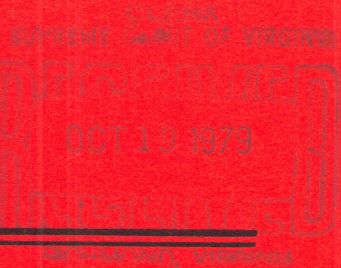


220VA762



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 790524

RONNIE WAYNE DUTTON

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

APPENDIX TO BRIEFS

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INDICTMENT

(Filed October 27, 1978)

(R. p. 10)

THE GRAND JURY CHARGES THAT:

On or about June 18, 1978, in the County of Lancaster, Ronnie Wayne Dutton did unlawfully and feloniously possess with intent to distribute a controlled substance, to-wit: Marijuana; against the peace and dignity of the Commonwealth.

Va. Code 18.2-248

A TRUE BILL

/s/ Ford Warwick
FOREMAN

WITNESS (ES) :

Sgt. D. C. Benson

~~Deputy-Sheriff-William-Raberg~~

~~Deputy-Sheriff-K.-J.-Cox~~

STATEMENT OF COUNSEL

(Tr. p. 6)

MR. McCLEOD: If the Court please, in my opening statement I would simply like to expand a little on what I believe the case will bring out as to what the Commonwealth Attorney has said. There was a soft ball game, as he said, held and, in fact, two of them or [and] three young men were from the Manassas area where there were members of their team which was to play down here. They got a fourth one who was a longstanding friend of theirs, a good friend, to bring down here. They spent the night

here. They played one afternoon and spent the night. They were to play again the next day.

* * * * *

The four young men were all arrested and [Tr. p. 7] all charged. Three of them have been tried and convicted of mere possession. The case will show, I think, Your Honor, that this was a group of four young men who had a certain amount of marijuana. Undoubtedly they used it as an illegal thing, but we have singled out one of four -- all were in the same possession -- to the charge with a felony. The others were charged, at least some of them were, but the charges were reduced. Those other three are all on the first offense probation system now.

I think the case will show that there is no distinguishing feature between the case of any of the young men. This is a party of young men who did use the marijuana and came into the county. They were all guilty of the possession but I maintain that not all of them as a group were guilty of possession of intent to distribute. This was their own pot, which was an appropriate amount of four people to use, and it was in their possession solely for that purpose.

TESTIMONY OF DONALD CLAYTON BENSON - Direct

(Tr. p. 9)

Q Where did you search the automobile and how long did you go about that?

A The vehicle which was a 1967 Chevrolet owned and operated by, or registered to a Mr. Ronald Wayne Dutton of Manassas, Virginia. I stopped the vehicle or located the vehicle at Lively Recreation Center on a ballpark off of Route 201 in Lancaster County. I was looking for the vehicle at approximately ten-fifty that morning.

Q Did you already have the description of the automobile that you were looking for?

A Yes, sir.

Q Go ahead.

A I was leaving the ballpark. I met this [TR. p. 10] vehicle coming off of Route 201 into the entrance of the ballpark. The vehicle matched the description I was looking for right down to the license plate number. I then turned around on the vehicle and followed it directly into the ballpark. When the vehicle stopped, I stopped directly behind it, Deputy Rayburn and myself. We approached the vehicle and got everyone out. I recognized the operator to be by the driver's license Ronald Wayne Dutton, the defendant, and also by the registration of the vehicle which showed that it belonged to him. I put Mr. Dutton in the police vehicle and I advised him why I had stopped him. Then we searched his car for probable cause.

Q This was Deputy Rayburn and you?

A Yes, sir.

Q What did you find as it relates to this particular case, not as it relates to anyone else in this

case?

A When a third deputy arrived, Deputy Young, I had him watch all four individuals outside. Deputy Rayburn and myself then proceeded to search the vehicle in question. I searched the right side and Deputy Rayburn approached from the other side. During the search of the vehicle, underneath of the driver's seat, was located a small individually wrapped bag of marijuana, approximately a half ounce under the seat. Further I pulled out a large [TR. p. 11] zip-lock plastic bag which contained four individually wrapped plastic bags containing what appeared to be four separate ounces of marijuana.

Q Who was driving the car when you stopped them?

A The defendant.

* * * * *

Q (Continuing) Mr. Benson, I will hand you a certificate of analysis dated July 18, 1978 from the Commonwealth of Virginia, Division of Consolidated Laboratories Services, Bureau of Forensic Science, and ask you [Tr. p. 12] if you have seen this before today?

A Yes, I have.

Q Would you indicate which items on that list are the items that you have just spoken of which was taken from underneath the seat of the driver's side?

A Item No. 1 and Item No. 2.

Q Would you turn to the back and say what

the report is as to the material findings of the description of this material?

A The results of the examination: Green brown plant material from Items 1, 2, 9, 10 and residue from Items 3, 4, 6, and the seeds in the Item 7 were found to contain marijuana, a Schedule I controlled substance. Found was ninety grams plant material. Percentage of germination of seeds was sixty percent.

Q Is it not true that the ninety grams is the composite of everything in the car and does not address specifically what was found under the driver's seat; is that correct?

A That is what the lab report says, yes, sir.

MR. PURRINGTON: I would offer this as Commonwealth's Exhibit No. 1.

THE COURT: Certificate of Analysis dated July 18, [Tr. p 13] 1978, will be entered as Commonwealth's Exhibit No. 1.

NOTE: The aforementioned Certificate of Analysis was entered into evidence and marked as Commonwealth's Exhibit No. 1.

Q (Continuing) Did you all have any conversation with the defendant? First let me ask you if he made any statement to you?

A Yes, sir. A few words after the search, and after he was advised of his rights, he made a few state-

ments.

Q What did he say?

A After I found the marijuana under the seat and so forth, I placed the subject under arrest. I placed him in my police vehicle along with the other subjects. At this time I advised him of his rights and I asked him if he understood his rights, and he said he did. At this point I asked him if he would like to make any statement. At this time the subject as I recall made the statement, "What can I say? We just came down here for a soft ball tournament." And then I made the statement, "Well, you should have left this stuff home." And he realized "Yes, I guess you are right, man."

DONALD CLAYTON BENSON - Cross-Examination.

(Tr. p. 15.)

Q How many people did you testify were in the vehicle?

A Four.

Q Did you determine whether according to the statement you had received, or any observation you made [Tr. p. 16] that they were all travelling together to this county?

A They were altogether at the time I observed them and stopped.

Q Was there any statement made to you?

A The statement by Mr. Dutton.

Q Did he make the statement that they were all together?

A No, sir.

Q In other words you did not inquire about that?

A Inquire about that, no, sir.

Q Who were the others?

A The other subjects were Isaac Robert Brooks, age twenty; Fred Allen Brown, age twenty-one; and Joseph Charles Watts, age twenty. All were from Manassas, Virginia.

Q Were any of them charged on the basis of possession?

A All of them were charged at the time of the arrest with same charge. When they came to trial it was reduced to possession, simple possession from the other search of the vehicle.

* * * * *

[Tr. p. 17]

Q (Continuing) Mr. Benson, are you aware of the conversion table between the average [avoirdupois] ounce and the metric milligram?

A No, I am familiar with the street terms. [Tr. p. 18] Of course, a nickel and a dime bag, a nickel bag would be a half ounce and a dime would be a full ounce according to the street terms.

MR. McCLEOD: I think the Court has taken judicial notice of the measurements in the code.

THE COURT: Yes, sir.

Q (Continuing) I believe there are twenty-six fractions of grams per ounce. You have testified, sir, that the total on Items 1 and 2 appeared to you to be of a half ounce and four ounce packages which would be four and a half ounces?

A Yes, sir.

Q Which would be considerably over ninety grams and only ninety grams was turned in; are you aware of that?

A Yes, sir.

Q There was some other traces of marijuana and seeds and so forth. Well, for instance, Item No. 9 and Item 7 which were included also with Item 10, all which were included in that ninety grams; isn't that correct?

A Yes, sir, according to the report the ninety grams would appear to be covering all items that was admitted.

STATEMENT BY THE COURT

[Tr. p. 29]

THE COURT: I think there is a distinction between a situation of the defendant in this proposition and a distinction of the other three people. It is his automobile. He is operating it and underneath the seat right by him are several packages, separate packages of marijuana. It was not divided among all of them. It is his automobile and I think all of the facts and circumstances of the case

indicate he had it in his possession with intent to distribute. For that reason we have to find him guilty of possession of marijuana with intent to distribute.

We will so find him guilty. We will get a pre-sentence report before we impose any sentence.

COMMONWEALTH'S EXHIBIT NO. 1.

[The following is the body of the Exhibit, omitting the letterhead and the jurat which are admitted to be in proper form. For admission of the Exhibit, see this App. p. 5]

CERTIFICATE OF ANALYSIS

July 18, 1978.

TO: Sheriff
Lancaster County
Lancaster, VA 22503

Re: Drug Analysis

Attention: Sgt. D. C. Benson

FS Lab # 77-09226
Examiner: Delbert T.
Agee

Your Case # ---
Victims ---

Suspect(s) DUTTON, Ronnie Wayne
BROOKS, Issac Robert
BROWN, Fred Allen
WATTS, Joseph Charles

Laboratory: Central
P. O. Box 999
Richmond, VA 23208

Evidence Submitted By: Sgt. Benson Date Received: 6-19-78

DESCRIPTION:

One (1) brown sealed envelope containing the following items:

#1- One (1) plastic bag containing a green-brown plant material.

#2- One (1) zip-lock bag with four (4) plastic bags with green-brown plant material.

#3- One (1) pipe.

#4- One (1) glass pipe.

- #5- One (1) plastic bag containing a clip, pippette, and cigarette papers.
- #6- One (1) black pipe.
- #7- One (1) amber vial containing seeds.
- #8- One (1) vial containing a cigarette butt.
- #9- One (1) gray canister containing green-brown plant material.
- #10-One (1) black canister with a small amount of plant material.
- #11-One (1) white envelope containing bingo blotter paper.

RESULTS:

The green-brown plant material from items 1, 2, 9, 10 and residue from items 3, 4, 6, and the seeds in item 7 were found to contain Marijuana, a Schedule I controlled substance.

Found: 90 grams plant material

Percentage of germination of seeds was 60%

Items 5 and 11 were negative for controlled drugs.

ORDER OF COURT - ENTERED NOVEMBER 21, 1978.

(Record, P. 14.)

ORDER - FELONY

This day came again the Attorney for the Commonwealth and Ronnie Wayne Dutton, age 20, who stands indicted for a felony, to-wit: "Possession of a controlled drug, to-wit: Marijuana, with Intent to Distribute" appeared according to the condition of his recognizance, and came also William B. McLeod, his attorney.

Whereupon the accused was arraigned and after private consultation with his counsel, pleaded not guilty to the Indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law; after which the Attorney for the Defendant moved the Court to reduce the charge to a misdemeanor, which motion was overruled by the Court, and to which ruling the defendant by Counsel excepted; and the Court having heard the evidence and argument of Counsel finds the accused guilty of "Possession of a controlled drug, to-wit: Marijuana, with Intent to Distribute", as charged in the Indictment.

The Court, before fixing punishment or imposing sentence, directs the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, on the 8th day of January, 1979 at 9:30 o'clock A.M., and sentencing is now set for the 8th day of January, 1979 at 9:30 o'clock A.M., to which time this case is continued.

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.

And the defendant was allowed to depart for his appearance on the 8th day of January, 1979 at 9:30 o'clock A.M.

ORDER OF COURT - ENTERED JANUARY 8, 1979.

(Record, P. 24.)

ORDER - FELONY

This day came again the Attorney for the Commonwealth, and Ronnie Wayne Dutton, age 21, who stands convicted of a felony, to-wit: "Possession of a controlled drug, to-wit: Marijuana, with Intent to Distribute", as charged in the indictment, appeared according to the condition of his recognizance, and came also William B. McLeod.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the accused.

Thereupon 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, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced 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 is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of five years, of which term the Court suspends the execution of three (3) years upon the conditions that he keep the peace and be of good behavior for ten (10) years with supervision for two (2) years after his release from the penitentiary; the Court doth suspend the execution of sentence until January 12, 1979 at 6:00 o'clock P.M.; and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$189.90 by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed 1 days credit for the time spent in jail awaiting trial.

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.

And the prisoner is allowed to depart upon his recognizance for his appearance at the Lancaster Jail on January 12, 1979 at 6:00 o'clock P.M.

ASSIGNMENT OF ERROR

(Petition for Appeal, p. 3.)

Assuming but not admitting that the defendant possessed the marijuana, the judgment of the Court that he possessed it with intent to distribute is not supported by the law or the evidence in that the total amount attributable to all four occupants was less than 3.17 ounces and the marijuana attributed to the defendant was in the typical form in which such quantities are purchased for personal use.