

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 21st *day of* February, 2014.

Earl Lewis Bradley, Jr., Appellant,

against Record No. 131087
Court of Appeals No. 1194-12-2

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, the judgment of the Court of Appeals is affirmed.

I. Background

Earl Lewis Bradley pled not guilty in the Circuit Court of the
City of Petersburg to indictments charging possession with intent to
distribute cocaine as a subsequent offense in violation of Code
§ 18.2-248, possession with the intent to sell, give, or distribute
more than one-half ounce but not more than five pounds of marijuana
in violation of Code § 18.2-248.1(a)(2), possession of a firearm by
a convicted felon in violation of Code § 18.2-308.2, and possession
of a firearm while possessing a controlled substance in violation of
Code § 18.2-308.4. Bradley was tried by the court, having waived
trial by jury, and at the conclusion of the Commonwealth's evidence,
moved to strike the charge of possession with intent to distribute
cocaine by challenging DNA evidence that linked Bradley to the pants
in which the cocaine was found. The court denied the motion to
strike.

When the case was submitted to the court at the close of the evidence, Bradley renewed his motion to strike. In support of his motion to strike the charge of possession with intent to distribute cocaine, Bradley argued:

On the cocaine, you know, the DNA evidence - I'm not sure if that's the cocaine that was submitted. Maybe it is. Maybe it isn't, but let's assume for the case that it's not. The question is whether it's possession or possession with intent to distribute, or possession at all. What is interesting is that when he gets up and puts on his pants, he doesn't put on those pants. And there is no evidence that those pants would even have fit him or that they were even men's pants. At best, it was unisex. So, in light of all that, we would move the court to grant our renewed motion, which is also my closing statement.

The circuit court denied Bradley's motion to strike the charge of possession with intent to distribute cocaine. The court found Bradley guilty of possession with intent to distribute cocaine and sentenced him to twenty years' imprisonment with seventeen years and nine months suspended.

Bradley appealed his conviction to the Court of Appeals. The Court of Appeals, under Rule 5A:18, refused to reach Bradley's challenge to the sufficiency of the evidence to establish his intent to distribute cocaine. Bradley v. Commonwealth, Record No. 1194-12-2 (June 4, 2013). Bradley filed a timely appeal.

II. Discussion

Bradley argues that the Court of Appeals erred in applying Rule 5A:18 to procedurally bar review of his challenge to the sufficiency of the evidence to establish his intent to distribute cocaine. Bradley contends that he made an objection to the sufficiency of the evidence proving intent in his motion to strike when he stated, in relevant part, "[t]he question is whether it's possession or possession with the intent to distribute, or possession at all." Bradley argues that the aforementioned language was sufficient to alert the circuit court of the nature of his objection, as is demonstrated by the Commonwealth's response to his motion to strike and the court's ultimate ruling on the matter, both of which discuss the sufficiency of the evidence to establish intent to distribute.

The provisions of the contemporaneous objection rule in this Court, Rule 5:25, parallel the requirements of the contemporaneous objection rule applicable to the Court of Appeals, Rule 5A:18. Rule 5A:18 provides, in relevant part:

No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

(Emphasis added.) See also Rule 5:25. The purpose of the contemporaneous objection rule "is to avoid unnecessary appeals by affording the trial judge an opportunity to rule intelligently on

objections." 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." Gooch v. City of Lynchburg, 201 Va. 172, 177, 110 S.E.2d 236, 239-40 (1959).

Bradley's objection was not stated with reasonable certainty. A mere statement that "[t]he question is whether it's possession or possession with intent to distribute, or possession at all" does not state Bradley's challenge that the evidence introduced by the Commonwealth was insufficient to establish that Bradley possessed the cocaine with the specific intent to distribute. This is especially true in light of the fact that the totality of Bradley's supporting argument focused on whether the pants were his to the exclusion of all of the other evidence that was indicative of possession with the intent to distribute. Consequently, Bradley's objection did not provide the court with the information necessary to make an intelligent ruling on the issue that is the basis for Bradley's appeal.

Therefore, the judgment of the Court of Appeals that Rule 5A:18 procedurally bars consideration on appeal of the sufficiency of the evidence to establish that Bradley intended to distribute the cocaine is affirmed. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

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

A Copy,

Teste:

Pat L. Hamington

Clerk