

Selected Appellate Decisions for Law Enforcement Officers

June 1, 2014 – June 1, 2015

- **U. S. Supreme Court**
- **Virginia Supreme Court**
- **Virginia Court of Appeals**



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Please refer to

2015 Appellate Update Master List

for a complete listing of new cases
of interest to law enforcement officers.



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4th Am. — Search Warrants

Riley v California and *U.S. v Wurie*

573 U.S. ____ (2014)

- U.S. Supreme Court Cases

Riley v California 573 U.S. ____ (2014)	United States v Wurie 134 S. Ct. 999 (2014)
<ul style="list-style-type: none">• Riley was arrested for possession of loaded firearms.• Subsequent to arrest, officers found and searched his smartphone without obtaining a warrant for its contents.• The phone contained various materials connecting Riley to an earlier shooting and gang activity.• Riley was convicted of involvement in that shooting.	<ul style="list-style-type: none">• Wurie was arrested for selling narcotics.• Incident to arrest, officers seized his older-style “flip” phone.• The phone was receiving calls from a location called “my house.”• Officers opened the phone and used the information inside to locate Wurie’s house.• Officers obtained a search warrant on the house and discovered drugs and firearms.

4th Am. — Search Warrants

Riley v California and *U.S. v Wurie*

Holding: Convictions Reversed

- Police must obtain a search warrant before searching a cell phone seized incident to an arrest.
- Exceptions:
 - Exigent circumstances may exist.
 - The body of the phone may be physically examined, e.g. to determine if there is a razor blade hidden in the case.
- Officers may use “Faraday bags” or aluminum foil to prevent phone from receiving a signal and being wiped remotely.



4th Am. — Search Warrant

Harris v Commonwealth

Unpublished

- Defendant, a registered sex offender, sexually assaulted a child in his home and videotaped the offense.
- State police officer obtained a search warrant for defendant's home that sought items including computer systems and digital storage media.
- Officer located a video camera and videotape that recorded the assault. Defendant claimed videotape was outside scope of the search warrant.
- **Held: Affirmed.**
- Court ruled that videotape is a form of magnetic media and fell under scope of the search warrant.



4th Am. — Search Warrant

Commonwealth v Dawson

Unpublished

- Officers could smell marijuana outside Defendant's residence. They knocked on his door and detained him and his friends.
- Officers conducted a "protective sweep" of the interior of the residence, exited, and obtained a search warrant.
- The search warrant noted the odor coming from the residence, but additionally noted that officers observed baggies of marijuana inside the residence while conducting the protective sweep.
- The trial court suppressed the evidence; CA appealed.



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4th Am. — Search Warrant

Commonwealth v Dawson (con't.)

Unpublished

- **Holding: Evidence Admissible**
- A search warrant is not invalid simply because it contains tainted evidence.
- The odor of marijuana, alone, was sufficient to justify the search.
- Distinguish from *Murray*, where the entire search was unlawful due to the initial, unlawful entry. Here, the purpose of the illegal protective sweep was for officer safety and not to look for evidence.



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4th Am. — Search Warrant

Flashback: *Florida v Jardines*

133 S. Ct. 1409 (2013)

- Officers brought drug-sniffing dog onto Defendant's porch. The dog alerted, and a search warrant was issued for the house.
- **Holding: Illegal Search.** The use of a drug-sniffing dog on a front porch constituted a warrantless search.
- "Curtilage" = the area surrounding and associated with the home. Curtilage is part of the home for 4th Amendment purposes.
- Officers have an implied invitation to approach the house to speak to the owner, but not to conduct a search.



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4th Am. — Traffic Stop

Sanders v Commonwealth

___ Va. App. ___ (2015)

- Officers used a drug-sniffing dog in a motel hallway.
- The dog alerted outside Defendant's room and a search warrant was obtained.
- **Holding: Evidence Admissible**
- While a motel room has protections similar to a home, the hallway outside the motel room is not "curtilage" under *Florida v Jardines*.
- A warrant is not required to use a drug-sniffing dog in a motel hallway.



4th Am. — Traffic Stop

Heien v North Carolina

135 S. Ct. 530(2014)

- North Carolina law requires that only one functioning taillight must be operational; however, the law was not clearly written and the courts had not clearly interpreted it this way.
- Officer mistakenly believed the law required that both brake lights be operational.
- Officer stopped Defendant for having only one operational brake light and discovered a large quantity of drugs.



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4th Am. — Traffic Stop

Heien v North Carolina (con't.)

135 S. Ct. 530 (2014)

- **Holding: Evidence Admissible**
- Reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition.
- That mistake must be objectively reasonable.
- What is a reasonable mistake?
 - A mistake a reasonably well-trained officer would make.
 - NOT a mistake based on an officer's "subjective understanding" of the law or based on "a sloppy study of the laws he is duty-bound to enforce."



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4th Am – Traffic Stop

Mason v Commonwealth

___ Va. App. ___ (2015)

- Reversing earlier panel decision.
- Defendant was driving with a parking pass measuring 3” x 5” hanging behind his mirror.
- Officer stopped Defendant and discovered narcotics.
- **Holding: Evidence Admissible.**
- The pass could obstruct a driver’s view, creating reasonable suspicion.
- Not relevant whether the officer himself actually believed the facts were suspicious.
- Question is whether reasonable suspicion exists under the objective facts.



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4th Am — Traffic Stop

Pork v Commonwealth

Unpublished

- Officer approached Defendant in his vehicle and informed him he was investigating a call for a suspicious vehicle.
- Officer noticed a firearm in the back seat, within Defendant's reach.
- Officer asked Defendant if there were any weapons in the car. Defendant did not answer but his eyes shifted right.
- Officer ordered him out of the car. He concealed his right hand between the seat and center console. Officer ordered him to reveal his hand, but he refused to comply.
- Officer ordered Defendant out of the car at gunpoint.
- Heroin was discovered in Defendant's pocket



4th Am – Traffic Stop

Pork v Commonwealth (con't.)

Unpublished

- **Holding: Evidence Admissible (possession of heroin)**
- Defendant was not seized until he complied with officer's command to step out of the vehicle.
- At the point of seizure, Officer had developed reasonable suspicion that the Defendant was carrying a concealed weapon, and therefore was armed and engaged in criminal activity.



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4th Am. — Traffic Stop

Billups v Commonwealth

Unpublished

- Police, through binoculars, observed two men engage in hand-to-hand transaction. Defendant appeared to take possession of an item.
- Defendant left in a vehicle driven by a third person.
- Officers stopped the vehicle, obtained consent to search, and located cocaine in the car.
- **Holding: Conviction Upheld**
- Hand-to-hand transaction in a high-drug area provided reasonable suspicion.
- Officer's training and experience provided that basis.



4th Am. — Traffic Stop

Creekmore v Commonwealth

Unpublished*

- Defendant stopped his car behind a police car.
- Officer shined his spotlight on Defendant, then turned it off and approached.
- Officer asked for ID, Defendant had none.
- Officer ran Defendant to cite him for driving without a license in possession.
- Discovered Defendant's license was revoked.

*2/11/14 – Technically last year's case but worth repeating.



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4th Am. — Traffic Stop

Creekmore v Commonwealth (con't.)

Unpublished

- **Holding: Conviction Upheld**
- The initial encounter was consensual.
- Using the spotlight was not a “seizure.”
- Officer did not block the Defendant’s egress.
- When the officer asked for identification, he was not exercising any authority to do so, but merely asking if Defendant would voluntarily produce his license.



4th Am. — Traffic Stop

Commonwealth v Rosser

Unpublished

- Officer received a BOLO for a gold Nissan Maxima driven by a bald male connected with “drug activity”
- BOLO was based on an anonymous tip.
- Officer saw the car and followed it briefly.
- Defendant turned abruptly. Officer considered this evasive behavior.
- Officer did not observe any traffic violations, but stopped the vehicle.
- Marijuana was located in the vehicle, and Defendant had a suspended license.



4th Am. — Traffic Stop

Commonwealth v Rosser (con't.)

Unpublished

- **Holding: Evidence Inadmissible**
- Motion to suppress was properly granted, as in *Harris* (258 Va. 576)
- Lawful behavior can provide reasonable suspicion when it is evasive, but an abrupt turn was not sufficiently evasive.
- Distinguish from recent U.S. Supreme Court case *Navarette v California*. There the tip specifically described criminal behavior through a recorded 911 call that could be verified, traced, or justifiably relied on, and the tip was made minutes before the arrest.
- The BOLO here rested on an anonymous, vague tip.



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4th Am. — Traffic Stop

Wilson v Commonwealth

Unpublished

- Officer stopped car for not using a turn signal.
- Officer testified that the lack of a turn signal might have affected his own vehicle's movements.
- There were other cars in the general area.
- Drugs and a gun were found on the passenger.
- **Held: Affirmed.**
- Failure to use a turn signal is sufficient reasonable suspicion *provided that other vehicles are in the vicinity and "may" be affected by the un-signaled turn.*



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4th Am. — Stop

Commonwealth v Mosley

Unpublished *

- Officers observed Defendant walking alone on public housing property in violation of no-trespassing rules.
- Officers knew Defendant to be a habitual trespasser.
- Defendant fit description of suspect in an incident at the property the night before.
- Defendant appeared nervous and repeatedly put his hands in his pockets, against instructions.
- Officers initiated a pat-down. Defendant resisted.
- Officers noticed a handgun in Defendant's jacket during the struggle.



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4th Am. — Stop

Commonwealth v Mosley

Unpublished *

- **Holding: Evidence Admissible**
- Officers had reasonable suspicion to conduct pat-down.
- Totality of the Circumstances
 - Nervous and suspicious behavior
 - Suspect in prior case
 - Trespassing
- Distinguish from *Roulhac* - placing hands in pockets is NOT enough, by itself, to justify a pat-down

*2/11/14: Technically last year's case but worth repeating.



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4th Am. — Stop

Commonwealth v Vick

Unpublished

- Officers found Defendant asleep on the metro. He was escorted off the train. They asked for his name and he provided ID.
- While holding his ID, officers asked his permission to search his backpack and he agreed.
- The backpack contained marijuana and PCP.
- **Holding: Evidence Not Admissible**
- A reasonable person would not have felt free to leave given that he was ordered and escorted off a train and the officers were holding his ID.



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4th Am. — Stop

Parker v Commonwealth

Unpublished

- Defendant was riding a bicycle on public housing property.
- Officers asked to speak to him and he agreed.
- He provided his ID and officers issued a barment notice, banning him from the property.
- After returning the ID, the officer asked to look at the bike's serial number. Defendant agreed, and the bike was determined to be stolen.
- Defendant was arrested and drugs were found on his person.



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4th Am. — Stop

Parker v Commonwealth (con't.)

Unpublished

- **Holding: Evidence Admissible**
- Once officers returned the ID and issued the barment notice, Defendant was free to leave.
- The conversation about the bicycle was a consensual encounter. Nothing in the officers' words or actions suggested the Defendant was not free to leave.
- Officers were not required to inform the Defendant that he was free to leave.



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4th Am. — Stop

Minter v Commonwealth

Unpublished

- Officers drove slowly past Defendant, who began to walk faster and crossed a muddy pool to get away.
- Officers stopped their vehicle and he agreed to speak
- Defendant appeared was stammering, appeared nervous and was reaching into his pockets against instructions.
- Officers conducted a pat-down and asked if he had any weapons. He stated he did, and officers located a handgun.



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4th Am. — Stop

Minter v Commonwealth (con't.)

Unpublished

- **Holding: Evidence Not Admissible.**
- Officers seized the Defendant as soon as they conducted the pat-down.
- Defendant walked away from officers, but they were driving an unmarked vehicle.
- Defendant was nervous, but provided his correct name and answered their questions.
- Putting hands in pockets was not enough to provide reasonable suspicion.



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4th Am. — Stop

Gilliam v Commonwealth

Unpublished

- Defendant attempted to break into a residence.
- Police responded to a call and found Defendant, who matched the caller's description.
- Defendant started to look around and quickly walked away, looking for a place to run.
- Defendant was stopped and cuffed and later ID'd as the perpetrator.
- **Holding: Evidence Admissible**
- Suspect's unauthorized presence on the premises of a suspected burglary provides reasonable suspicion.
- Attempted flight additionally provides such suspicion.



Sufficiency – Driving Suspended

Barden v Commonwealth

___ Va. App. ___ (2015)

- Defendant's license reflected DUI convictions in 2008, followed by 12 month license suspensions.
- His license was then suspended for failure to pay fines and costs.
- Defendant then paid those fines and costs, but had failed to pay the reinstatement fee and obtain a new license.
- **Holding: Conviction Overturned**
- Defendant's license was no longer suspended after he paid the fines and costs.
- Must be tried under § 46.2-300, No Operator's License.



Sufficiency — DUI

Sarafin v Commonwealth

___ Va. ___ (2014)

- Defendant drove while intoxicated and fell asleep in his private driveway with the key in the auxiliary position.
- Officer woke Defendant and arrested him for DUI.
- **Holding: Conviction Upheld**
- Defendant was the operator of the vehicle.
- No requirement that vehicle be operated on a highway to sustain a DUI conviction — that requirement is unique to mopeds and instances where the Commonwealth relies on implied consent.
- No requirement that Defendant intended to operate vehicle.



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Sufficiency – Reckless Driving

Blevins v Commonwealth

63 Va. App. 628 (2014)

- Defendant was on the interstate, driving between 75 and 80 mph on a rainy night.
- While attempting to pass on the right, Defendant struck another vehicle, killing the passenger.
- **Holding: Conviction Upheld**
- Evidence of the high-speed, aggressive driving, in the rain, at night, was sufficient to prove reckless driving



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Sufficiency — Eluding

Jones v Commonwealth

__ Va. App. __ (2015)

- Officers used lights and sirens to stop Defendant for DUI.
- They ordered him to remove keys, but instead he drove away while officers were partially inside vehicle, causing them to fall to the ground.
- Defendant drove away in a reckless manner.
- **Held: Affirmed.**
- Court rejected the argument that he was not guilty of eluding because his behavior took place after stop.



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Sufficiency — PWID

Wallace v Commonwealth

__ Va. App. __ (2015)

- Responding to a tip, police found Defendant in a car with 29 small bags of marijuana in the center console.
- Total weight was 19.5 grams.
- Detective testified that 29 small bags was inconsistent with personal use.
- **Held: Affirmed.**
- Court rejected argument that lack of scales, cash or guns left the evidence insufficient.
- Packaging was sufficient to demonstrate PWID.



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Sufficiency — Possession of Cocaine

Brown v Commonwealth

Unpublished

- Officer smelled marijuana coming from car. Another officer noticed marijuana on floorboard.
- Defendant, who had been driving, consented to a search.
- Officers located cocaine in cup holder.
- Defendant denied ownership of car and said that he had looked in cupholder and there was no cocaine.
- **Held: Affirmed.**
- Statement that he looked in cupholder demonstrated dominion and control.



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Sufficiency — Concealed Handgun

Hodges v Commonwealth

___ Va. App. ___ (2015)

- Defendant parked along a highway and went to sleep with engine running.
- Handgun was in center console.
- Officer could not recall whether the console was latched or fastened closed.
- **Holding: Conviction Overturned**
- The Commonwealth bears the burden of proving that the handgun was not secured in a container. (It is not an affirmative defense).
- Since the officer could not remember, the evidence was insufficient.



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Sufficiency — Protective Orders

Stephens v Rose

___ Va. ___ (2014)

- Civil case.
- Respondent and victim ended their relationship years before, but respondent began to contact victim obsessively.
- Victim informed respondent that any contact was unwelcome and threatened to call the police.
- Respondent continued to call her in the middle of the night and showed up at her house at 7 am with flowers.
- Victim obtained a protective order. Respondent challenged that order.



Sufficiency — Protective Orders

Stephens v Rose

___ Va. ___ (2014)

- **Holding: Protective Order Upheld**
- Va. Code §19.2-152.10 allows a court to issue a protective order when the victim is or has been subjected to an act of violence, force, or threat.
- Stalking can be such an act.
- Evidence that respondent received notice that his contacts were unwelcome supports the finding that respondent should have known his contacts would cause fear.
- Victim's fear was reasonable here. She need not specify exactly what harm she fears.



Sufficiency — Protective Order

Wyant v Commonwealth

Unpublished

- Defendant was subject to a protective order.
- He drove to victim's house, stood on her property line and took pictures of her and her home.
- Victim was looking at the Defendant from approximately 50 feet away.
- **Holding: Conviction Upheld**
- Defendant had “contact” with the victim.
- His contention that he did not know if the victim was present was rejected under the facts.



Sufficiency — Protective Order

Walton v Commonwealth

Unpublished

- Defendant was subject to a protective order.
- Defendant approached victim aggressively with his dog while carrying something in his hand.
- Victim sat in his truck, nervous and scared, while Defendant filmed him and the dog circled the truck, growling and barking.
- **Holding: Conviction Upheld**
- Victim was in fear during the violation and Defendant's actions were threatening.
- Defendant was responsible for his dog's actions.



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Sufficiency — Strangulation

Dawson v Commonwealth

63 Va. App. 429 (2014)*

- Defendant struck the mother of his child and pinned her with his arm, choking her unconscious.
- She suffered a fractured rib, a ligature wound around her neck and general pain and bruising.
- **Holding: Conviction Upheld**
- Bodily injury means the same thing in strangulation cases as in felony assault cases.
- **“Bodily injury” = “any bodily hurt whatsoever”**

* 5/24/14 - Technically, last year’s case but worth repeating.



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Sufficiency – Strangulation

Moore v Commonwealth

Unpublished*

- Defendant struck and strangled his girlfriend.
 - She suffered a scratch on her neck, minor swelling of her forehead, and had blood on her shoulder. She later suffered swelling on her neck.
 - §18.2-51.6 requires proof of “bodily injury” to prove strangulation.
 - **Holding: Conviction Upheld**
 - **“Bodily injury” means any “bodily hurt” whatsoever.**
 - **No requirement that victim receive medical attention or suffer residual effects.**
- * 5.6.14 – Technically, last year’s case but worth repeating



Sufficiency — Abduction

Norman v Commonwealth

Unpublished

- Defendant smashed his way into victims house, tearing the doors off the hinges and assaulting the victim.
- In view of the victim's sister, defendant marched victim out of the house.
- Sister testified to these events; the victim recanted.
- **Held: Affirmed.**
- Court ruled that trial court was entitled to believe the sister and reject the testimony of the victim.



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Sufficiency — Abduction

Norman v Commonwealth (con't.)

Unpublished

- The court wrote:

Trial courts are confronted on a daily basis with victims of DV who are reluctant to bring to justice those who frighten and abuse them, whether from motives of affection, financial independence, ongoing fear or some other reason. Trial judges need not blind themselves to these realities when they make factual determinations.



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Sufficiency – Malicious Wounding

Howard v Commonwealth

Unpublished

- Defendant beat the mother of his children repeatedly, putting her in the hospital for two days. The attack left her bleeding from the head and scarred.
- Convicted of Malicious Wounding
- **Holding: Conviction Upheld**
- Evidence must show an intent to permanently injure the victim, i.e., to maim, disable, disfigure, or kill.
- Evidence met this burden.



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Sufficiency – Malicious Wounding

Conway v Commonwealth

Unpublished

- Defendant punched victim at least 3 times with his fist.
- Victim suffered swelling and hemorrhages to both eyes, plus bruises to face.
- E.R. doctor testified “very severe force” was used.
- **Holding: Conviction affirmed.**
- Court rejected argument that a weapon must be used to cause wound – fists are sufficient.



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Sufficiency — Attempted Capital Murder

Howard v Commonwealth (con't.)

Unpublished

- Officers told him to stop, but Defendant tightened grip, even after being shot in the back.
- **Held: Affirmed.**
- Court found that, despite his intoxication, Defendant had the specific intent to kill the officer.
- Court rejected argument that Defendant only wanted to escape.



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Sufficiency — Contributing to Delinquency

Miller v Commonwealth

Unpublished

- Defendant left her 2 year old in her unlocked car, double-parked, with the engine running and windows open as she visited a grocery store.
- Defendant asked an employee inside to watch her car “for five minutes,” but did not tell the employee her child was inside. The employee watched the car for over 30 minutes before he had to leave.
- Defendant returned, took her keys from the car and returned inside for another 30 minutes.
- Defendant convicted of Contributing to the Delinquency of a Minor.



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Sufficiency — Burglary

Grimes v Commonwealth

__ Va. __ (2014)

- Defendant was convicted of burglary for breaking into crawl space under a house. It had no direct access to house. Defendant stole copper pipes.
- **Held: Affirmed**
- Court ruled crawl space was structurally part of the house, observing that the space was within the 4 walls and under the same roof.
- Crawl space contained integral utilities and was functionally interconnected and contiguous to the house.



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Sufficiency — Grand Larceny

Winslow v Commonwealth

__ Va. App. __ (2015)

- Defendant was convicted of stealing money and 2 laptops from a parked car. His fingerprints were found on a box that had contained victim's money. The lap tops had been near the box.
- Victim did not know defendant and had never let him in the car.
- **Held: Affirmed.**
- Court found that fingerprints are an “unforgeable signature.”
- Court rejected argument that CA must exclude any other possible source of the fingerprints.
- It was reasonable to assume person who took money also took the laptops.



Sufficiency — Contributing to Delinquency

Miller v Commonwealth (con't.)

Unpublished

- **Holding: Conviction Upheld**
- Defendant's conduct rendered the child abused or neglected because the child suffered an unreasonable absence of her parent.
- Leaving a stranger in charge of her child was not reasonable or sufficient.
- No requirement to prove child suffered actual harm.
- Defendant acted willfully in a criminally negligent manner.



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Sufficiency — Indecent Liberties

Farhoumand v Commonwealth

__ Va. __ (2014)

- Defendant molested his younger cousin for years.
- Victim testified that sometimes he put her hands on his genitals and sometimes he exposed himself.
- He was charged with several counts of Indecent Liberties.
- **Held: Affirmed in part, reversed in part.**
- Court held that the word “expose” as used in §18.2-370 requires a visual display – indictments alleging touching were dismissed.



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Sufficiency – PWID

Wallace v Commonwealth

Unpublished

- Police found Defendant in a car with a bag containing 29 smaller bags of marijuana in the center console. Total weight = 19.5 grams.
- A detective testified as an expert that the quantity of drugs, divided up into 29 bags, was inconsistent with personal use.
- **Holding: Conviction Upheld**
- This is sufficient evidence of guilt. Scales, cash, firearms, etc., were not required.



Sufficiency — Grand Larceny

Neblett v Commonwealth

Unpublished

- Defendant stole Victim's phone.
- Victim claimed she purchased the phone one month prior for \$600. She admitted she did not know the value of a equivalent used phone.
- Defendant argued that without evidence of depreciation the trial court would be speculating on the value of the phone.
- **Holding: Conviction Upheld**
- Fair market value is the test of value in Grand Larceny.
- The original purchase price is admissible evidence of the fair market value.



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Sufficiency — Uttering

Goodwin v Commonwealth

__ Va. App. __ (2015)

- Stopped for traffic offenses, defendant provided a false name and signed summons with false name.
- Defendant argued the evidence did not prove that the sought to obtain “an object mentioned in the writing.”
- **Held: Affirmed.**
- Court held that by signing the summonses, defendant asserted that his name and signatures were “good and valid” and was therefore guilty of offense.



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Sufficiency — Conspiracy

Velez-Suarez v Commonwealth

__ Va. App. __ (2015)

- Defendant entered a store with his confederate, holding bags from a store that was not in the mall.
- Defendant and confederate selected clothing, entered the fitting room and then left separately.
- Store security found sensors and clothing with sensors cut off in the fitting room.
- A security officer witnessed Defendant leave the store with a coat. The coat was recovered abandoned with the security tag torn off.
- Police stopped Defendant and recovered wire cutters. His confederate possessed the stolen property.
- Defendant was convicted of Conspiracy to Commit Larceny and Destruction of Property.



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Sufficiency — Conspiracy

Velez-Suarez v Commonwealth (con't.)

___ Va. App. ___ (2015)

- **Holding: Convictions Upheld**
- An overt act must be proved for attempt, but not for conspiracy. Evidence was sufficient to show that Defendant conspired to steal property, no overt act must be proved.
- Although the evidence suggested that the confederate committed the destruction of property, everyone connected with carrying out a common design to commit a criminal act is concluded and bound by the act of any member of the combination, perpetrated in the prosecution of the common design



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Sufficiency – Resisting Arrest

Joseph v Commonwealth

___ Va. App. ___ (2015)

- Resisting Arrest case.
- Officer stopped Defendant, driving a car, and discovered several outstanding warrants.
- Officer attempted to take Defendant into custody.
- Defendant refused to comply, struggling, pulling away, and repelling attempts to handcuff him.
- Defendant remained in close proximity to the officer and never left the scene.
- **Holding: Conviction Overturned**
- “Resisting Arrest” requires “fleeing,” i.e. running away or moving out of officers’ immediate span of control.



Sufficiency — Criminal Contempt

Abdo v Commonwealth

___ Va. App. ___ (2015)

- **Defendant, a police officer**, appeared 9 minutes late for his court date in traffic court.
- Commonwealth was forced to nolle pros his cases.
- Judge noted three prior such instances and found Defendant in contempt.
- **Holding: Conviction Affirmed**
- It was proper to consider previous instances.
- No specific intent to act in contempt of court is required. Willfulness or recklessness satisfies a finding of criminal contempt.



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Inmate's Right to Resist

Burch v Commonwealth

Unpublished

- Defendant, an inmate, refused to return to his cell. Deputies attempted to restrain him. Defendant punched a deputy in the eye.
- At trial, Defendant asked the court to instruct the jury that excessive use of force gave him the right to use reasonable force to defend himself. The request was denied.
- **Holding: Conviction Upheld**
- Deputies were exercising lawful authority. Defendant, as an inmate rather than an arrestee, has no legal right to resist deputies and could not claim self-defense in this case.



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