215 Va. 318

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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

RECORD NO. 730828

DANIEL BRUCE LARGIN

vs.

COMMONWEALTH OF VIRGINIA

From The Circuit Court Of
Bedford County

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I

INDICTMENT

On or about the 11th day of October, 1972, in the City of Bedford, Virginia, Daniel Bruce Largin unlawfully and feloniously did break and enter the store building of Goodyear Tire and Rubber Company Service Store of Bedford, with intent to commit larceny of a quantity of goods and chattels therein found, contrary to the provisions of Section 18.1-88 and 18.1-89 of the Code of Virginia of 1950, as amended.

On or about the 11th day of October, 1972, in the City of Bedford, Virginia, Daniel Bruce Largin did take, steal, and carry away a quantity of goods and chattels, to-wit: one 18 inch G. E. color television set, Model # WN-270-CWD-2 and one 19 inch G. E. color television, Model # WN-382-CWD-2, having a value of one hundred dollars or more, said goods and chattels being the property of the said Goodyear Tire and Rubber Company Service Store of Bedford, contrary to the provisions of Section 18.1-100 of the Code of Virginia of 1950, as amended.

II

ASSIGNMENT OF ERROR #1

"The defendant assigns as error the action of the Trial Court in admitting into evidence the allegation of Carol Folden that Daniel Bruce Largin was the father of her illegitimate child".

III

PORTIONS OF THE TRANSCRIPT

(a) OPENING STATEMENTS OF COUNSEL

BY HARRY W. GARRETT, JR.:

May it please the Court, and you, Ladies and Gentlemen of the Jury, I'll be very brief as far as my opening remarks to you, but I'm simply going to tell you what we expect to prove in this case, which is a case of statutory burglary. The place that was burglarized in, I believe it was October of '72, is the Goodyear Service Store, which is situated I think at the intersection of I believe it's Washington and North Bridge Streets, South Bridge Street, anyway it's right over here on the other side of town. But, anyway, they broke the window to the Goodyear Store by throwing a rock through the window, and they got away with two TV sets. Sergeant Webster, with the Police Department, City of Bedford, is going to tell you or describe to you the TV sets that were taken; what he observed when he physically surveyed the scene; the value of the TV sets.

As to the proof of Mr. Largin's guilt, the Commonwealth is going to offer you only one witness and that's going to be Mrs. Carolyn Ann Folden. Mrs. Folden was Mr. Largin's accomplice. She has already pled guilty and has been tried in this Court, but she has yet to be sentenced. We're not going to pull your leg and say that one of the reasons she probably testified to you is that she is hopeful that she will receive lenient treatment in her case by virtue of testifying against Mr. Largin. But we also plan to show you through her testimony that the relationship between she and Mr. Largin in the past has been an

extremely close one; that they lived together for some matter of months in Roanoke; that about a month ago Mrs. Folden had a child by Mr. Largin --

WANDREI:

I object to that. I think it's highly prejudicial. I don't think that's an issue here.

GARRETT:

Judge, I'm simply pointing out what we expect to show from Mrs. Folden as a past relationship between these two parties because one of the basic reasons here is going to be the credibility of witnesses, whether or not there's any bias or reason that this woman has to lie concerning the events here, and we think that this is a proper comment in opening remarks and proper evidence.

WANDREI:

Judge, may we approach the bench, Your Honor.

"CONFERENCE AT BENCH INAUDIBLE."

JUDGE:

I do want to--in other words, did I understand you to say that the accomplice here claims that she had a child by the defendant?

GARRETT:

Yes, sir.

JUDGE:

All right, the objection to that statement is overruled.

GARRETT:

All right, sir.

Anyway it's true what Mrs. Folden tells you; that we plan to show that she still has affection for Mr. Largin, and that if she had her druthers, because she no longer has the --

and we plan to, before she takes the stand, before she answers one question, that we're going to ask the Judge to instruct her that she has to answer my questions because of the fact that she's already been found guilty of her part in this crime; that she's no longer entitled to claim the Fifth Amendment; no longer entitled to say that I do not choose to answer your questions, and we plan to show through what she tells you about their relationship that if she had her choice today that her choice would be not to testify against Danny Largin, a man who in the past she's been very friendly, very close to and who she still has great affection for. But she is going to tell you that she and Danny Largin made a number of trips down from Roanoke in her automobile. They came down for the purpose of casing police movements, to see when the lights of the Goodyear Store and other stores would go out. On this particular occasion they came down she's going to tell you that they observed a policeman walking by the store, and when they felt that it was safe. She said Mr. Largin had already gotten a brick out of a yard somewhere, I believe, down on East Main Street, or further below this end of town, that he used to throw through the window and break the window and then go in and get the TV sets, which he brought back and loaded into her car, and that it was her job to have the car ready to go when they left town, or rather when he had gotten the TV sets out and had gotten them loaded into the car. She's going to tell you what disposition they made of the TV sets; that they took them to Roanoke and there they were sold to a friend of Mr. Largin, a man by the name of Squeaky McGuire, and that they got a quantity of money for it and that she got sixty dollars out of it, which he put into her savings account, which was in her name alone and not in Mr. Largin's.

But she's going to be the only witness that the Commonwealth is going to produce for you outside of Sergeant Webster, who is going to, in part, corroborate what she tells you because she'll give you some idea as to where the vehicle was parked. Sergeant Webster is going to tell you there was broken glass that apparently had fallen on top of the TV sets and that was in the area where the car was parked.

At the conclusion of the evidence, we feel that you are going to be satisfied as to this man's guilt. We're going to ask you to find him guilty. The Court is going to instruct you as to the range of punishment and once again, we're going to leave it to your discretion as to the punishment to fix in this case.

JUDGE:

All right, thank you. Mr. Wandrei.

OPENING STATEMENT

BY ROBERT T. WANDREI:

May it please the Court, and Ladies and Gentlemen of the Jury, I would preface my remarks by saying something that I think that all you may know, and that is the fact that the comments of counsel, including the opening statements, are not to be considered by you in your deliberations as evidence. The only evidence that you will hear in considering whether or not the defendant is guilty of the charge is that which comes from the witness stand right here.

Now as you probably know from trying cases in the past and in this term, this charge is one of Statutory Burglary, and I'm sure that most of you have served in the first case that was heard earlier today and you know the elements that constitute this particular offense. Now before we start this case, I think you all are aware that the Court will instruct you that the defendant is presumed to be innocent, and it is the duty of the Commonwealth to prove beyond a reasonable doubt that the defendant is guilty as charged. Now I stress these two points, presumption of innocence, the fact that the burden of proof is upon the Commonwealth to prove the case beyond a reasonable doubt because these are two fundamental cornerstones in our system of jurisprudence. They are no Johnny-come-lately that was handed down recently.

Now in this particular case you're going to hear a relatively a short amount of testimony from, I believe, two witnesses Mr. Garrett pointed out to you, and I think in view of the fact that most of you who sat through the first case, all of you will be pleased to hear that. I submit to you that the crucial testimony that you are going to hear is the testimony of one Carol Folden. Now Mr. Garrett has intimated that Carol Folden had a child, which would be an illegitimate child, by Danny Largin, and, of course, I objected to that, and I objected to it very strongly because I feel this is not an element for consideration in this charge. In fact, I don't think that Carol Folden could tell whose child it was. She, as I understand, she's already married to a man by the name of Folden. Now the thing about it is, it will come up in evidence, that her testimony is the only testimony that directly

bears upon the fact that Daniel Largin was involved in the offense, which is before you today. Now you will be instructed that Carol Folden is what we call an accomplice, and the Court will further instruct you that in listening to the testimony of the accomplice and considering it, you should receive it with extreme caution, the reason being, of course, that sometimes there are motives for an accomplice not to testify or tell the complete truth or for that matter could actually commit perjury on the stand.

Now I think as this case goes along, I think there will be reasons brought forth as to why her testimony may not be as credible as the Commonwealth would like it, and I think you will be best the ones to judge this fact. I also submit to you that as you hear the evidence, particularly the testimony of Carol Folden, that you will find that there are certain material elements which constitute this offense that are not proven by her testimony, and are not going to be proven by any other testimony or evidence offered by the Commonwealth.

Now, I will ask that you carefully consider each particular element as testified to by the various witnesses, and at the conclusion of the evidence, I will ask that you consider carefully the evidence which you have heard, and in light of the instructions that you are going to receive from the Court, I submit to you that at the conclusion of all of the evidence you will find that the burden of proof has not been met by the Commonwealth and Daniel Largin is not guilty of the offense charged.

Thank you.

(b) TESTIMONY OF CAROL FOLDEN

BY HARRY W. GARRETT, JR.:

Q. Mrs. Folden, how old are you?

A. I'm twenty-six.

Q. You're twenty-six years old?

A. Yes, sir.

Q. And where do you live now?

A. I live at 425 Mountain Avenue in Roanoke.

Q. All right, where were you living before this offense occurred?

A. At that address.

Q. At that address? Who else lives there?

A. My mother and my two children.

Q. All right, are you married?

A. Yes, sir, I am.

Q. Are you divorced?

A. No, sir.

Q. All right, will you tell the Jury who resided at the 425 Mountain Avenue address prior to the date of the offense here?

A. Daniel Largin was there.

Q. How long did he live there?

A. Several months. I'm not sure of the exact number.

Q. All right. Did you participate in the burglary of the Goodyear Service Store here in Bedford?

A. Yes, sir.

Q. What was taken?

A. Two TVs.

Q. Did you do it by yourself?

A. No, sir.

Q. Who else participated in it?

A. Daniel Largin.

Q. Was this the first time you had been to Bedford?

A. No, sir.

Q. How many times had you been down here before you broke into the Goodyear Store?

A. I don't know the exact number.

Q. All right, what was your purpose of coming down here?

A. Just to see the town.

Q. I mean, just to see the town? Was that all?

A. That's all we did.

Q. Well, I mean, did you pay any particular attention to what the police were doing?

A. Well, we were watching them.

Q. And did you make several trips down for this purpose, to see the town and to see what the police were doing, before you came down and got the TV sets?

A. Yes, sir.

Q. How did you get down here?

A. We drove down in my car.

Q. All right, on the night in question, were you in your car again?

A. Yes, sir.

Q. All right, I'm just going to turn you loose and you tell the Jury in your words how you all went about breaking into the Goodyear Store and stealing the TVs.

JUDGE:

Just face the Jury, please, and look at them and tell them.

FOLDEN:

A. Well, I don't know the time that we got down here. I'm not sure at all. But we arrived in my car and it was still fairly daylight. We just drove around town watching people. We were just looking for the police and just to see who was

on the street and how busy these stores were, and then we made several trips by the Goodyear Store and then it had gotten dark there. We were just driving around. You want me to tell about the brick?

CARRETT:

Go ahead.

A. Well, we had gone out North or South Street, I'm not sure of the name of the street, to -- we were just driving that way, and I stopped along beside the street and Danny picked up a brick and put it in the car and we came back to the public parking lot across the street from the Goodyear Store. I got out of the car, and I walked to the corner and I was facing this -- well, facing the Courthouse, I could see that from the corner, and then I heard glass breaking, and when I did I went back to the car and got in. Danny and I left the vicinity and drove on -- two blocks behind the Goodyear --

Q. All right now, at this point, were any TV sets taken?

A. There was a TV set in the car.

Q. All right, was the TV set in the car when you left to walk up to the corner?

A. No, sir.

Q. All right, go ahead.

A. Well, we were several blocks up behind the Goodyear store; the TV was put in the trunk of my car and I returned to the same public parking lot; I was again asked to watch in this general direction, and then there was another TV put in the car and we left the vicinity back to the -- several blocks --

Q. All right, did you see Danny coming back with this TV?

A. No, sir, I didn't. I wasn't looking at Danny. I was looking this way.

Q. All right, and what was your purpose in looking this way?

A. I was looking for anybody to --

Q. That would have come up there?

A. -- In the vicinity.

Q. Right. O. K., were you driving or was Danny driving when you left?

A. I was driving.

Q. All right, go ahead.

A. Well, when we had reached the same vicinity, several blocks behind the Goodyear Store, the TV was put in the trunk of the --no, -- yes -- I'm sorry, I've got it backwards. On the second trip when the TV was taken, we didn't go back to the same place, the TV was left in the trunk of the car.

Q. In the trunk or the back seat?

A. I mean in the back seat. There was one in the trunk and one in the back seat.

Q. O. K., go ahead.

A. We left the vicinity of Goodyear, and went down the highway to the stop light, and I had to stop for a red light, and while I was setting there waiting for the light to change, a police car came through the intersection. He ran the red light and I was told to run it also, but I didn't.

Q. Who told you to run it?

A. Danny Largin.

Q. All right, go ahead.

A. And we leave Bedford and go back to Roanoke.

Q. All right, what happened when you got back to Roanoke?

A. Well, I stopped somewhere, I'm not sure where, in Roanoke, and got the TVs; we checked the TVs to see if they were damaged at all, and then we went to Ninth Street --

Q. Went where?

A. To Ninth Street, Eight and a half street, after that.

Q. And what place did you go to there?

A. To a service station.

Q. And who owned that service station?

A. I know just one name. I don't know the last name at all.

Q. Well, what was the person's name?

A. The first name is Squeaky.

Q. All right, what was done there?

A. The TVs were taken out of the car and put into a metal utility shed, what he was using it for.

Q. Do you remember any conversations that took place between Squeaky and Danny Largin?

A. I couldn't hear too much of the conversation, but I know that after the TVs were put into the utility shed that Squeaky made the comment to Mr. Largin, or Danny, not to come back later on a night, that night, and take the TVs and sell them to somebody else.

Q. All right, do you know how much money Squeaky paid for the TV sets?

A. No, sir, I don't.

Q. How much did you get out of it?

A. Well, as you said, I got $60.00 but there was also food bought for myself and my two children and there was clothes bought.

Q. And who bought them, the clothes and food?

A. Well, it come from the money that Danny had. I don't know—

Q. And did he give you the $60.00?

A. Well, he was with me when the $60.00 was put into the bank.

Q. In whose name was it put in?

A. It was put in mine.

Q. All right. Would you tell the Jury whether or not you were and whether or not you're still in love with Danny Largin?

A. Yes, sir, I am.

Q. And you say that you have two children at home. Are these all the children you've had?

A. No, -- I've got two at home, yes, sir.

Q. All right, did you have one about how long ago?

A. It'd be a month; he was a month Monday.

Q. All right, would you tell the Jury who's the father of that child?

WANDREI:

I object to that, Your Honor. I think it's immaterial and I don't think we are trying a paternity case.

JUDGE:

Mr. Wandrei, it has a bearing on the credibility and bias of this particular witness. I overrule the objection.

GARRETT:

Q. Would you answer the question?

A. Daniel Largin.

Q. Now, you know that you have taken an oath to tell the truth?

A. Yes, sir.

Q. Is what you've told this Jury the truth?

A. Yes, sir.

Q. All right, answer any questions that Mr. Wandrei might have.

CROSS-EXAMINATION

BY ROBERT T. WANDREI:

Q. Carolyn, whose car was it when you came to Bedford?

A. My car.

Q. And who drove the car?

A. I did.

Q. And did you drive the car all night?

A. All night?

Q. Yes, when you came to Bedford, and then after -- when you subsequently went to Roanoke, were you driving?

A. I was under the wheel, yes, sir, I was.

Q. So, if you were under the wheel, we can assume you were driving?

A. Yes, sir.

Q. When you came to Bedford, as I understand it, you parked the car in, which you referred to, a public parking lot, is that the parking lot near Johnson's Store?

A. All I know, it was just a public parking lot. I don't know the name of any of the stores there.

Q. Now when you got out of the automobile, you say you walked up to the corner?

A. Yes, sir.

Q. Now did you see what Danny Largin was doing?

A. No, sir, I was looking towards the Courthouse in front of me.

Q. And supposedly the glass is broken, now could you tell us what glass this was that was broken?

A. It was one of the plate glass windows.

Q. Did you see it when it was broken?

A. No, sir, I did not.

Q. Did you examine the window after it had been broken?

A. No, sir, I didn't cross the street at all.

Q. Now, did you see Danny Largin break the window?

A. No, sir.

Q. Can you tell the Jury positively who broke the window, if you know?

A. No, sir, I don't know who broke it.

Q. Now after the window was broken, as I understand it, a TV set was put -- when you returned to your car, there was a TV set in the car?

A. Yes, sir.

Q. Did you see Danny Largin put that TV set in your car?

A. Let's see. I'm thinking. Yes, sir, I'd have to say yes, to that.

Q. You have to say yes, but you're not for sure.

A. Yes, sir.

Q. Now, do you know where he got that TV set?

A. Yes, sir.

Q. Did you see him get the TV set?

A. No, sir, I did not.

Q. Well, you don't know where the TV set came from?

JUDGE:

Wait, she just said she did.

WANDREI:

Well, she said --

JUDGE:

Give her a chance to say whether --

WANDREI:

Let me ask her this question.

Q. Did he say where he got the TV set?

A. I did not see him take the TV from anywhere, but I did see him with it in his hand. Let me put it that way.

Q. So you did not see where he actually got the TV?

A. No, sir.

JUDGE:

You don't know where it came from then?

A. No, I don't know where he got it from.

JUDGE:

I'm really trying to get it straight in my own mind. I'm not trying to confuse anybody.

A. I'm confused too.

WANDREI:

Q. Now, as I understand it, there were two TV sets that had been taken that night?

A. I was told there was two.

Q. Well, --

A. I saw two, if that's what you want to know.

Q. Did you know how many TV sets were taken?

A. I saw two.

Q. O.K., can you tell me if those TV sets were black and white, or were they color TV sets?

A. Well, as of then, I didn't know what they were.

Q. Now, --

A. Later, I found out.

Q. Then you said, later. When did you find out whether they were black and white or color?

A. It was about a month later.

Q. About a month later?

A. Maybe.

Q. I thought you said you checked the TV sets that night to see if they were damaged?

A. Well, I didn't pay any attention to what they were.

Q. So, even though you said you checked the TV sets to see if they had been damaged, you didn't -- your check wouldn't disclose whether they were black and white or color?

A. No, sir. I just looked at the back of the case.

Q. In other words, you didn't turn it on?

A. No, sir, there was no place to turn it on.

Q. Now, could you tell us what particular make these TV sets were?

A. No, sir.

Q. Could you tell us what size screen it was, whether it was 21 inch, 28 inch, or a small one?

A. I don't know the difference in the screen size.

Q. Was it a little tiny portable, such as a panasonic or a zonie, or was it one of these giant --

A. Fairly large.

Q. But you don't know what size?

A. No, sir.

Q. Now, one other thing. You mentioned when you were leaving Bedford that you approached a stop light which was red, --

A. Yes, sir.

Q. -- And a police officer went by. Now was that police officer going in the same direction you were going?

A. No, sir.

Q. He was going the opposite direction?

A. Yes, sir.

Q. And did he run a red light?

A. Yes, sir, he did.

Q. Now, if he ran the red light, it was probably green for you, if he --

A. No, sir, it was still red. He met me head on and both of them were red.

Q. Well then, he was going in just the opposite direction?

A. He was going to where I just come from. I mean, from the direction I just come from.

Q. Now, you stated that you are living -- were living at your mother's home, I believe, on Mountain Avenue, and back in October Danny Largin was living with you, your mother and two children, is that correct?

A. Yes, sir.

Q. Now it is correct though that you are still married?

A. Yes, sir.

Q. Not divorced?

A. No, sir.

Q. Now you mentioned also that you were in love with Danny Largin?

A. Yes, sir.

Q. Isn't it a fact that you've asked Danny Largin to marry and he's refused?

A. No, sir. I haven't asked him yet.

Q. You haven't suggested it?

A. I've suggested it, but I haven't asked him.

Q. Isn't it a fact that he told you he didn't want to marry you?

A. Well, he told me he couldn't right now.

Q. Didn't he tell you he didn't want to marry you?

A. No. He may have -- he may not want to, I don't know.

Q. Now, you were tried on this offense on November 27th, is that correct?

A. I was tried, yes, sir, but I'm not sure of the date.

Q. At that particular time, was there anything said to you by your attorney or by anyone else concerning a possible recommendation as to sentence?

A. I have been -- I've been told that I may be -- will be recommended to the Court for a suspended sentence.

Q. Isn't it a fact that you have been told through your attorney that they will recommend a suspended sentence and you won't have to spend any jail time?

A. Well, I have received word from my attorney that there is a recommendation for a suspended sentence.

Q. Isn't it a fact that delayed taking any action on that sentence to determine what you say here today?

A. In my belief, yes, sir.

Q. There has been six months that have elapsed and they could have brought you up here to be sentenced, could they not?

A. Yes, sir, they could have.

Q. And they didn't?

A. Not yet, no, sir.

Q. Of course, you certainly want them to give you a suspended sentence, don't you?

A. Yes, sir, I'm hoping for that.

Q. Of course, you realize that if you testify contrary to the way the Commonwealth wants, you probably wouldn't get the suspended sentence, don't you?

A. Yes, sir, I know that.

Q. I have no further questions.

REDIRECT EXAMINATION

BY HARRY W. GARRETT, JR.:

Q. Let me ask you this, Carolyn. Have you spent some time in jail?

A. Yes, sir.

Q. On this charge?

A. Yes, sir.

Q. How much time have you spent in jail?

A. On this charge, about three weeks.

Q. About three weeks? All right, you say that, if I recall your testimony when you were on direct examination before, that you stopped the car and Danny got a brick?

A. Yes, sir.

Q. He got the brick for what purpose, again?

A. Just to have something handy.

Q. To do what with?

A. I don't know, I didn't ask him.

Q. All right, when he got out of the car and walked, as you described it, toward the Goodyear Service Store, did he have the brick with him?

A. No, sir. When he got out of the car?

Q. Right.

A. Well, he got out of the car several times.

Q. All right now, what I'm trying to get at, what happened to that brick?

A. What happened to the brick? It was laying in the doorway of the building.

Q. All right, who put the brick there? That's what I'm getting at.

A. Well, Danny pitched it up on the sidewalk and a policeman kicked it up in the doorway.

Q. I realize that and that's what I wanted you to tell the Jury. How many times did you all observe this policeman walk by there?

A. Well, I can't say that it was the same policeman, or not.

Q. But there was more than one policeman that you all saw pass by?

A. There was a policeman -- yes.

Q. And the brick had already been thrown out on the sidewalk?

A. The brick was on the sidewalk.

Q. And when the policeman came by one time he actually kicked it off to the side?

A. In the doorway, yes, sir.

Q. That's all right. Now, you say that you did not see Danny actually take the TV set out of the store, itself?

A. No, sir, I did not.

Q. But you did see him carrying a TV set back from the direction of the store?

A. I saw him with the TV in his hand in the middle of the street.

Q. And there was --

A. Coming to my car.

Q. In what direction was he coming from?

A. Well, from the position I was in, he was -- I was facing this way and I turned when the glass was broken and he was coming, the way I seen him, diagonally across the street.

Q. From the store?

A. Yes, from the store.

Q. O.K., that's all.

RECROSS-EXAMINATION

BY ROBERT T. WANDREI:

Q. Were there any other stores in that general direction or any other places?

A. There was a store on the corner, but I'm not sure what kind it is. I mean, it's up the street.

Q. Now, in effect, wouldn't it be more accurate to say that Danny Largin was walking toward you as opposed from a direction?

A. Well, he was walking towards the car.

Q. Toward the car. Were you at the car at the time?

A. No, sir, I was on the corner.

Q. So he was walking toward the car? Let me ask you this. You mentioned that you had spent three weeks in jail?

A. Yes, sir.

Q. Isn't it a fact, and I think that you know this, that Danny Largin has spent a considerable greater period of time in jail?

A. Yes, sir, I know that.

Q. No further questions.

(c) CLOSING ARGUMENT OF COUNSEL

BY GARRETT:

May it please the Court, and I'm going to attempt to be very brief to you, because, face it, I think you would certainly agree that after hearing the evidence in this case, the whole case is whether or not you believe what Carol Ann Folden has told you because if you believe her, if you feel that she's telling the truth, then this man's guilty, his guilt has been proven beyond any doubt. If you disregard her testimony, then the Commonwealth's case goes right down the drain with that disregard. But this is your choice; this is your right. The Court has instructed you that you ought to receive her testimony with great caution and care. But the Court nowhere has told you that you completely throw it out simply because of the fact that she is an accomplice. Now is her evidence corroborated? We would say that it unquestionably is corroborated. You have got here the two TV sets that were described by Sergeant Webster, and I would suggest to you that it would have been nearly impossible for this lady, working by herself, to have done what was done as far as breaking into the place, taking the TV sets out, loading them into the car and so on, if she had done it alone.

Secondly, you've got the fact that Sergeant Webster's investigation corroborates what she has told you as to the manner in which this robbery or this burglary was accomplished. And at this point, I would touch briefly on the fact that there is an instruction as to circumstantial evidence and that circumstantial evidence is competent evidence, and on circumstantial evidence alone you can convict this defendant if you are satisfied as to his guilt based on that circumstantial evidence. Now, what I'm talking about here, circumstantial evidence. Mrs. Folden told you that she did not see Largin actually break the window at Goodyear. She did not see him go into the window or reach into the window and get the TV set. She didn't see this. But what she did tell you was that she saw him -- she was the lookout, she was over at the parking lot watching for people coming from other

directions, she heard the glass break and when she looked back, coming across the street from the direction of the Goodyear Store, carrying a TV set in his hand, was the defendant, Daniel Largin.

Sergeant Webster's investigation is -- interview and what-have-you with the manager of the store say that these two TV sets were missing; the building was secure roughly an hour and twenty minutes, or something like that, prior to them being called to the scene, and when the manager got there and they found that these two TV sets, both valued in excess of a hundred dollars, that they were missing. Sergeant Webster also told you that there was this heavy, old fashioned brick lying inside the building and that this was the only object that was in there that didn't belong in there, that the shattered glass was all inside the building. She tells you that they went -- they got this brick, she says that she didn't know why Mr. Largin got it, but I think her phraseology in describing it at one point was so that it would be handy. I say that the inference to put on the word handy, was handy to throw through the window here, to break the glass so that they could have ready access to the TV sets. This is circumstantial evidence. She didn't actually see him in there, but she heard the glass break; she saw him walking away from the store with the TV set in his hand and put it in the rear of her vehicle. She has described to you here a complete account of the events that took place this evening, I would say to you that this is hardly fabrication.

There is no evidence to contradict the fact that she and Mr. Largin lived together for some months prior to this offense in the City of Roanoke. There is no evidence to contradict what she has told you about the two of them making several trips to Bedford to case the joint; quote, end quote; as to what they were doing; looking to see the movements of the police; to see the traffic patterns as far as people using the street, so after this has been done, two or three times, that they checked Bedford out; that they checked the Goodyear Store out; then they come down together in Mrs. Folden's car and throws a brick, Mr. Largin does, through the window, goes in and gets the TV sets, they load them into the car and they go back to Roanoke. She doesn't just stop there; she fills you in on details of the fact that she was stopped at the stop light, the police vehicle coming in the opposite direction from which she was, that came through the stop light; Mr. Largin encouraged her to go on, but she stayed there waiting for the light, and I dare say that had she made that mistake of going through the light that neither one of them would have cleared the city limits of Bedford because I think this would have drawn the local

authorities or the police their attention, look on, going away from the burglary scene and going through a stop light. She described how that they went to an area in Roanoke, a service station, I think she described it as eight and a half street, or something like that up there, where Mr. Largin dealt with a man by the name of Squeaky. She only knows him by the name of Squeaky and that he purchased the TV sets from them, put them into a metal utility shed and then Squeaky cautions Mr. Largin, "Don't you come back later and take these TV sets I just bought from you and take them somewhere and sell them to somebody else." The reason that I'm going through this is to simply point out that this lady is telling you the truth. She has every reason to lie to you; she has every reason to disrupt it all Mr. Largin so that as has been pointed out, I will make a recommendation to the Judge that she be given a suspended sentence beyond the three weeks that she spent in jail on this particular offense. And I will tell you right now that this is exactly my plan that I'm going to reward her for taking the stand and testifying, but I tell you too to consider the background and the relationship between these two parties. And the fact that she tells you under oath that she still cares for this man; she was instructed by the Court here that she had already been convicted of this crime; that she no longer had the right to claim a right to silence under the Fifth Amendment; that she would have been in contempt of Court had she not answered the questions that I put to her or had she not told you of the details of this offense. One basic thing here, if you believe what she has told you then this man is guilty of the offense that he's charged with. Now, we suggest to you that it's all here, that there is every reason to believe what she has told you as an actual, factual account. I think it is highly unlikely that anybody is going to come in and give you such detailed account, so reasonable, that fits in so neat with what the officers have told you as to what went on that particular night. Sergeant Webster has told you about an officer going by at approximately 10:30 checking the building. She tells you about the officer walking by, seeing the brick on the sidewalk, that it was already thrown there, so the officer, unwittingly, kicks it up just a little bit closer to make it a little more handy as far as throwing it through the window. If you believe her, if you accept what she has told you, then there's only one verdict that you can reach here and it's guilty. And I say to you, that this is the guilt -- the verdict that you should reach, and the Court has again defined the range of punishment which goes all the way up to twenty years. And I leave it to your sound discretion, simply asking you to use your common sense and do your duty as Jurors.

Thank you.

JUDGE:

Thank you. Mr. Wandrei.

CLOSING ARGUMENT

BY ROBERT T. WANDREI:

May it please the Court, and Ladies and Gentlemen of the Jury, as you heard Mr. Garrett in his opening remarks, he stated that he would be brief, and I'm sure you appreciate that. Of course, as you know, that he has a second opportunity to come back at you after I get through and we hope that he will be equally brief with all of it.

Now the thing about this case I think that once we started off when we told you in the opening statements that there were certain presumptions, and proofs, and what-have-you that you had to begin with, and too, that you apply the evidence that you heard from the witness stand. You recall that one of the first ones that I spoke to you about is embodied in Court instruction is that the accused is presumed to be innocent until such time as the Commonwealth proves beyond a reasonable doubt that he is guilty of the charge. Now we call your attention to the instruction here on reasonable doubt, which talks about the fact that his guilt must be proven beyond a reasonable doubt and that the proof must be -- let me go back -- it says -- the Court says, it further tells you that it is not sufficient that facts and circumstances proved be consistent with the guilt of the defendant, but they must be inconsistent with every reasonable hypothesis consistent with the innocence of the defendant.

Now, I think that it's very important in this particular case, particularly when we talk about the credibility of the witnesses that also are taking the other side of the coin, and I'm speaking primarily now of Carol Folden, speaking of what would happen if we did in fact believe her lock, stock and barrel. Now the first thing I'm going to tell you about Carol Folden is the fact that she is an accomplice; she admits she is an accomplice. And the Court instructs you as to the dangers that are inherent in a testimony of an accomplice and I think you can see the reason why. The thing about it is it's just natural that anybody that would try to put the blame off on someone else to lessen or mitigate their involvement in the offense or in fact put the entire blame on someone else. Now, I think it's quite clear this girl was convicted of this offense back in November; she was told that she would probably get a suspended sentence; she hopes for a suspended sentence; they had not done anything about her sentence until today, in fact, they haven't

done anything as of today. Now, I submit to you that one of the reasons why she had testified today is the fact that she is hoping, as Mr. Garrett said, and Mr. Garrett, I understand, recommended, or stated in his argument that he was in fact going to reward her for her testimony. In short, she got what she wanted. She's not going to spend any time in jail, even though she's guilty of this crime. And this is one of the dangers inherent in a testimony of an accomplice, and the Court instructs you that as far as the accomplice is concerned, there must be corroboration. Now, what do we have here? Let's take a look at it. In a charge for breaking and entering there is the effect of the actual breaking. Now there is no doubt that the window had been broken, as Sergeant Webster testified. It occurred sometime between 10:30 and 11:50, but after that period on, believing all of the testimony of Carol Folden, there is nothing in the evidence whatsoever to the effect that Daniel Largin actually broke the window, or did anything to allow him to enter into the Goodyear Store. Now, thing it over. Did anybody say that they saw him break the window? Did anybody say they went up -- Carol Folden said she heard something about glass breaking. Did she testify that she saw that the window was broken and that it was this particular glass? No.

Now, you have another element here, I think that's important and that's in the second charge. The second charge is larceny. And you've heard the Court's instructions to the effect that you have two offenses here and you have only one punishment. Let's look at the second offense, Larceny. Now you have one element in there and that is the fact that there was a taking of certain goods. Now I submit to you that there's been no identity of the goods that were taken from the Goodyear Store as compared to supposedly the items that were placed in Carol Folden's car, and this is assuming that we believe Carol Folden. There is no evidence whatsoever that says that items taken out of the Goodyear Store were the same items that supposedly Daniel Largin put in Carol Folden's car. Now, they could have gone -- Goodyear, I suppose they could have traced these goods down, but they didn't. And I submit to you the reason why was to the effect that there wasn't any goods taken. At least, the goods that were taken from the Goodyear Store were not any good to have him put in a car that Carol Folden had been -- done by Daniel Largin.

Now, we talk about this and we say that we have a circumstantial evidence involved. Mainly, to the effect that there was a breaking and entering, something sounded like a broken glass and Daniel Largin was in the vicinity of the Goodyear Store at the time Mrs. Folden heard glass broken. What I submit

to you that if you are going to use this as a circumstance, you must find as is set out in Court Instruction F that the chain of circumstances must be unbroken. And I will submit to you that there is any number of reasons or hypothesis as to what could have happened. There could have been glass broken; it could have occurred elsewhere; it could have been glass broken at the time Daniel Largin supposedly was right by the store; it could have been a subsequent taking by others. In short, there are a number of other circumstances, other reasonable hypothesis, as to what could have happened at that time. Now, I submit to you that fully a circumstantial -- a chain of circumstantial evidence is broken.

Now, finally, I would also say this -- and I think I would be less than candid if I did not: I think any of you could find from the evidence a difference of opinion and you may find that the Commonwealth has proven this case beyond a reasonable doubt. I submit to you that even in such an event clearly if we are going to have any sense of equality among our law, we cannot let one convicted felon get by with no time in jail and send Daniel Largin to the penitentiary. Quite frankly, I feel that the evidence here has not even proven Daniel Largin guilty of the charge. I submit to you clearly that the Court's Instruction No. B, I believe, concerning the burden of reasonable doubt has not been met. And I submit to you that for that very reason you will find Daniel Largin not guilty.

IV

INSTRUCTION D

The Court further instructs the jury that while you may convict the accused upon the uncorroborated evidence of an accomplice and Carolyn Folden represents herself as accomplice yet the law is that her evidence must be received by the jury with great care and caution, for the source of such evidence is tainted with the temptation to exculpate herself by laying the crime upon another is so strong that the Court warns the jury against convicting upon her uncorroborated testimony.

V

JUDGEMENT ORDER

VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF BEDFORD,

MAY 31, 1973.

COMMONWEALTH

against -- -- -- -- -- Upon an Indictment for Breaking and Entering and Grand Larceny

DANIEL BRUCE LARGIN, date of birth, February 22, 1946

This day came the Attorney for the Commonwealth, and Daniel Bruce Largin who stands indicted for a felony, to-wit: Breaking and Entering and Grand Larceny as charged in the indictment, was led to the bar in the custody of the Sheriff of this County; and came also Robert T. Wandrei, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impaneled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law.

Whereupon the Attorney for the Commonwealth and the attorney for the defendant exercised their right to strike names from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the Court and Jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the Commonwealth's evidence, which motion was overruled and exception was noted.

After hearing the evidence, instructions of the Court and argument of counsel, the jurors were sent to the jury-room to consider their verdict. They subsequently returned their verdict in open Court, reading: "We, the Jury, find the accused, Daniel Bruce Largin, guilty as charged and fix sentence at 20 years Mrs. Charlie W. Markham Foreman".

The Attorney for the defendant then moved the Court to set aside the verdict as contrary to the law and evidence and that it was an incomplete verdict and not responsive to the indictment and the Jury having been dismissed from the Courtroom for this day the motion is taken under advisement until the jury is recalled and have an opportunity to amend their verdict to show the specific charge for which they convicted the defendant.

And this case is continued.

A Copy -- Teste:

_____, Clerk.

VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF BEDFORD,

JUNE 5 1973.

COMMONWEALTH

against -- -- -- -- Upon an Indictment for Breaking and Entering and Grand Larceny

DANIEL BRUCE LARGIN

This day came again the Attorney for the Commonwealth, and Daniel Bruce Largin who stands indicted for a felony, to-wit: Breaking and Entering and Grand Larceny as charged in the indictment was led to the bar in the custody of the Sheriff of this County; and came also Robert T. Wandrei, his attorney heretofore appointed.

Whereupon the Jury having been recalled to fix the specific offense for which the defendant was convicted by the Jury were requested to retire and consulting the instructions to fix the specific offense on which the defendant was convicted and the Jury retired to the jury room and after a time returned into Court with the following verdict, to-wit: "We, the Jury, find the accused, Daniel Bruce Largin, guilty of burglary with a sentence of 20 years Mrs. Charlie W. Markham Foreman".

The Attorney for the defendant then moved the Court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him, the defendant having declined, the Court finds the defendant guilty of burglary as charged in the indictment and sentences the defendant to confinement in the penitentiary of the Commonwealth for the term of 20 years.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia.

At all times during the trial of this case the defendant and his counsel were present.

The Court orders that the defendant be allowed 165 days credit for the time spent in jail awaiting trial.

The defendant is remanded to jail to await transfer to the penitentiary.

A Copy -- Teste:

_____, Clerk.