COURT OF APPEALS OF VIRGINIA

Record No. 1595-25-4

GREGORY LEONARD SIMPSON
v.
COMMONWEALTH OF VIRGINIA

Present: Judges O'Brien, Friedman and Frucci

Argued at Fredericksburg, Virginia

Opinion Issued October 27, 2026

FROM THE CIRCUIT COURT OF CULPEPER COUNTY
William W. Sharp, Judge Designate

(Amy M. Harper; HarperWilliams, PLLC, on brief), for appellant. Appellant submitting on brief.

Lindsay M. Brooker, Assistant Attorney General (Jay Jones, Attorney General, on brief), for appellee.

PUBLISHED OPINION BY
JUDGE MARY GRACE O'BRIEN

Following a conditional guilty plea, the circuit court convicted Gregory Leonard Simpson for possession of child pornography. On appeal, he challenges the court's denial of his motion to exclude evidence obtained during a nighttime search of his residence. In a case of first impression, he argues that the search warrant he received during the search was defective because it did not include the affidavit requesting judicial authorization of the nighttime search under Code § 19.2-56(B). For the following reasons, we affirm.

BACKGROUND

On June 26, 2024, following a tip from Google,[1] Detective Dana Dodson with the Culpeper County Sheriff's Office requested a search warrant for Simpson's residence on Hunters Road in Culpeper, Virginia, to search for child pornography. The search warrant authorized the search of Simpson's residence "only in the daytime hours between 8:00 a.m. and 5:00 p.m."

On July 8, 2024, Culpeper Sheriff's deputies attempted to execute the search warrant during the daytime, but no vehicles were in the driveway, no one answered the door or the Ring doorbell, and there were no lights or movements inside the house. A next-door neighbor told Detective Dodson that the residents of Simpson's home "are gone by the time she awakens at 8:00 a.m. and do not typically return until 7:00 p.m."

Later that same day, Detective Dodson submitted an affidavit to the court explaining why a nighttime search was necessary and requesting judicial authorization for such a search. A circuit court judge authorized the execution of the search warrant "at any time." The affidavit and authorization are on a single page (the "nighttime-search authorization").

The next day, at 5:32 a.m., the Culpeper Sheriff's Department executed the search warrant. Simpson was given a copy of the June 26 daytime search warrant along with the underlying affidavit, which detailed the probable cause for the search. Simpson did not receive a copy of the nighttime-search authorization issued on July 8, 2024.

A grand jury indicted Simpson for one count of possession of child pornography, first offense, and one count of child pornography, second and subsequent offense, in violation of Code § 18.2-374.1:1. Simpson pleaded not guilty and filed a motion *in limine* to exclude all evidence seized during the execution of the search warrant. Simpson contended that because he

[1] Google reported that a total of 12 files containing child abuse material had been uploaded to a Google account associated with Simpson. Verizon confirmed that the IP addresses used to upload the files were also associated with Simpson.

was not given a copy of the nighttime-search authorization, any seized evidence should be excluded under Code § 19.2-56.

After argument by the Commonwealth, the court denied the motion, stating that the statute did not make the nighttime-search authorization part of the search warrant. The court found that the statute did not "require any written proof of the authorization." Rather, "[i]t makes [the nighttime-search authorization] part of the process towards getting the warrant executed, but not part of the warrant itself."

Simpson subsequently entered a conditional guilty plea, reserving his right to appeal the court's decision regarding his motion to exclude the evidence seized during the nighttime search of his residence. The Commonwealth, in turn, agreed to nolle pross the charge of possession of child pornography as a second and subsequent offense. Simpson appeals the court's decision denying his motion to exclude the evidence.

ANALYSIS

"When challenging the denial of a motion to suppress evidence on appeal, the defendant bears the burden of establishing that reversible error occurred." *Mason v. Commonwealth*, 291 Va. 362, 367 (2016). "[This] Court considers the evidence in the light most favorable to the Commonwealth and affords it the benefit of all inferences fairly deducible from that evidence." *Williams v. Commonwealth*, 71 Va. App. 462, 474-75 (2020). "We give deference to the trial court's factual findings and review *de novo* the application of law to those facts." *Ray v. Commonwealth*, 74 Va. App. 291, 302 (2022) (quoting *Joyce v. Commonwealth*, 72 Va. App. 9, 14 (2020)). Further, "[s]tatutory interpretation is a question of law which we review de novo, and we determine the legislative intent from the words used in the statute, applying the plain meaning of the words unless they are ambiguous or would lead to an absurd result." *Howard v.*

Commonwealth, 74 Va. App. 739, 759 (2022) (quoting *Wright v. Commonwealth*, 278 Va. 754, 759 (2009)).

Simpson argues that "law enforcement failed to comply with [Code §] 19.2-56(B) by not providing [him] with the July 9, 2024, nighttime authorization." He contends that "the nighttime authorization is an extension of the search warrant" and required law enforcement to provide a copy of the authorization when executing a search warrant. Simpson posits that, by not providing the nighttime-search authorization, "his rights were violated" and the search warrant was "clearly defective due to the time of execution."

Because we apply the plain meaning, "the paramount principle of statutory interpretation is 'to interpret the statute as written.'" *City of Virginia Beach v. Va. Marine Res. Comm'n*, 70 Va. App. 68, 75 (2019) (quoting *Miller & Rhoads Bldg., LLC v. City of Richmond*, 292 Va. 537, 542 (2016)). "In determining the plain meaning of a statute, appellate courts have 'long recognized that "statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system, or a single and complete statutory arrangement."'" *Id.* (quoting *Miller & Rhoads Bldg.*, 292 Va. at 543).

Code § 19.2-54 establishes the requirements for obtaining a search warrant in Virginia as well as the contents of the probable-cause affidavit supporting the search warrant. Code § 19.2-56, on the other hand, generally governs the issuance and execution of the search warrant. For nighttime search warrants, however, Code § 19.2-56(B) requires an additional step prior to its execution—i.e., the nighttime-search authorization.

Here, Code § 19.2-56(B), as in effect at the time of the search in question, provided that

> After entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing law-enforcement officer *shall give a copy of the search warrant and affidavit* to the person to be searched or the owner of the place to be searched . . . .

> Search warrants authorized under this section for the search of any place of abode shall be executed by initial entry of the abode only in the daytime hours between 8:00 a.m. and 5:00 p.m. unless (i) a judge or a magistrate, if a judge is not available, *authorizes the execution of such search warrant at another time for good cause shown by particularized facts in an affidavit* or (ii) prior to the issuance of the search warrant, law-enforcement officers lawfully entered and secured the place to be searched and remained at such place continuously.
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> . . . .
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> Any evidence obtained from a search warrant executed in violation of this subsection shall not be admitted into evidence for the Commonwealth in any prosecution.

(Emphases added).

Subsection A of Code § 19.2-56 specifies that "[t]he judge, magistrate, or other official authorized to issue criminal warrants shall attach a copy of the affidavit required by [Code] § 19.2-54, *which shall become a part of the search warrant and served therewith.*" (Emphasis added). Code § 19.2-54 requires an affidavit describing the facts that constitute the probable cause for the issuance of a search warrant.

Code § 19.2-56 does not expressly include an analogous service requirement for the affidavit detailing good cause for a nighttime-search authorization. Code § 19.2-56(B) specifies the requirements for obtaining authorization to execute a search warrant at night; but it contains no language making the affidavit underlying the nighttime-search authorization part of the search warrant. "[W]hen the General Assembly has used specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere in the Code, we must presume that the difference in the choice of language was intentional." *City of Richmond v. Va. Elec. & Power Co.*, 292 Va. 70, 75 (2016) (alteration in original) (quoting *Zinone v. Lee's Crossing Homeowners Ass'n*, 282 Va. 330, 337 (2011)). And appellate courts "may not construe the plain language of a statute 'in a manner that amounts to holding that the

General Assembly meant to add a requirement to the statute that it did not actually express.'" *Commonwealth v. Amos*, 287 Va. 301, 307 (2014) (quoting *Vaughn, Inc. v. Beck*, 262 Va. 673, 679 (2001)).

Because subsection A of Code § 19.2-56 clearly states that the affidavit detailing probable cause becomes part of the search warrant, and subsection B—which concerns the affidavit necessary for a nighttime-search authorization—does not contain similar language making the nighttime-authorization affidavit part of the search warrant, we must assume the General Assembly chose that language intentionally. *Va. Elec. & Power*, 292 Va. at 75. The statute's plain language makes only the probable-cause affidavit part of the search warrant. We therefore conclude that when Code § 19.2-56(B) requires a law enforcement officer to provide "a copy of the search warrant and affidavit to the person to be searched," that requirement refers only to the probable-cause affidavit and not the affidavit underlying the nighttime-search authorization.

This interpretation reflects the plain meaning of the text. *Va. Marine Res. Comm'n*, 70 Va. App. at 74-75. Code § 19.2-56(B) only requires the service of "a copy of *the* search warrant and affidavit." Code § 19.2-56(B) (emphasis added). We note that Code § 19.2-56 uses the article "the" when referring to the probable-cause affidavit, which is attached to the search warrant, but provides that good cause for a nighttime search should be "shown by particularized facts in *an* affidavit." (Emphasis added). The use of "the" affidavit versus "an" affidavit shows that the General Assembly contemplated two distinct affidavits that serve different purposes. Based on subsection A's language, specifying that the probable-cause affidavit "shall become a part of the search warrant and served therewith," we conclude that the affidavit referenced in subsection B is the probable-cause affidavit and not the affidavit supporting a nighttime search.

And the statute contains no additional requirement for service of the affidavit detailing good cause for the nighttime search.

Significantly, Simpson does not contend that the search warrant lacked probable cause or that the nighttime-search authorization was issued without the requisite good cause. Indeed, any details in the nighttime-search authorization affidavit would not affect the probable cause required for the issuance of a search warrant. Code § 19.2-56(B) merely sets out a process for obtaining judicial authorization to execute a nighttime search. In this case, Detective Dodson followed this process and obtained the nighttime-search authorization, and Code § 19.2-56(B) imposed no further requirements for serving that authorization along with the search warrant.

CONCLUSION

For these reasons, we hold that the requirement in Code § 19.2-56(B) to serve "a copy of the search warrant and affidavit to the person to be searched" refers to the affidavit establishing probable cause for the search warrant and does not include an unstated requirement to also serve the affidavit detailing good cause for a nighttime search. We therefore affirm the judgment of the circuit court.

Affirmed.