

SUPREME COURT OF VIRGINIA

Waller v. Commonwealth

685 S.E.2d 48 (Va. 2009) · No. Record No. 081920 · Decided November 5, 2009

SUMMARY

The Supreme Court of Virginia held that prior felony conviction orders were improperly admitted because they were not authenticated as required for circuit court orders under Code § 17.1-123(A). The court vacated the conviction for possession of a firearm after conviction of a violent felony, concluding that the evidence supported conviction for the lesser offense of possession of a firearm after conviction of a non-violent felony. The case was remanded for a new sentencing hearing on the lesser offense.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Harry L. Carrico; Justice Koontz; Justice Kinser; Justice Lemons; Justice Goodwyn; Justice Millette; Senior Justice Carrico; Senior Justice Russell
JURISDICTION	Virginia
DECIDED	November 5, 2009
DOCKET	Record No. 081920
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a bench trial, Waller was convicted in the Circuit Court of Pittsylvania County of possessing a firearm after having been convicted of a violent felony. The Court of Appeals of Virginia affirmed, and the Supreme Court of Virginia awarded Waller an appeal.
STANDARD OF REVIEW	De novo review of the legal issue concerning admissibility and authentication of the prior-conviction orders; the court assessed the sufficiency of the remaining evidence to support conviction of the lesser offense.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.
PARTIES	James Lester Waller v. Commonwealth of Virginia

TOPICS

authentication

evidence

statutory interpretation

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether six Henry County circuit court orders were properly authenticated and admissible to prove that Waller had previously been convicted of a violent felony.
2. Whether the remaining evidence was sufficient to support conviction for the lesser offense of possessing a firearm after having been convicted of a nonviolent felony.
3. Whether Waller's admissions that he was a convicted felon were sufficiently corroborated to establish the prior-felony element of the lesser offense.

HOLDINGS

1. Circuit court orders are admissible under Code § 8.01-389(A) only when authenticated in accordance with the specific requirements of Code § 17.1-123(A). A clerk's certification alone does not establish the required authentication where the orders contain no judge's signature and the record provides no indication of a judge's signature in the order book or a signed term order.
2. Because the improperly authenticated orders were admitted in error, the evidence was insufficient to sustain Waller's conviction for possessing a firearm after having been convicted of a violent felony.
3. The evidence was sufficient to establish that Waller had previously been convicted of a felony and therefore supported sentencing for the lesser offense of possessing a firearm after having been convicted of a nonviolent felony.

KEY QUOTATIONS

“Under Code § 8.01-389(A), the records of all judicial proceedings except orders of circuit courts shall be received as prima facie evidence while circuit court orders shall be received only when authenticated pursuant to Code § 17.1-123(A).” (50)

“Because the six orders in question were admitted in error, we must vacate the judgment convicting the defendant of possessing a firearm after having been convicted of a violent felony.” (51)

FACTUAL BACKGROUND

After Waller's nephew threatened to return and kill him, Waller retrieved several firearms and was found placing a shotgun under a van, with other firearms nearby and another revolver in his pocket. Waller acknowledged to a deputy and at trial that he was a convicted felon, but he did not remember whether the prior conviction was for armed robbery. The Commonwealth introduced six 1975 Henry County circuit court orders purporting to establish armed-robbery convictions; the orders lacked a judge's signature and showed only a clerk's copy-teste certification.

PROCEDURAL HISTORY

The circuit court admitted six uncertified or improperly authenticated Henry County circuit court orders offered to prove Waller's prior violent-felony convictions and convicted him under Code § 18.2-308.2(A). The Court of Appeals affirmed the conviction. The Supreme Court of Virginia held that the orders were improperly authenticated, reversed the appellate judgment, vacated the violent-felony conviction, and remanded for sentencing on the lesser offense of firearm possession by a person previously convicted of a nonviolent felony.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Court of Appeals of Virginia with direction to remand to the Circuit Court of Pittsylvania County for a new sentencing hearing on the lesser offense of possessing a firearm after having been convicted of a nonviolent felony.

CASES CITED

- Waller v. Commonwealth, 52 Va. App. 571, 665 S.E.2d 848 (2008)
- McMillan v. Commonwealth, 277 Va. 11, 671 S.E.2d 396 (2009)
- Gallagher v. Commonwealth, 205 Va. 666, 139 S.E.2d 37 (1964)
- Tilton v. Commonwealth, 196 Va. 774, 85 S.E.2d 368 (1955)
- Mahoney v. Commonwealth, 162 Va. 846, 174 S.E. 817 (1934)
- Kirkpatrick v. Board of Supervisors of Arlington County, 146 Va. 113, 136 S.E. 186 (1926)
- Lucy v. County of Albemarle, 258 Va. 118, 516 S.E.2d 480 (1999)
- Tyson v. Scott, 116 Va. 243, 81 S.E. 57 (1914)
- Magruder v. Commonwealth, 275 Va. 283, 657 S.E.2d 113 (2008)
- Watkins v. Commonwealth, 238 Va. 341, 385 S.E.2d 50 (1989)
- Roach v. Commonwealth, 251 Va. 324, 468 S.E.2d 98 (1996)
- Moore v. Commonwealth, 132 Va. 741, 111 S.E. 128 (1922)