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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0768

WALTER RIDLEY,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

William L. Perkins, III
SACKS and SACKS
405 First and Merchants National Bank Building
Norfolk, Virginia 23510
Counsel for Appellant

Robert H. Herring, Jr.
Assistant Attorney General
900 Fidelity Building
830 E. Main Street
Richmond, Virginia 23219
Counsel for Appellee

A P P E N D I X

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F77-1887

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Commonwealth of Virginia)
)
vs.) Indictment for STATUTORY BURGLARY
)
WALTER RIDLEY

January 4, 1978
DATE

The Grand Jury charges that: On or about November 25, 1977, in the City of Norfolk, WALTER RIDLEY did enter, in the nighttime, the storehouse of Home Furniture, with intent to commit larceny.

Va. Code Section 18.2-91

Witness:
Inv. ~~J. S. McMa~~han - Burglary Squad

(X) A True Bill
( ) Not A True Bill

(Foreman of Grand Jury)

#231-78

Virginia:

In the Circuit Court of the City of Norfolk, on the 8th *day of* March *, in the year 19* 78

COMMONWEALTH vs. Walter Ridley

Attorney for the Commonwealth: Lawrence C. Lawless

Attorney for the defendant: William L. Perkins
(X) Heretofore appointed by the Court ( ) Of defendant's own choosing

FELONY SENTENCING ORDER

This day again came the Attorney for the Commonwealth and the attorney for the defendant, as aforesaid, and came as well the defendant in person, who stands convicted of Statutory Burglary

Thereupon the Probation Officer of this Court, to whom this case has 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 the case, the report of the Probation Officer and such additional facts as were presented by the defendant, doth now fix the defendant's punishment at confinement in the Penitentiary for the term of Seven (7) Years for Statutory Burglary as charged in Indictment #1

of
STOVALL
of the
Court
Virginia

Whereupon it being demanded of him if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, 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 Seven (7) Years for Statutory Burglary as charged in Indictment #1, subject to credit for time spent in jail awaiting trial, and that he be required to pay the costs of his prosecution. And the Court, being of the opinion that it is compatible with the public interest, doth adjudge and order that the execution of Four (4) Years of the aforesaid Seven (7) Year sentence for Statutory Burglary be suspended and the defendant placed on probation for the term of Four (4) Years, to commence upon release from confinement, under the supervision of the Probation Officer of this Court, conditioned upon good behavior and the payment of the costs of prosecution and upon compliance with the conditions set forth in writing, signed by the defendant and filed herewith as a part of the record. Thereupon the defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion, having been fully heard and determined by the Court, is sustained, and the execution of the foregoing judgment is hereby postponed for the period of Thirty Days or until the Supreme Court of Virginia shall deny said writ of error if prior thereto. And the Court, having made inquiry and being of the opinion that the defendant is indigent and without funds with which to employ counsel of his own choosing, the Court doth hereby appoint William L. Perkins, to represent

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the said defendant. It is further ordered that the transcript of testimony, when prepared, be made a part of the record in this case. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorney's fee of $150.00.

And the prisoner was remanded to jail.

Wm. Moultrie Guerry, Judge

(Court Reporter - Susan Horner)

(Walter Ridley, B/M, DOB: 10-15-39, SSN: 123-52-3010)

ASSIGNNENTS OF ERROR

1. That the Court erred in overruling the defendant's Motion to Strike the Commonwealth's evidence at the conclusion of the Commonwealth's case as the evidence was not sufficient to prove specific intent to commit larceny as charged in the indictment.

2. That the Court erred in overruling the defendant's Motion to Strike the Commonwealth's evidence at the conclusion of all of the evidence as the evidence was not sufficient to prove specific intent to commit larceny as charged in the indictment.

3. That the Court erred in overruling the defendant's objection to the finding of guilt on the indictment as the verdict was contrary to the law and the evidence in that there was no evidence to prove specific intent to commit larceny as charged in the indictment.

1 did not give anybody permission to break
2 out a show window on the north side of the
3 building and go into the premises. Is that
4 our stipulation?
5 MR. PERKINS: We agree to that.
6 (Opening statement presented by Mr. Lawless.)
7 MR. PERKINS: We have no opening statement.
8 MR. LAWLESS: Call Officer Webb.
9 (Officer Webb called to the witness stand
10 by the Commonwealth.)
11 * * *
12 GEORGE H. WEBB, Witness,
13 called by the Commonwealth,
14 having been first duly sworn,
15 was examined and testified
16 as follows:
17 * * *
18 DIRECT EXAMINATION
19 BY MR. LAWLESS:
20 Q State your name, occupation and duty
21 assignment.
22 A George H. Webb, Police Officer for the
23 City of Norfolk, First Patrol Division.
24 Q Were you assigned to the First Precinct
25 November 25, '77?

1 A Yes, sir.
2 Q Were you working the evening shift?
3 A Yes, sir.
4 Q One man marked police unit?
5 A Yes, sir.
6 Q Approximately 9:30 p.m. on the evening
7 of November 25, 1977, did you have occasion to find yourself
8 in the vicinity of Home Furniture Company located at
9 35th and Granby Street in the City of Norfolk?
10 A Yes, sir.
11 Q What prompted you to go to that
12 address?
13 A I received a call from the dispatcher
14 of an alarm going off. On responding to the scene, I
15 pulled up on the north side of the building, the 35th Street
16 side, observed a hole in the plate glass window.
17 Q Did the business appear to be open
18 or closed at that time?
19 A The business was closed.
20 Q Were brother officers arriving on the
21 scene approximately the same time you were?
22 A Yes. They were.
23 Q Also, were they marked police units?
24 A Yes, sir.
25 Q Did there come a time when Corporal

1 Barrington arrived with his K-9 dog, Lance?
2 A Yes, sir.
3 Q What did you and other officers do
4 in your presence? Was there an alarm going off?
5 A It was a silent alarm.
6 Q What occurred in your presence when
7 you got to the scene?
8 A I arrived and observed the hole in the
9 glass. I parked my vehicle in front of it and remained
10 there. The other officer responding went to the front of the
11 building.
12 Q The east side?
13 A The east side where the front entrance
14 is. Along with Corporal Barrington.
15 Q Did there come a time Corporal
16 Barrington and his dog went into the building?
17 A Yes.
18 Q A short time later, did you hear a
19 noise or disturbance in the building?
20 A No, sir. I was outside.
21 Q You didn't hear the dog agitated
22 or anything?
23 A No, sir.
24 Q Did there come a time Corporal
25 Barrington and his dog came out with something they didn't

1 have when they went in?
2 A Yes, sir.
3 Q What was that?
4 A Walter Ridley.
5 Q What was his appearance when you saw
6 him?
7 A He was dressed in a large amount of
8 old clothing. He just walked out the door. Appeared to
9 be coherent.
10 Q Was he later turned over to the
11 Detective Bureau for processing?
12 A Yes.
13 Q What type window was on the north side?
14 A Plate glass display type window.
15 Q Larger than the average window?
16 A Yes, sir.
17 Q From your examination of the scene,
18 could you determine what appeared to have broken the window?
19 A There was a large piece of cinder block
20 lodged into a stereo right in front of the hole.
21 Q Didn't appear to be part of the normal
22 window display?
23 A No, sir.
24 MR. LAWLESS: Answer counsel.
25 * * *

1 CROSS EXAMINATION

2 BY MR. PERKINS:

3 Q You didn't see who broke the window,

4 did you?

5 A No, sir.

6 Q Was the hole in the window large

7 enough for somebody to get through?

8 A Yes, sir.

9 Q Did Officer Barrington and the dog

10 go through the hole?

11 A No, sir. They went through the front

12 door.

13 Q You never heard any alarm at any time,

14 did you?

15 A No, sir.

16 Q Is that alarm relayed straight to the

17 police department?

18 A I believe it goes through Southern

19 Burglar Alarm.

20 MR. PERKINS: That's all I have.

21 Thank you.

22 (Witness excused.)

23 MR. LAWLESS: Call Officer M. B. Owens.

24 (Officer M. B. Owens called to the witness

25 stand by the Commonwealth.)

1 * * *

2 M. B. OWENS, Witness,

3 called by the Commonwealth,

4 having been first duly sworn,

5 was examined and testified

6 as follows:

7 * * *

8 DIRECT EXAMINATION

9 BY MR. LAWLESS:

10 Q State your name, occupation and duty

11 assignment.

12 A Officer M. B. Owens, First Precinct,

13 Norfolk Police Department.

14 Q What was your occupation November 25,

15 1977?

16 A Police officer.

17 Q Also assigned to First Patrol Precinct?

18 A That's correct.

19 Q On that particular evening were you

20 operating a one man car?

21 A Yes, sir.

22 Q Marked police unit in uniform?

23 A Yes, sir.

24 Q Did you have occasion during the

25 performance of your employment to go to the intersection of

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1 35th and Granby?
2 A Yes, sir.
3 Q Is that located in the City of Norfolk?
4 A Yes, sir.
5 Q Is there a commercial storehouse or
6 retail furniture store called Home Furniture at that
7 intersection?
8 A Yes, sir.
9 Q What was your purpose in going there?
10 A My dispatcher directed me to respond to
11 a silent burglar alarm there.
12 Q What did you observe there?
13 A A broken window on the northeast corner
14 of the building facing 35th Street.
15 Q What action did you take to secure
16 the immediate area?
17 A I handled one corner of the building
18 where I could watch two sides. Officer Webb picked up the
19 other.
20 Q Did there come a time Officer Barrington
21 and his K-9 dog came to the scene?
22 A Yes, sir. He was requested by Officer
23 Webb.
24 Q Did they go in the front door?
25 A Yes.

1 Q Was the owner there by then?
2 A Yes, sir.
3 Q Is that Mr. Weisberg?
4 A Yes, sir.
5 Q Did you see Corporal Barrington and his
6 dog go in the building?
7 A Yes.
8 Q Did they bring anything out?
9 A Yes, sir.
10 Q What?
11 A The Defendant.
12 Q This gentleman?
13 A The Defendant sitting by his attorney
14 (indicating the Defendant).
15 Q All events occurred in the City of
16 Norfolk?
17 A Yes, sir.
18 * * *
19 CROSS EXAMINATION
20 BY MR. PERKINS:
21 Q Did you see anybody break the
22 window?
23 A No, sir.
24 Q Was it broken when you arrived?
25 A Yes, sir.

1 * * *

2 BY THE COURT:

3 Q When you and Webb stationed yourselves

4 as you did, could you, between the two of you, see all four

5 sides?

6 A Not from the southwest corner. The

7 southwest is all bricked up.

8 Q You said each of you could see two

9 sides?

10 A That is correct. I initially stationed

11 myself there, but after I found the window broken, I came

12 around the front.

13 Q Were there any other points of entry

14 to the building?

15 A No, sir.

16 Q You inspected it and found it secured?

17 A Yes.

18 Q There is no way anybody could have

19 gotten in or out except through that window?

20 A Yes, sir.

21 Q Did Barrington put the dog in or go

22 in with him?

23 A He went with him.

24 Q Did he go in through the window?

25 A He went through the door.

1 Q How did he get in the door?
2 A The owner opened the door.
3 Q When you saw him brought out, had he
4 been bitten?
5 A Corporal Barrington said he had.
6 Q You couldn't see that?
7 A No, sir.
8 THE COURT: Step down.
9 (Witness excused.)
10 MR. LAWLESS: Call Corporal Barrington.
11 (Corporal Barrington called to the witness
12 stand by the Commonwealth.)
13 * * *
14 C. L. BARRINGTON, Witness,
15 called by the Commonwealth,
16 having been first duly sworn,
17 was examined and testified
18 as follows:
19 * * *
20 DIRECT EXAMINATION
21 BY MR. LAWLESS:
22 Q State your name, occupation and duty
23 assignment.
24 A Corporal Cecil L. Barrington, Norfolk
25 Police Department, K-9.

1 Q Directing your attention to the evening
2 of November 25, 1977, were you similarly employed by the
3 City of Norfolk Police Department in a K-9 capacity?
4 A Yes, sir.
5 Q Do you work by yourself or with other
6 animate objects?
7 A I've got a K-9 dog.
8 Q What is his name?
9 A Lance.
10 Q Is he a specially trained K-9 dog that
11 is trained to perform the special functions of a K-9 dog?
12 A Yes, sir.
13 Q Was he fully trained the evening of
14 November 25?
15 A Yes, sir.
16 Q Did there come a time after sundown,
17 approximately 9:30 p.m., where you and Lance were called
18 to the intersection of 35th and Granby Street, City of
19 Norfolk?
20 A Yes, sir.
21 Q What was the appearance of the building
22 at that intersection when you first came on the scene?
23 A There was a window that was broken
24 out on the north side of the building.
25 Q What type window?

1 A I believe it was -- I believe it was
2 a plate glass window.
3 Q Did there come a time when the owner,
4 Mr. Weisberg, came down and gave you admittance into the
5 building?
6 A Yes,sir. He did.
7 Q Did there come a time you and Lance
8 went into the building?
9 A Yes, sir.
10 Q Pick up your narrative at that point
11 and tell what, if anything, occurred.
12 A Yes, sir. The owner opened up the
13 front door which was on the east side of the building and
14 I let my K-9 dog loose inside.
15 Q Was he under any command?
16 A Yes, sir. At that time, I opened the
17 door and placed him inside and told him to find. He went
18 from the door to the broken window on the north side.
19 From that point, he started tracking and found Mr. Ridley
20 in the southwest corner of the building.
21 Q What was Mr. Ridley doing when he
22 found him?
23 A I don't know. The dog got there just
24 before I did.
25 Q Did the dog bark or give any indication

1 he had found his quarry?
2 A Yes, sir. He growled.
3 Q When he growled, did you go to the
4 southwest corner?
5 A Yes, sir.
6 Q What did you see?
7 A The dog was in attack on Mr. Ridley.
8 Q Had he been successful in attacking
9 Mr. Ridley?
10 A Yes, sir.
11 Q Had there been several dog bites
12 inflicted on the lower anatomy?
13 A Yes, sir.
14 Q Did you call off Lance at that point?
15 A Yes, sir.
16 Q Mr. Ridley did not give you any
17 difficulty once you had called your dog off?
18 A No, sir.
19 Q Did you then take Mr. Ridley out
20 and turn him over to Detective McMann for processing?
21 A Yes, sir.
22 Q All events occurred in the City of
23 Norfolk?
24 A Yes, sir.
25 Q Do you see the person your dog and

1 you apprehended inside the place of business at 35th and
2 Granby?
3 A Yes, sir.
4 Q Point him out for the record.
5 A He's right over here (indicating the
6 Defendant).
7 MR. LAWLESS: Answer counsel.
8 * * *
9 CROSS EXAMINATION
10 BY MR. PERKINS:
11 Q You didn't see who broke the window,
12 did you?
13 A No, sir.
14 Q Aren't there other windows in the
15 building besides that front window?
16 A I'm sure there are.
17 * * *
18 BY THE COURT:
19 Q Was there any glass about?
20 A Yes, sir. On the north side where the
21 window was busted was all the glass I saw.
22 Q Was there glass on the sidewalk?
23 A There was glass inside and out.
24 Q It appeared this had been a recent
25 break?

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1 A Yes, sir.
2 Q As far as you could tell, was the
3 building secure except for that broken window?
4 A As far as I could tell. Yes, sir.
5 THE COURT: All right.
6 * * *
7 REDIRECT EXAMINATION
8 BY MR. LAWLESS:
9 Q Your dog didn't find anything else in
10 there of an animate nature other than Walter Lee Ridley,
11 did he?
12 A Not a single thing.
13 MR. LAWLESS: I have no further questions.
14 (Witness excused.)
15 MR. LAWLESS: That completes our evidence.
16 I will save Investigator McMann for
17 rebuttal if necessary.
18 MR. PERKINS: Your Honor, at this time,
19 I want to make a motion to strike the
20 Commonwealth's evidence. Judge, we are not
21 going to offer any evidence, so I can do both
22 of these motions at the same time.
23 THE COURT: Make your motion first.
24 MR. PERKINS: My motion is to strike the
25 Commonwealth's evidence on the statutory

1 burglary for their failure to prove any intent.
2 The law provides there must be an entry into a
3 building of this type with the intention of com-
4 mitting larceny, or some other related crime. They
5 have charged larceny. In this case, there's been
6 no proof of any kind offered as to what the
7 intention of the Defendant was. The law on that,
8 that I have here today is Taylor vs. Commonwealth,
9 207 Va. 326. There the Court was dealing with
10 a rape case, but it was a breaking and entering with
11 intent to commit rape. The Court said, "The
12 evidence is sufficient to show that defendant
13 broke and entered the dwelling house in the
14 nighttime, but it is the law in this jurisdiction
15 that where a statute makes an offense consist of
16 an act combined with a particular intent, such
17 intent is as necessary to be proved as the act
18 itself, and it is necessary for the intent to be
19 established as a matter of fact before a conviction
20 can be had. Surmise and speculation as to the
21 existence of the intent are not sufficient, and
22 no intent in law or mere legal presumption,
23 differing from the intent in fact, can be allowed
24 to supply the place of the latter." It cites two
25 Virginia cases. That's a 1966 case. The other is

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1 Supreme Court of the United States, Winship,
2 397 U.S. 358. It stands for the proposition --
3 I'll read here. ". . . that the due process
4 clause protects an accused against conviction
5 except upon proof beyond a reasonable doubt
6 of every fact necessary to constitute the crime
7 with which he is charged." It is my contention
8 under 18.2-91, breaking and entering or entering
9 with intent to commit larceny or a felony, the
10 intent is a sufficient part of the offense.
11 Specific intent, and the burden is on the Common-
12 wealth to prove the intent. They haven't proved
13 anything. The most they have shown is that the
14 Defendant was present in the building, which
15 constitutes a trespass.
16 THE COURT: What is the citation of Winship?
17 MR. PERKINS: 397 U.S. 358. I've got some others.
18 1970. That case is not a breaking and entering
19 case. This stands for the principle that every
20 element of the case must be proven beyond
21 reasonable doubt. At this time, I understand
22 that at the conclusion of the Commonwealth's
23 evidence my motion to strike doesn't stand
24 on the same footing that it does
25 at the conclusion of our evidence.

1 So, I renew the same thing after his
2 argument. We have no evidence to offer.
3 MR. LAWLESS: Mr. Perkins would argue that
4 the police are to be penalized for the
5 professionalism and alacrity with which they
6 responded to the silent alarm. Mr. Perkins
7 would have us believe we would have to stand
8 by and watch the man bring out the stereos
9 and the bedroom suites and the dinettes
10 and put them into his truck or his car.
11 I think these circumstances speak so
12 well. There certainly has to be -- I have
13 no objection to the horn book suggestion of
14 what due process is or the elements of the
15 offense. But the circumstances prove the
16 case. This is a place of business closed for
17 the night. A retailer. The use of force to
18 break this large expensive window. The man
19 is in the southwest corner. Lance and
20 Barrington found him. Obviously, he put up
21 a furtive move or the dog would not have
22 bitten him on or about his person. We have
23 more than carried our burden of prima facie.
24 I suggest after he argues again, we have shown
25 a case of breaking and entering with intent

1 to commit larceny.
2 THE COURT: Motion overruled.
3 MR. PERKINS: We note exception to that
4 overruling of our motion. I want to renew
5 that again as I say. We offer no evidence
6 at this time.
7 THE COURT: All right. Further argument?
8 MR. LAWLESS: No, Your Honor.
9 MR. PERKINS: You have overruled it, Your
10 Honor, but I don't see where the Commonwealth
11 has brought you any evidence at all. The only
12 thing you can do is surmise from the fact the
13 man is on the premises where he is not supposed
14 to be, that he has that intent. If he was
15 moving goods towards the front door or if he
16 had come in and they had brought you a statement
17 that he went in there to steal something,
18 any evidence. But there is no evidence
19 here and all we are doing is surmising that
20 because he is there in the nighttime in the
21 store where he is not supposed to be, he is
22 there with intent.
23 THE COURT: Intent can be proved by
24 circumstantial evidence. You have a commercial
25 building full of furniture, merchandise, I

1 assume -- no evidence of it, but I assume
2 it carries what a normal furniture store
3 carries. Commercial building. Broken
4 into late at night through a display
5 window. All of this is circumstantial
6 evidence that supplies the intent to steal.
7 MR. PERKINS: Your Honor, I respectfully
8 disagree with the Court, but I won't argue
9 further. Note my exception to overruling
10 my motion at this time also.
11 THE COURT: Have him stand. Walter Lee Ridley,
12 I find you guilty of statutory burglary as
13 charged in the indictment.
14 MR. LAWLESS: Move to refer it for a presentence
15 report, Your Honor, on the Commonwealth's motion.
16 THE COURT: So ordered. Referred for a
17 presentence report.
18 MR. PERKINS: We object to the referring
19 for the presentence report.
20 MR. LAWLESS: Your Honor, it would take me the
21 balance of the day, I expect, to go into the
22 minutia of his record. I think the Court
23 should have the benefit of a presentence report.
24 I believe the code permits any party to move for
25 it.

1 THE COURT: Gentlemen, come up.
2 (Counsel approached the bench and a side
3 bar conference was held.)
4 THE COURT: All right. Mr. Sheriff,
5 look here and see if Mr. Lewis has a list
6 of cases. How many have we put on
7 March 8? I believe we only have one on
8 March 8. Let's make this one March 8, also,
9 9 a.m. Referred for a presentence report.
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