IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

LARRY DARNELL MALLOY, Petitioner,	)	
v.	)	
MICHAEL NORRIS, et al., Respondents.	)	Civil Action No. 82-0769-AM

ORDER

This case is before the court on petitioner's writ for habeas corpus under 28 U.S.C. § 2254. For the reasons stated in the accompanying memorandum opinion, the writ is DENIED and the conviction AFFIRMED.

Should the plaintiff desire to appeal, written notice must be filed with the Clerk of the Court within 30 days of this date.

Let the Clerk send copies of this order and the accompanying memorandum opinion to petitioner and to counsel for the respondents.

DATE: Jan. 20, 1983

Richard L. Williams

UNITED STATES DISTRICT JUDGE

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v.	)	CIVIL ACTION NO. 82-0769-AM
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MEMORANDUM OPINION

Virginia inmate Larry Darnell Malloy has submitted a petition for writ of habeas corpus relief in which he has raised one allegation of constitutional error at his state trial. 28 U.S.C. §2254. Malloy contends that even viewing the evidence in the light most favorable to the prosecution, there was insufficient evidence adduced at trial to convince any rational trier of fact that the value of the stolen ring was greater than two hundred dollars beyond a reasonable doubt. For the reasons stated below, the petition for writ of habeas corpus is DENIED.

I. Factual Background

On February 24, 1981 Carol Hoffman employed Jewell Cleaning Service to do cleaning in her home while she was at work. Larry Darnell Malloy was one of the employees of Jewell

Cleaning Service who worked in Ms. Hoffman's home. Upon her return home from work, Ms. Hoffman noticed that an antique ring was missing from the top of her dresser. Mr. Malloy was arrested and indicted for the crime of grand larceny in connection with the theft of the ring. Mr. Malloy admitted stealing the ring and the sole issue at trial was whether the ring was over two hundred dollars, causing the crime to be grand rather than petit larceny. The ring was not introduced as evidence at the trial because Mr. Malloy had pawned it before his arrest for $25.00 and its whereabouts were unknown.

At the trial, the prosecution introduced Ms. Hoffman's and William Dougherty's testimony as proof of the value of the ring. Ms. Hoffman was of course the owner of the ring and Mr. Dougherty is an expert in appraisal of jewelry. Defendant Malloy strongly objected to the use of their testimony throughout the trial, but the judge ruled it admissible and let it go to the jury. The jury returned a verdict of guilty and sentenced Malloy to twelve months for the crime of grand larceny.

II. Legal Analysis

The petitioner alleges that the prosecution failed to prove one of the essential elements of the crime of grand larceny, i.e., value. An allegation of insufficiency of the evidence does state a claim cognizable under federal

habeas corpus. It appearing from the pleadings that petitioner has exhausted his state remedies, this case is properly before the court.

It has been established by the Supreme Court that a federal habeas corpus court must consider not whether there was any evidence to support a state court conviction, but whether there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. See Jackson v. Virginia, et al., 443 U.S. 307 (1979); In re Winship, 397 U.S. 358 (1970). "After Winship the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonable support a finding of guilt beyond a reasonable doubt." Jackson, supra, at 318. Based on this precedent, the evidence adduced at Malloy's trial must be tested for its sufficiency.

Under Virginia law, it is clear that the owner of property can testify as to its value without a showing that he or she is acquainted with the market value of the property, or that he is an expert on value. Haynes v. Glenn, 197 Va. 746, 91 S.E.2d 433 (1956). Ms. Hoffman testified that she had received her grandmother's engagement ring as a Christmas gift from her mother. She was able to describe the setting of the ring, the fact that the band had been stamped 14K, and that the ring included one round diamond and six smaller ones. Based on her description

and a drawing admitted into evidence, Mr. Dougherty testified if the stones were authentic diamonds, the ring was worth between $700.00 and $3,000.00. On the other hand, if the stones were not authentic, but merely simulated, the ring would not be worth over two hundred dollars. Unfortunately, the ring had never been appraised and therefore the owner's testimony was crucial. The judge properly instructed the jury that if they determined that the state had failed to prove the value of the ring as being over $200.00 they could not return a guilty verdict on the grand larceny charge. The jury was also properly instructed as to the burden of proof.

When the evidence adduced at trial is considered in its entirety the court cannot say that a rational trier of fact could not have found proof of guilt beyond a reasonable doubt. In addition, Virginia substantive law allows non-expert owners, such as Ms. Hoffman, to testify as to the value of a chattel. Since federal courts are bound by the applicable state substantive law in situations such as this, I have no choice but to affirm the conviction.

Let the Clerk send a copy of this memorandum opinion and the attached order to counsel for petitioner and to counsel for the respondents.

DATE: Jan. 20, 1983

Richard L. Williams

UNITED STATES DISTRICT JUDGE