

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Coleman and Bumgardner
Argued at Richmond, Virginia

GARY W. WRIGHT, S/K/A
GARY WALTER WRIGHT

v. Record No. 0672-97-3

MEMORANDUM OPINION* BY
JUDGE SAM W. COLEMAN III
FEBRUARY 24, 1998

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF AUGUSTA COUNTY
Thomas H. Wood, Judge

Robert T. Garnett, Assistant Public Defender,
for appellant.

Linwood T. Wells, Jr., Assistant Attorney
General (Richard Cullen, Attorney General, on
brief), for appellee.

Gary W. Wright was convicted in a bench trial for breaking and entering a dwelling with the intent to commit larceny therein in violation of Code § 18.2-91. The sole issue on appeal is whether the evidence is sufficient to identify Wright as the person who broke into and entered the dwelling. Finding the evidence sufficient, we affirm the conviction.

When the sufficiency of the evidence is challenged on appeal, we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom. Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987).

Viewed accordingly, the evidence proved that David Walker

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

vacated his house after it was damaged by flood waters. Late one afternoon, he returned to inspect the house. Walker testified that he looked through a window and saw Gary W. Wright walking around the inside of the house. A few minutes later, he saw Wright and another man walking between his house and a vacant house next door. Walker inspected his house and found that the back door which he had secured with boards had been forcibly opened. Walker entered the house and determined that a sewing machine was missing. He also noticed that a step ladder and a can of construction material had been placed under a ceiling fan in the living room. Walker testified that he had known Wright for twenty years and that he was certain that Wright was the man he had seen walking through the house.

Appellant contends that Walker was mistaken in identifying Wright as the person inside the house because he only saw the intruder for "a couple of seconds" and his ability to see into the house would have been impaired by the bright afternoon sunlight. However, the trial court, sitting as the finder of fact, believed Walker's testimony. "The trial judge's determination of the credibility of witnesses and the weight to be given to their testimony are questions exclusively within the province of the [trier of fact]." Long v. Commonwealth, 8 Va. App. 194, 199, 379 S.E.2d 473, 476 (1989) (alteration in original) (citation omitted). The Commonwealth's evidence was competent, was not inherently incredible, and is sufficient to

support beyond a reasonable doubt the trial court's conclusion that Wright was guilty of breaking and entering Walker's house with the intent to commit a larceny therein.

Accordingly, we affirm the conviction.

Affirmed.