

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Benton and Overton
Argued at Norfolk, Virginia

BENJAMIN BROTHERS, JR.

v. Record No. 0325-96-1

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
NOVEMBER 26, 1996

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF SOUTHAMPTON COUNTY
Westbrook J. Parker, Judge

Michael J. Lutke, Assistant Public Defender
(Office of the Public Defender, on brief),
for appellant.

Steven A. Witmer, Assistant Attorney General
(James S. Gilmore, III, Attorney General, on
brief), for appellee.

Benjamin Brothers, Jr., appeals his conviction of grand larceny in violation of Code § 18.2-95. We find that the evidence is insufficient to support the conviction and we reverse.

The parties are fully conversant with the record in this cause, and a recitation of the facts is unnecessary to this memorandum opinion.

When the evidence against the defendant is entirely circumstantial, "all necessary circumstances proved must be consistent with guilt and inconsistent with innocence, and must exclude any reasonable hypothesis of innocence." Reynolds v.

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

Commonwealth, 9 Va. App. 430, 440, 388 S.E.2d 659, 665 (1990) (quoting Inge v. Commonwealth, 217 Va. 360, 366, 288 S.E.2d 563, 567 (1976)). The evidence against Brothers, even in the light most favorable to the Commonwealth, showed merely that Brothers was present in the store the same day that the necklace was missing and that he showed some interest in the necklace. None of the defendant's actions indicates any criminal activity. Under these facts, we hold that the evidence is insufficient to prove beyond a reasonable doubt that Brothers committed a larceny.

Reversed and dismissed.