

SUPREME COURT OF VIRGINIA

McDowell v. Commonwealth

641 S.E.2d 507 (Va. 2007) · No. Record No. 060989 · Decided March 2, 2007

SUMMARY

The Supreme Court of Virginia affirmed Lawrence McDowell's convictions for grand larceny and grand larceny with intent to sell or distribute property. The Court held that a Rite-Aid inventory report generated from computerized inventory records qualified as a business record under Virginia's modern Shopbook Rule and was properly admitted to establish the value of stolen merchandise.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Harry L. Carrico; Chief Justice Hassell; Justice Lacy; Justice Keenan; Justice Koontz; Justice Lemons; Justice Agee; Senior Justice Carrico
JURISDICTION	Virginia
DECIDED	March 2, 2007
DOCKET	Record No. 060989
DISPOSITION	affirmed
PROCEDURAL POSTURE	McDowell appealed from the Court of Appeals of Virginia's affirmance of his bench-trial convictions for grand larceny and grand larceny with intent to sell and distribute property valued at \$200 or more. The Supreme Court of Virginia awarded an appeal to review the admission of a computerized inventory report under the business-records exception to the hearsay rule.
STANDARD OF REVIEW	The admissibility of the inventory report was reviewed for error; the court assessed whether the trial court properly admitted the report under the business-records exception to the hearsay rule.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Virginia
PARTIES	Lawrence McDowell v. Commonwealth of Virginia

TOPICS

- hearsay
- evidence
- appellate procedure
- preservation of error
- criminal procedure

PRACTICE AREAS

criminal law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Box-List Sheets Report qualified as a business record under Virginia's modern Shopbook Rule even though the underlying inventory had been conducted by an outside contractor and the Commonwealth did not call a representative of that contractor or Rite-Aid management.
2. Whether the trial court erred in admitting the report to establish circumstantial evidence of the value of the stolen merchandise.

HOLDINGS

1. The Box-List Sheets Report qualified as a business record and was admissible under the modern Shopbook Rule. It was not necessary for the Commonwealth to call a representative of the outside inventory contractor or a Rite-Aid management witness to verify the earlier inventory or establish that it was conducted in the regular course of business.

KEY QUOTATIONS

"The trustworthiness or reliability of the records is guaranteed by the regularity of their preparation and the fact that the records are relied upon in the transaction of business by the person or entities for which they are kept" (641 S.E.2d at 509)

"We find that the Report qualifies as a business record under the Shopbook Rule." (641 S.E.2d at 510)

FACTUAL BACKGROUND

Lawrence McDowell and an accomplice removed merchandise from shelves at a Rite-Aid drug store and concealed it in their clothing before escaping; the merchandise was not recovered. An undercover Rite-Aid detective used a computerized inventory device to compare a store-wide inventory conducted three to four hours earlier with the post-theft inventory. The resulting Box-List Sheets Report identified missing merchandise and listed a total store selling price of \$1,179.93. The trial court admitted the report as a business record and as circumstantial evidence of the merchandise's price.

PROCEDURAL HISTORY

McDowell was convicted in a bench trial in Virginia circuit court. The Court of Appeals of Virginia affirmed both convictions in a published opinion, and the Supreme Court of Virginia granted the defendant an appeal. The Supreme Court affirmed the Court of Appeals' judgment.

DISPOSITION

affirmed

CASES CITED

- McDowell v. Commonwealth, 48 Va. App. 104, 628 S.E.2d 542 (2006)
- Robinson v. Commonwealth, 258 Va. 3, 516 S.E.2d 475 (1999)
- Neeley v. Johnson, 215 Va. 565, 211 S.E.2d 100 (1975)
- Sparks v. Commonwealth, 24 Va. App. 279, 482 S.E.2d 69 (1997)
- Automatic Sprinkler Corp. of America v. Coley & Petersen, Inc., 219 Va. 781, 250 S.E.2d 765 (1979)
- Ashley v. Commonwealth, 220 Va. 705, 261 S.E.2d 323 (1980)
- Kettler & Scott, Inc. v. Earth Technology Cos., Inc., 248 Va. 450, 449 S.E.2d 782 (1994)

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