

VIRGINIA:

**IN THE
CIRCUIT COURT FOR THE CITY OF LYNCHBURG**

COMMONWEALTH OF VIRGINIA

DOCKET No.
CR18000502
CR18000503

— v. —

PLEA:

FERRON AND SIMMONS,
Defendants.

March 25, 2019
10:00 a.m.

STATEMENT OF FACTS

May it please the Court, had the Commonwealth proceeded to trial in the instant case, it would have proven the following facts beyond a reasonable doubt:

In the late evening of February 16, 2018, Walker Sigler was in his residence located at 2109 Link Road in the City of Lynchburg. His house was a framed colonial center-hall home, set off from the right of way. The home boasted a semi-circular driveway that passed close to the front porch. Both of the Sigler vehicles were parked in the driveway, directly in front of the house and near the porch. The porch was illuminated by two bright porchlights.

That evening, Mr. Sigler's wife had taken their two children out to dinner with friends. The trio returned home around 8 p.m. Mr. Sigler's pregnant wife complained of feeling ill and went straight to bed. Mr. Sigler got his children to bed about 9:30 p.m. Sigler left all three upstairs asleep and went downstairs to watch television.

Sigler went to a first-floor den to watch T.V. The den was located to the right rear of the home. Sigler watched one movie and then started a second movie around 11 p.m. He consumed no alcohol or medications that evening. At some point during the second movie, probably around midnight, he dozed off.

That same evening, Officers Edward Ferron and Austin Rowland of the Lynchburg Police Department were on duty and assigned to the midnight shift. Officer Ferron had just completed his seventeenth year with the department and had been selected as a Field Training Officer, responsible for the training of officers newly graduated from the police academy. Rowland had just graduated from the academy and had been on the streets with FTO Ferron for about five weeks. Rowland was driving a marked police

cruiser with Ferron in the front passenger seat. Both officers were in uniform and displaying their badges of authority.

The weather that night was clear and a little bit warmer than typical February weather. Rowland and Ferron were assigned to LPD beat four, which is situated near the center of the City, incorporating part of Rivermont Avenue. The Sigler home on Link Road was within Beat Four, a block or two off of Rivermont.

As Rowland drove down Link Road, Ferron's attention was drawn to the Sigler home. Ferron noticed the front storm door to the Sigler home was open at a 90-degree angle, which he found unusual. Ferron noted the open door but took no action on this pass of the residence.

Somewhere around 11:00 p.m., Rowland drove past the Sigler home a second time. Ferron noticed that the storm door to the home was still open at a 90-degree angle. It appeared to Ferron that the door was in the same position as it had been earlier.

During both of these passes, Ferron could not see whether the front door to the residence was also open because it was cast in shadow.

At about 1 a.m., as the calendar had moved to the early morning hours of February 17th, Rowland again drove by the Sigler home. Ferron noticed that the storm door was still open in the same position. This time, he decided that he needed to investigate. Ferron told Rowland to slow down and trained the police cruiser's spotlight on the front door of the Sigler home.

As the light fell on the front of the home, Ferron saw that the front door of the residence was open, just short of 90 degrees from the front of the home. He could see into the foyer of the home, which was dark, and he observed a stairwell.

Unbeknownst to the officers, the Sigler's front door was very old and the Siglers' had problems with it "popping open." It did not fit the jamb well, and unless it was forcefully shut, it tended to stay closed for a bit and then work itself open.

Concerned about the open door, Ferron told Rowland to pull over, away from the Sigler home, and use the radio to tell dispatch that they had an open door. Ferron and Rowland then got out of the car and walked toward the house to conduct a check of the residence.

When they got close to the front of the home, they noticed the two cars parked in the driveway of the home. Ferron told Rowland to "call in" the license plates of the parked cars to dispatch.

Ferron did not see any signs of forced entry into the home. He also checked the parked cars to see if there was any sign that they had been rifled through, but he did not see any such indication. Ferron did not hear any noise coming from the home. He could

see a short distance into the home through the open front door but observed nothing of note.

Soon, the dispatcher radioed Rowland and told him that both of the cars were registered to the Sigler's at 2109 Link Road. Rowland relayed this information to Ferron.

At this point, Ferron decided that, based solely on the open door of a residence at night, he needed to request additional units to respond. He also decided that when the other units arrived on the scene, they would approach the open front door of the residence, announce their presence, tactically enter the home with firearms drawn and "clear" the residence. Ferron believed that LPD policy mandated that he make tactical entry and clear the house because of the possibility that a burglary was in progress.

Ferron requested additional units over the radio. Rowland and he went back to the area of the police car to await additional units. Roughly 7 minutes after Ferron and Rowland first marked out at the Sigler residence, Officer Reed arrived on scene. Ferron briefly told Reed what they had observed and asked Reed to go around to the rear of the residence. This was standard procedure and would allow Reed to observe the rear of the home as Ferron and the other officers made entry.

As Reed walked to the back of the house, he told Ferron and Rowland that it "looks like there's a T.V. on in" the home. Ferron told Rowland that he thought the light might be a "WiFi router" instead of a television.

As they waited for other officers, Ferron and Rowland discussed the situation. Ferron indicated that he was concerned about their tactical approach to the home, both because of the lack of "cover" and because the lighting on the front of the home could make them visible.

About five minutes later, Officer Anderson and Simmons arrived on the scene. Once they walked up to Ferron and Rowland, Ferron told them "we're going to go in with four," meaning that the four of them would make entry into the home.

Ferron told Anderson and Simmons that the two cars parked immediately in front of the house were "registered to this address." He then said: "I mean it could be that they left to go out of town this weekend in a third car... and just didn't pull the door shut all the way." Ferron then told Rowland to radio the dispatcher that "we're going in."

Between the time the officers arrived on the scene and when they began to approach the house to announce and make tactical entry, they had observed no other fact or circumstance that suggested a burglary, such as a broken window, another sign of forced entry, a burglar alarm, a call from a neighbor or cries for help from inside the

Sigler residence. The sole reason for the decision to make tactical entry was the conjunction of three facts: an open door of a residence at night.

Between the time the officers arrived on the scene and when they began to approach the house to announce and make tactical entry, there was no discussion about any alternate method of handling the situation. No one suggested asking the dispatcher to try to obtain a number for the Sigler's landline and call to see if a resident would answer. No one suggested calling for a K-9 unit to assist. No one suggested waking a neighbor to see whether they could provide any information about the Sigler's and whether they were present in the home. No officer suggested the possibility of a "surround and call out" operation, in which a perimeter would be established around the home, with the officers remaining behind cover and using a loud voice or a P.A. system to identify themselves and request any occupants of the home to do the same. Ferron would later say that these alternatives "didn't even go through" his head at the time.

Instead, Ferron, Rowland, Simmons and Anderson unholstered their firearms and began to approach the front of the home. Rowland was first, followed by Ferron, Simmons and then Anderson. Before they approached, Ferron told Rowland that he would be responsible for announcing their presence when they reached the front porch.

When the group reached the porch, Rowland walked close to the front door jamb and stated in a loud but not overwhelming voice: "Lynchburg Police Department, if anyone is in the residence, make yourself known now."

As he did so, Walker Sigler remained asleep in the first-floor den, oblivious that the police were outside of his residence. Rowland's announcement was loud enough to wake Sigler, although he did not understand that it was the police at his front door who had roused him. Instead, he thought it was his wife yelling something to him from upstairs. Sigler responded to what he thought was his wife, saying "Huh, what?" in a loud voice. He then got up off the couch and began to walk towards the front of the house on a path that would lead him past the front door on his way to the stairs to the second floor. Sigler did not own any firearms and had nothing in his hands as he walked toward the front door of the residence.

Back out front, Rowland and Ferron were surprised to hear a voice from inside of the residence. They could also hear that the person inside of the home was walking toward the front door. Rowland again said, in a loud but not overwhelming voice: "Lynchburg Police, if you're in the residence, make yourself known." As Rowland said this, Ferron began to move forward in an attempt to change position to the other side of the porch.

Inside, as Sigler walked out of the den and closer to the front door, he heard a voice and movement outside. He remained groggy but was able to determine that some-

one was on the porch. He did not understand that police officers were outside of his door because he had not clearly heard Rowland's announcement.

Sigler reached his front door, grabbed it with both hands, and peered around it so that he could see who was on his front porch. He did this just as Ferron moved across the porch and reached the halfway point. At this juncture, Sigler saw a man holding a gun and became terrified, unaware it was a police officer. Sigler reflexively and forcefully closed the door, pushing it with his hands.

As the door forcefully closed, Ferron was standing exposed in the middle of the porch. The combination of the rapid movement of the door and the loud noise it made as it closed caused Ferron to think he was being attacked. He quickly reacted, pointing his firearm in the direction of the door and fired a round, immediately followed by a second round. Ferron would later say that he saw a "clenched fist" come out from behind the door "for a second." He admitted that he did not see anything in the fist and that he did not see any other part of the person's body.

As Sigler forcefully closed the door, the door did not shut and instead bounced back toward Sigler. Ferron fired his first round just as the door was bouncing back, and that round actually entered through the space created by the open door and struck the wall of the Siglers' foyer. Sigler then quickly closed the door again. This time, the door stayed closed. Ferron's second round went through the front door and continued on through the Sigler house, finally penetrating the far wall of the living room.

As this happened, Officer Simmons reacted. She raised her firearm and fired two rounds just after Ferron's second shot. One round hit the jamb of the Sigler's front door and would have likely struck Rowland had he not have already retreated from his initial position. Simmons' other round squarely struck the now-closed front door, travelled through it and hit Mr. Sigler in the right thigh. It is impossible to determine which of these rounds were fired first.

A total of four rounds were fired, two from Ferron and two from Simmons. One round struck Mr. Sigler. Rowland, Anderson and Reed did not fire during the incident. The Virginia State Police would later determine that only about 12 seconds elapsed between Rowland's first announcement and the last shot being fired.

Mr. Sigler was badly injured by the gunshot. He collapsed to the ground and began screaming for help. All four officers, by now flush with adrenaline and concerned about the situation, briefly retreated and took cover. About a minute later, Ferron approached the front door and kicked it open, announcing "Police" several times. As Ferron entered the home, the scene was chaotic. Mrs. Sigler had turned on the interior lights and was now at the top of the stairs, screaming "Why did you shoot my husband?"

Ferron approached Sigler, who was lying on the ground and screaming in agony. Sigler yelled several times: “Why did you shoot me?” Ferron confirmed that Sigler was shot in the leg and called for medics. About eight minutes after the final round was fired, Lynchburg medics arrived on the scene.

Mr. Sigler was transported to the hospital and operated on by Dr. Ian Smithson. Smithson diagnosed a complex fracture of the right femur. He decided to operate. When he began to do so, he immediately encountered a significant problem: Mr. Sigler was suffering from compartment syndrome, a serious condition in which, as a result of blood loss, pressure within a muscle builds to dangerous levels. The pressure can decrease blood flow to the affected area, killing tissue and sometimes leading to further bleeding.

Once Smithson stabilized the area and controlled the bleeding, he realigned and secured the complex femur fracture with wire, a TENA rod and several screws. Because of the compartment syndrome, he could not close the wound that morning. Instead, Smithson left the wound open and treated the compartment syndrome. The next day Mr. Sigler underwent a second surgery in which the doctor removed dead tissue and subsequently was able to close the wound.

As a result of the loss of blood caused by the gunshot wound, Mr. Sigler began to experience headaches and significant blurriness of his vision in his left eye. On March 6, 2018, Dr. Gail Ganser, a neuro-ophthamologist, diagnosed Mr. Sigler as having suffered bilateral anterior ischemic optic neuropathy left greater than right, a loss of vision caused by damage to the optic nerve due to a loss of blood. Ganser would have testified that both of Mr. Sigler’s eyes suffered “definite permanent damage,” with the left suffering more damage than the right.

The shooting was investigated by the Virginia State Police. VSP processed the crime scene and recovered a total of four fired cartridge cases and three fired bullets. The fourth bullet was recovered by Dr. Smithson during the first surgery and given to the State Police. These items, along with Ferron’s and Simmons’ Glock semi-automatic pistols, were submitted to the Department of Forensic Science, where a forensic scientist confirmed that it was Simmons who fired the round that struck Mr. Sigler.

Had the matter proceeded to trial, the Commonwealth would have called a retired SWAT officer and tactical instructor with 30 years of police experience as an expert witness. The expert would have testified that, in his opinion, making an armed tactical entry of a residence should be a last resort, not an automatic response, and should only be used in situations where there is direct evidence of an extant emergency. He would have testified that this is because the increased risks of entering an unknown building, both risks to the officers who make the entry and to any people innocently inside – a danger that this incident illustrates. He would have testified that, because of these safety concerns, many officers and SWAT teams are now trained to employ a sur-

round and call out technique wherever possible. The expert would have testified that he could see no evidence of an emergency in this case that required immediate tactical entry and that there was no tactical or officer safety reason why a surround and call out technique could not have been utilized at the Sigler home. To the contrary, the expert would have testified that the tactically safe technique would have been to set up a perimeter and “call out” the occupants of the home from behind cover.

The expert would have opined that the attempt at entry in this case presented tactical and safety problems for the approaching officers, in that the officers did not consider alternatives to tactical entry, made little effort to utilize cover and were brightly illuminated on the front porch while the interior of the residence was dark – a position of weakness for the officers. The expert would also have testified that Officer Ferron’s decision to enter the “fatal funnel” – the dangerous area directly in front of a portal in which an officer is in the most peril and which officers are therefore trained to avoid – left Ferron exposed and without cover at the exact moment Sigler was forcefully closing the door, perhaps contributing to the decision to fire.

The Lynchburg Police Department’s Use of Force Directive states that police officers may use “deadly force... when the officer reasonably believes that the action is in defense of human life, including the officer’s life.” The directive admonishes officers “faced with the possible necessity of discharging a firearm” to “remain cognizant” of the direction in which the firearm is to be discharged and to ensure that the “target threat is in plain view and that the target threat is identified.” The Lynchburg Police Department has no directive that directly addresses the “open door” situation encountered by the officers in this case.

The Virginia Court of Appeals issued a published opinion on May 3, 2005, entitled *Kyer v. Commonwealth*. In that case, the Court was tasked with determining whether the police could initiate a warrantless, exigent entry of a residence based on the discovery of an open door at 4:00 a.m. The Court of Appeals held that “The mere discovery of an ‘open door’ of a residence -- absent some other reason for concern – is not, *in and of itself*, a circumstance that could give rise to a reasonable belief that entry is necessary to prevent harm to persons or property. It is simply too common an event to create a concern of harm in the absence of other signs of trouble, such as evidence of a forced entry or a medical emergency; here, there were no such indications... The police had no legal right, therefore, to enter the (residence) uninvited.” This case constitutes controlling legal authority in Virginia.