

SUPREME COURT OF VIRGINIA

Murphy v. Commonwealth, 277 Va. 221

672 S.E.2d 884 (2009) · No. Record No. 080852 · Decided February 27, 2009

SUMMARY

The Supreme Court of Virginia held that Code § 18.2-262 grants use and transactional immunity only to witnesses whose testimony is compelled. Because Simon Vaughn Murphy voluntarily testified against a codefendant in exchange for the Commonwealth's agreement to dismiss a transportation charge, the statute did not immunize him from prosecution for possession with intent to distribute marijuana. The court affirmed the Court of Appeals' judgment.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Barbara Milano Keenan; All the Justices
JURISDICTION	Virginia
DECIDED	February 27, 2009
DOCKET	Record No. 080852
DISPOSITION	affirmed
PROCEDURAL POSTURE	Murphy appealed his conditional guilty plea and conviction for possession of marijuana with intent to distribute, arguing that his testimony at a passenger's preliminary hearing entitled him to statutory transactional immunity. The Supreme Court of Virginia reviewed the Court of Appeals' affirmance of the circuit court's judgment and considered the Commonwealth's cross-error concerning whether Code § 18.2-262 applies only to compelled testimony.
STANDARD OF REVIEW	The interpretation of Code § 18.2-262 presented a pure question of law reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.
PARTIES	Simon Vaughn Murphy v. Commonwealth of Virginia

TOPICS

- criminal procedure
- statutory interpretation
- fifth amendment
- plea bargaining
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

statutory interpretation

immunity

self-incrimination

QUESTIONS PRESENTED

1. Whether Code § 18.2-262 grants use and transactional immunity to a witness whose testimony is voluntarily given under an agreement with the Commonwealth.
2. Whether Murphy's voluntary testimony at his passenger's preliminary hearing entitled him to dismissal of the possession-with-intent-to-distribute charge.

HOLDINGS

1. Code § 18.2-262 grants immunity only to witnesses whose testimony is compelled; it does not grant statutory immunity when testimony is voluntarily given as part of a plea or cooperation arrangement.
2. Murphy was not entitled to dismissal of the possession-with-intent-to-distribute charge because his testimony was purely voluntary rather than compelled.

KEY QUOTATIONS

“Applying these principles, we conclude that the language of Code § 18.2-262 is unambiguous and grants immunity only to witnesses whose testimony is compelled.” (887)

“Because Murphy's testimony against Dickson was purely voluntary, rather than compelled, we reject Murphy's claim that he was entitled to dismissal of the possession with intent to distribute charge under the immunity provisions of Code § 18.2-262.” (888)

FACTUAL BACKGROUND

A Virginia State Trooper smelled marijuana in Murphy's vehicle at the Chesapeake Bay Bridge Tunnel and found between 15 and 16 pounds of marijuana. Murphy admitted that he was paid \$2,000 to transport it and was charged with possession with intent to distribute and transporting marijuana into Virginia. He voluntarily agreed to plead guilty to the possession charge and testify against his passenger in exchange for dismissal of the transportation charge, then sought dismissal of the possession charge under Code § 18.2-262 after testifying.

PROCEDURAL HISTORY

Murphy was charged with possession with intent to distribute more than five pounds of marijuana and transporting more than five pounds of marijuana into Virginia. Under an oral agreement, he pleaded guilty to the possession charge and testified at his passenger's preliminary hearing in exchange for the Commonwealth's agreement to nolle prosequi the transportation charge. The circuit court denied his motion to dismiss the possession charge based on Code § 18.2-262 immunity; after a written conditional plea agreement, the court entered the nolle prosequi and imposed sentence. The Court of Appeals affirmed, and the Supreme Court of Virginia affirmed on the Commonwealth's cross-error.

DISPOSITION

affirmed

CASES CITED

- *Murphy v. Commonwealth*, 51 Va. App. 535, 659 S.E.2d 538 (2008)
- *Young v. Commonwealth*, 273 Va. 528, 643 S.E.2d 491 (2007)
- *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 639 S.E.2d 174 (2007)
- *Washington v. Commonwealth*, 272 Va. 449, 634 S.E.2d 310 (2006)
- *Tucker v. Commonwealth*, 268 Va. 490, 604 S.E.2d 66 (2004)
- *Alger v. Commonwealth*, 267 Va. 255, 590 S.E.2d 563 (2004)
- *Carpitcher v. Commonwealth*, 273 Va. 335, 641 S.E.2d 486 (2007)
- *Cummings v. Fulghum*, 261 Va. 73, 540 S.E.2d 494 (2001)
- *Gunn v. Commonwealth*, 272 Va. 580, 637 S.E.2d 324 (2006)
- *Commonwealth v. Diaz*, 266 Va. 260, 585 S.E.2d 552 (2003)
- *United States v. Escandar*, 465 F.2d 438, 442 (5th Cir. 1972)
- *Connecticut v. Barrett*, 479 U.S. 523, 527-28 (1987)
- *United States v. Smith*, 452 F.3d 323, 337 (4th Cir. 2006)
- *United States v. Hubbell*, 530 U.S. 27, 38 (2000)
- *Kastigar v. United States*, 406 U.S. 441, 449, 453 (1972)
- *Gosling v. Commonwealth*, 14 Va. App. 158, 415 S.E.2d 870 (1992)
- *Commonwealth v. Sluss*, 14 Va. App. 601, 419 S.E.2d 263 (1992)
- *Newton v. Commonwealth*, 29 Va. App. 433, 512 S.E.2d 846 (1999)
- *Caldwell v. Commonwealth*, 8 Va. App. 86, 379 S.E.2d 368 (1989)