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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

No. 780831

KENNETH M. PEDERSEN, JR.,

Appellant (Defendant),

v.

CITY OF RICHMOND,

Appellee.

JOINT APPENDIX

Stephen W. Bricker
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TIME: 12 : 55 AM/PM

CITY OF RICHMOND, VIRGINIA

DATE: 1 / 5 / 78

FIRST	MIDDLE	LAST NAME	SOCIAL SECURITY NO.
KENNETH	MERLE	PEDERSON, JR.	231 - 66 - 9051

HOME ADDRESS STREET	CITY-TOWN-COUNTY	STATE	ARREST NUMBER
1711 ACCOMAC STREET	RICHMOND,	VA.	571724

YOU ARE HEREBY SUMMONED TO APPEAR IN:

- [x] RICHMOND GENERAL DISTRICT COURT, CRIMINAL DIVISION, 501 N. Ninth St., Ground Floor
- [ ] RICHMOND GENERAL DISTRICT COURT, MANCHESTER DIVISION, 905 Decatur St.
- [ ] RICHMOND JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT, 2000 Mecklenburg St.

ON JANUARY 25, 1978 AT 9:30 AM/PM, TO ANSWER FOR THE FOLLOWING VIOLATION OF LAW, TO WIT: SOLICITATION - RICHMOND CITY CODE SECTION 27-27, 32-34.1

HEREBY PROMISE TO APPEAR AT THE TIME AND PLACE SPECIFIED ABOVE

DEFENDANT'S SIGNATURE X Ken Pederson, Jr.

(SIGNING THIS SUMMONS IS NOT AN ADMISSION OF GUILT)

FAILURE TO COMPLY WITH THIS SUMMONS CONSTITUTES A SEPARATE OFFENSE

OFFICER Kenneth L. Palmer

CODE NO.: ✓

BUREAU OF POLICE

UNIFORM DISTRICT COURT SUMMONS

1a

CS139051

Virginia:

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

THE 17th DAY OF March 19 78

CITY OF RICHMOND

vs Appeal M-6425

KENNETH MERLE PEDERSON, JR., Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sheriff of this City and was represented by Attorney Stephen W. Bricker, retained counsel, and the City of Richmond was represented by Warren B. VonSchuch.

And evidence and arguments of counsel having been presented on defendant's written motion previously filed to dismiss this case, the Court denied said motion.

And being arraigned the defendant pleaded not guilty to violating Section 22-34.1 of the City Code, as charged in the summons, 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 City of Richmond, 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 City of Richmond, the said defendant by counsel moved the Court to strike the evidence of the City of Richmond as being insufficient for the finding of a judgment of guilty, which motion the Court denied. And having heard all of the evidence and arguments of counsel the Court finds the defendant guilty as charged and doth assess his fine at $50.00.

Whereupon it is considered by the Court that the said Kenneth

CS139052

Circuit Court of the City of Richmond, Division 1,

CITY OF RICHMOND vs. KENNETH MERLE PEDERSON, JR. page 2

Merle Pederson pay and satisfy a fine of $50.00 and costs.

And the Court advised the defendant of his appellate rights and two magazines not introduced as evidence in this case are made a part of the record in this case.

And appeal bond in this case is set at $100.00 and the defendant is given thirty days to either note an appeal or pay his fine and costs of court.

And thereupon the said Kenneth Merle Pederson, Jr., is released.

March 17 1978

Enter: James M. Lumpkin

James M. Lumpkin, Judge

169 p. 470

ASSIGNMENT OF ERROR

1. The Court below erred in finding the defendant guilty beyond a reasonable doubt of soliciting another to commit a lewd, lascivious or indecent act.

2. The Court below erred in denying the defendant's motion to dismiss the charge against him upon the ground that Richmond City Code Section 22-34.1 is unconstitutionally vague and overbroad.

1
2
3
4
5
6 KENNETH L. PALMER, intro-
7 duced on behalf of the Commonwealth, being first duly sworn,
8 testified as follows:
9
10 DIRECT EXAMINATION
11 BY MR. VON SCHUCH:
12 Q Give the Court your name, please?
13 A Patrolman Kenneth L. Palmer,
14 Richmond Bureau of Police.
15 Q Officer Palmer, would you tell the
16 Court whether or not you had occasion to see the gentleman, a
17 Mr. Pedersen, seated next to Mr. Bricker here on or about
18 January 25th -- I'm sorry, January 5th, 1978?
19 A Yes, sir.
20 Q All right, where did you see him
21 on that date?
22 A It was in the zero hundred block
23 of North Foushee Street.
24 Q All right, is that in the City of

1 Richmond, north of the James River?

2 A Yes, sir.

3 Q All right, tell the Court what, if

4 anything, unusual occurred at that time?

5 A I was working plainclothes, Selective

6 Enforcement Unit that week, and I was standing in the zero

7 hundred block of North Foushee Street when the defendant had

8 pulled up and stopped his car next to the curbing.

9 He rolled his window down and asked

10 me if I would like to have a seat in his car because it was

11 cold outside, and I had a seat in his automobile, at which time

12 he started to drive off. I asked him where he was going and

13 he stated he was just riding.

14 He stated that he had picked me up

15 because -- that I looked nice in my blue jeans and that he

16 would like to see me naked. He drove over across Belvidere

17 Street and went down Holly Street to -- south on Holly to the

18 dead end and took a right, I believe it's Riverside Park --

19 Drive, if I'm not mistaken.

20 He pulled down to the dead end of

21 the street and cut the car off and he was asking me what type

22 of things did I like and I just repeated the question back to

23 him. I'd say, you know, different type of things, all types

24 of things, nothing specifically.

1 I asked him and he stated that he
2 liked, you know, different experiences and he would, you know,
3 do almost anything and he said he would like to have sex.
4 He had also -- had stated and told
5 me about his roommate, which is another male companion, and he
6 told me that he had had sex with him several times.
7 I asked him if that's what he
8 wanted me to do, to see me naked and to have sex with me and
9 he stated yes, at which time I placed the defendant under
10 arrest for solicitation and he was advised of his rights.
11 Q All right, what specific -- when
12 you were talking about different experiences in the conversa-
13 tion prior to the time you asked him if that's what he wanted,
14 what specifically did he say?
15 A Well, it kinda went back and forth
16 like he would ask me what I wanted or what I had on my mind.
17 Q Do you recall the specific question
18 or what -- did he give you any indication what the question was
19 in regards to?
20 A Not by words, no, sir.
21 Q All right, what else did he say
22 to you at that time?
23 A That was just about almost all of
24 the conversation. He said that, you know -- he stated that he

1 wanted it to be a mutual agreement, that he just didn't want
2 to have sex with somebody for the heck of it and then, you
3 know, that he wanted it to be a mutual agreement between the
4 two. He wanted it to be more than just, you know, the run of
5 the mill type of thing, I imagine what he meant.
6 Q And how long did this conversation
7 go on before you asked him what he meant?
8 A When I first got in the car with
9 him it was approximately 11:35 p.m., and the time of arrest
10 was approximately 12:05 a.m., on the 5th of January.
11 I was with him in the car for
12 approximately thirty minutes before he was advised that he was
13 under arrest for solicitation.
14 MR. VON SCHUCH: That's all the
15 questions.
16 MR. BRICKER: May I have just a
17 second, Your Honor?
18 THE COURT: All right.
19 (pause)
20
21 CROSS EXAMINATION
22 BY MR. BRICKER:
23 Q Officer Palmer, how long have you
24 been a police officer?

1 A I've been with the Richmond Bureau
2 of Police for about three years.
3 Q How long have you been assigned
4 with the Vice Squad?
5 A No, sir, I was not assigned to the
6 Vice Squad,
7 Q Who --
8 A I'm assigned to Patrol Division.
9 Q On the night in question, were
10 you working as a patrolman?
11 A Yes, sir, I was working plain-
12 clothes, the Selective Enforcement Unit.
13 Q What is the Selective Enforcement
14 Unit?
15 A We're just plainclothes, unmarked
16 car, and we work different things, burglaries, robberies, and
17 -- you know, whatever, drug arrests, whichever we can make --
18 Q I wonder if you could give me a
19 little more detailed description, the nature of the Selective
20 Enforcement Unit, does it -- how many persons or officers are
21 member of that Unit?
22 A It varies, depending on how many
23 people we have working, if we have extra people that are
24 working, they will take and select two officers to work a

1 Selective Enforcement Unit, unmarked car, patrol.
2 Q So there would be a very small
3 number, less than six, normally?
4 A Yes, sir, normally with that
5 Precinct, it's only two, if that.
6 Q Which Precinct are you in?
7 A The First Precinct.
8 Q For the week involved here, have
9 you ever worked Selective Enforcement?
10 A No, sir.
11 Q How did you happen to be on the
12 street in the night in question?
13 A Well, that is a known area for
14 homosexuals and we were out to see if anybody -- just to give
15 them the opportunity to see whether or not anybody would
16 proposition us.
17 Q I take it by that you're saying
18 that your superior officer directed you to be on the street?
19 A No, sir, nobody directed us to go
20 to that location.
21 Q What was your duty assignment for
22 that night?
23 A As I stated before it was Selective
24 Enforcement, plainclothes, we didn't have nothing specific that

1 we had to do.

2 Q You could have driven anywhere in

3 the City of Richmond and conducted any form of investigation

4 you wanted to?

5 A More or less, you know, just about,

6 you know, anything west of Belvidere and Broad.

7 Q Could you please relate to the

8 Court any and all training instruction which you were given

9 for the assignment with the Selective Enforcement Unit?

10 A Well, there was no training or

11 anything given for it, it's just that they had had several

12 complaints on that area known as the "Blackgown" there, about

13 people hanging out -- frequently around that one block there

14 from Franklin to Main to the north and south boundaries and

15 from First and Foushee Street to the east and west boundaries.

16 I had talked to several Vice Detectives in reference to

17 solicitation.

18 Q Had you initiated the conversations

19 with the Vice Detectives or had they initiated the conversa-

20 tions?

21 MR. VON SCHUCH: Judge, this is --

22 I object, this is getting to be irrelevant.

23 THE COURT: Sustained.

24 MR. BRICKER: All right.

1 Q What were you -- what was the
2 nature of your conversation with the Vice Detectives?
3 MR. VON SCHUCH: I object.
4 THE COURT: Sustained.
5 MR. BRICKER: Could I be heard on
6 the objection, Your Honor?
7 THE COURT: No, sir, move on, Mr.
8 Bricker.
9 Q When did you first arrive upon the
10 street that night?
11 A I don't recall what time exactly
12 that I got out there, I believe it was -- I'm not sure if I
13 came on at ten o'clock that night or eleven o'clock, we come
14 in at different times some nights.
15 I hadn't been out there on the
16 street that long, I don't think I had been there ten minutes
17 at the most, if I recall correctly, before the defendant had
18 pulled up beside where I was standing at.
19 Q What were you looking for in being
20 on the block?
21 A I was just standing there, I wasn't
22 looking for anything in particular.
23 Q I assume the City of Richmond pays
24 its police officers to enforce the law, I mean there must have

1 been some reason, you were either walking or patrol --
2 MR. VON SCHUCH: I object,he's
3 already answered the question.
4 THE COURT: He's answered it at
5 least twice.
6 MR. BRICKER: Your Honor, his
7 answer was generally, I'm looking for a more
8 specific answer which I have not gotten.
9 THE COURT: He's answered the
10 question, Mr. Bricker.
11 Q Well, what types of individuals
12 were you looking for on that block?
13 THE COURT: Hasn't he answered
14 that question also?
15 MR. BRICKER: Okay.
16 Q How would you -- as interpreted by
17 the Court, your testimony is that you were dealing with
18 complaints of homosexual activity on the block, correct?
19 A I said it was dealing with com-
20 plaints of people frequenting that area, the neighbors.
21 Q Have -- did you make any other
22 arrests that night for solicitation?
23 MR. VON SCHUCH: I object.
24 THE COURT: Overruled.

1 A I'm not sure if I made one other
2 arrest that night or not.
3 One night I only arrested one
4 person up there, I can't recall which night it was, and other
5 nights I arrested a couple.
6 Q Was it a male suspect, the other
7 arrest?
8 A Yes, sir.
9 Q Have there ever been any arrests
10 made for heterosexual solicitation by you?
11 A No, sir, not by me.
12 Q Officer, you are probably aware
13 of the -- the defense had filed a motion prior to the trial
14 of this case challenging the constitutionality of the City
15 Ordinanace on the grounds of vagueness, and I wonder if you
16 could answer some questions as to the application of the stat-
17 ute that we're dealing with, you are familiar with the specific
18 language of the statute?
19 MR. VON SCHUCH: Your Honor, I
20 would object to this because it could have
21 been done on the motion, we're into the trial
22 of the merits, and -- and not on the motion
23 and --
24 THE COURT: Yes, sir, just ask him

1 the factual questions, Mr. Bricker.
2 MR. BRICKER: Well, Your Honor,
3 as I represented to the Court at the argument
4 on the motion, the motion dealt with the chal-
5 lenge to the statute on its face and --
6 THE COURT: Well, it's a matter of
7 Constitutional Law, now, if you have a question
8 as to the facts he's testified to, go ahead.
9 MR. BRICKER: Your Honor, the --
10 at the argument I had specifically stated that
11 we challenge the statute on its face and as
12 applied, and I stated to the Court
13 THE COURT: I know that --
14 MR. BRICKER: for the purpose of
15 the application --
16 THE COURT: I know that, now, ask
17 your question.
18 Q What sign or gesture would con-
19 stitute a violation of the statute?
20 A Well, as far as --
21 MR. VON SCHUCH: Did the Court
22 sustain the objection that I made previously?
23 THE COURT: You have to object
24 each time.

1 MR. VON SCHUCH: I object again, I
2 think --
3 THE COURT: All right, the
4 objection is sustained.
5 Q Would asking a girlfriend to walk
6 hand-in-hand constitute a violation of the statute?
7 MR. VON SCHUCH: I object.
8 THE COURT: Sustained.
9 MR. BRICKER: Your Honor, I have
10 a long series of questions dealing with the
11 same subject, just to -- obviously the Court
12 has already ruled on the relevancy of the
13 objection but for purposes of the record I
14 would like to get the specific nature of the
15 questions, maybe I can quickly state the
16 questions and -- with the understanding the
17 Commonwealth has a continuing understanding --
18 THE COURT: How many questions do
19 you have, you say a long series?
20 MR. BRICKER: Ten or fifteen.
21 THE COURT: Go ahead.
22 Q Would asking a male to walk hand-
23 in-hand constitute a violation of the City Ordinance?
24 THE COURT: Sustained.

1 Q Would walking arm-in-arm with a
2 girlfriend constitute a violation of the statute?
3 THE COURT: Sustained.
4 Q Would walking arm-in-arm with a
5 male friend constitute a violation of the statute?
6 THE COURT: Sustained.
7 Q Would asking a girlfriend to
8 embrace face-to-face constitute a violation of the statute?
9 THE COURT: Sustained.
10 Q Would asking a male friend to
11 embrace face-to-face constitute a violation of the statute?
12 THE COURT: Sustained.
13 Q Would asking a girlfriend to kiss
14 constitute a violation of the statute?
15 THE COURT: Sustained.
16 Q Would asking a male friend to kiss
17 constitute a violation of the statute?
18 THE COURT: Sustained.
19 Q Would fondling or -- strike that,
20 would fondling -- would asking a girlfriend to allow her to
21 fondle her back constitute a violation of the statute?
22 THE COURT: Sustained.
23 Q Would asking a male friend to
24 allow him to allow you to fondle his back constitute a

1 violation of the statute?
2 THE COURT: Sustained.
3 Q Would the same questions constitute
4 a violation if the request was to fondle the buttocks?
5 THE COURT: Sustained.
6 Q Would the same conduct constitute
7 a violation if the request was to fondle one's genitals?
8 THE COURT: Sustained.
9 Q Would asking another person to
10 masturbate constitute a violation of the statute?
11 THE COURT: Sustained.
12 Q Would asking another person to
13 sleep with one when there is no sexual contact constitute a
14 violation?
15 THE COURT: Sustained.
16 Q Would asking another person to
17 sleep nude when there is no sexual contact constitute a
18 violation?
19 THE COURT: Sustained.
20 Q Would asking another individual to
21 skinny dip in a private lake constitute a violation?
22 THE COURT: Sustained, that's
23 about ten or fifteen, how many more do you
24 have?

1 MR. BRICKER: Three,
2 THE COURT: All right,
3 MR. BRICKER: actually two.
4 THE COURT: All right.
5 Q Would asking another individual
6 to skinny dip in a public body of water constitute a violation?
7 THE COURT: Sustained.
8 Q And would asking another individual
9 to have sexual intercourse constitute a violation?
10 THE COURT: Sustained.
11 Q Okay, this -- your encounter with
12 the defendant began at 11:35 p.m., you testified?
13 A Approximately.
14 Q On what date?
15 A That would be January the 4th, '78.
16 Q What were you wearing at the time?
17 A As I recall, I had on a pair of
18 blue jeans, a flannel shirt and I'm not sure if I had on a
19 light weight jacket or whether I had on a windbreaker, I can't
20 recall, I believe I had -- I had a sweater on also.
21 Q What was the weather like that
22 night?
23 A As I stated before, it was cold.
24 Q Below freezing?

1 A I can't recall.
2 Q Did the defendant's car stop
3 directly adjacent to where you were positioned?
4 A Yes, sir, it did.
5 Q Did you have to walk over to the
6 car to hear him?
7 A He rolled the window down, leaned
8 over and said something, I couldn't hear what he said, so I
9 took a step towards the car and I leaned over to see what he
10 said, at which time he asked me if I would like to have a
11 seat in his car.
12 Q Did he say anything about the
13 weather?
14 A I testified before, he said -- he
15 asked me to have a seat in his car -- if I would like to have
16 a seat in his car due to the fact it was cold outside.
17 Q And where did you drive to?
18 A He started riding -- driving
19 around and started heading over towards Oregon Hill and turned
20 down a couple of streets over there, which I'm not really
21 familiar with all the streets over there, and I believe he rode
22 down Holly Street, South Holly Street and he took a right when
23 he got to the end which, I believe, is Riverside Park, if I'm
24 not mistaken. I'm not sure, and went down to a dead end and

1 stopped the automobile.

2 Q Where were you seated in the auto-

3 mobile?

4 A In the right front passenger seat.

5 Q What kind of automobile was it?

6 A A 1977 Subaru, I believe, two-door.

7 Q Who first raised the subject of

8 what each of you were into?

9 A I asked him -- well, he first

10 stated that he had picked me up because I looked good in my

11 jeans and he would like to see me naked.

12 Q He stated that the first thing?

13 A I asked him, you know, what he was

14 doing out there -- or asked, you know, where we was going and

15 he said just riding.

16 I asked him, you know what was he

17 doing out there and then he stated -- he made that statement

18 that I looked good in my blue jeans and he would like to see

19 me naked.

20 Q That was as soon as he got in the

21 car -- as soon as you got in the car?

22 A Shortly thereafter, yes, sir. I

23 had been in there approximately a minute or two.

24 Q What had you said to him prior to

1 to that time?

2 A Nothing as I recall.

3 Q And what did you respond to that

4 question?

5 A I didn't directly respond the

6 answer he had given or the -- or what that statement that he

7 had made. I asked him, you know, what was he doing out there

8 or what he had on his mind.

9 Q And what did he say?

10 A He said he had sex on his mind

11 and that, you know, he would go for just about anything if I

12 recall correctly. And then he asked me what I had on my mind

13 and I said nothing in particular.

14 He said what types of experiences

15 do you like and I said, well, all types, that all depends on

16 what you're talking about, and that kinda went back and forth

17 about, you know -- not directly, you know, mentioning anything

18 as far as experiences or what the other one was talking about

19 and then he told me about his roommate, about having sex with

20 him.

21 Q What was the specific language

22 that the defendant used in discussing his roommate, can you

23 recall?

24 A Just that he had had sex with his

1 roommate several times.

2 Q He had used the word sex?

3 A Yes, sir.

4 Q And what happened next?

5 A That was it and after he rode down

6 the, you know, just to carry on the conversation down --

7 Q Well, what did you say in the

8 conversation?

9 A I stated before --

10 Q No, I mean from that -- from the

11 point of where you and the defendant discussed the roommate,

12 what happened after that?

13 A After that I asked him -- I said

14 do you want to see me get naked and have sex with me, I said

15 is that what you wanted to do and he stated yes, at which time

16 I placed him under arrest.

17 Q How did you place him under arrest?

18 A I told him to put his hands on the

19 steering wheel, I had had my revolver in my hand at the time.

20 Q What did you do with the revolver?

21 A I took it and pointed it at him

22 and told him --

23 Q Where did you --

24 A put his hands --

1 Q Did you -- I'm sorry --
2 A Okay, ask the question.
3 Q Where did you point it, at what
4 point on his body was the revolver directed?
5 A I pointed it towards his head.
6 Q During your conversations with the
7 defendant, did he ever ask you if you were a police officer?
8 A Yes, sir, he did,
9 Q And what was your --
10 A I -- wait a minute, let me check
11 on it, I'm not sure.
12 (pause and rattling of paper)
13 A He asked me if I was Vice and I
14 stated that I wasn't and then I asked him if he was Vice and
15 he says no.
16 Q Had the defendant touched you in
17 any sexual way?
18 A No, sir.
19 Q Had the defendant made any threaten-
20 ing or violent gestures towards you?
21 A No, sir.
22
23
24