215 Va. 286

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAY 17 1974
RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 740115

JOSEPH CHEATHAM, Appellant

-vs-

COMMONWEALTH OF VIRGINIA, Appellee

APPENDIX
CIRCUIT COURT, CITY OF RICHMOND, DIVISION I

C. THOMAS MUSTIAN
Law Offices, Edward E. Lane & Assoc., Inc.
Suite 1604--700 Building
Richmond, Virginia 23219

&

JOHN DIRFFIE TYLER
7049-A Forest Hill Avenue
Richmond, Virginia 23225

Counsel for Appellant

TABLE OF CONTENTS

INDICTMENT..... 2

ORDER.....4

ASSIGNMENT OF ERROR.....6

TRANSCRIPT..... 7

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

October 1, 1973
(Date)

City of Richmond, to-wit:

The GRAND JURY charges that:

On or about July 20, 1973, in the City of Richmond, Joseph Cheatham did feloniously and unlawfully obtain and withhold from the person, possession, custody or control of another and without the consent of the card holder, a credit card issued by the First National Exchange Bank of Virginia, in the name of Carlton P. Brooks, III, with intent to use the same for his own benefit with the intent to cheat and defraud,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.1-125.3 and 18.1-125.6

	10/9					
G. C. Robinson, III		✓				
J. J. Cox	•					
Carlton P. Brooks, III	•	✓				
Karen Brooks		✓				

OCT 11 1973

INDICTMENT FOUND

Witnesses sworn and sent by the court to the Grand Jury to give evidence.

Edward L. Kirk Clerk

Credit Card Theft

COMMONWEALTH
VS.

Joseph Cheatham

AN INDICTMENT

FOR

A FELONY

A TRUE BILL

Atty.....
Clk.....
Wit.....
Hwy.....
T. J.....
Pub. Def.....
Rec.....
.....

FOREMAN

DEFENDANT'S
ATTORNEY.....

CS139051

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 9th DAY OF October 19 73

Commonwealth
vs Indictment for Credit Card Theft (F-2434)
Joseph Cheatham, Dft.

The said defendant was this day led to the bar in the custody of the Sergeant of this City and was represented by Attorney Thomas Mustian, court appointed counsel, and the Commonwealth was represented by Willard H. Douglas. And being arraigned the defendant pleaded not guilty to Credit Card Theft as charged in the indictment, after consultation with counsel. And with the consent of the accused, given in person, after consultation with counsel, and the concurrence of the Court and the Attorney for the Commonwealth, the Court proceeded to hear and determine this case without a jury. And the witnesses having been sworn and the Court having heard the evidence for the Commonwealth, the said defendant by counsel moved the Court to strike the evidence of the Commonwealth as being insufficient for the finding of a judgment of guilty, which motion the Court overruled and the defendant noted an exception. And having heard all of the evidence and arguments of counsel the Court finds the defendant guilty of Credit Card Theft as charged in the indictment and doth ascertain his term of confinement in the Penitentiary at three years.

Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is the judgment of this Court that the said Joseph Cheatham be confined

CS139052

Circuit Court of the City of Richmond, Division 1,

Commonwealth vs. Joseph Cheatham page 2

in the State Penitentiary for a term of three years, this being the period by the Court ascertained. And on his motion the execution of two years of the said Penitentiary sentence is suspended during his good behavior. And it is ordered that the Sergeant of this City do,when required so to do, deliver the said defendant from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law; said term to be credited by the time spent in jail awaiting trial.

And the Court advised the defendant of his appellate rights.

And thereupon the said Joseph Cheatham is remanded to jail.
Age -

OCT 9 1973

Enter: J. Randolph Tucker, Jr.
J. Randolph Tucker, Jr.

TERED
B 147 p 177

ASSIGNMENT OF ERROR

The Trial Court erred in finding Joseph Cheatham guilty of the statutory crime of Credit Card Theft due to the fact that the Commonwealth did not prove beyond a reasonable doubt that Joseph Cheatham did take, obtain or withhold a credit card from the person, possession, custody or control of another, or that he did any act to constitute the crime of Credit Card Theft.

1
2
3 JANE BROOKS, introduced on
4 behalf of the Commonwealth, being first duly sworn, testified
5 as follows:
6
7 DIRECT EXAMINATION
8 BY MR. DOUGLAS:
9 Q All right, state your name and
10 address?
11 A Jane Brooks, 100 North Allen Avenue,
12 Richmond.
13 Q All right, and were you living on
14 that at -- that location on July 9th of this year?
15 A Yes.
16 Q And is that location north of the
17 James River and in the City of Richmond?
18 A Yes, sir.
19 Q All right, directing your attention
20 to that same date, will you tell Your Honor what happened,
21 what took place on July 9th?
22 A Well, I had just turned the lights
23 out downstairs in the house, getting ready to go to bed, and
24 there was a knock on the door. I was inappropriately dressed

1 and I called my husband to answer the door and he came down
2 and I stepped back into the kitchen, he answered the door, a
3 man put a gun to him and forced him into the house, two men
4 entered, there was another with him. I didn't --
5 Q You say two came in --
6 A Two came in --
7 Q but there was another -- so there
8 were three people altogether?
9 A My husband and two men.
10 Q All right?
11 A Okay, just two. I didn't hear any-
12 thing and I -- I heard him walking into the den -- dining room
13 and I looked out and then the man turned the gun on me, and
14 then he had us both lying on the floor and then proceeded --
15 do you want all of them?
16 Q In reference to your personal --
17 that is your personal property, what happened in reference to
18 that?
19 A A TV was stolen, a AM/FM radio was
20 stolen, a tape recorder was stolen, two thirty-five milimeter
21 cameras were stolen and my wallet was stolen.
22 Q All right, and will you tell -- all
23 right, I hand you this card and ask you can you identify it?
24 A Yes, I can.

1 Q All right, tell Your Honor what it
2 is?
3 A It's my Bank Americard.
4 Q All right, in what name is it in?
5 A It's in my husbnad's name, but we
6 have two cards, one for the each of us.
7 Q All right, and where was that card
8 on this particular night in question?
9 A It was in my wallet.
10 Q All right, and what other items were
11 in your wallet that were taken?
12 A A Gulf card, Miller and Rhoads charge
13 card, Phillips charge card, Chevron charge card and . . . .
14 (unintelligible) charge card.
15 Q All right, and did you make a report
16 of this to the police?
17 A Yes, sir.
18 Q And that was in your wallet which
19 was at the address that you gave on the day in question?
20 A Yes, sir.
21 Q All right. All right, that's all
22 the questions I have.
23 MR. DOUGLAS: We would move to intro-
24 duce the credit card, Your Honor.

1 THE COURT: That will be received as
2 Commonwealth's Exhibit Number 1.
3 Q Had that card been signed?
4 A Yes, sir.
5 Q Now, did you look at the face of it,
6 your signature was not on it at that day, is that right?
7 A No, sir, it looked like the tape's
8 been pulled off.
9 Q All right, all right, that's all the
10 questions I have.
11
12 BY THE COURT:
13 Q Let me ask you one question, I
14 didn't quite understand what you said at the end: Did you say
15 the card had or had not been signed when it was taken?
16 A Yes, sir, it had.
17 Q It was signed?
18 A Yes.
19 Q All right.
20 THE COURT: Mr. Mustian.
21
22 CROSS EXAMINATION
23 BY MR. MUSTIAN:
24 Q Mrs. Brooks, you say that the card

1 was in your wallet, when was the last time prior to this night
2 of July the 9th that you had seen this card?
3 A I cannot say exactly, some -- I
4 imagine a couple of days since.
5 Q Am I to understand you correctly
6 that -- that you cannot pinpoint exactly the last time you
7 saw the card prior to July the 9th --
8 A No, sir.
9 Q Now, who had signed the card, had
10 you signed it or had your husband signed it?
11 A I had signed it.
12 Q In whose name had you signed it?
13 A Mrs. Carlton T. Brooks, III.
14 Q It's exactly like that, ...
15 (unintelligible)
16 A Yes.
17 Q No further questions.
18 MR. DOUGLAS: That's all the questions
19 I have.
20 THE COURT: Mrs. Brooks,
21 A Yes.
22 THE COURT: I'll ask you to retire
23 to the hallway, please, don't discuss your testi-
24 mony with the gentlemen out there or the other

1 witnesses.

2 A Yes, sir.

3

4

5

6 WITNESS STOOD ASIDE.

7

8

9

10

11

12

13 G. C. ROBINSON, introduced

14 on behalf of the Commonwealth, being first duly sworn, testi-

15 fied as follows:

16

17 DIRECT EXAMINATION

18 BY MR. DOUGLAS:

19 Q All right, state your name and

20 occupation?

21 A Detective George C. Robinson, Jr.,

22 Richmond Bureau of Police, assigned to the Vice Division,

23 Narcotics Squad.

24 Q All right, directing your attention

1 to July 20th of this year, would you tell us what you did in
2 reference to the offense in question?
3 A On July the 20th, 1973, approximately
4 7:45 p.m., I responded to 1439 Claiborne Street in the City of
5 Richmond on information that Joseph Cheatham was at this
6 location and he was an escapee from Hanover County. I arrived
7 at the location, a colored male was sitting on the porch, I
8 had a picture of the same, which was Joe Cheatham, and this
9 colored male on the porch was the same. I placed him under
10 arrest at this time and a search of his person, I recovered a
11 Bank Americard from his right rear traveler's pocket. He was
12 also arrested for this card and advised of certain Consti-
13 tutional rights at 7:45 p.m., by myself.
14 Q All right, did he make any statement
15 in reference to the card?
16 A He stated that he found the card,
17 and I believe in the sixteen hundred block of Jacqueline
18 Street, that another lady had told him that the card was hot
19 or not to take it, something to that extent.
20 Q All right, did he tell you when he
21 had found it?
22 A I don't recall if he did or not.
23 Q All right, and how was the card in
24 his pocket, in other words, was it in a wallet or --

1 A No, sir, it was loose in his pocket.
2 Q All right --
3 A There was a Social Security card in
4 his pocket also with another subject's name on it.
5 Q And that was -- the card that you
6 found was Commonwealth's Exhibit that was introduced here
7 today?
8 A Yes, sir, it was.
9 Q All right, can you identify the
10 person that you arrested and from whose pocket you took the
11 card from?
12 A Yes, sir, the defendant sitting at
13 the table with his attorney, Mr. Mustian.
14 Q All right, all right, you may answer
15 Mr. Mustian.
16
17 CROSS EXAMINATION
18 BY MR. MUSTIAN:
19 Q Officer Robinson, in relating the
20 complete statement of Mr. Cheatham to you, did not he also
21 tell you that he was going to put the card in the mailbox?
22 A Yes, sir, he did.
23 Q And you just left that out when you --
24 A I can recall that he did state that,

1 but he did.

2 Q No further questions.

3

4

5

6 WITNESS STOOD ASIDE.

7

8

9

10

11

12 MR. DOUGLAS: That's the -- the

13 Commonwealth rests its evidence in chief.

14 THE COURT: The Commonwealth rests.

15 MR. MUSTIAN: Your Honor, I would

16 make a motion to strike the Commonwealth's

17 evidence, I submit that under the statute

18 18.1-125.3 that the statute calls for the proving

19 that a person takes or . . . . . or withholds

20 a credit card from a person's possession and

21 custody or control, without the cardholder's

22 consent and has the intent to use it or to sell

23 it, I submit that there has not been proof beyond

24 a reasonable doubt that Mr. Cheatham intended to