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SUPREME COURT OF VIRGINIA
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RICHMOND, VA.

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 751088

WESLEY RUDOLPH WILDER
A/K/A John Doe

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

APPENDIX

Richard A. Turner
Hutzler & Turner
424 Farm Bureau Building
200 West Grace Street
Richmond, Virginia

Counsel for Appellant

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VIRGINIA:

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

April 7, 1975
(Date)

City of Richmond, to-wit:

The GRAND JURY charges that:

On or about February 4, 19 75, in the City of Richmond, Wesley Rudolph Wilder alias John Doe did feloniously and unlawfully have in his possession two or more stolen credit cards issued to Mrs. John W. Cowan,

TAKE, steal, and carry away two credit cards belonging to Mrs. John W. Cowan in violation of 18.1-125.3

take, obtain or withhold a credit card from ~~Mrs John W Cowan~~ the person. Possession custody or control of Mrs John W. Cowan, without her consent, with intent to use it or sell it or transfer it to a person other than the issuer or Mrs John W. Cowan.

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.1-125.3, ~~18.1-125.5~~ and ~~18.1-100~~

G. Pollard
Mrs. John W. Cowan
G.P. Creathom

APR 7 1975 INDICTMENT FOUND

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

Edward W. Hill

Clerk

CREDIT CARD THEFT

COMMONWEALTH
VS.

WESLEY RUDOLPH WILDER
ALIAS
JOHN DOE

AN INDICTMENT

FOR

A FELONY

A TRUE BILL

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

FOREMAN

DEFENDANT'S
ATTORNEY.....

001-a

COMMONWEALTH OF VIRGINIA

VS.

WESLEY RUDOLPH WILDER

MOTION TO QUASH INDICTMENT

Now comes the Defendant, Wesley Rudolph Wilder, by Counsel and hereby moves the Court to Quash the Indictment against him which purports to charge him with an offense in violation of statutes made and enacted with regard to Credit Cards and contained in Sections 18.1-125.2 et. seq. of the Code of Virginia of 1950 as Amended, said Sections also being cited as Article 4.1 and entitled Offenses Relating to Credit Cards in Title 18.1

The movant states that the said Indictment against him, which is the written charge upon which he is to be tried, fails to state an offense set forth in said Statutes or any offense upon which a valid conviction can be had.

Richard A. Turner
Counsel for Defendant

I certify that a copy of the foregoing Motion to Quash was handed to Seward Lawler, Assistant Attorney for the Commonwealth on the 28th day of April, 1975, at Courts Building Suffolk, Va.

Richard A. Turner
Richard A. Turner. p.d.

1 motion, it is.

2 MR. TURNER: Your Honor please, if

3 I may, file a motion to quash the indictment --

4 THE COURT: Well, which indictment

5 are you talking about --

6 MR. TURNER: The indictment --

7 THE COURT: There seems to be two --

8 MR. TURNER: On the indictment

9 charging an offense under the credit card

10 statute, Judge, the written was not prepared and

11 served a copy -- here is a copy for the Common-

12 wealth's Attorney and we'll identify the particu-

13 lar offenses we're talking about, Your Honor,

14 and the Clerk -- if you would mark that, if

15 Your Honor please, as filed and then I'll make

16 some statement with regard to it.

17 (pause)

18 THE COURT: Well, I understand that

19 the case is going to be continued, in that event,

20 I'm sure Mr. Lawlor is getting ready to make a

21 motion to amend the indictment

22 MR. LAWLOR: in view of your motion

23 to quash. Since we're going to continue it

24 anyway, I'm going to allow the Commonwealth to

1 amend, I must, of course, note an objection to
2 that saying that the Commonwealth -- since the
3 indictment states no offense, they have no right
4 to now amend an indictment returned by a grand
5 jury to state an offense and that's the nature
6 of my objection, Judge, and I do not want to
7 put the Commonwealth on a -- in a position of
8 having to answer that this morning, Judge --
9 THE COURT: Well, I say, let's set
10 this motion down for argument, we'll have to
11 set it -- if we're going to take it with a jury
12 next time, we're going to have to set it down
13 for argument and try with a jury case.
14 MR. TURNER: Are you talking about
15 a motion to quash, Judge, or the motion to amend?
16 THE COURT: I meant the motion to
17 amend -- to quash, excuse me --
18 MR. TURNER: All right, Judge.
19 THE COURT: I'll hear you in argument
20 on that, you're making the statement that --
21 failing to state any charge cannot be now amended.
22 MR. TURNER: Well, I'm saying, Judge,
23 my motion to quash is based upon the grounds
24 that the indictment as it is now states no

1 offense,

2 THE COURT: Well --

3 MR. TURNER: does not charge an

4 offense --

5 THE COURT: Well, I understand that,

6 you said therefore it can't be amended --

7 MR. TURNER: It cannot be -- be

8 amended -- my objection to his amending it, the

9 Court allowing the amendment, Judge, it would

10 be on the basis that it not only changes the

11 offense, but it charges an offense with his

12 amendment, where before it did not, and I do not

13 think that the Commonwealth's Attorney can amend

14 that defect in the indictment which is defective

15 in that it states no charge.

16 MR. LAWLOR: Judge, the Commonwealth

17 is moving to amend merely for clarification, I

18 think the indictment does state -- as written --

19 does state an offense in that under 18,1-125.3

20 having in possession the cards issued to someone

21 else, under that -- under that section, deems

22 it credit card theft, the -- parenthesis one,

23 a person is guilty of credit card theft when he

24 has these cards. However, I -- I do feel that

1 the indictment could be further clarified to
2 give Mr. Turner more adequate preparation and
3 understanding of his defense, therefore, that
4 would be the reason for my motion to amend.
5 THE COURT: Well, I -- it certainly
6 states that -- it states the offense perfectly
7 now, but I -- I don't agree with Mr. Turner that
8 it can't be amended. I will allow the amendment
9 and note your exception, ~~Mr. Turner, and, of~~
10 course, this will give you time to meet the new
11 amended indictment, because we're going to
12 continue it today.
13 MR. LAWLOR: Your Honor, I have --
14 THE COURT: Now, the other one is
15 certainly -- needs amendment, you're alleging
16 grand larceny or attempted grand larceny and not
17 stating a sufficient amount of money taken to
18 constitute grand larceny.
19 MR. TURNER: Judge, it's a question
20 on that, they are alleging larceny from the
21 person in the amount of two dollars and seventy-
22 five cents.
23 THE COURT: Oh, I see --
24 MR. TURNER: And a pocketbook in the

1 there's been any published before this, Judge,
2 I don't know if there's any difference or not.
3 THE COURT: Let me see this -- I
4 think this is the latest, this is '74.
5 MR. TURNER: I didn't know whether
6 there was a publication before this one came out,
7 Judge, which came out, as you know, the first of
8 this year, and I don't know whether there's any
9 difference either in that one and the one that
10 you have . .. .
11 THE COURT: This appears to be the
12 same thing. (pause) I don't think you got it
13 amended very well, Mr. Lawlor, in the follwoing
14 the statutory language, I think you better work
15 on that -- I think you are mixing up two -- two
16 different sections of the credit card theft --
17 and you can work on it and show it to Mr. Turner
18 before we come up next time.
19 MR. LAWLOR: Very well.
20 MR. TURNER: That would be all right,
21 Judge, do you want to set a date for that argu-
22 ment on the objection to the amendment, Judge,
23 I didn't think you had decided that my objection
24 to the amendment was well taken, Judge --

1 THE COURT: I'm going to allow him
2 to amend, but I just don't think he's amending
3 it properly --
4 MR. TURNER: You don't want any
5 argument on the --
6 THE COURT: No, I don't think I
7 need any argument --
8 MR. TURNER: All right, Judge, I
9 would note an exception to the Court allowing
10 him to amend, for the record.
11 THE COURT: All right.
12 MR. TURNER: For the reasons stated,
13 Judge.
14 THE COURT: Very well.
15 MR. TURNER: All right, and I might
16 bring up one more point, Judge, we're getting
17 ready to set these cases for trial, and I do not
18 want to try the cases together, and I don't want
19 these ladies to come back and then one of them
20 have to go away again, because they are both
21 from out of town, Judge, so may we set both cases
22 for separate trials at this time?
23 THE COURT: Are you asking for a
24 jury on both --

CS139051

Virginia:

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

THE 28th DAY OF May 19 75

COMMONWEALTH

vs Indictment for Credit Card Theft F-4570

WESLEY RUDOLPH WILDER a/k/a JOHN DOE, 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 Richard A. Turner, appointed counsel, and the Commonwealth was represented by H. Seward Lawlor.

And on motion of the Attorney for the Commonwealth, the indictment was amended to charge that the defendant "did feloniously and unlawfully take, obtain or withhold a credit card from the person, possession, custody or control of Mrs. John W. Cowan, without her consent, with intent to use it or sell it or transfer it to a person other than the issuer or Mrs. John W. Cowan against the peace and dignity of the Commonwealth of Virginia."

And being arraigned on the amended indictment, the defendant pleaded not guilty as charged therein, after consultation with counsel. And the Sergeant of this City having returned a writ of venire facias heretofore issued by order of this Court, with the names of the persons summoned in pursuance thereof, and of the veniremen so summoned and attending, a panel of twenty qualified jurors, free from exception for the trial of the defendant was made up and completed. And the Attorney for the Commonwealth and the Attorney for the accused having alternately, beginning with the Attorney for the Commonwealth, each stricken the names of four of the said veniremen, the remaining twelve constituted the jury for the trial of the accused, to-wit: Joyce Albro, Julia R. Allen, Geraldine B. Booker, James A. Duren, Estelle M. Farrar, Maria D.

Fenner, William S. Langford, Jr., Walter Lee, Jr., William W. Michaux, Phyllis Simms, Willie Thomas, Sr., and William J. Warren, who were sworn the truth of and upon the premises to speak. And the witnesses having been sworn and the jurors 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 verdict of guilty, which motion the Court overruled. And having heard all the evidence and arguments of counsel, the jurors retired to their room in the custody of the Sergeant of this City to deliberate upon a verdict. And after some time, they returned into Court and presented a verdict in the following words and figures, to-wit:

> "We, the jury, find the defendant guilty of credit card theft and fix his punishment at 2 years in the penitentiary." /s/ William J. Warren, Foreman.

And the defendant then, by counsel, moved the Court to set aside the verdict of the jurors as being contrary to the law and evidence and grant him a new trial, which motion the Court overruled.

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 Wesley Rudolph Wilder a/k/a John Doe be confined in the State Penitentiary for a term of two years, this being the period by the jurors ascertained.

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

CS139052

Circuit Court of the City of Richmond, Division 1,

COMMONWEALTH vs. WESLEY RUDOLPH WILDER a/k/a JOHN DOE page 3

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 said defendant having noted an appeal from the judgment of this Court, the Court doth appoint Richard A. Turner to assist the said defendant in perfecting said appeal to the Supreme Court of Virginia.

And thereupon the said defendant is remanded to jail.

DOB: 6/19/41

MAY 28 1975

ENTER: J. Randolph Tucker, Jr., Judge

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Notice is hereby given that the defendant, Wesley Rudolph Wilder, appeals from the final judgment of the Court rendered herein on May 28, 1975, and assigns the following error as required by the Rules of the Supreme Court of Virginia, Rule 5:6; and pursuant to said rule does hereby state that a transcript of the evidence, testimony and other incidents of the trial of this matter will be hereafter filed:

1. The Court erred in refusing to grant defendant's written Motion to Quash the indictment against him filed herein on the 28th day of April, 1975, on the grounds that the said indictment failed to state an offense, and further by allowing the Commonwealth to amend the said indictment to state an offense.

2. The Court erred in permitting the defendant to be tried upon a felony, he, the defendant, never having been indicted upon such felony by a Grand Jury duly called, and not having waived such action of a Grand Jury.

3. The Court erred in overruling defendant's motion to strike the evidence of the Commonwealth at the conclusion thereof on the grounds that the same was insufficient to sustain a conviction of the defendant upon the charges alleged in the amended indictment.

4. The Court erred in overruling the defendant's motion to set aside the Jury's finding of guilty and entering judgment on such action of the Jury, as such verdict of the Jury and judgment of the Court was contrary to the law and the evidence.

WESLEY RUDOLPH WILDER

By Richard A. Turner
Counsel

Richard A. Turner
424 Farm Bureau Building
200 West Grace Street
Richmond, Virginia 23220
Counsel for the defendant

I hereby certify that a copy of the foregoing Notice of Appeal and Assignments of Error was delivered to the Office of the Commonwealth Attorney for the City of Richmond, Virginia, Courts Building, 1001 East Broad Street, Richmond, Virginia, on the 24th day of June, 1975.

Richard A. Turner
Counsel for Defendant