

COURT OF APPEALS OF VIRGINIA

Present: Judge Annunziata, Senior Judge Duff and Judge Clements\*  
Argued at Alexandria, Virginia

ROBERTO CALDERON

v. Record No. 2132-99-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\*\* BY  
JUDGE CHARLES H. DUFF  
JUNE 27, 2000

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY  
F. Bruce Bach, Judge

Michael C. Sprano, Assistant Public Defender  
(Clinton R. Shaw, Jr., Assistant Public  
Defender, on brief), for appellant.

John H. McLees, Assistant Attorney General  
(Mark L. Earley, Attorney General; Thomas M.  
McKenna, Assistant Attorney General, on  
brief), for appellee.

Roberto Calderon, appellant, appeals his conviction for malicious burning of a school building structure. Appellant contends that the trial court erred by finding the evidence sufficient to prove that an actual burning occurred. For the following reasons, we find no error and affirm the conviction.

"On appeal, 'we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable

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\* Judge Jean Harrison Clements took part in the consideration of this case by designation pursuant to Code § 17.1-400, recodifying Code § 17-116.01.

\*\* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

inferences fairly deducible therefrom.'" Archer v. Commonwealth, 26 Va. App. 1, 11, 492 S.E.2d 826, 831 (1997) (citation omitted). The conviction will not be reversed "unless it is plainly wrong or without evidence to support it." Reynolds v. Commonwealth, 30 Va. App. 153, 163, 515 S.E.2d 808, 813 (1999).

Larry Lindsay was "performing locker duty" at Langston Hughes School when he noticed that a locker was on fire. Lindsay saw flames "coming out of the locker." In response to Lindsay screaming that there was a fire, Bill Stitch extinguished the flames with a fire extinguisher. Officer Garrett Bailey investigated the fire. Appellant admitted filling the locker with notebook paper and lighting the paper with a lighter. In a conversation with Bailey, appellant admitted setting the fire and showed Bailey the trashcan where he had thrown away the lighter. Bailey took pictures of the charred locker, and the pictures were admitted into evidence at trial. The trial judge viewed the pictures and noted that the lockers had been damaged by the fire. The trial judge said, "I mean it looks like the paint is charred on [the locker]." The damaged lockers had to be repainted.

The amount of "burning" necessary to support appellant's conviction pursuant to Code § 18.2-79 is "'any amount, provided there is a perceptible wasting of the fiber of the building or object which is the subject of arson.'" See Hancock v.

Commonwealth, 12 Va. App. 774, 779, 407 S.E.2d 301, 303-04 (1991) (citation omitted). Only a "slight burning" is necessary. See id. at 779, 407 S.E.2d at 304.

The trial judge considered and determined the credibility of the witnesses, heard the evidence that appellant stuffed paper into the locker and lighted the fire, viewed pictures of the locker taken after the fire was extinguished, and noted that the pictures showed that the locker was charred and damaged by the fire. Viewing the evidence and the pictures of the charred locker, the evidence was sufficient to prove beyond a reasonable doubt that a "burning" occurred, and therefore, was sufficient to support appellant's conviction for malicious burning. The photographic evidence supports the trial judge's decision, and we cannot say that the trial judge was plainly wrong or that his decision was without evidence to support it.

For these reasons, we find no error in appellant's conviction, and accordingly affirm.

Affirmed.