



Supreme Court of Virginia Clarifies "Right Result for the Wrong Reason Doctrine"

02.11.2011

The Supreme Court of Virginia recently decided a pair of unanimous decisions clarifying the "right result for the wrong reason" doctrine. Virginia courts have long recognized that an appellate court may affirm the judgment of a trial court even where the trial court reached the right result for the wrong reason. *Eason v. Eason*, 204 Va. 347 (1963). Just last year, however, the Supreme Court of Virginia limited the application of the "right result for the wrong reason" doctrine to "cases in which the party seeking affirmance" argued the "right ground" to the trial court. *Whitehead v. Commonwealth*, 278 Va. 105, 114 (2009). In the two unanimous decisions, the Supreme Court of Virginia has clarified the doctrine and concluded that failure to make the alternate argument before the trial court is not the proper focus of the "right result for the wrong reason" doctrine. Rather, the focus should be on whether the facts in the record support the alternate ground for affirmance, regardless of whether the alternate ground was argued at trial. In those two cases, the Supreme Court of Virginia held that the record supported an alternate ground for affirmance, regardless of whether that ground was argued at trial, when it reflects that all evidence necessary to establish that ground was before the trial court.

In *Perry v. Commonwealth*, 2010 Va. LEXIS 271 (Nov. 4, 2010), the Supreme Court of Virginia considered whether the appellate court erred when it affirmed the trial court's denial of the defendant's motion to suppress certain evidence. In *Perry*, after arresting the driver of a vehicle for possession of PCP, a police officer frisked the defendant, the passenger in the vehicle, and arrested him on finding a vial of illegal drugs in his pocket. At trial, the defendant argued, to no avail, that the officer did not have reasonable articulable suspicion to believe that the defendant was armed and dangerous and that, even if the pat-down search was lawful, the officer exceeded the scope of the frisk. The appellate court ruled that the trial court erred in concluding that the officer had reasonable articulable suspicion necessary to justify the frisk. Instead, the appellate court held that the officer had probable cause to believe that the defendant possessed illegal drugs—either by having joint or constructive possession of the drugs originally in [the driver's] hand or by having actual possession of other drugs that the officer had not yet seen.? *Perry v. Commonwealth*, 55 Va. App. 122, 128 (2009). The appellate

court acknowledged that the Commonwealth never argued that the officer had probable cause to arrest the defendant and conduct the search but affirmed the conviction based on the "right result for the wrong reason" doctrine.

On appeal, the defendant argued that the appellate court improperly applied the doctrine because the Commonwealth did not present the probable cause argument at trial.

Nevertheless, the Supreme Court of Virginia upheld the appellate court's decision because the facts necessary to resolve the issue of whether the officer had probable cause to arrest for possession were established in the record before the trial court. The record showed that the officer smelled drugs in the vehicle, verified that the driver of the vehicle possessed PCP, and identified the defendant's behavior as consistent with that of an individual under the influence of PCP. Thus, the record showed that the officer had probable cause to believe that the defendant possessed PCP and conduct the subsequent search incident to arrest.

In *Banks v. Commonwealth*, 2010 Va. LEXIS 274 (Nov. 4, 2010), the Supreme Court of Virginia applied the doctrine to conclude that the appellate court erred in affirming the defendant's conviction for possession of a firearm on alternate grounds. In that case, the defendant was arrested while wearing a long-sleeved shirt and mesh shorts. One of the arresting officers retrieved the defendant's jacket because the defendant was inappropriately dressed for the cold weather and found a gun in the jacket pocket. The trial judge ruled that the defendant's state of undress created exigent circumstances that justified the seizure of the jacket. The appellate court, however, upheld the seizure because the defendant had consented to seizure, an alternate ground that was not argued at trial.

Reversing the appellate court's ruling, the Supreme Court of Virginia noted that the "right result for the wrong reason" doctrine only applies where the record before the trial court provides all evidence necessary to support the alternate ground for affirmance. The Supreme Court of Virginia added that, where the evidence is conflicting, however, "the record must show how [the trial court] resolved the dispute" for example, it must demonstrate how contradicting testimony was weighed or credited. In *Banks*, the facts surrounding the seizure and whether the defendant consented to it were in dispute, and the circuit court neither resolved the dispute nor indicated how it weighed or credited the contradicting testimony as to whether the defendant asked for his jacket. Accordingly, the Supreme Court of Virginia held that the record did not afford sufficient evidence for the appellate court to apply the "right result for the wrong reason" doctrine.

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