214 Va. 166

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Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 8193

Luther Durham, Jr.,
Plaintiff in Error

V.

Commonwealth of Virginia,
Defendant in Error

APPENDIX

For Plaintiff in Error: David G. Simpson, Esquire
Winchester, Virginia

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APPENDIX

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INDICTMENT

COMMONWEALTH OF VIRGINIA

COUNTY OF FREDERICK, To-wit:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Frederick, and now attending the Circuit Court of said County at its July, 1964 Term, upon their oaths present, that Luther Durham, Junior, alias Luther Junior Durham, on the 25th day of February, 1963, in the County of Frederick aforesaid, did unlawfully and feloniously kill and murder one Annie Snow, against the peace and dignity of the Commonwealth.

Found on the testimony of: Robert L. DeHaven

F. L. Woolf

Witnesses sworn in open court and sent to the Grand Jury to testify.

TRANSCRIPT

[Dennis Hoover - Direct Examination (Trp. pp. 165-188)]

Q. Mr. Hoover, on February 25, 1963 were you a resident of Frederick County?

A. Yes, sir. I lived at Double Toll Gate.

* * *

Q. ..., were you married on February 25, 1963?

A. Yes, sir.

Q. To whom were you married?

A. Waltine Hoover.

Q. Did she live with you in your home in Frederick County

A. Yes, sir.

Q. And, did anyone else live with you there?

A. Yes, sir. Her mother, Mrs. Snow, Mrs. Annie Snow.

Q. How old was your wife on that day?

A. She was fourty-seven.

* * *

Q. How old was Mrs. Snow?

A. Mrs. Snow was eighty-five.

* * *

Q. ...(G)oing back to that day did you receive a call from the operator of the telephone system in Stephens City about 2:00 o'clock?

A. Yes, sir. I did.

Q. Was that in, 2:00 o'clock, in the afternoon?

A. 2:00 o'clock in the afternoon, approximately.

Q. Where were you at at the time?

A. In my office at the school.

* * *

Q. How far ... was (it) from your school to the house?

A. It was five and two tenths miles. ...

Q. What time would you say it was, approximately, that you arrived at the house?

A. Well, it wasn't very long after I received the telephone call...

* * *

Q. When you went into the kitchen what did you do then?

A. I went (from) the kitchen into the dining room and I found Mrs. Snow on the floor.

* * *

Q. Now, when you saw her lying there what did you do?

A. When, (I) looked in the other rooms right quickly to see if I could see my wife and I didn't see her. And, I thought she must have run for help. Then I got

on the telephone to call the rescue squad, immediately.

Q. ..., while you were on the telephone did anybody come to the house?

A. Yes, sir. ... Trooper Estep came in while I was on the telephone.

* * *

Q. After you got through calling the rescue squad what did you and Trooper Estep do?

A. We started looking for my wife ... (A. Well,) we looked around in the downstairs and we didn't find anybody and so we started upstairs.

Q. Who went up the stairs first?

A. I started up the steps, he was right along with me. And, as soon as he saw my wife at the head of the steps,... he pushed me back down and he went on up.

Q. Now, Mr. Hoover, when you got up part way up the steps you say you saw your wife?

A. I could see her head. That is all I could see. I couldn't see the rest of her.

* * *

[Dennis Hoover - Cross Examination (Trp. p. 188)]

Q. [Okay. Now] (W)as anything taken from your house?

A. Not that I know of, sir.

* * *

[L. F. Craft - Direct - Questions by Joseph A. Massie, Jr. (Trp. pp. 268 - 274)]

Q. Now, Officer Craft, I believe this is your handwriting?

A. Yes, sir.

Q. Would you then read that to the Court and Jury, please sir?

A. Yes, sir.

> "Virginia State Penitentiary, June 23rd, 1964, 12:50, P.M." "I, Luther Junior Durham, alias, Luther Durham, Junior, do make this free and voluntary statement to Investigator L. F. Craft and E. M. Lloyd, who are known to me, and identified to me to be State Police Officers. I have not been threatened, or promised any reward. I know that what I say may be used either for or against me in a court of law. I know that I am entitled to counsel."
> Q. What is your full name?
> A. Luther Junior Durham.
> Q. Are you known by any other name?
> A. Dude Durham and Luther Durham, Junior.
> Q. Have you been made any promises to make this statement?
> A. No.
> Q. Are you making this statement of your own free will?
> A. Yes, that's the only way you can get it.
> Q. Has anyone told you that the court would be more lenient on you, if you made this statement?
> A. No.
> Q. Where were you staying in February, 1963?
> A. Hop Yard Farm.
> Q. Where is Hop Yard Farm located?
> A. King George County, Virginia.
> Q. In February 1963, did you leave the Hop Yard Farm?

A. Yes.
Q. Do you recall what day of the week it was when you left?
A. I believe it was on a Monday.
Q. How were you travelling when you left the Hop Yard Farm on that Monday in February, 1963?
A. With Otho Howard, in this 1955-56 Chevrolet.
Q. Who was the operator of Howard's car?
A. Otho Howard.
Q. What time of day was it when you and Otho Howard left the Hop Yard Farm?
A. 8:00, A.M. to 9:00, A. M.
Q. Leaving the Hop Yard Farm, do you know what routes you travelled?
A. Route 3 to Fredericksburg, from then on unknown, after leaving intersection of Routes I and 17.
Q. How long did it take you and Mr. Howard to travel from Fredericksburg, Virginia, to the location of the victim's home?
A. About two hours, stopped twice on the way. It could have been a little longer.
Q. Reaching the victim's home, where was the car parked?
A. In front of the house, pulled in toward the screened porch.
Q. What was the weather condition on this day?
A. It had been snowing earlier.
Q. Describe the victim's home.
A. White house, large, front porch screened in, it had an upstairs window and it was a double window, with six to eight rooms.
Q. What time was it when you and Mr. Otho Howard arrived at this house?
A. 1:30 to 2:00, P.M., because we had already eaten lunch.
Q. After the car was parked, who got out of the car?
A. I got out of the car and Howard got out.
Q. Who went to the house first?
A. We both went up together.
Q. Reaching the front door, or the door you went to, what happened?
A. I knocked on the door three times, no one came to the door, I jimmied the door and lock and we both went in.

Q. After entering the house with Otho Howard, did you see anyone?
A. No, didn't see a soul.
Q. After entrance had been gained into the house, what did you do?
A. I returned to the car for a sack.
Q. While you were gone to the car for the sack, where was Otho Howard?
A. In the house.
Q. When you returned to the house with the sack, what did you see?
A. I went in through the door and started to another door in a hallway, then I saw an old woman, cut all to pieces.
Q. Where was the woman that you saw, which had been cut?
A. Laying on the floor.
Q. How was the woman dressed?
A. Wearing slacks, it might have been a dress, whatever she had on was light blue in color.
Q. What was the position of the woman on the floor?
A. She was lying on her side, mouth open and her eyes were staring me in the face, she was dead.
Q. Did you see Otho Howard at this time?
A. No.
Q. While looking at the woman on the floor, did you hear any noise?
A. Heard another woman hollering, several times.
Q. After hearing the other woman screaming, what did you do?
A. Tried to run out but it seemed like I just could not get out. Got to the door and made my way to the car. Got in and drove off.
Q. When you drove away from the house did you leave anyone behind?
A. I left Howard there.
Q. How long were you gone from the victim's home before you returned for Otho Howard?
A. Ten to fifteen minutes.
Q. Where was Otho Howard when you returned to the house?

A. He had come out of the house and had walked down to the road, walking out of the driveway.
Q. Leaving the victim's home, where did you and Otho Howard go to?
A. Fredericksburg, stopped there. Later, on to Hop Yard Farm.
Q. Do you know what time it was when you all reached Hop Yard Farm?
A. About 7:30, P.M., they were finished milking.
Q. For what purpose did you and Otho Howard go to the victim's home?
A. Break in, in other words, to commit larceny.
Q. Do you recall seeing anything behind the victim's home?
A. A pond.
Q. While in the house, did you see any blood?
A. The woman on the floor was bloody all over.
Q. Did you ever see the woman who was doing the screaming?
A. Never saw her.
Q. How many times do you think the woman on the floor had been cut or stabbed?
A. Cut twice, stabbed six or seven times, she was stabbed all over her body as well as her arms.
Q. When Otho Howard, came out of the house, was he bloody?
A. He was bloody all over. Looked like he had been killing hogs, all over his hands, all over his light striped coveralls.
Q. How were you dressed?
A. Brown dress pants, white shirt, brown coat, sport, tan crepe soled shoes.
Q. Did you kill either of these women?
A. No.
Q. Do you know who killed the two women?
A. Otho Howard.
Q. What kind of knife did Otho Howard usually carry?
A. Pocketknife, 3 to 3 1/2 inch blade.
Q. Is this statement true to the best of your knowledge?

A. Yes, sir.

SIGNED: Luther Durham, Junior
WITNESSED: L. F. Craft, 6/23/64
2:15, P. M.
E. M. Lloyd, 6/23/64

* * *

[L. F. Craft - Direct - Questions by Joseph A. Massie, Jr., (Trp. p. 276)]

Q. On what day was it that you picked him up (at the penitentiary)?

A. July 14th.

Q. Of 1964?

A. 1964.

Q. All right. You and Officer Lloyd picked him up in a police car?

A. Yes, sir.

Q. And, did he direct you to the scene of the crime?

(A. Yes)

* * *

[Trp. p. 282]

A. ... We went into the house.

* * *

[Trp. p. 284]

Q. Now, did he advise you where he had first seen Mrs. Snow.

A. At the foot of the steps in the little hallway

at the foot of the steps.

Q. Not over in the dining room?

A. Not in the dining room, no, sir.

Q. Now, when he informed you that he saw Mrs. Snow at the foot of the steps what did he say; she was lying there or what was her condition?

A. She was lying there, I believe, one foot in the bathroom and one in the bedroom.

Q. Those connecting doors right there together?

A. Yes, sir. It's three doors, two bedroom and bathroom. Doors all open in the same hall.

* * *

[E. M. Lloyd - Direct Examination (Trp. pp. 369 - 371)]

A. We went into the house and then we went around beyond the staircase to the head of the stairsteps leading up the steps... And (he) said this is where the body was, where the lady was lying.

* * *

Q. He saw her...at the foot of the steps?

A. Yes, sir.

* * *

Q. Did he go upstairs?

A. Yes, sir.

Q. Were you with him when he went up there?

A. Yes, sir. I went up to the head of the landing.

Q. What did he tell you about the second floor?

A. This is where he saw another body, or saw scuffle going on there.

* * *

Q. Did he point out where he saw the other body up there?

A. At the top of the landing, ...

* * *

[L. F. Craft - Redirect - Questions by Joseph A. Massie, Jr. (Trp. pp. 437-438)]

Q. Sergeant Craft, going back to July 14, 1964 when you were with Luther Durham at the home of Mr. and Mrs. Hoover you testified that he pointed out to you that he saw Mrs. Snow at the foot of the steps. Now, after he told you that he found her there on her side what then did he tell you and what then did he tell you he did?

A. He stated he went part way up the steps and saw Mr. Howard have a woman by the arm just in the door of the bedroom. He had her right arm up behind her back and was holding her with his left hand. He stated that Howard had a knife in his hand and the woman was dressed...

* * *

Q. Officer you say he went part of the way up the steps?

A. Yes, sir.

Q. And, that he saw Mr. Howard with a hold on Mrs. Hoover?

A. Yes, sir.

Q. Did Howard have anything else with him at that point in his other hand?

A. You mean free hand?

Q. Yes.

A. He stated he had a knife in his free hand.

Q. And, did he tell you how Mrs. Hoover was dressed?

A. Yes, sir.

Q. What did he say?

A. Said she was dressed in slacks and he was unable to see the upper portion of her body because it was blocked by Mr. Howard.

* * *

INSTRUCTIONS NUMBER 5 AND 15

5 - The Court instructs the jury that murder in the commission of or attempt to commit robbery is murder in the first degree.

15 - The Court instructs the jury that robbery is defined as the taking with intent to steal the personal property of another from his person or in his presence against his will by partial strangulation or by suffocation or by striking or beating or by other violence to the person or by the threat of firearms, or other deadly weapons or instrumentality whatever and if the jury believe from the evidence in this case beyond reasonable doubt that the defendant went to the home of the Hoovers with intent to commit robbery and in the course of said robbery or attempt to rob, Mrs. Snow was killed you shall find him guilty of murder in the first degree.

JURY VERDICT

"We, the jury, find the accused guilty of first degree murder as charged in the indictment and fix his punishment at life in prison."

Earl Cather, Foreman"

JUDGMENT ORDER

On the 8th day of July, 1972, came the Defendant, in person, in the custody of the Sheriff, and by his Court-appointed attorneys, and came the Attorneys for the

Commonwealth and the Court Reporter, all parties present pursuant to a previous order of this Court continuing this case until Saturday, July 8, 1972, at 10:00 a.m. for ruling on the Defendant's motion to set aside the verdict previously rendered by the jury in this case, and for the purpose of pronouncing judgment and sentencing the Defendant.

WHEREUPON, after argument by the Attorneys for the Defendant and the Attorneys for the Commonwealth the Court overruled the Defendant's motion to set aside the verdict and the Attorneys for the Defendant noted an exception to the Court's ruling. The Attorneys for the Commonwealth then moved the Court that judgment be entered on the verdict and prior to pronouncing judgment the Court allowed the Defendant to make a statement in his own behalf.

WHEREUPON, the Court, according to the jury verdict previously rendered, found the Defendant guilty of first degree murder on February 25, 1963 sentenced him to life in the State Penitentiary and awarded judgment against him for the costs of this prosecution. The Court further ordered the Defendant be given credit towards his life sentence for all time he had been incarcerated pending the trial of his case.

WHEREUPON, after the Defendant advised the Court that he wished to note an appeal, the Court ordered the Defendant remanded to the custody of the Sheriff for service of his sentence and ordered this case filed among the Criminal Cases Ended.

ASSIGNMENT OF ERROR

1. The Court erred in over-ruling defendant's motion to strike the evidence as to the charge of first degree murder.

2. The Court erred in granting instructions, duly objected to, numbers 5 and 15.

3. The Court erred in over-ruling defendant's motion to set aside the verdict as being contrary to the law and evidence.