

SUPREME COURT OF VIRGINIA

Billips v. Commonwealth

652 S.E.2d 99 (Va. 2007) · No. Record No. 062180 · Decided November 2, 2007

SUMMARY

The Supreme Court of Virginia held that the Spencer reliability requirement applies to scientific evidence offered in judicial proceedings, including sentencing proceedings. Because the Commonwealth failed to establish the scientific reliability of penile plethysmograph testing before introducing related evidence at sentencing, the evidence was inadmissible and the sentencing judgment was reversed and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Charles S. Russell; Chief Justice Hassell; Justice Keenan; Justice Koontz; Justice Kinser; Justice Lemons; Justice Agee; Senior Justice Russell
JURISDICTION	Virginia
DECIDED	November 2, 2007
DOCKET	Record No. 062180
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Billips appealed his sentences to the Court of Appeals of Virginia, which affirmed. The Supreme Court of Virginia granted an appeal limited to whether evidence based on plethysmograph testing was admissible at sentencing.
STANDARD OF REVIEW	The admissibility of scientific evidence requires a threshold reliability finding; the Supreme Court reviewed the legal admissibility issue and applied nonconstitutional harmless-error review to the sentencing error.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Virginia.
PARTIES	Matthew Edward Billips v. Commonwealth of Virginia

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QUESTIONS PRESENTED

1. Whether the Spencer reliability rule applies to scientific evidence offered at a sentencing proceeding.
2. Whether penile plethysmograph evidence lacking a threshold foundation establishing the reliability of the scientific method was admissible at sentencing.
3. Whether admission of the plethysmograph evidence was harmless.

HOLDINGS

1. The Spencer rule governing the admissibility of scientific evidence applies to scientific evidence offered in judicial proceedings generally, including sentencing proceedings.
2. Penile plethysmograph evidence is inadmissible when the proponent fails to make a prima facie showing establishing the reliability of the scientific method.
3. The admission of the unsupported plethysmograph evidence was not harmless because the court could not say with fair assurance that the sentencing decision was unaffected by the evidence.

KEY QUOTATIONS

“Rather, the Spencer rule applies to the use of scientific evidence in judicial proceedings generally.” (at 101)

“As with any evidence requiring a preliminary foundation, the burden of making a prima facie showing of that foundation rests upon the proponent of the evidence, subject to the opponent's opportunity for cross-examination and refutation.” (at 101)

“The plethysmograph evidence, lacking foundation, was inadmissible in the sentencing proceeding.” (at 101)

FACTUAL BACKGROUND

Billips was convicted of three sexual offenses arising from conduct involving a child. Before sentencing, the circuit court considered a psychosexual risk evaluation containing results from a penile plethysmograph assessment, which purported to measure sexual responsiveness to various stimuli and placed Billips in the highest reoffense-risk category. The Commonwealth presented no evidence establishing the scientific reliability of the plethysmograph method, and the circuit court nevertheless relied on the report and related testimony in imposing sentence.

PROCEDURAL HISTORY

Billips was convicted in the circuit court of two counts of forcible sodomy of a child under thirteen and one count of soliciting a child to commit sodomy. Before sentencing, the circuit court admitted a presentence risk-evaluation report and related testimony that relied on penile plethysmograph testing, despite the absence of

evidence establishing the reliability of the testing method. The Court of Appeals affirmed the sentences, but the Supreme Court of Virginia reversed as to sentencing and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals' judgment insofar as it pertains to sentencing and remand to the Court of Appeals with direction to remand the case to the circuit court for resentencing consistent with the opinion. Billips' convictions and the Court of Appeals' judgment concerning guilt were unaffected.

CASES CITED

- Spencer v. Commonwealth, 240 Va. 78, 393 S.E.2d 609 (1990)
- Billips v. Commonwealth, 48 Va. App. 278, 630 S.E.2d 340 (2006)
- Clay v. Commonwealth, 262 Va. 253, 546 S.E.2d 728 (2001)
- Kotteakos v. United States, 328 U.S. 750, 764-65, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946)
- O'Dell v. Commonwealth, 234 Va. 672, 701, 364 S.E.2d 491 (1988)
- Richardson v. United States, 468 U.S. 317, 330, 104 S. Ct. 3081, 82 L. Ed. 2d 242 (1984)

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