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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 780377

JOHN ROBERT ANSELL,

.....Appellant

v.

COMMONWEALTH OF VIRGINIA,

.....Appellee

JOINT APPENDIX

Harvey E. White, Jr.
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Norfolk, Virginia 23514

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FILMED

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Commonwealth of Virginia)
)
vs.) Indictment for USE OF A WEAPON IN
)
JOHN ANSELL COMMISSION OF A FELONY

September 7, 1977
DATE

The Grand Jury charges that: On or about June 4, 1977, in the City of Norfolk, JOHN ANSELL did display, use or attempt to use a shot-gun while committing a felony, to-wit: robbery.

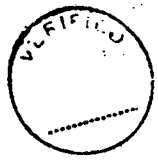
Va. Code Section 18.2-53.1; 18.2-10

Witness:
Inv. R.E. Vest - Det. Bureau

( ) A True Bill
( ) Not A True Bill

(Foreman of Grand Jury)

FILMED



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Virginia:

In the Circuit Court of the City of Norfolk, on the 16th *day of* December *, in the year 1977.*

COMMONWEALTH vs John Ansell

Attorney for the Commonwealth: Calvin R. Depew

Attorney for the defendant: Harvey E. White
(X) Retained

FELONY SENTENCING ORDER

This day again came the Attorney for the Commonwealth and the attorney for the defendant, as aforesaid, and the defendant, who stands convicted of Robbery on each Indictment #1 and #2; of Attempt Robbery on Indictment #5; and of Use of a weapon in commission of a felony on each Indictment #9, #10, and #11; and stands indicted for Robbery on Indictment #3; for Attempt Robbery on Indictment #4; for Sodomy on Indictment #6; for Malicious wounding on Indictment #7 and #8; and for Use of a weapon in commission of a felony on each Indictment #12 and #13, was led to the bar in the custody of the Sheriff of the City of Norfolk.

Thereupon, John H. Pickering, a Probation Officer of this Court, to whom these cases have been previously referred for investigation, appeared in open court with a written report, a copy of which has been delivered to counsel for the defendant. Whereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they

desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case. Whereupon the Court, taking into consideration all of the evidence in these cases, the report of the Probation Officer and such additional facts as were presented by the defendant, asked the defendant whether he desired to make a statement or to advance any reason why judgment should not now be pronounced against him. And having heard the defendant's statement and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of Five (5) Years for Robbery on Indictment #1; for the term of Five (5) Years for Robbery on Indictment #2; and for the term of Two (2) Years for Attempt Robbery on Indictment #5 - said sentences to run concurrently with each other; for the term of One (1) Year for Use of a weapon in commission of a felony on Indictment #9; for the term of Three (3) Years for Use of a weapon in commission of a felony on Indictment #10; and for the term of Three (3) Years for Use of a weapon in commission of a felony on Indictment #11 - said sentences to run consecutively - total time to serve 12 years. A court reporter recorded the evidence and incidents of this trial.

It is further ordered that the defendant be allowed credit for time spent in jail or detention home while awaiting trial, and that as soon as possible after the entry of this Order, the defendant be removed from the jail of this Court, and safely conve-

yed, to such penal facility as is designated by the Director, Department of Corrections, therein to be kept, confined and treated in the manner provided by law.

And the prisoner was remanded to jail to await transfer to a designated penal facility.

Spencer G. Gill Jr.

SPENCER G. GILL, Jr., Judge

(Court reporter - Gladys Sawyer)

(John Ansell, W/M DOB: 01-27-60)

ASSIGNMENT OF ERROR

The court erred in its ruling as to offenses which occurred on one day, within a time period of forty-five minutes, that guilty pleas to the charges for those offenses, accepted and entered on the same day, were first, second and third convictions under Virginia Code Annotated § 18.2-53.1 and thereby mandated the imposition of a sentence of one year for the first conviction, three years for the second conviction, and three years for the third conviction, all to run consecutively.

1 please, sir? Your full name?

2 THE DEFENDANT: John Robert Ansell.

3 THE COURT: And what is your age?

4 THE DEFENDANT: Seventeen.

5 THE COURT: Are you the John Robert Ansell

6 charged in the various indictments?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you fully understand these

9 charges against you? Have you talked that over with Mr. White?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is he your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you hire him?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Or your parents?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Well, -- and you do understand these

18 charges, what they involve - the use of the various weapons and

19 the force involved? All of those things you have discussed and

20 you know what you are charged with?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you entering these pleas of

23 guilty freely and voluntarily?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And are you pleading guilty because

1 THE CLERK: Eleven, Your Honor.

2 THE COURT: Eleven.

3 Indictment No. 1 is robbery, and in that the

4 punishment shall be confinement in the penitentiary for life or

5 any term not less than five years.

6 You understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: On Number 2 --

9 THE CLERK: That's robbery, also.

10 THE COURT: -- is also a violation of the same

11 section and the same punishment, life -- or, penitentiary for

12 life or any term not less than five years.

13 Number 5 is the same, and in addition is a

14 violation of 18.2-26. And for that the punishment is from not

15 less than two or more than ten years under the attempt.

16 The next one is No. 9, again robbery. But this

17 is a violation of 18.2-53.1, which inovlves the use or the

18 attempt to use any pistol, shotgun, rifle or other firearm.

19 And this is a separate and distinct felony from the robbery,

20 itself, and this involves a Class 6 Felony, not less than one

21 year nor more than five years for the use of the firearm.

22 Is it correct that when you use the firearm that

23 that is a year on the top and there is no getting away from

24 that one?

25 MR. WELSH: That's right, Your Honor.

1 THE COURT: Do you understand what we are
2 talking about?
3 THE DEFENDANT: Yes, sir.
4 THE COURT: When you use the firearm, that's the
5 extra year and that there is no way that you can avoid serving
6 that. You understand that?
7 THE DEFENDANT: (The Defendant nodded
8 affirmatively.)
9 THE COURT: All right, sir. The next one is
10 No. 10. That also is the violation of 18.2-53.1, use of the
11 firearm. And that also is a Class 6 Felony with the extra time.
12 Number 11 is the same as 9 and 10.
13 Gentlemen, have I overlooked anything?
14 MR. WELSH: Just that the second and third
15 offenses are three-year sentences on the firearms.
16 THE COURT: The first is one year. And let me
17 go back. That's in 18.2-10.
18 MR. WELSH: It's in 53.1.
19 THE COURT: In 53.1. All right. Let's run
20 through that.
21 Mr. Ansell, in the event of a second or
22 subsequent conviction of the violation of Section 18.2-53.1,
23 which is the one involving the use of the firearm, you are then
24 guilty of a Class 5 Felony, which is not less than one year
25 nor more than ten years, or, alternatively, not more than 12

1 months in jail and a fine of $1,000, either one or both.

2 You have gone through these with your lawyer,

3 have you?

4 THE DEFENDANT: Yes.

5 THE COURT: In addition, if you have previously

6 been sentenced to confinement in a penitentiary, additional

7 punishment can be imposed under the multiple-offender status.

8 Do you understand that?

9 THE DEFENDANT: No.

10 THE COURT: You don't understand that?

11 All right. Have a seat and you and Mr. White

12 can --

13 MR. WHITE: Your Honor, I can clear it up by

14 saying he has had no previous --

15 THE COURT: Well, nevertheless, in the event that

16 things do not turn out as you would hope, it means that the

17 next time around he would be facing some problems.

18 You might as well discuss that with him right

19 now. I hope that he will not, but --

20 MR. WHITE: Mr. Ansell, do you understand that

21 what the Court has questioned in its address to you, namely, that

22 you can get additional time if you are found -- subsequently

23 found guilty of these same offenses?

24 Is that correct, Your Honor?

25 THE COURT: Do you understand that, Mr. Ansell?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You are facing a real problem.

3 All right, sir. Stand again, if you would.

4 Have you had plenty of time to talk to Mr. White

5 concerning any possible defenses you may have to these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And when you were talking to him,

8 did you discuss whether you should plead guilty or not guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What did you decide to do?

11 THE DEFENDANT: Decided to plead not guilty --

12 I mean, guilty.

13 THE COURT: Guilty to Indictments, 1, 2, 5, 9,

14 10 and 11?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Which you have done this morning?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand the questions that

19 I have asked you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Based on that,

22 then, the Court will accept your pleas of guilty.

23 You may be seated.

24 THE CLERK: All witnesses testifying, please

25 stand, face the Court, and raise your right hand.

1 A Yes, sir. This was the one at the intersection
2 of Harrell and Bancker, at which time he turned over $110.
3 I am sorry about that, Your Honor.
4 Q All these events were in the City of Norfolk?
5 A Yes, sir.
6 Q And I believe they all happened within hours of
7 each other?
8 A Within minutes; yes, sir.
9 MR. WELSH: Within minutes. Okay.
10 I have nothing further.
11
12 CROSS-EXAMINATION
13
14 BY MR. WHITE:
15 Q Officer Claxton, let me ask you just a few
16 questions. First of all, within the time frame, what do we
17 have, within minutes; less than an hour; half an hour;
18 something of that sort?
19 A First one, 1:15 a.m.; second one, 1:45 a.m.;
20 and third one 2:00 a.m., so we are talking about 45 minutes.
21 Q So all these felony charges we have heard here
22 today were within a 45-minute period of time; is that correct?
23 A Yes, sir.
24 Q With no break in the time sequence?
25 A That's correct.

1 Your Honor, I submit that he is not sincere
2 yet in his desire to abide by the rules of society,
3 as is evidenced by his actions since he was arrested
4 on these charges, and that he needs to be incarcerated
5 for a lengthy period of time until he understands
6 that society will not tolerate the actions which he
7 has engaged in over the past few years.
8 And, Your Honor, this Court, I'm sure, is
9 interested in rehabilitation of the defendant; but
10 this Court also has a duty to protect society.
11 And I think the actions which the defendant
12 has been involved in indicate that society does need
13 some protection in this case.
14 And I would ask that a sufficient time,
15 sufficient sentence to the penitentiary although
16 I don't say Richmond. I'm sure I'd rather prefer
17 Southampton.
18 THE COURT: Well, that is a matter - they'll
19 classify him?
20 MR. DEPEW: Certainly, Your Honor.
21 THE COURT: Here's the thing that puzzles me,
22 and I think I need to hear from both of you on this,
23 and that is the statute in regard to use of a weapon.
24 Certain mandatory things I read here -
25 violation of this section shall constitute a

1 separate and distinct felony, and any person found
2 guilty thereof shall be sentenced to a term of
3 imprisonment for one year for the first conviction,
4 and for a term of three years for a second or
5 subsequent conviction.
6 Now, we have three offenses here. Notwithstand-
7 ing any provisions of law the sentence prescribed
8 for violation of provisions of this section shall
9 not be suspended in whole or in part, nor shall anyone
10 convicted hereunder be placed on probation.
11 Punishment shall be separate and apart and shall be
12 made to run consecutively with any punishment
13 received for the commission of the primary felony.
14 We have three convictions here and that
15 would seem to me to run one, three, three.
16 MR. DEPEW: I believe that's the way the
17 statute would read, Your Honor.
18 MR. WHITE: Your Honor, I've given some
19 thought to that.
20 THE COURT: Do you need to refer to this?
21 MR. WHITE: Well, no. The thing about it is
22 whether you can really give that a logical
23 interpretation when this is all within one single
24 span.
25 The intent of the statute was to act as a

1 deterrent against repeat violators.

2 This thing is all one episode. And it says

3 one year for the first conviction. All of this, this

4 matter was tried simultaneously, all at the same time.

5 And I think the intent of the statute was clearly

6 to - that in a case where a man has been convicted

7 of one, he is then put on knowledge that he will

8 have - he will be subject to consecutive terms for

9 separate offenses for second convictions, and then a

10 third conviction or whatever it is.

11 I don't know whether I made myself clear,

12 but I'm saying in this case he's been convicted

13 simultaneously on the offenses and I don't think

14 that statute applies.

15 MR. DEPEW: Judge, I would just answer Mr.

16 White's argument. And I assume for the same purpose

17 he says the statute was passed as a deterrent effect.

18 I probably can't think of a greater deterrent

19 than if the statute is literally taken for its word,

20 and to let a man or any robber on the street know

21 that any time he uses a gun in the commission of a

22 felony, no matter how far apart it goes, if that were

23 to get out on the street, I think we'd have a more

24 maximum deterrent than the interpretation Mr. White

25 would ask for.

THE COURT: All right, sir. Anything further, gentlemen?

All right, sir, if you would stand, please.

Before I pronounce sentence, Mr. Ansell, I would inquire of you if you desire to make a statement, if you desire to advance any reason why judgment should not be pronounced against you?

THE DEFENDANT: Yes, sir. I'd like to say that I don't feel that I'm a threat to society. I just feel that I have a very bad drinking problem. I'd like to go somewhere long enough to have a counselor and whoever can get my problem straightened out with this drinking. And I just, I feel that the boy I was with got the shotgun, he was driving the car. I know nothing about it. And I just feel that my alcohol problem, I need my alcohol problem straightened out. I just want to get my head straight.

THE COURT: All right, sir. On Indictment Number One, robbery, you pleaded guilty, I will give you the minimum of five years; Number Two, robbery, again pleading guilty, the minimum five years; then on the attempt, under attempt of robbery, two years, all of those to run concurrently.

Now, that brings us to the serious problem - the use of the weapon in the commission of a felony.

1 Now, the way I read this section, it has been
2 made clear by the Legislature that on the first
3 conviction it will be one year in the penitentiary,
4 on the second three years, and on the third three
5 years. That's what they have said; that's what it
6 has to be.
7 Now, on the remainder of the charges you have
8 made a motion to nol-pros those and I have taken
9 those under advisement until today. Your motion is
10 granted on those.
11 All right, sir.
12 MR. WHITE: Your Honor, would that be
13 concurrently, those remaining ones, or what?
14 THE COURT: Sir, you can read the statute and
15 there is no way in the world that the Court can do
16 that.
17 MR. WHITE: All right, sir.
18 THE COURT: It's harsh, but the Legislature
19 has spoken clearly and that's it. When you use a
20 gun they cannot be suspended or anything else.
21 All right, sir.
22
23 (Whereupon the presentence hearing was
24 concluded.)
25 * * * * * * * *