

1 VIRGINIA: IN THE CIRCUIT COURT OF PULASKI COUNTY

2 COMMONWEALTH OF VIRGINIA

3 v.

4 STEPHEN MATTESON EPPERLY,

5 Defendant

6
7 Stenographic report of all the testimony, together with the
8 motions, objections and exceptions on the part of the respective parties,
9 the action of the Court in respect thereto, and other incidents of the
10 trial of the case of Commonwealth of Virginia v. Stephen Matteson Epperly,
11 Defendant, tried at Pulaski, Virginia, on 11-17-80, before the Honorable
12 R. William Arthur in the Circuit Court of Pulaski County, Virginia.

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15 APPEARANCES:

16 EVERETT R. SHOCKLEY, ESQUIRE

17 Attorney for the Commonwealth

18 R. DAVID WARBURTON, ESQ., AND R. GLENNWOOD LOOKABILL, ESQ.

19 Counsel for the Defendant

20 STEPHEN MATTESON EPPERLY

21 The Defendant, in person and by Counsel

22
23 Reported by:

24 Miss Elinor E. Williams
25 Court Reporter
26 780 S. 4th Street, Apt. 1
Wytheville, Virginia 24382

I N D E X

(11-17-80)

DIRECT CROSS RE-DIRECT RE-CROSS

COMMONWEALTH WITNESSES

John Russell	9			
John Hall	12			
Robert H. Edwards	16	36	54	55
B. F. Shearwood	58	70, 90	90	96

ARRAIGNMENT				99
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MOTIONS

Motion of Commonwealth to revoke bond				3b
Motion of Defendant in limine to suppress evidence re tracking dogs				3g
Motion of Defendant in limine to suppress evidence re polygraph examination				6
Motion of Defendant for change of venue				98

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1 COURT: Let the record show that we are reconvened in a pre-trial hearing
2 in the case of Commonwealth v. Epperly. Gentlemen, I understand that you're
3 making a joint motion that this hearing be conducted in camera?

4 MR. WARBURTON: Yes, sir.

5 COURT: Commonwealth's attorney?

6 MR. SHOCKLEY: Yes, sir.

7 MR. WARBURTON: On behalf of the Defendant, we'll ask that it be held in
8 chambers, Your Honor.

9 COURT: Mr. Epperly, do you have any objection to having this hearing in
10 chambers?

11 MR. EPPERLY: No, sir.

12 COURT: Rather than open court?

13 MR. EPPERLY: I'd prefer to have it in chambers.

14 COURT: All right, now, what motion are we considering?

15 MR. WARBURTON: Do you have any evidence?

16 MR. SHOCKLEY: Yes, we have, I think, three things of major importance
17 for the Court to consider today. First of all, the Commonwealth would like the
18 Court to review the sufficiency of the bond posted by the Defendant's parents.
19 We have some matters to offer before the Court on that. Also, the Defendant,
20 prior to obtaining counsel, having counsel appointed for him, voluntarily took
21 a polygraph examination, which was administered by Mr. Sherwood of the Virginia
22 State Police in Wytheville. The Defendant, of course, Mr. Sherwood will be
23 here today to testify, I don't think he's here yet, but the results showed
24 deception when he was asked if he had killed Gina Renee Hall. The Commonwealth
25 here today has various evidence that it wants to offer and sincerely ask the
26 Court to allow it to introduce the results of the polygraph examination into

1 evidence. Those are the two motions that we have.

2 MR. WARBURTON: Your Honor, on that particular issue of the polygraph, I
3 have a written notice in limine regarding that polygraph for the Court to
4 consider. In addition, I have a motion in limine regarding certain allegedly
5 scientific tests done with trained dogs that I'd like the Court to review. As
6 to the order of how you want to take those three issues, that's up to the Court.

7 COURT: Let's take the bond first.

8 MR. SHOCKLEY: All right, sir. Judge, this matter, of course, is not set
9 to be heard until 11:00, we subpoenaed -.

10 COURT: Well, if you're not ready to proceed on it -.

11 MR. SHOCKLEY: Well, I don't know that it's absolutely necessary, if the
12 Court deems that it is, Mr. Deeson, Arthur Deeson (phonetic spelling) out of
13 Radford, apparently at the Defendant's parents' request, made an appraisal of
14 their home. I have it here in writing signed by Mr. Deeson, with photographs
15 of the house, and he has placed a fair market value on the house at sixty-
16 three thousand two hundred fifty dollars (\$63,250.00). I don't even think we
17 necessarily need to put Mr. Deeson on, although he was subpoenaed, I submit
18 to the Court that that valuation is just utterly ridiculous. Moreover, Mr.
19 Terwilliger here, last week, made a check at the court records in the city of
20 Radford. There are four (4) deeds of trust of record against the house. We
21 do not have the deeds of trust themselves. On the bond that was signed by the
22 Defendant's parents, a copy of which is here, they deduct from the fair market
23 value, mortgage and deeds of trust showing thirteen thousand dollars (\$13,000.00),
24 leaving a balance of fifty thousand dollars (\$50,000.00), \$50,250.00. Again,
25 after we checked the court records, we found four (4) deeds of trust, three (3)
26 of which were held by First and Merchants National Bank in the City of Radford,

1 one of which was held by First Federal in Radford. I placed calls to all of
2 these places, requesting that they send me a statement of the pay-off, and
3 we've received that in writing from First and Merchants, and I do not have the
4 one from First Federal, they either did not promptly get it in the mail, or
5 what, it would only boost the pay-off by about twelve hundred dollars (\$1200.00).
6 But the balance owing to First and Merchants alone is right at twenty thousand
7 dollars (\$20,000.00), seven thousand dollars (\$7,000.00) more than recited by
8 the Defendant's parents in the bond. We have Mr. (inaudible) also summonsed
9 for examination on these if you gentlemen have objection, we can cross-examine,
10 or examine him, on these deeds of trust.

11 COURT: Gentlemen, can we obviate this problem by having somebody else
12 go on the bond with the parents? Do you have such a person?

13 MR. WARBURTON: Yes, sir.

14 COURT: If you'll do that, why take the time to go through all this. That
15 would be the simplest way to -.

16 MR. WARBURTON: It may take a day or two, Your Honor, would it be possible
17 for the current bond to succeed through whatever days it takes, with due
18 diligence for us to secure another party?

19 MR. SHOCKLEY: Judge, we've gone through this before, and I would ask that
20 the Defendant be held in custody until such time as the bond is actually posted.
21 We've run into this problem before.

22 COURT: What problem?

23 MR. SHOCKLEY: People like in the case of -.

24 COURT: Oh, you mean other cases?

25 MR. SHOCKLEY: Yes, sir. Other cases.

26 MR. WARBURTON: Your Honor, at the moment, there's no evidence as far as

1 I know, that Mr. Shockley can proffer that there's been any problem with the
2 bond as far as leaving the Commonwealth of Virginia, or any untoward or any
3 illegal acts committed by the Defendant while he's been bonded for the last
4 week and three days. It would appear to me that the bond is sufficient,
5 amounts is the only thing in question, it's not a question of custody to protect
6 the citizens of this Commonwealth.

7 MR. SHOCKLEY: Again, it's beside the point, I submit to the Court. The
8 Court has set a bond which, you said on the bench one day, is this bond unfair,
9 or whatever, and at a bond hearing, you refused to lower it from \$50,000.00,
10 and if we're going to have \$50,000.00 as the figure, we ought to have \$50,000.00
11 worth of property to secure it.

12 COURT: Well, it's hard to argue with that logic. If you can get someone,
13 I gather from what you say you can get someone right away, maybe even today, or
14 tomorrow, certainly. But I will order that the Defendant be held until this is
15 done.

16 MR. WARBURTON: Would you ask him if we could have a day to check these
17 figures and see if they're correct?

18 MR. SHOCKLEY: Again, Judge, I don't know what type of bond or amount
19 would be posted, but I'd ask the Court to review that, I don't even think we
20 would need a, well, I would submit to the Court possibly a further appraisal
21 would, with all due respect to the Defendant and his parents, I don't see how
22 on earth that house could be worth \$63,000.00.

23 MR. WARBURTON: I can explain that very quickly if the Court will allow
24 me. The property is not just the house we're talking about. The house is
25 appraised at forty something, I believe. It's a large old rambling house. It's
26 got about nine (9) or ten (10) rooms. And the two lots next to it, see, this

1 is zoned Commercial, I assume Commonwealth checked this out, but this is zoned
2 Commercial, that side of the street, on Second Street, is zoned Commercial,
3 from Wirt Street all the way down, down for a couple more blocks. The property,
4 I went there to pick up the appraisal myself, Mr. Deeson, I didn't tell him
5 what it was for or anything else until he had completed his figures, I told him
6 it was for a bond, he didn't know what type of bond or anything else, but he
7 did the figures just at the Epperlys request, no knowledge of what they were
8 for. The two lots are commercial lots. Right down behind it, there's
9 commercial enterprises only about a block and a half or so from the Court House.
10 And the appraisal is based upon these being zoned Commercial. Also, there is
11 room there for two other dwellings under the zoning laws of the City of Radford.
12 So, it's quite, I mean, they'd been offered \$70,000.00 two years ago, for the
13 property, for the house and the two lots, or the adjoining lots. It's a very
14 long frontage, and it's clearly worth that as zoned Commercial. No doubt
15 about it, he was on the light side when he appraised it. His first reaction
16 was to put it right close to \$70,000.00. He thought, well, he'd better be on
17 the conservative side, not knowing what the bond was for, what the appraisal
18 was for, and the commercial lot's definitely valued at, a Seven-Eleven Store
19 there or anything else there, sold as a commercial lot, the lot would bring
20 considerably more than the residential lot. He had to take that into consid-
21 eration. He called the zoning people while I was in his office. So that's the
22 reason for that appraisal. In fact, it's a little bit on the light side. Of
23 course, with commercial zoning.

24 MR. SHOCKLEY: And I'd point out that the Commissioner of Revenue's
25 office in Radford has that property appraised as of the 1979 appraisal at 100%
26 of value -.

1 MR. WARBURTON: Isn't it 1977?

2 MR. LOOKABILL: As residential property.

3 MR. SHOCKLEY: As thirty-four thousand five hundred dollars (\$34,500.00)
4 in that area.

5 MR. LOOKABILL: For 1980, it's thirty-eight five (\$38,500.00).

6 MR. SHOCKLEY: And that includes both parcels of land as well.

7 MR. LOOKABILL: Well, that's as residential. But see, the fact is that
8 it's zoned Commercial. They've apparently appraised it as residential property,
9 but it's zoned Commercial.

10 COURT: Well, I know Mr. Deeson, and I know he has a reputation of being
11 a competent, conservative real estate man and appraiser. And unless some
12 evidence is introduced to show that he's just, for some reason or other, made
13 an egregious error in this case, I see no reason to question his figures. But,
14 his own figures show, and the letter from the bank shows that we don't have
15 fifty thousand dollars (\$50,000.00) net assets, and so, I will -.

16 MR. SHOCKLEY: May I also offer this into evidence, please, this -?

17 COURT: Well, I -.

18 MR. WARBURTON: I object to the entry of this, Your Honor, since it is
19 hearsay.

20 COURT: Well, if you object, I'll, can't let it in if it is hearsay.

21 MR. SHOCKLEY: Well, we're not here trying the merits of the matter, Your
22 Honor, and it's inconceivable to me that the rules of evidence in a hearing
23 in chambers on bond are as stringent as they would be in a court room, trying
24 the merits of a criminal case.

25 MR. WARBURTON: We're dealing with a man's liberty. I certainly hope
26 they would be as stringent.

1 COURT: All right, now, what's the next issue?

2 MR. SHOCKLEY: Well, is the Court of the opinion then that the bond is
3 insufficient at this time?

4 COURT: I've ruled that it is.

5 MR. SHOCKLEY: All right, sir. We need about \$20,000.00 more to --

6 COURT: And until whatever it takes to overcome the liens against it and
7 to show a net equity of \$50,000.00. And that Mr. Epperly will be held until
8 this is done. All right, now, what's the next issue?

9 MR. WARBURTON: Well, I'd urge the polygraph issue be taken up next, Your
10 Honor.

11 MR. SHOCKLEY: I'd ask the Court to take up the dog issue.

12 COURT: Well, what difference does it make? We'll take up whichever one
13 you all are ready in. Do you have some reason you don't want to --?

14 MR. SHOCKLEY: The polygraph will take some time and witnesses, the dog
15 we can handle, I think --.

16 COURT: Well, what about the law of the polygraph? Regardless of witnesses.
17 Do you want me to be the first Court in Virginia or one of the first in the
18 nation to admit a polygraph test?

19 MR. SHOCKLEY: These are some things we have here today for you, yes, sir.

20 COURT: All right. Well, let's take up the dogs, then, if it won't take
21 too long.

22 MR. WARBURTON: Your Honor, I have a motion in limine regarding the dogs,
23 also.

24 COURT: Let me get out my book on evidence.

25 MR. WARBURTON: Your Honor, it would appear to me that the Commonwealth,
26 assuming it proffers evidence, would have the burden of showing that it is

1 admissible, rather than our showing that it's inadmissible, although I've
2 offered the motion in limine, so I don't know who is the leading party, actually,
3 in this case, the decision on inclusion or not of the dog evidence.

4 COURT: Well, I'd say since you made the motion to suppress, that you
5 should go forward with it.

6 MR. WARBURTON: Okay. Your Honor, my preliminary comment is that I'm
7 dealing from relative ignorance since I am unable from your prior ruling,
8 despite a proffer from Mr. Shockley that he would give me whatever reports
9 he has on the dogs. I'm unable to assess the evidence itself. All I can do
10 is speculate on what it is. My understanding is that the Commonwealth had,
11 at their behest, a gentleman and several dogs come in from out of state, I
12 believe it was from up-state Pennsylvania, at a time after the alleged disa-
13 ppearance of, the actual disappearance of Miss Hall, the alleged death and
14 murder of Miss Hall, come and take the dogs from the Davis home on Claytor
15 Lake through some route, the end result being that the dogs showed up at the
16 home of Mr. and Mrs. Q. B. Epperly on Second Street in Radford. That is the
17 extent of my knowledge about the activities of the dog. I talked informally
18 with Mr. Shockley who mentioned to me that he intended to introduce evidence
19 regarding the dogs about the time he brought up the issue of whether the dog
20 and the trainer would be in Florida or not, regarding when we could set the
21 dates. I assume from those (inaudible) he intends to submit evidence to
22 the Court, regarding the activities of the dog and persons who saw the dog
23 do whatever the dog did.

24 COURT: All right. Now, what authority do you have one way or the
25 other?

26 MR. WARBURTON: Assuming I'm correct on what Mr. Shockley intends to

1 offer, my research reveals that there is no case whatsoever in the State of
2 Virginia, Commonwealth of Virginia, regarding the admissibility of evidence
3 of bloodhounds or other tracking animals. The closest I have been able to
4 come up with is a majority view in about seventeen (17) states that would
5 allow such evidence given certain restrictions and conditions precedent, and
6 seven (7) or eight (8) states which absolutely do not allow it. The closest
7 you've got between the Virginias is the State of North Carolina which decided
8 in 1965 that such evidence, under certain circumstances, is indeed admissible.
9 My argument will start with the position that this ought not to be allowed
10 in the Commonwealth of Virginia, or anywhere else for that matter, because
11 it has not been scientifically proven reliable. Should the Commonwealth
12 accede to that burden, I would urge to this Court that the circumstances of
13 which I'm aware regarding these dogs do not allow any finding of reliability,
14 that being that the tracking done was ten (10) days after the alleged
15 disappearance of Miss Hall, actual disappearance of Miss Hall, the alleged
16 death and murder of Miss Hall, and ~~that there were either two (2) or three (3)~~
17 ~~rains in between the 29th of June which is the day the Commonwealth alleges~~
18 ~~this crime to have occurred, and the day that the dogs tracked.~~ Again, to
19 recapitulate, I would state that there's no reliability possibility in this
20 case to start with, even if it had been done the next day. It's too subjective.
21 But in this instance, it was done ten (10) days later after a few rains, I
22 believe the Judge can take judicial notice of the fact that if a dog has any
23 talent whatsoever, that that is extremely diminished by rain and time, and I
24 would say it is too remote for consideration by the Jury in this case.

25 MR. SHOCKLEY: Judge -, are you through, Mr. Warburton?

26 MR. WARBURTON: Yes, sir.

1 MR. SHOCKLEY: Okay. As Mr. Warburton stated, this dog was brought in
 2 from northern Pennsylvania. ~~The dog's owner, trainer and operator is Mr.~~
 3 ~~John Preston, who is a former State Trooper with the Virginia State, or, excuse~~
 4 ~~me, Pennsylvania State Police.~~ Mr. Preston did as Mr. Warburton said
 5 approximately ten (10) days after the disappearance of Gina Hall, scented the
 6 dog, and the dog went from where her car was abandoned, over a railroad
 7 trestle, through the back side of Radford, and went and sat on the front
 8 stoops of Stephen Epperly's house. This matter has been considered by the
 9 Supreme Court of this State. There's no written opinion because they denied
 10 the Writ of Error. Mr. Preston, just last year, the man with the dog, testified
 11 in Pittsylvania County on a murder case, in the case of Commonwealth v. Dean
 12 Franklin Wade. This matter was appealed to the Virginia Supreme Court and
 13 I think it's Record No. 800542, I have here the petition submitted by the
 14 Defendant and also the required brief by the Commonwealth Attorney, and also
 15 a certified copy of the Order denying the Writ of Error.

16 COURT: This is one of the assignments of error? The direction of --?

17 MR. SHOCKLEY: Yes, sir. And I also have for your reading, I don't have
 18 copies to hand around, but I'll give you the cite. It's evidence of trailing
 19 dogs by, excuse me, by dogs in criminal cases, and this is ALR, 18 ALR
 20 12.21, or 12.20, yeah, 12.21. And as Mr. Warburton said, it goes through
 21 several cases, one of which is not Virginia, and I'd say about two-thirds say
 22 yes under most circumstances, or under some circumstances, and then there's
 23 a few that flat out say no. But Virginia has had the chance to consider this
 24 and I do have the briefs by both the State and the Defendant, if you care to--

25 MR. WARBURTON: Assuming --

26 MR. SHOCKLEY: And also in, excuse me, Mr. Warburton.

