

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Felton, Judges Clements and Beales
Argued at Richmond, Virginia

ANDRE COSEAL MORTON

v. Record No. 3037-05-2

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE JEAN HARRISON CLEMENTS
FEBRUARY 6, 2007

FROM THE CIRCUIT COURT OF HENRICO COUNTY

L. A. Harris, Jr., Judge

Samuel P. Simpson, V, for appellant.

Alice T. Armstrong, Assistant Attorney General (Robert F.
McDonnell, Attorney General, on brief), for appellee.

Andre Coseal Morton (appellant) appeals from his jury trial conviction for possession of cocaine with intent to distribute, in violation of Code § 18.2-248. Pursuant to Code § 19.2-187, the trial court admitted into evidence a certificate of analysis (certificate) from the Department of Forensic Science establishing that the substance seized from his motel room was cocaine. Appellant chose not to subpoena the forensic scientist who performed the analysis, despite his statutory entitlement to do so under Code § 19.2-187.1. On appeal, appellant argues that the Confrontation Clause of the Sixth Amendment, which guarantees an accused the right to confront those who “bear testimony . . . for the purpose of establishing or proving some fact,” Crawford v. Washington, 541 U.S. 36, 51 (2004), operates in the absence of testimony by the forensic scientist to preclude the admission of the certificate at trial.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

During the pendency of this appeal, this Court decided Brooks v. Commonwealth, 49 Va. App. 155, 638 S.E.2d 131 (2006), which controls the disposition of the present issue. In Brooks, the Commonwealth offered into evidence certificates of analysis and Brooks chose not to subpoena the analyst. On appeal, Brooks argued the admission of those certificates violated his Sixth Amendment right of confrontation. Assuming without deciding there, as we likewise do here, that a certificate of analysis contains testimonial hearsay, we concluded in Brooks that “the procedure in Code §§ 19.2-187 and 19.2-187.1 adequately protects a defendant’s Confrontation Clause rights” and held that “a defendant’s failure timely to notify the Commonwealth of his desire to confront the forensic analyst at trial constitutes a waiver of that right.” Id. at 161, 168, 638 S.E.2d at 134, 138. In accordance with this clear legal authority, we hold the trial court here did not err in admitting the certificate, and we affirm appellant’s conviction.

Affirmed.