215 Va. 698

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 740508

NATHANIEL PATTERSON, 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

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VIRGINIA:

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

August 6, 1973
(Date)

City of Richmond, to-wit:

The GRAND JURY charges that:

On or about July 11, 19 73, in the City of Richmond, Nathaniel Patterson did feloniously and unlawfully break and enter in the nighttime the dwelling house of Wilimena Horton, there situate at number 3411 Missouri Avenue, with intent to commit rape,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.1-86

Wilimena Horton			✓			
J. S. Gaudet		✓	✓			
G. K. Wilson		✓	✓			
C. W. Bennett	✓		✓			
N. A. Harding			✓			

AUG 6 1973

INDICTMENT FOUND

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

Edward L. Wild

Clerk

BURGLARY

COMMONWEALTH
VS.

NATHANIEL PATTERSON

AN INDICTMENT
FOR

A FELONY

A TRUE BILL

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

Gilma Brown Jr.
FOREMAN

DEFENDANT'S
ATTORNEY.....

CS139051

Virginia:

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

THE 29th DAY OF January 19 74

COMMONWEALTH
vs Indictment for Burglary No. 1 (F-2263)
NATHANIEL PATTERSON, Dft.
COMMONWEALTH
vs Indictment for Burglary No. 2 (F-2264)
NATHANIEL PATTERSON, Dft.
COMMONWEALTH
vs Indictment for Rape No. 3 (F-2265)
NATHANIEL PATTERSON, Dft.

The said defendant was this day again led to the bar in the custody of the Sergeant of this City and was represented by Attorney Thomas Mustian, court appointed counsel, the Commonwealth was represented by Willard H. Douglas, and the Probation Officer was also present. And the defendant having been on December 14, 1973, found guilty of Burglary as charged in each of the said cases of Indictments No. 1 and No. 2 and guilty of Rape as charged in the case of Indictment No. 3 and these cases referred to the Probation Department for a pre-sentence investigation and report, and said report having this day been filed in open Court and the defendant advised as to the contents thereof and given the privilege of cross-examining the reporting officer thereon, and arguments of counsel heard, the Court doth now ascertain his term of confinement in the Penitentiary at fifteen years in each of the said cases of Indictments No. 1 and No. 2 and ascertains his term of confinement in the Penitentiary at twenty years in the case of Indictment No. 3.

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 Nathaniel Patterson be confined in the State Penitentiary for three terms, two terms of fifteen years and one term of twenty years, these being the periods by the Court ascertained. And said terms are to run consecutively making a total of fifty years

CS139052

Circuit Court of the City of Richmond, Division 1,

COMMONWEALTH vs. NATHANIEL PATTERSON page 2

with the fifteen years in the case of Indictment No. 1 to be served first and the remaining two terms to be served in the order given.

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 terms to be credited by the time spent in jail awaiting trial.

And thereupon the said Nathaniel Patterson is remanded to jail.
Age -

JAN 29 1974

Enter: James B. Wilkinson
James B. Wilkinson, Judge

ASSIGNMENT OF ERROR

The Trial Court erred in finding Nathaniel Patterson guilty of breaking and entering the dwelling of Wilhelmina Horton with intent to commit rape, when there was no proof of intent.

1 Q How far did you go in school?

2 A To the ninth grade.

3 Q Can you read and write all right?

4 A (inaudible)

5 Q All right, you can have your seat.

6 Proceed, gentlemen.

7

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13 WILHELMINA HORTON, intro-

14 duced on behalf of the Commonwealth, being first duly sworn,

15 testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. DOUGLAS:

19 Q All right, state your name and age,

20 please?

21 A Wilhelmina Fulton Horton, and I'm

22 thirty-nine years old.

23 Q All right, and where were you living

24 on July 11th of this year?

1 A 3411 Missouri Avenue.

2 Q All right, and is that address

3 north of the James River and in the City of Richmond?

4 A Yes, it is.

5 Q All right, directing your attention

6 to that same date, tell Your Honor just what happened?

7 A Well, I was at home in the bed, my

8 son and I, and it was about eleven o'clock, it was during the

9 time Johnny Carson's show had just come on. I heard this

10 noise, but I wasn't sure what it was, because it had been

11 raining, and a girlfriend of mine had called me and told me

12 to to turn my air-conditioner off and my radio because it was

13 lightning. Well, when I got up -- I kept hearing this noise

14 because I was watching the show, and then I heard this noise,

15 you know, right heavy, so I got up, and went in my bathroom,

16 cut the light on, and I saw this towel laying across the

17 shower bar, and it was dripping with water, and at first I

18 thought my son had done it, and that's when I noticed this

19 shadow in my bathroom, because the shower door was halfway

20 closed, and when I pushed the door back open, I saw Nathaniel

21 Patterson standing up in my bathtub, against the wall, with

22 his arms folded, and my first reaction -- I backed off, be-

23 cause I didn't have anything but a gown on, and I asked him

24 what was he doing in my house, then he put his hand up to his

1 mouth as if to tell me to be quiet, and I -- he reached out
2 at me, and I screamed, and I said, "You better get out of here,"
3 and that time he sorta ran, as if to say he knew that I was
4 in the house by myself, which ordinarily I do be there a lot
5 by myself, and I screamed for my son again, and that time he
6 jumped up. Well, when he jumped up, he ran into the tele-
7 vision, and I think Nathaniel actually heard, you know, knew
8 that it was somebody else in there, and he went back out the
9 bathroom window.
10 Q All right.
11 THE COURT: How old is your son?
12 A He is -- was sixteen yesterday.
13 Q All right, and did you receive --
14 how was entrance gained to your house?
15 A Well, I had --
16 MR. MUSTIAN: I object to that, Your
17 Honor, that would -- unless she -- that would be
18 a conclusion of law, I think that she can state
19 the facts surrounding it, but actual gaining
20 of entrance to the house is a conclusion.
21 THE COURT: Unless there is some
22 evidence of a window being broken or something.
23 MR. DOUGLAS: All right.
24 Q Did you determine how this person

1 got in your house?

2 A Yes, I did.

3 Q And how was that?

4 A It was through my bathroom window,

5 he pried open the storm screen, and he used a kitchen table

6 that was in my back yard, he drug it up to that window and

7 climbed in it. You could tell where the screen had been

8 pried out of its groove.

9 Q I show you this photograph -- all

10 right, would you identify those two pictures?

11 A Yes, one is my bathroom, and shows

12 the bathroom window which he came in, and the other is the

13 back of my house, and it shows the window that was prized open.

14 MR. DOUGLAS: All right, we would

15 move to introduce those two photographs.

16 THE COURT: All right, they'll be

17 Commonwealth's Exhibits 1 and 2.

18 Q All right, and this -- it was dark

19 on the outside, nighttime?

20 A Yes, it was.

21 Q All right, I believe you said the

22 Johnny Carson show was on?

23 A Yes,

24 Q All right,

1 A uh huh.

2 Q and I show you that --

3 A Yes,

4 Q those two papers?

5 A these are letters I received from

6 him.

7 Q All right.

8 MR. DOUGLAS: We would move to

9 introduce the letters.

10 THE COURT: All right.

11 Q All right, did you know the defen-

12 dant prior to this time?

13 A No, I don't know anything about him

14 except the night that I saw him in my bathroom, after we went

15 to Police Court, after having seen him again, as I told the

16 detective, the night when he came in and went out, and I

17 described him, it dawned on me I had seen him before, he

18 trailed me home on a Saturday.

19 Q How long was that prior to this?

20 A That was -- if I'm not mistaken,

21 the way I figured, it was the Saturday before Memorial Day,

22 Q And that was --

23 A and he, as I told him --

24 Q Do you mean Memorial Day or Fourth

1 of July?

2 A No, Memorial --

3 Q In May?

4 A Uh huh,

5 Q All right?

6 A Memorial Day. As I told the detec-

7 tive, what made me notice him, and he was in my house long

8 enough for me to see him that night, he wasn't as far as

9 features, like the average black fellow, no bush, his hair

10 looked like it had just been, you know, he had a crew cut,

11 and after seeing him in Court that day, it dawned on me that

12 the Saturday that he trailed me home, he had his hair shaved,

13 and that Saturday, the reason it was noticeable, because he

14 was right in behind me, and I noticed it, so I sorta slowed

15 up, he got in front of me, and from the laundromat on Meadow-

16 bridge to Missouri, he kept in front of me, and he kept look-

17 ing back, and I could tell -- I thought at first rather he

18 thought I was sorta making fun, or looking at his head, being

19 shaved.

20 Q All right, now, did you have any of

21 your family in the Service?

22 A I have no family in Service except

23 a husband, and he came out the Service in 1948.

24 Q All right.

1 MR. DOUGLAS: That's all the ques-
2 tions I have.
3 THE COURT: All right, any questions?
4 MR. MUSTIAN: Yes, sir.
5 THE COURT: All right.
6
7 CROSS EXAMINATION
8 BY MR. MUSTIAN:
9 Q Mrs. Horton, you say your son is
10 fifteen years of age?
11 A He was fifteen yesterday.
12 Q Is he here today?
13 A No, he is not, he's at home sick.
14 Q Was he asked to be here, to your
15 knowledge?
16 A No, he was not.
17 Q You referred to -- in direct testi-
18 mony, you referred to Mr. Patterson as Nathaniel,
19 A Uh huh.
20 Q do you know him by his first name?
21 A I do not know him at all, I only used
22 that name because I didn't see any . . . . . .
23 Nathaniel Patterson, that is what I remember from the . . . .
24 Q Did you ever live -- did you ever

1 reside at 1517 Blair Street?

2 A I did . . . .

3 Q Would you state whether or not you've

4 ever been convicted of a felony or a crime involving moral

5 turpitude?

6 A No indeed.

7 Q Do you know what the crime of forgery

8 is?

9 A Yes, sir, it was, I did have that

10 against me, and it was cleared.

11 Q Do you know what grand larceny is?

12 A That was all in the same thing, it

13 was all at one time, and that was cleared.

14 Q Do you know what felonious assault

15 is?

16 A Yea, uh huh.

17 Q And you do acknowledge that you were

18 convicted of forgery

19 A Until the matter was cleared.

20 Q on the 19th day of April, 1966, and

21 grand larceny on the 21st day, of 1966?

22 A Until the matter was cleared, yes,

23 uh huh, and the charge was cleared.

24 Q You say until the matter was cleared,

1 but you're

2 A Yes.

3 Q not denying the fact that you were

4 convicted?

5 A Well, as far as I know, from what

6 the lawyer told me, the charges were dropped, because . . . .

7 . . . what was -- had been taken, they found out that it was

8 mine, and it wasn't part of that, and it was cleared, and

9 the lawyer in the case was Colston Lewis.

10 Q Do you know whether or not you --

11 you received any suspended sentence at all, on these charges?

12 A No.

13 Q . . . . . (unintelligible)

14 A I don't think it has anything to do

15 with him coming in my house.

16 MR. MUSTIAN: I don't have any --

17 THE COURT: All right, thank you,

18 ma'am.

19

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22 WITNESS STOOD ASIDE.

23

24

1 Transcriber's Note: The
2 recording is so poor that the Transcriber cannot
3 get every word spoken.
4
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9
10 J. S. GAUDET, introduced
11 on behalf of the Commonwealth, being first duly sworn, testi-
12 fied as follows:
13
14 DIRECT EXAMINATION
15 BY MR. DOUGLAS:
16 Q State your name and occupation?
17 A Detective J. S. Gaudet, assigned to
18 the Detective Division, Richmond Bureau of Police.
19 Q All right, when did your investiga-
20 tion start on the offense in question?
21 A My investigation started on the
22 7/16/73, this was in reference to Sandra Miller,
23 Q All right?
24 A and then it continued on through

1 until the arrest.

2 Q All right, after the Sandra Miller

3 case, what did you do in reference to the Wilhelmina Horton

4 case?

5 A After the Sandra Miller case, I

6 obtained pictures and description, obtained a warrant for

7 Nathaniel Patterson. He was arrested on 7/16/73, on the

8 charge in the other case,

9 Q All right, did you

10 A I took a

11 Q take a photograph of him at that

12 time?

13 A photograph of him at this time,

14 Q All right?

15 A and put that with sixteen other

16 pictures, and I went to the address of Wilhelmina Horton, and

17 showed her the group of pictures, which consisted of all types

18 of photographs, Polaroid, Police mug shots. I asked her to

19 look through these to see if she had seen anybody in this

20 group of pictures that resembled the person that came into

21 her house. She went through the pictures very carefully.

22 When she got to the defendant's picture, she jumped up and

23 grabbed her mouth and said, that's him, I'll never forget him,

24 and this was the picture of Nathaniel Patterson, the defendant.

1 Q All right.

2 MR. DOUGLAS: We would move to

3 introduce that photograph, Judge.

4 THE COURT: All right, Commonwealth's

5 Exhibit Number 3, ...

6 Q Did you see the towel?

7 A Yes, the towel was -- I took pictures

8 of the house, the front of the house, the rear of the house

9 where the entrance had been gained, and the picture of the

10 bathroom area, where the person also came in, and observed

11 the towel.

12 Q All right, what did the towel mean

13 to you?

14 A What did the towel mean to me?

15 Q Yes?

16 A For the past year --

17 MR. MUSTIAN: I object, Your Honor,

18 unless he can testify as to this particular

19 case, I think it's irrelevant as to what other

20 matters might or might not be.

21 THE COURT: Objection sustained.

22 Q All right, did you observe the

23 damage to the window?

24 A Yes, I did.

1 Q That's all the questions I have.

2 THE COURT: All right, any questions

3 of the officer?

4 MR. MUSTIAN: I have no questions,

5 Your Honor.

6 THE COURT: All right, sir, thank

7 you, Mr. Gaudet.

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11 WITNESS STOOD ASIDE.

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17 THE COURT: Is that the Common-

18 wealth's case?

19 MR. DOUGLAS: Yes, sir.

20 THE COURT: The Commonwealth rests

21 its evidence in chief, any evidence for the

22 defendant?

23 (No response)

24 THE COURT: All right, sir, stand

1 up, then:

2 On the evidence heard by the Court,
3 the Court now finds you guilty as charged in
4 the indictment. I'm going to order a pre-
5 sentence report.

6 MR. MUSTIAN: Your Honor, in pre-
7 paring a pre-sentence report, this man hasn't
8 been sent down to Central State, he has a long
9 history of being at Central State, he's had a --
10 I don't think that this can be confirmed by
11 Sergeant Winston, he has not caused any trouble
12 in the City Jail, but he's been a . . . .
13 problem, but he's been -- he's asked to be put
14 in isolation, he does not get along with the
15 population, he has emotional problems, I think
16 -- I would move that, at least here in the
17 Richmond area, that he has been a patient in
18 the Richmond Area Psychiatric Clinic, that an
19 additional report be rendered on this individual.
20 I have -- within the last two weeks, I have
21 noticed in talking with him that a withdrawing
22 of reality with the situation that he's facing
23 with here today. At first there was cooperation,
24 but the last few weeks the only thing that he

1 has discussed with me is publication of some
2 songs which he wants to have published, which
3 I --
4 THE COURT: Well, we can't just keep
5 on examining people, that's a matter for the
6 penal authorities, he can be examined by the
7 psychiatrists. If Sergeant Winston feels that
8 it's a necessity, he'll be thouroughly examined.
9 All right, how about January the
10 29th, nine o'clock?
11 MR. MUSTIAN: That will be fine,
12 Your Honor.
13 THE COURT: In the meantime, he'll
14 be committed to the custody of the City Sergeant.
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17
18 HEARING CONCLUDED.
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