

Central Shenandoah Criminal Justice Training Academy

APPELLATE UPDATE BULLETIN Summer 2007

Traffic Offenses

Felony Hit and Run

Robinson v. Commonwealth

Va. Sup. Ct. Record No. 061911 (June 8, 2007)

The defendant appealed his conviction for failure to stop at the scene of an accident (Va. Code §46.2-894) in connection with a traffic crash that killed a mother and her 4-year-old son. At appeal, he argued that he was not “involved in” the crash as required by the statute because his vehicle did not strike the victim’s vehicle. The Supreme Court of Virginia reversed his conviction, holding that in order for the driver of a vehicle to be “involved in” a crash, “there must be actual physical contact between the driver’s vehicle and another vehicle, person, or object, OR the driver of a motor vehicle must have been the proximate cause of the accident.” Here, there was no contact between the two vehicles, and the trial court expressly ruled that the defendant did not proximately cause the crash.

Tooke v. Commonwealth

47 Va. App. 759, 627 S.E.2d 533 (2006)

The defendant appealed his convictions for two counts of failure to stop at the scene of an accident (Va. Code §46.2-894) in connection with a single-vehicle crash where two occupants were seriously injured. Defendant argued, in part, that it was a “miscarriage of justice” to convict him of two identical offenses related to the same crash. The Court agreed, ruling that “the gravamen of the offense under the statute is a single accident” and that “the number of people injured or killed does not constitute an element of that offense.” The Court reversed and vacated one of defendant’s two convictions.

Miscellaneous

Rowley v. Commonwealth

48 Va. App. 181, 629 S.E.2d 188 (2006)

The defendant appealed his conviction for refusing to provide a breath sample after being arrested for driving under the influence of alcohol (Va. Code §18.2-268.3), arguing that statute violated the 4th and 5th amendments of the United States Constitution. The Court disagreed. It ruled that an officer’s request for a breath sample is not an unreasonable search protected

by the 4th amendment, as drivers in the Commonwealth impliedly consent to submit breath samples by driving on the Commonwealth’s roads. Further, the Court ruled that breath tests are considered “real or physical evidence” rather than testimonial evidence, so they do not fall under the 5th amendment protections against self incrimination.

Saunders v. Commonwealth

48 Va. App. 196, 629 S.E.2d 701 (2006)

The defendant appealed his conviction for driving after having been declared a habitual offender (Va. Code §46.2-357) after an officer spotted him driving a moped. He argued that the order that declared him a habitual offender expressly banned him from operating a motor vehicle but not a moped. The Court disagreed, ruling that the moped was considered “self-propelled machinery” and the defendant’s operation of it after having been declared a habitual offender was sufficient evidence to convict him under the statute.

Wyatt v. Commonwealth

47 Va. App. 411, 624 S.E.2d 118 (2006)

The defendant appealed his conviction for aggravated involuntary manslaughter (Va. Code §18.2-36.1), arguing that the evidence was insufficient to show that his conduct was criminally negligent. The conviction stemmed from defendant’s role in a motor vehicle crash that killed one person. The Court held that there was sufficient to show that defendant was criminally negligent and to support the conviction, particularly that: defendant was beneath the legal drinking age and had consumed six or seven alcoholic beverages in under three hours; defendant chose to get behind the wheel of his automobile; defendant failed to maintain proper control of his vehicle although it was a clear night on a well-paved road; and defendant drove his vehicle entirely in the lane of oncoming traffic, causing him to strike the other vehicle and kill the driver.

This Appellate Update Bulletin was researched and written by Amy McMullen, rising 4th year law student at George Mason University in Arlington, Virginia, under the supervision of Phillip O. Figura of the Virginia Attorney General’s Office.

Search & Seizure

Anticipatory Search Warrants

U.S. v. Grubbs, 126 S.Ct. 1494 (2006)

Defendant appealed his conviction for possession child pornography, arguing that the trial court improperly denied his motion to suppress evidence gathered by an “anticipatory” search warrant. Defendant argued that because the warrant required a “triggering condition” to be met before its execution, no probable cause existed at the time the Magistrate issued the warrant and the warrant violated the Fourth Amendment. The Supreme Court disagreed, holding that “anticipatory” search warrants were lawful and that the occurrence of the “triggering condition” established probable cause for the search. The affidavit supporting the warrant need only to provide the Judge or Magistrate with sufficient information to establish probable cause that: 1) contraband or evidence of a crime will be found in a particular place upon the occurrence of the triggering condition, and 2) that the triggering condition will occur. Further, the Court ruled that the “triggering condition” need not be set forth in the warrant itself in order to meet the particularity requirement.

Ward v. Commonwealth, 639 S.E.2d 269 (Va. 2007)

Defendant appealed his convictions for possession with intent to distribute marijuana and possession with intent to distribute cocaine, arguing that the trial court improperly denied his motion to suppress evidence gathered by an invalid “anticipatory” search warrant. Defendant specifically argued that no probable cause existed to issue the warrant because the government failed to provide a link between the package scheduled to be delivered to defendant’s address and defendant’s actual address. The Court disagreed, stating that the officers acted in good faith in obtaining and executing the warrant and that the deterrent function of the exclusionary rule would not be served by excluding the evidence seized during the search.

Arrest Procedure

Bristol v. Commonwealth

272 Va. 568, 636 S.E.2d 460 (2006)

The defendant appealed his convictions for driving under the influence of alcohol (DUI) and for maiming another as a result of driving under the influence. At the hospital after the crash, police told him that he was under arrest but did not restrain him or formally charge him with a crime. Prosecutors indicted him after receiving the results of his blood test more than two months later. At trial, the court admitted into evidence a certificate of analysis of defendant's blood alcohol content to establish a rebuttable presumption under Code § 18.2-269 that he was intoxicated at the time of the crash. The defendant argued that the admission of this certificate was improper because he was not arrested within three hours of the offense as required by Va. Code § 18.2-268.2. The Supreme Court reversed his convictions, agreeing that the “mere words” used here were insufficient to effect an arrest and thus the certificate was improperly admitted at trial.

Moore v. Commonwealth

272 Va. 717, 636 S.E.2d 399 (2006)

Defendant appealed his conviction for possession with intent to distribute cocaine (Va. Code § 18.2-248). Officers initially arrested defendant after observing him driving while his operator’s license was suspended. They took him into custody and read him Miranda but did not immediately search him. Then, the officers transported him to his hotel room, searched him, and found 16 grams of crack cocaine on his person. Defendant argued that Va. Code § 19.2-74(a)(1) required the officers to issue him a summons for the initial violation and release him upon his promise to appear in court on a certain date and time, not place him under arrest since none of the statutory exceptions for a warrantless arrest existed in his case. The Supreme Court of Virginia agreed, stating that the officers should only have issued a summons for defendant’s conduct and that a search incident to citation is invalid under the Fourth Amendment. Thus, the Court ruled that the cocaine should have been suppressed at trial.

Pierce v. Commonwealth

48 Va. App. 660, 633 S.E.2d 755 (2006)

Defendant appealed his revocation of previously suspended prison sentence after being arrested on a capias for failing to comply with the conditions of his probation. He argued both that the capias on which he was arrested was invalid because it was not issued upon sworn statements but rather on a written letter from his probation officer. The Court of Appeals disagreed and upheld the conviction. It specifically ruled that “although the 4th amendment and Va. Code §19.2-72 require that an arrest warrant... be based on sworn statements establishing probable cause, there is no such requirement imposed on the seizure of a probationer, previously convicted of a criminal offense and whose sentence to confinement has been suspended, based on his failure to comply with specified terms and conditions of his probation.”

Civil Liability for Search and Seizure

Los Angeles County v. Rettele

550 U.S. ____ (5/21/2007)

Rettele filed suit against deputies from the Los Angeles County Sheriff’s Department under Rev. State. § 1979, 42 U.S.C. § 1983, alleging that deputies executed a lawfully obtained search warrant in an unreasonable manner. The warrant had authorized officers to search the homes of three African American suspects. Police did not know that one suspect had sold his home to Rettele and his family, who were Caucasians, and executed the warrant at Rettele’s residence. There, they ordered Rettele and his girlfriend, who were naked, out of bed at gunpoint and held them there until the officers cleared the home. Upon realizing the mistake, officers allowed the two to dress, apologized, and left the residence. Rettele argued the officers violated his Fourth Amendment rights by unreasonably holding his family nude and at gunpoint when they were clearly not the suspects named in the warrant. The U.S. Supreme Court, however, held that the

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deputies acted reasonably because, despite the difference in the race between Rettele and the named suspects, the officers had no way of knowing that the suspects were not in another location in the home. Further, the officers did not detain the family longer than necessary and left within minutes of realizing their mistake. As the Court said, "Valid warrants will issue to search the innocent, and people like Rettele... unfortunately bear the cost... When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the Fourth Amendment is not violated."

Scott v. Harris, 550 U.S. ____ (2007)

Scott, a Georgia deputy, appealed the trial court's denial of a civil summary judgment motion in a personal injury suit that Harris, a suspect in an automobile chase, had filed against him. Harris alleged that Scott had used "excessive force resulting in an unreasonable seizure" when Scott applied his push bumper to the rear of Harris's vehicle during a high speed chase. The action caused Harris to lose control of his vehicle, which ran down an embankment and crashed. The wreck left Harris a quadriplegic. After reviewing a videotape of the chase taken from Scott's police cruiser, the Court reversed the trial court's motion and granted summary judgment, finding Scott's actions objectively reasonable and ultimately dismissing the suit against him. The Court found Scott's actions reasonable primarily because Harris's vehicle was traveling in such a fashion as to endanger motorists' and police officers' lives, and Scott did not use the push bumper maneuver until several minutes after he had activated his lights and sirens, thereby giving Harris adequate warning to stop his escape.

Consent to Search

Georgia v. Randolph, 126 S.Ct. 1515 (2006)

Defendant appealed his conviction for possession of cocaine, arguing that the search that produced the cocaine was unconstitutional and all evidence gathered from it should have been suppressed at trial. Police had come to defendant's residence for a domestic dispute, and defendant's wife told the officers that defendant was a drug user and that there was evidence of drug use in the house. Police asked defendant for consent to search the home, and he adamantly refused. However, defendant's wife consented to a search of the residence, and police uncovered cocaine residue during the search. The Court held that the search was unconstitutional since the wife's disputed invitation, without more, gave police no better claim to reasonableness in entering than they would have had in the absence of any consent at all. The fact that the couple shared the residence and that one resident gave consent cannot justify the search with regards to the non-consenting, physically present resident.

Glenn v. Commonwealth, 49 Va. App. 413 (2007)

Defendant appealed his conviction for robbery, arguing that the evidence obtained during a search of his grandfather's home and used against him at trial should have been suppressed. Police went to defendant's grandfather's home, arrested defendant for robbery, and requested consent to search the residence from the homeowner, defendant's grandfather. The defendant and his grandfather did not have a landlord-tenant relationship. The grandfather gave consent to search the residence, and officers located an unsecured backpack lying freely on the floor in an unlocked room used by multiple parties in the residence. Police located a cell phone inside of the backpack, and the Commonwealth used evidence obtained from the cell phone to convict defendant at trial. The Court ruled that the grandfather's consent to search the residence included permission to open the unsecured, unidentified, and unclaimed backpack found in plain view in the home.

Pharr v. Commonwealth, 49 Va. App. __ 1744054, __ S.E.2d __ (2007)

Pharr appealed his convictions for rape in violation of Va. Code § 18.2-61 and breaking and entering with intent to commit rape in violation of Va. Code § 18.2-89. Pharr, a suspect in a 2001 breaking and entering case, voluntarily provided Fairfax police with a DNA sample for that investigation, although he did not specifically limit his consent for explicitly that purpose. Police subsequently found they had sufficient evidence to charge Pharr with the 2001 case and did not submit the DNA for analysis as part of that investigation. However, one officer noticed similarities between the 2001 case and an unsolved 1999 case. Fairfax police then submitted Pharr's DNA for analysis in comparison with DNA recovered at the 1999 crime scene. The analysis revealed a match, and this evidence was ultimately used to convict him of charged related to the 1999 case. Pharr argued that police violated his Fourth Amendment rights by conducting an illegal search, since he provided the DNA sample provided for the 2001 case and not for the 1999 case. In recognizing this as an issue of first impression in the Commonwealth, the Court upheld Pharr's conviction. The Court believed that "privacy concerns are no longer relevant once the sample has already lawfully been removed from the body, and the scientific analysis of a sample does not involve any further search and seizure of a defendant's person." Quoting People v. King, 663 N.Y.S.2d 610, 614 (N.Y. App. Div. 1997). Because Pharr's "reasonable expectation of privacy in the DNA sample ended when he voluntarily provided it to police,... the DNA analysis of the validly obtained sample did not trigger Fourth Amendment protections."

U.S. v. Buckner, 473 F.3d 551 (4th Cir. 2007)

Defendant appealed his federal convictions for wire fraud after the trial court denied his motion to suppress evidence gathered from password-protected files on the hard drive of his family computer. Police seized and

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searched the home computer, without a warrant, after receiving consent from the defendant's wife. Defendant argued that although the wife gave consent to search the computer itself, her consent could not extend to his password-protected files. The Court found that while the wife did not share "mutual use, general access, or common authority" over those particular files, the totality of the circumstances in this case led the officers to possess an objectively reasonable belief that she had authority to consent to the entire search. Thus, the Court affirmed his convictions.

Knock & Announce

Hudson v. Michigan, 126 S.Ct. 2159 (2006)

Defendant appealed his convictions for drug offenses, arguing that the police's violation of the "knock and announce" rule before executing a search warrant on his home warranted the suppression of evidence gathered from the search. The State conceded that the officers violated the "knock and announce" rule but argued that the exclusionary rule should not apply because the rule was not designed to prevent one's interest in preventing the government from seizing evidence described in a search warrant. The Supreme Court agreed with the State and held that the evidence should not have been suppressed because the "knock and announce" violation was not a "but-for" cause of obtaining the evidence and because the benefits of applying exclusionary rule in these circumstances did not outweigh the "substantial social costs."

Plain View

Rosa v. Commonwealth

48 Va. App. 93, 628 S.E.2d 92 (2006)

Defendant appealed his convictions for possessing child pornography in violation of Va. Code § 18.2-374.1:1, arguing that trial court improperly denied his motion to suppress materials gathered during an illegal search in violation of the Fourth Amendment. Defendant argued that the officer conducting the search exceeded the scope of the search warrant by opening files labeled with picture extensions. He also argued that the picture files were not in "plain view" because appellant had previously deleted them, and the officer could only view them after reconstructing them with the assistance of a computer program. The Court affirmed the convictions, holding that the officer acted reasonably in opening the picture files "because file extensions may be misleading and may not give accurate descriptions of the material contained in the file." The Court further found that "the deleted files are not entitled to additional protection simply because appellant attempted to erase them."

Probable Cause to Search

Adams v. Commonwealth

48 Va. App. 737, 635 S.E.2d 20 (2006)

Defendant appealed his conviction for second degree murder, arguing that the trial court had improperly

denied his motion to suppress evidence seized from his residence under the "good faith" exception to the search warrant requirement. Defendant specifically argued that the search warrant itself lacked any indicia of reliability because it failed to link the defendant to the residence being searched. The Court disagreed, finding that when the complaint and affidavit were read together and considered with the totality of the circumstances, the sworn facts provided the necessary link to supply probable cause for the warrant. The Court thus held that the "good faith" exception applied here and that "an affidavit deficient on its face may, under appropriate circumstances, be rehabilitated with facts not included in the affidavit if the evidence establishes that the omitted facts were actually disclosed to the magistrate under oath or affirmation."

Cost v. Commonwealth

49 Va. App. 215, 638 S.E.2d 714 (2006)

Defendant appealed his conviction for possession with intent to distribute heroin in violation of Va. Code §18.2-248, arguing that the search that uncovered the heroin was unconstitutional. The officer had initially approached defendant to investigate whether he was a resident of the public housing property in front of which he was parked. As the officer approached, he noticed defendant "immediately reach across his body towards his left front pants pocket" twice, despite being told to stay away from his pocket. During a frisk of defendant, the officer felt a "large bulge" consisting of "numerous capsules" in his front left pants pocket. The officer had specific training and experience with narcotics arrests and believed that the capsules contained narcotics, so he reached into defendant's pocket. He found a baggie containing 20 capsules of heroin and several wads of cash. The Court of Appeals upheld his conviction, arguing that the seizure of the capsules was constitutional because the officer had probable cause based on "the totality of the circumstances, consisting of furtive movements and suspicious conduct."

Grandison v. Commonwealth

48 Va. App. 314, 630 S.E.2d 358 (2006)

Defendant appealed his conviction of possession of cocaine under Va. Code § 18.2-250 after the trial court denied his motion to suppress evidence gathered during a traffic stop of a reported stolen vehicle. The officer removed defendant from the vehicle and noticed a dollar bill protruding from the pocket of his jeans. The dollar bill was folded into an "apothecary fold," which the officer recognized as a common method for concealing contraband. The officer removed the dollar bill, unfolded it, and found cocaine inside. Defendant argued that the officer did not legally obtain the cocaine under the plain view doctrine because the dollar bill was an everyday item with legitimate use. The Court denied this argument and affirmed his conviction, holding that everyday items that "had been manipulated in a way that made it immediately apparent to the officers that they may contain contraband [constitute] probable cause to seize and search them."

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Moore v. Commonwealth, 49 Va. App. 294 (2007)

Defendant appealed his convictions for possession with intent to distribute cocaine (Va. Code 18.2-248) and possession of a firearm after having been convicted of a felony (Va. Code 18.2-308.2), arguing that the traffic stop that led to his arrest was unconstitutional. The officer testified at trial that the sole reason he stopped defendant's vehicle was "because the valid inspection sticker was partially peeling from the windshield." Defendant moved to suppress the evidence gained from the stop of the vehicle, arguing that the peeling sticker alone did not give rise to a reasonable articulable suspicion that criminal activity was afoot. The Court of Appeals agreed and reversed the trial court's denial of the motion to suppress, stating that because the inspection sticker was lawful on its face, more information was required in order for the Officer to formulate a particularized and objective suspicion that the sticker had been unlawfully transferred or was counterfeit.

Search Incident to Arrest

United States v. Currence

446 F.3d 554 (4th Cir. 2006)

Defendant appealed his conviction for possession of cocaine, arguing that the search that uncovered the cocaine was unconstitutional. Detectives had initially approached defendant based on a tip from a confidential informant that defendant was selling drugs on a bicycle. During the encounter, detectives found that defendant had an outstanding misdemeanor warrant and placed him under arrest. The officers frisked him and searched the bicycle, where they discovered crack cocaine after sliding off the end cap of one handlebar. Defendant argued that the search of the bicycle went beyond the scope of a valid search incident to arrest. The Fourth Circuit disagreed, holding that the search was lawful because the bicycle was within the area of defendant's "immediate control" and it involved only minimal intrusion.

Search of Prisoners/Parolees/Probationers

Anderson v. Commonwealth

48 Va. App. 704, 634 S.E.2d 372 (2006)

Defendant appealed his convictions for rape, robbery, and sodomy, arguing in part that Va. Code § 19.2-310.2:1, which allows law enforcement to obtain a sample of "saliva or tissue" for DNA testing from anyone arrested for certain violent felonies, violated the Fourth Amendment of the United States Constitution. Here, Defendant was arrested in Stafford County for rape. His DNA was collected pursuant to § 19.2-310.2:1 and entered into the state databank. Fairfax police ran a DNA sample from a cold rape case through the state databank, and their sample matched defendant's DNA. Fairfax police then requested a warrant to obtain additional DNA samples from defendant and ultimately charged him with rape. Defendant argued that the statute that allowed Stafford

county officials to take his DNA and ultimately led Fairfax to solve their cold rape case authorizes a "suspicionless search" unrelated to the investigation of the charge that justifies the arrest. The Court of Appeals disagreed, ruling that "the procedure involved a permissible application of law enforcement's authority to search an arrestee incident to an arrest."

Samson v. California, 126 S.Ct. 2193 (2006)

Defendant appealed his convictions for drug offenses, arguing that the search that produced the narcotics was unconstitutional. A police officer had recognized him as a parolee, conducted a suspicionless search on him, and found methamphetamines. A California statute in place at the time required all parolees to agree in writing to subject themselves to searches and seizures from peace officers as a condition of their parole. Defendant argued that the statute violated his Fourth Amendment rights to be free of unreasonable searches and seizures. The Supreme Court disagreed, holding that the suspicionless search was a reasonable condition of parole which advanced state interests. The Court also stated that a parolee had a diminished expectation of privacy while on parole and that those limited privacy rights were protected by the prohibition of searches that were arbitrary, capricious, or harassing.

Seizure of a Person

Brendlin v. California, 551 U.S. ___ (2007)

Brendlin appealed his conviction for possession and manufacture of methamphetamine, arguing that the evidence should be suppressed because the officers did not have probable cause to stop the vehicle in which he was a passenger. Officers conceded that there was no probable cause to stop the vehicle but stopped it anyway. During the stop, they recognized Brendlin, a passenger in the car, as a parole violator with an outstanding warrant. The officers subsequently ran his information, arrested him, found numerous substances and drug paraphernalia in a search of the vehicle, and arrested the driver as well. The State argued that although the police did not have adequate justification to pull the car over, the passenger was not seized and thus could not claim that the evidence was gathered in violation of his Fourth Amendment rights. The U.S. Supreme Court disagreed, finding that, during a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and may challenge the stop's constitutionality. The Court reasoned that the stop curtails the travel of the passenger just as much as the driver, that passengers reasonably expect that officers will not allow people to move about a scene in ways that could jeopardize their safety, and that an officer's display of authority in initiating his lights and sirens applies to the occupants of the vehicle as well as the driver. It further offered that "the fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible against any passengers would be a powerful incentive to run the kind of 'roving patrols' that would still violate the driver's Fourth Amendment right."

Search & Seizure - cont'd

Warrantless Searches

Hill v. Commonwealth

47 Va. App. 442, 624 S.E.2d 666 (2006)

The defendants appealed their misdemeanor convictions for refusing to submit to a warrantless inspection of a goat cheese manufacturing facility in violation of Va. Code § 3.1-388(e). Defendants operated a small goat cheese manufacturing operation out of their home in Fauquier County and refused to allow a credentialed food safety inspector from the Virginia Department of Agriculture on the property without a search warrant. They argued that the Fourth Amendment barred a warrantless search of the operation since they operated it out of their home and were not required by law to obtain a license in order to sell their products. The Court affirmed their convictions, finding that the statute at hand was designed to ensure the safe production of foods in the Commonwealth and that “the warrantless search falls within the exception for closely regulated industries.”

Brigham City v. Stuart, 126 S.Ct. 1943 (2006)

Officers arrested the defendant for alcohol-related offenses after arriving at a residence in response to a noise complaint, observing juveniles drinking beer outside, hearing shouting inside, and observing a physical altercation through a window. The defendant filed a motion to suppress evidence gathered by the officers, claiming the warrantless search of the residence violated the 4th amendment of the United States Constitution. The trial court granted the motion to suppress, and the Supreme Court of Utah affirmed that decision. However, the U.S. Supreme Court reversed the decision, holding that, regardless of their subjective motives, police officers who have an objectively reasonable belief that an occupant of a residence has been or is about to be seriously injured may enter without a warrant under the exigent circumstances exception to the warrant requirement.

Robinson v. Commonwealth

Va. Sup. Ct, 639 S.E.2d 217 (2007)

The defendants appealed their convictions for contributing to the delinquency of a minor stemming from a party they threw for their 16-year-old son where defendants served alcohol to minors. Defendants argued that the officer violated their Fourth Amendment rights by pulling his marked police cruiser into a garage area of their residence in response to a “loud party” call and observed juveniles consuming alcoholic beverages on the patio and backyard area of the residence. Upon spotting the officer, the juveniles fled, causing the officer to enter the backyard in attempts to locate the host of the party. Defendants argued that the officer was not legally entitled to be near their garage because it was within the curtilage of their home and thus the trial court should have suppressed all of the evidence stemming from this initial “illegal” search. The Court disagreed and affirmed their convictions, rejecting a

“bright line rule holding that the implied consent given by a resident of a dwelling is limited in all cases to entry onto the premises to ‘knock and talk’ to the resident.” The Court further found that the officer acted with probable cause and under exigent circumstances in entering the backyard after observing the juveniles flee after having been in possession of alcohol.

Self-Incrimination

United States v. Alvarado

440 F.3d 191 (4th Cir. 2006)

Defendant appealed his convictions of federal drug offenses, arguing that incriminating statements used against him at trial were obtained in violation of the Sixth Amendment. Defendant had been arrested and charged with felony drug offenses in Prince William County as the result of a joint investigation between federal and state authorities. The state court appointed an attorney to represent defendant on the state charges. Prior to his preliminary hearing, the federal government filed federal charges against him. The state then dismissed its charges at the preliminary hearing, and federal authorities took him into custody. There, federal authorities reread the defendant Miranda and interviewed him. The federal government used several statements that he made during this interview against him at trial. Defendant argued that the trial court should have suppressed these statements since his state and federal charges arose from the same conduct and the federal authorities interviewed him without his state-appointed attorney present. The Court disagreed, holding that federal and state crimes are “necessarily separate offenses... because they originate from autonomous sovereigns that each have the authority to define and prosecute criminal conduct.” Since defendant’s right to counsel had not attached to his federal offenses at the time of his interview, the trial court properly admitted his statements.

U.S. v. Nichols, 438 F.3d 437 (4th Cir. 2006)

The government appealed defendant’s sentence on a federal bank robbery charge. Defendant had won a motion to suppress his confession after the court ruled that he had repeatedly requested an attorney prior to making several incriminating statements. He then pled guilty to the bank robbery. During his confession, however, defendant had admitted to using a firearm in the commission of the bank robbery, and that made the offense eligible for an enhanced sentence under federal sentencing guidelines. The probation officer did not recommend a sentencing enhancement because the confession had been suppressed, and the trial court adopted the probation officer’s recommendation. The government argued that although the confession was deemed inadmissible for purposes of conviction, the trial court should have considered that evidence in determining punishment. The Fourth Circuit agreed, ruling that “statements obtained in violation of *Miranda*, if they are otherwise voluntary, may generally be considered at sentencing.”

Miscellaneous

Jurisdiction

Boatwright v. Commonwealth

Va. Court of Appeals, Record No. 1356-06-2 (7/31/07)
Boatwright appealed his conviction for driving under the influence under Va. Code § 18.2-266, arguing that the trial court improperly denied his motion to suppress because the officer who stopped him did not have jurisdiction to do so. The officer was a member of the University of Virginia Police (“UVA Police”), and the Circuit Court for the City of Charlottesville (“the City”) had given the UVA Police concurrent jurisdiction in the City. The officer had observed Boatwright driving erratically in the City, near the Albemarle County line, around 2 a.m. He activated his lights and sirens, and Boatwright stopped approximately 200 yards into Albemarle County. Boatwright subsequently failed field sobriety tests and blew a .16 on the intoxilizer. Boatwright moved to suppress the evidence gathered from the stop, arguing that it was illegal because it occurred outside of the City. The trial court denied the motion, holding that the officer’s jurisdiction extended up to one mile beyond the corporate limits of the City under Va. Code § 19.2-250. The Court of Appeals affirmed the trial court’s ruling, further stating that the officer had jurisdiction under both Code § 23-234 (governing the jurisdiction of campus police) and § 19.2-249 (permitting offenses occurring within 300 yards of a jurisdictional border to be prosecuted in either jurisdiction) as well.

Substantive Law

Battle v. Commonwealth

Va. Court of Appeals, Record No. 1424-06-2(7/24/07)
Battle appealed his conviction for disorderly conduct in violation of Va. Code § 18.2-415. A Richmond police officer saw Battle outside of a night club arguing with a crowd of people and then saw him “make a striking motion toward another individual.” The officer did not see whether the blow had landed. The officer approached and ordered him to leave the area. Battle refused to obey and cursed at the officer so loudly that spit came out of his mouth. The Officer then arrested him for disorderly conduct. The trial court found him guilty. The Court of Appeals reversed his conviction, however, finding that the statute “specifically excludes conduct made punishable by other Title 18.2 criminal statutes.” The Court believed that each act that the Commonwealth relied on to convict Battle could have been punishable by another criminal statute. The Court held that § 18.2-415 reserves “disorderly conduct convictions only for conduct not punishable elsewhere in the criminal code.” The Court said, however, that “the conduct exempted from the reach of Code § 18.2-415 includes only Title 18.2 crimes for which the defendant could be found guilty beyond a reasonable doubt. It is not enough that the defendant could merely be prosecuted for a Title 18.2 crime because that requires only a showing of probable cause.”

Farrakhan v. Commonwealth

273 Va. 177, 639 S.E.2d 227 (2007)

Farrakhan appealed his conviction for possession of a concealed weapon after having previously been convicted of a felony, in violation of Va. Code § 18.2-308(A). The evidence showed that Farrakhan, a previously convicted felon, had walked into a woman’s furnishings store and attempted to leave with two boxes of shoes. Upon being approached by the store manager, Farrakhan removed a kitchen knife from his jacket, jabbed it at the store manager, and said, “Get the fuck out of my way.” Police later apprehended him and charged him with robbery and possession of a concealed weapon, and he was ultimately convicted of both charges. Farrakhan appealed the concealed weapon charge, arguing that the kitchen knife at issue did not qualify as a “weapon of like kind” as required by Va. Code § 18.2-308(A). The Virginia Supreme Court agreed, holding that “in order to be a ‘weapon’ within the definition of ‘weapon of like kind,’ the item must be designed for fighting purposes or commonly understood to be a ‘weapon.’” Although the Court noted that, “a kitchen knife is a potentially dangerous object, particularly in the hands of a person with criminal intent,” it found that the knife that Farrakhan possessed did not qualify as a weapon under that definition.

Phelps v. Commonwealth

49 Va. App. 265, 639 S.E.2d 689 (2007)

Phelps appealed his conviction for felony eluding in violation of Va. Code § 46.2-817(B), arguing that there was no evidence that his vehicle interfered with or endangered law enforcement or any person. The evidence showed that an officer with the James City Police Department witnessed Phelps make a left-hand turn without pulling into the turn lane. The officer got behind Phelps’s vehicle and activated his lights and sirens. Phelps initially maintained the posted speed limit but then accelerated through a residential area, ultimately striking a culvert near a residential driveway and flipping over. Phelps then crawled out of the wrecked vehicle and fled on foot; the officer apprehended and arrested him. Phelps argued at trial that the “Commonwealth had not shown that the operation of the vehicle interfered with or endangered the law enforcement vehicle or any person.” The Commonwealth argued that Phelps had endangered himself, and the Court found him guilty. Phelps argued on appeal that “a person,” as contemplated in Va. Code § 46.2-817(B), does not include the defendant himself. The Court disagreed, finding both that Phelps clearly endangered himself and that the legislature had not “meant to exclude appellant, a member of the general public, from the protection afforded by Code § 46.2-817 (B).” Thus, the Court upheld his conviction.

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