

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of March, 2018.*

Victoria Elizabeth Dufresne, Appellant,

against Record No. 161633  
Court of Appeals No. 0281-15-2

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, for the reasons stated below, we will vacate the Court of Appeals' judgment and affirm the judgment of the trial court convicting Victoria Elizabeth Dufresne of grand larceny.

Dufresne was indicted for the robbery of Stephen Phelps, in violation of Code § 18.2-58, but in a bench trial was convicted of grand larceny. Code § 18.2-95. Dufresne filed a Motion to Set Aside the Verdict arguing that grand larceny is not a lesser-included offense of robbery, and asking the trial court to enter judgment convicting Dufresne of petit larceny, a lesser-included offense of robbery. The trial court denied Dufresne's motion.

The Court of Appeals held that the trial court did not abuse its discretion in denying Dufresne's motion and affirmed her conviction, stating that although grand larceny is not a lesser-included offense of robbery, Dufresne invited error in asking the trial court "for the charge to be dropped down to grand larceny." *Dufresne v. Commonwealth*, 66 Va. App. 644, 651, 791 S.E.2d 335, 338 (2016).

The record in this case regarding the basis for the change in the charge is not clear; that is, whether the trial court, in convicting Dufresne, erroneously considered grand larceny to be a lesser-included offense of robbery or considered Dufresne's request to "drop down" the charge as a waiver of a formal amendment to the indictment. Under these circumstances, we will assume without deciding there was error and that Dufresne invited the error. Therefore, the trial

court did not abuse its discretion when it denied Dufresne's Motion to Set Aside the Verdict. *See Sauder v. Ferguson*, 289 Va. 449, 458-59, 771 S.E.2d 664, 670 (2015) (applying abuse of discretion standard when reviewing trial court's judgment on motion to set aside verdict).

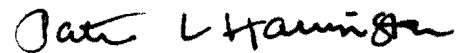
Accordingly, we will vacate the judgment of the Court of Appeals and affirm the trial court's judgment convicting Dufresne of grand larceny.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Richmond.

Justice McCullough took no part in the resolution of the appeal.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Dale L. Hamner". The signature is written in a cursive, slightly slanted style.

Clerk