IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 131574

ROBERT KING VIA,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF THE COMMONWEALTH

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INTRODUCTION

The defendant, Robert King Via, argues the trial court erred in refusing to give his proffered jury instruction, which instruction would have advised the jury regarding the danger of relying upon the uncorroborated testimony of an accomplice to convict a defendant. (App. 66). The defendant argued to the trial court that Carl Gentline was an accomplice to the offenses for which Via was on trial, notwithstanding Gentline's testimony that he was coerced into

participating and the fact he was not charged with any offense. Via argued the jury's receipt of Gentline's testimony without the proffered instruction "irredeemably harmed" him at trial. (App. 97).

On appeal, Via contends the Court of Appeals erred in affirming the trial court's rejection of the proffered instruction.

STATEMENT OF THE CASE

A grand jury for the Circuit Court of the City of Hampton indicted the defendant, Robert King Via, for the following offenses: robbery of Frank Auche; the attempted robbery of Brent Conlon; breaking and entering while armed; conspiracy to commit robbery; the abduction of Auche; the abduction of Conlon; the abduction of Douglas Gurley, the abduction of Christopher Shorts[1], and seven counts of use or display of a firearm in the commission of a felony. (App. 1-15).

Prior to trial, the Commonwealth moved to *nolle prosequi* the charges of attempted robbery of Conlon and the use or display of a firearm in the commission of that offense. (App. 9, 12). A jury trial

[1] The grand jury initially returned the indictment alleging the abduction of Shorts with the incorrect victim, presenting what was in essence a duplicate indictment of that which alleged the abduction of Auche. Prior to trial, however, the Commonwealth amended the indictment's language, over the defendant's objection, reflecting Shorts as the victim of the offense, rather than Auche. (App. 118).

commenced on March 26, 2012. On March 28, 2012, the jury acquitted Via of one offense of the use of a firearm in the commission of a felony and convicted him of the remaining offenses. (App. 92-93). Thereafter, the defendant moved for a new trial, which motion was denied by the trial court. (App. 96-97, 112). The trial court imposed a sentence of 128 years and 1 day in prison, in accordance with the jury's verdicts. (App. 93, 114-115).

On May 22, 2013, a judge of the Court of Appeals of Virginia denied the petition for appeal. (Record No. 1759-12-1) (App. 118-127). A three judge panel of the Court of Appeals of Virginia denied Via's petition for rehearing on September 13, 2013. (App. 128). On February 26, 2014, this Court granted Via's petition for appeal.

ASSIGNMENT OF ERROR

The Defendant asserts the following assignment of error:

> "The Court of Appeals Erred In Affirming the Trial Court's Refusal of Instruction A Proffered By Via, Which Pertained To the Danger Of Convicting Upon The Uncorroborated Testimony of Carl Gentline. Specifically, the Court of Appeals Erred In Ruling That Sanchez's Testimony Corroborated, Rather Than Contradicted, Gentline's Testimony, Rendering The Instruction Unnecessary."

(Def. Br. at 10).

STATEMENT OF FACTS

The Offenses

Carl Gentline and Samual Sanchez were friends, having grown up together, and remained close over a period of about eight years. (App. 17-18, 47). Sanchez owned a trailer, in which he lived with his roommate Reginald Jones. (App. 47, 55, 58-59). The defendant, Robert King Via, was a "good frien[d]" of Jones. (App. 47).

On September 10, 2010, Gentline and Sanchez spent the day playing video games together in Sanchez's room of the trailer. (App. 18-19). At some point during that day Jones returned, accompanied by Via. (App. 18-19). Gentline and Sanchez overheard the other two men talking, and they exited Sanchez's bedroom to join them in the trailer's living room. (App. 19).

Sanchez testified that Jones and Via complained they were without money. (App. 48). Jones and Via concluded the only way they could obtain money immediately was to commit a robbery. (App. 48). Sanchez further related that Via proposed going to the home of an individual he knew for the purpose of robbing him of money and marijuana the defendant knew to be stored there. (App. 33, 49).

Gentline testified he did not believe Jones and Via seriously contemplated the commission of a robbery and that he considered the discussion to be a joke. (App. 20). Consequently, Gentline declined when Jones asked whether he would "go along with it." (App. 20). According to Gentline's testimony, Jones and Via then departed the trailer, until they returned approximately 30 to 45 minutes later, equipped with a long bag, black gloves, camouflage "beanies," and other items Gentline characterized as useful "for a robbery." (App. 20). At trial, Sanchez claimed Gentline drove him, in a car Sanchez borrowed, to Wal-Mart, where Gentline purchased ski masks. (App. 49).

Gentline related that upon the return of Jones and Via, he inquired, "What is going on right now?" (App. 21). While there was no further discussion of the robbery, Gentline testified that Jones directed Sanchez to get up and get dressed. (App. 21). As Sanchez did so, Gentline observed Jones and Via remove from a Wal-Mart shopping bag the items he characterized as being "for a robbery." (App. 20-21). After Jones, Via, and Sanchez finished dressing in dark clothing, Jones directed Gentline to get in the car. (App. 21-22).

Gentline complied, despite knowing their intention was to commit a robbery. He testified he did so because he was "scared" and "intimidated." (App. 22). Gentline knew Jones had previously killed someone, and feared that he too would be killed if he failed to do as he was directed. (App. 22). Gentline explained that, given the fact that Jones, Via, and Sanchez were all armed with guns, he believed he had to do what he was asked, and was too scared to refuse. (App. 24).

The men directed Gentline to drive them to a specific residence in Hampton. (App. 24). There, he was instructed to drive by the home several times, in an effort to scout the location. (App. 25). On the fourth pass, the men instructed Gentline to stop the vehicle and let them out. (App. 25). Gentline did so, remaining in the car, which he then parked nearby, with the house behind him. (App. 25). From the car's rearview mirror, he observed the men enter the home. (App. 26).

Once alone, Gentline waited in the car between thirty and forty-five minutes, until he observed police cars pull up near the house. (App. 26). He then left the location and drove around adjacent neighborhoods. (App. 28-29). As the same time, Jones, Via, and

Sanchez fled the home, seeking to hide from police officers in the neighborhood behind the house. (App. 28).

Gentline testified he exchanged a number of telephone calls with Jones, who sought to coordinate with Gentline their escape from the neighborhood and the police. (App. 27-28). Jones ordered Gentline to return to the neighborhood and pick them up. (App. 27-28). Gentline testified his concern for what might be done to him if he refused kept him from fleeing the scene. (App. 27). At some point Jones' cell phone battery died, and Gentline became panicked about what to do. (App. 28-29). Ultimately, however, he received a call from the defendant, who provided an address at which to retrieve the trio. (App. 29-30). Gentline then drove the men back to the residence shared by Sanchez and Jones, where he dropped them off and departed. (App. 30).

Gentline was not charged with any criminal offense arising out of his involvement in the robbery. (App. 42). At no point during the events at issue did he possess a firearm. (App. 51).

The Proceedings

Sanchez pled guilty to the charges he faced as a result of his involvement in these events. (App. 56). Sanchez testified that he,

Jones, and Via, while masked and armed, forced their way into 822 Arlington Terrace. (App. 51-52). Once inside, the men demanded money from the home's occupants and seized items of personal property found there. (App. 53-54). Upon learning of the arrival of the police, Jones, Sanchez, and Via fled from the home's rear entrance and leapt over the back yard fence, discarding their gloves and masks as they ran. (App. 54). Sanchez related they ultimately made contact with Gentline, who returned them to the home Sanchez shared with Jones. (App. 55).

Prior to the trial court's instruction of the jury as to the applicable law, the court heard argument regarding proffered instructions upon which the parties could not agree. (App. 69). The defense sought to offer Jury Instruction A, which stated as follows:

> Carl Genteline (sic) has testified that he was an accomplice in the commission of the crimes charged in the indictments. While you may find your verdict upon his uncorroborated testimony, you should consider his testimony with great care and you are cautioned as to the danger of convicting the defendant upon the uncorroborated testimony of an accomplice. Nevertheless, if you are satisfied from the evidence of the guilt of the defendant beyond a reasonable doubt, the defendant may be convicted upon the uncorroborated evidence of an accomplice.

(App. 66).

The Commonwealth objected to the instruction, arguing that Gentline was not, in fact, an accomplice to the offenses. (App. 69). The trial court inquired of the defense whether the testimony of Sanchez could corroborate that of Gentline, assuming for the sake of argument that Gentline was an accomplice to the offenses. (App. 70-71). The defense answered Sanchez's testimony ***could*** corroborate that of Gentline, but only if the jury credited Sanchez's testimony. If it were rejected, the defense maintained the testimony of Gentline would stand uncorroborated. Hence, the defense reasoned, the instruction should be given. (App. 71).

Ultimately, the trial court refused the proffered instruction, finding Gentline was not an accomplice and that to so instruct the jury would be "unduly confusing." (App. 72). An identical instruction, cautioning the jury regarding the weight to accord accomplice Samual Sanchez's testimony, was given without objection. (App. 89).

Subsequent to Via's conviction, the defense moved for a new trial, alleging, *inter alia*, the refusal of the proffered instruction was error in light of Jones v. Commonwealth, 111 Va. 862, 69 S.E. 953 (1911). (App. 96-97). At argument on the motion, the defense maintained, pursuant to Jones, the failure of the Commonwealth to

indict Gentline for his participation in the offenses was not dispositive as to whether he was an accomplice. (App. 105). Moreover, citing Jones and in contrast to the position adopted in response to the court's inquiry at trial, the defense argued the testimony of Sanchez and Gentline could not be employed to corroborate one another. (App. 106-107). The trial court denied Via's motion and imposed the sentence. (App. 109).

ARGUMENT

I. The Court of Appeals Did Not Err in Affirming the Trial Court's Denial of the Proffered Jury Instruction.

On appeal, Via argues the Court of Appeals of Virginia erred in affirming the trial court's denial of his proffered jury instruction. (Def. Br. at 14). The defendant maintains Gentline was an accomplice to the offense, citing Guthrie v. Commonwealth, 171 Va. 41, 469, 198 S.E.481 (1938) for the proposition that one bears accomplice liability where he may be indicted for the same offense. (Def. Br. at 14). Via argues the absence of an indictment in this specific case did not diminish Gentline's liability. (Def. Br. at 15). Consequently, Via contends it was error to not instruct the jury as to the potential danger of relying upon Gentline's uncorroborated testimony. (Def. Br. 16).

Furthermore, Via argues the Court of Appeals erred in concluding the testimony of Sanchez corroborated that of Gentline because Gentline asserted Jones and Via purchased the hats and gloves used in the robbery, while Sanchez claimed Gentline made the purchases when they rode together to Wal-Mart. (Def. Br. at 17-18). (App. 49).

Standard of Review

The determination whether to grant or deny proffered jury instructions rests within the sound discretion of the trial court. Cooper v. Commonwealth, 277 Va. 377, 381, 673 S.E.2d 185, 187 (2009). An appellate court's responsibility in reviewing jury instructions "is to see that the law has been clearly stated and that the instructions cover all issues which the evidence fairly raises." Cooper, 277 Va. at 381, 673 S.E.2d at 187 (citing Molina v. Commonwealth, 272 Va. 666, 671, 636 S.E.2d 470, 473 (2006)) (internal quotations omitted).

"[E]ven if jury instructions contain accurate statements of law, a trial court does not abuse its discretion by refusing the instruction if it is not applicable to the facts and circumstances of the case, or if it would have created confusion and would have been misleading." Juniper v. Commonwealth, 271 Va. 362, 431, 626 S.E.2d 383, 426 (2006).

(internal citations and quotations omitted). In deciding on appeal whether a given instruction was appropriate, the appellate court views the facts relevant to that determination in a light most favorable to the proponent of the instruction. Cooper, 277 Va. at 381, 673 S.E.2d at 187 (citing Commonwealth v. Cary, 271 Va. 87, 91, 623 S.E.2d 906, 907 (2006)).

Analysis

The Defendant Failed To Articulate At the Relevant Time The Precise Argument He Makes On Appeal Regarding the Inability of the Sanchez Testimony to Corroborate That of Gentline

As a threshold matter, Via failed to make his present argument, that the Sanchez testimony could not be relied upon to corroborate that of Gentline, to the trial court at a time the court could act on this alleged error. During the trial, the trial court determined as a matter of law that Gentline did not act as an accomplice. (App. 71). Prior to making that determination, however, the trial court asked defense counsel whether the Sanchez testimony could be relied upon to corroborate Gentline's testimony, if one were to assume Gentline acted as an accomplice. (App. 70-71). The defense answered that Gentline's testimony could be corroborated by Sanchez's testimony, if the jury believed Sanchez. (App. 71).

Significantly, the defense did not raise during the jury trial his present argument, in which he maintains the testimony of Sanchez could not be relied upon to corroborate Gentline, in the event they both acted as accomplices. Rather, this argument was presented for the first time after the jury trial, at argument on the defendant's motion for new trial. (App. 106-107). As a consequence, the defendant failed to preserve for appellate review the argument that Sanchez's testimony could not be used to corroborate Gentline's, in accordance with the operation of VA. SUP. CT. RULE 5:25.

To satisfy the dictates of Rule 5:25, "[a]n objection must be made . . . at a point in the proceeding when the trial court is in a position, not only to consider the asserted error, but also to rectify the effect of the asserted error." Scialdone v. Commonwealth, 279 Va. 422, 437, 689 S.E.2d 716, 724 (2010) (quoting Johnson v. Raviotta, 264 Va. 27, 33, 563 S.E.2d 727, 731 (2002)). "The purpose of the contemporaneous objection rule 'is to avoid unnecessary appeals by affording the trial judge an opportunity to rule intelligently on objections.'" Maxwell v. Commonwealth, 287 Va. ___, ___, 754 S.E.2d 516, 519 (2014) (slip op. at 6) (quoting State Highway Comm'r v. Easley, 215 Va. 197, 201, 207 S.E.2d 870, 873 (1974)". "For the

circuit court to rule intelligently, the parties must inform the circuit court 'of the precise points of objection in the minds of counsel.'" Maxwell, 287 Va. at ___, 754 at 519 (slip op. at 6) (quoting Gooch v. City of Lynchburg, 201 Va. 172, 177, 110 S.E.2d 236, 239-40 (1959)).

Moreover, to the extent the defendant indicated to the trial court at the time the proffered instruction was under consideration that the testimony of Sanchez could, in fact, corroborate that of Gentline, he may not now take an inconsistent position in an effort to obtain reversal. "[A] party may not approbate and reprobate by taking successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory. Nor may a party invite error and then attempt to take advantage of the situation created by his own wrong." Rowe v. Commonwealth, 277 Va. 495, 502, 675 S.E.2d 161, 164 (2009) (quoting Cangiano v. LSH Bldg. Co., 271 Va. 171, 181, 623 S.E.2d 889, 895 (2006)).

The Defendant Failed To Assign Error To The Court of Appeals' Implicit Conclusion That Gentline Was Not An Accomplice

At trial, the court determined Gentline was not an accomplice to the offenses. (App. 71). Based upon this legal conclusion, the court

refused the proffered jury instruction.[2] (App. 71). Via objected to this finding and presented argument to the contrary in support of his motion for new trial. (App. 72, 105-108).

In his petition for appeal in the Court of Appeals, Via's assignment of error merely asserted, "The trial court erred in refusing [the defendant's proffered instruction], which pertained to the danger of convicting upon the uncorroborated testimony of Carl Gentline." Petition for Appeal, Record 1758-12-1, filed February 21, 2013, at p.36. In support of this assignment of error Via referenced his argument on the motion for new trial, in which he maintained Gentline was an accomplice, whose testimony could not be corroborated by Sanchez as a matter of law. Petition for Appeal at 41. To the extent he argued the trial court erred, it was with respect to his claim that the proffered instruction was an "accurate statement of the law and was supported by more than a scintilla of evidence," thus requiring its

[2] Later, in denying the defendant's motion for new trial, the trial court suggested the question of whether Gentline was an accomplice was a question of fact to be determined by the jury. (App. 109). Regardless of any later articulated basis for the ruling, the court's stated rationale for refusing the proffered instruction at trial turned upon its legal conclusion that Gentline was not an accomplice to the offenses. (App. 71).

submission to the jury. Petition for Appeal at 42. Via never assigned error to the trial court's finding the Gentline was not an accomplice.

Before this Court, Via maintains the Court of Appeals erred in affirming the trial court's determination that the testimony of Sanchez ***corroborated*** the testimony offered by Gentline. See Assignment of Error, Def. Br. at 10. Significantly, however, the Court of Appeals did not conclude Gentline ***was*** an accomplice to the offense. (App. 120).

To the extent the Court of Appeals ***assumed*** Gentline was an accomplice, it did so in furtherance of resolving the alternate ground that Gentline's testimony was, in fact, corroborated. Thus, the proffered instruction was not applicable. The Court of Appeals' analysis of the corroborative effect of Sanchez's testimony began by noting, "Even if Gentline was ***considered*** an accomplice to the crimes . . . ." (App. 120).

In the assignments of error presented in this Court, Via failed to assign error to the Court of Appeals' implicit adoption of the trial court's conclusion that Gentline was ***not*** an accomplice. As a consequence, the defendant has waived appellate review of the Court of Appeals' affirmance of his conviction on this basis. See Riner v. Commonwealth, 268 Va. 296, 309, 601 S.E.2d 555, 562

(2004) (finding issue waived under Rule 5:17(c), where assignment of error in this Court failed to challenge portion of Court of Appeals' judgment below applying Rule 5A:18 to preclude consideration of the same issue).

Moreover, to the extent the defendant has failed to assign error in this Court to the Court of Appeals' implicit finding that Gentline was not an accomplice, it stands as an unchallenged independent basis upon which to affirm the Court of Appeals' conclusion the trial court did not abuse its discretion in refusing the proffered instruction. See Lawlor v. Commonwealth, 285 Va. 187, 222, 738 S.E.2d 847, 867 (2013), cert. denied, 134 S.Ct. 427 (2013) (where defendant convicted for capital murder in the commission of rape or attempted rape, the court declined to reach argument based upon alleged insufficiency of rape evidence, where unchallenged attempted rape predicate existed).

"[I]n situations in which there is one or more alternative holdings on an issue, the appellant's failure to address one of the holdings results in a waiver of any claim of error with respect to the court's decision on that issue." Johnson v. Commonwealth, 45 Va. App. 113, 116, 609 S.E.2d 58, 60 (2005) (internal quotations omitted). "If [the

appellate court] were to hold otherwise, an appellant could avoid the adverse effect of a separate and independent basis for the judgment by ignoring it and leaving it unchallenged." Id. at 116-17, 609 S.E.2d at 60 (internal quotations omitted).

The Defendant's Argument is Nevertheless Without Merit

Via errs in relying upon Guthrie in support of his contention Gentline was an accomplice to the offenses. Pursuant to Guthrie, Via argues the ability to indict Gentline for the same offenses renders him an accomplice. (Def. Br. at 14-15). However, Gentline was not subject to indictment. Via's conclusion ignores the evidence demonstrating Gentline did not share the requisite criminal intent to charge him as a principal in the second degree. While Via has recited a true statement of law, it is inapposite to the facts at issue for the simple reason that without the requisite criminal intent, Gentline could not have been charged for the offenses.

Pursuant to Code § 18.2-18, in the case of every felony (with the exception of certain murders), a principal in the second degree "may be indicted, tried, convicted and punished in all respects as if a principal in the first degree."

As this Court held in McMorris v. Commonwealth, 276 Va. 500, 666 S.E.2d 348 (2008):

> It is a well-settled rule that a defendant is guilty as a principal in the second degree if he is guilty of some overt act done knowingly in furtherance of the commission of the crime, or if he shared in the criminal intent of the principal committing the crime. This rule cannot be interpreted to mean that any overt act that is advantageous to the principal's criminal plan is sufficient; the defendant must also share in the principal's criminal intent. The overt act must be "knowingly in furtherance of the commission of the crime." Therefore, lack of intent is usually a defense to a conviction as a principal in the second degree. The one exception exists when there was concert of action and the resulting crime, whether such crime was originally contemplated or not, is a natural and probable consequence of the intended wrongful act.

Id. at 505-06, 666 S.E.2d at 351.

At trial, the evidence, viewed in a light most favorable to Via as the proponent of the proffered instruction, Cooper, 277 Va. at 381, 673 S.E.2d at 187, demonstrated resoundingly that Gentline did not share the criminal intent of Jones, Sanchez, and the defendant. Gentline's fear of Jones and his dread that the failure to comply as directed would result in imminent harm to himself represented the reasons Gentline undertook efforts in furtherance of the offenses. (App. 22-24). Gentline's concession at trial that he returned to pick the men up, in part, out of a desire to not leave Sanchez behind was

nevertheless couched in terms of an overarching fear of Jones and Via and the potential consequences to him if he failed to do so. (App. 37-38).

Via attaches great significance to Sanchez's testimony concerning the role played by Gentline in the acquisition of masks and other items employed for the robbery. (Def. Br. at 16-18). Via cites this testimony in support of the argument that Sanchez contradicted rather than corroborated Gentline's testimony. Nevertheless, when this testimony is included in the calculus as to whether Gentline was an accomplice, it does not compel a different result, even when viewed in a light most favorable to Via. Crediting Sanchez's testimony, Gentline undertook an additional act in furtherance of the offenses, however, Sanchez's testimony did not address at all Gentline's underlying motivation for doing so. It did not discredit Gentline's stated reasons for complying with the directions he was given in any way. His testimony, in which he stated he acted out of a sense of self-preservation, was therefore unimpeached in the trial court.

The trial court did not err in finding Gentline was not an accomplice. As a consequence, the proffered instruction failed to

apply to the facts and circumstances of the case. Juniper, 271 Va. at 431, 626 S.E.2d at 426. Accordingly, the trial court did not abuse its discretion in refusing the proffered instruction and the Court of Appeals did not err in so affirming.

Moreover, to the extent Sanchez's testimony differed in any respect from that of Gentline, it did not do so as it related to the circumstances of the offense itself. Nevertheless, Via relies upon Jones for the proposition that the testimony of Gentline and Sanchez may not be employed to corroborate one another. (Def. Br. at 13). In so arguing, however, Via presupposes that Gentline and Sanchez were ***both*** accomplices, as was the case in Jones. See id. at 868, 69 S.E. at 955. However as has been discussed, this premise was correctly rejected by the trial court. Thus, Jones is inapposite.

Assuming *arguendo*, that Gentline acted as an accomplice, and Jones applied to prohibit the reliance upon the testimony of Sanchez to corroborate his testimony, there was, nevertheless sufficient evidence adduced to corroborate Gentline's testimony. Thus, Gentline's testimony was not uncorroborated and the proffered instruction was inapplicable under the circumstances.

Regarding the necessity of an instruction regarding the uncorroborated testimony of an accomplice, this Court observed in Allard v. Commonwealth, 218 Va. 988, 243 S.E.2d 216 (1978):

> Where, therefore, the testimony of an accomplice is corroborated in material facts which tend to connect the accused with the crime, sufficient to warrant the jury in crediting the truth of the accomplice's testimony, it is not error to refuse a cautionary instruction. This rule applies even though the corroborative evidence falls short of constituting independent evidence which supports the alleged ultimate fact that the accused committed the offense charged.

Id. at 990, 243 S.E.2d at 217 (quoting Dillard v. Commonwealth, 216 Va. 820, 823-24, 224 S.E.2d 137, 140 (1976)) (internal quotations omitted).

In the instant case, police officers recovered a gun wrapped in a hunting mask in the alley behind 822 Arlington Terrace. (App. 121). Additionally, approximately twenty yards from the residence, officers recovered blood from a fence and a nearby leaf, which was scientifically linked to Jones' DNA. (App. 121). Jones provided a statement to law enforcement inculpating the defendant, Sanchez, and a person named "Carl." (App. 121). These facts corroborated the material facts offered by Gentline's testimony serving to connect

Via to the crime such that the refusal of the defendant's proffered instruction was not error.

Thus, even if the Court of Appeals erred in relying upon the Sanchez's testimony, a fact which is not conceded here, pursuant to the "right result for the wrong reason" doctrine, the judgment of the Court of Appeals should be affirmed. See Perry v. Commonwealth, 280 Va. 572, 578-80, 701 S.E.2d 431, 435-37 (2010) ("an appellee may argue for the first time on appeal any legal ground in support of a judgment so long as it does not require new factual determinations").

CONCLUSION

For the forgoing reasons, the Commonwealth asks this Court to affirm the judgment of the Court of Appeals and the Circuit Court of the City of Hampton.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
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CERTIFICATE OF TRANSMISSION AND SERVICE

On April 18 2014, in compliance with Rule 5:26, the required copies of this brief were hand delivered to the Clerk's Office of this Court for filing and three copies were mailed to Charles E. Haden, 1 E. Queens Way, First Floor, Hampton, Virginia, 23669, counsel for the Appellant. In addition a copy of the brief was sent to the Court electronically to scvbriefs@courts.state.va.us, and a copy was served upon opposing counsel at cehaden@mindspring.com

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