the superintendent which is capable of inflicting death or bodily injury", and this is what he is charged with under subsection 5 of 53-291. Then following

Chapter 13 defines the jurisdiction involving crimes by convicts under 53-291 and in 53-295 the Legislature has specifically said that "All criminal proceedings against convicts in the penitentiary shall be in the Circuit Court of the city of Richmond", and so forth and so on. It is for this reason, Your Honor, that we question the jurisdiction of this Court to hear this matter this morning on the possession. I think it is further indicative of the Legislature's intent in that since 53-295 had been the law for a number of years, at the recent session of the Legislature, the Legislature saw fit to amend the section and now 53-295 reads, which becomes effective July 1st, "All criminal proceedings against convicts in the penitentiary shall be in the Circuit Court of the city of Richmond, or by the Court having jurisdiction in which the offense occurred". This has been amended, and this was not the law when it happened, and it will not be the law until July 1st, and for this reason, we move to quash the indictment against William Kidd insofar as possession of an unauthorized weapon is concerned.

Mr. Grizzard: If it please the Court, Section 17.1-123 of the Code reads in part, speaking of jurisdiction of the Circuit Court under 17.1-123, it reads, and they are speaking of Circuit Courts, "They shall also have original jurisdiction of all indictments for felonies and of presentments", and indictments for misdemeanors. Section 53-295, which Mr. Carter speaks of is a special statute, and the general statutory interpretation where you have

a general statute of jurisdiction, and a special statute, the general interpretation of that is either statute would control. There are no cases decided in the State of Virginia on this point, but on June 21, 1972, in answer to an inquiry from the Commonwealth's Attorney for the City of Portsmouth, the Attorney General rendered an opinion and which I quote from the opinion, "The single issue that runs through your question is one of when, if ever, a general criminal statute is superceded by a particular criminal statute so as to preclude prosecution under the former. Although I found no Virginia cases dealing with this issue, I have found cases in other jurisdictions which provide valid guides", and then they cite a Colorado case, Huckle vs. People, and the statement of the Court in that particular case in arguing that a specific statute necessarily precludes prosecution under a general statute had been repudiated too often to warrant an extended discussion and suffice it to say that unless the legislative intent is clearly shown to the otherwise, a specific criminal statute does not preclude prosecution under a general criminal statute, but rather allows the single criminal transaction to be prosecuted under either statute, and it boils down to the intent of the legislature, and a general rule in statutory interpretation is that potentially conflicting or overlapping statutes should be construed to stand together if possible, and

one statute should not be deemed to repeal the other unless there is evidence of clear legislative intent to that effect. When you look at 53-295, this is a statute which gives jurisdiction of certain crimes by inmates to the Circuit Court of the City of Richmond, which is where 500 Spring Street, or the penitentiary is located, but there is nothing in that statute to show legislative intent which would say that Southampton County does not have general jurisdiction over all indictments for crimes committed in Southampton County. There is no clear legislative intent shown. Therefore, under the general principles of statutory construction, the Commonwealth has the election to proceed either in the City of Richmond, or in Southampton County. The statute should be construed to buttress each other rather than to repeal one another, and therefore, under the ruling of the Attorney General and under the construction of the statutes, it is clear that the Southampton County does have jurisdiction, and I would ask the Court to overrule the motion to quash.

The Court: Well, gentlemen, I have reviewed that statute in my office that has been passed by the General Assembly, and I am of the opinion that the Court does have jurisdiction and therefore I am going to overrule your motion, and note your exception in the record, Mr. Carter.