

Vasquez v. Commonwealth, 94 Vap UNP 2205924 (1994)

UNPUBLISHED
IN THE COURT OF APPEALS OF VIRGINIA
ARGUED AT ALEXANDRIA, VIRGINIA

JOSE NICOLAS VASQUEZ
v.
COMMONWEALTH OF VIRGINIA

Record No. 2205-92-4
Decided: November 15, 1994

Present: Chief Judge Moon, Judge Fitzpatrick and Senior Judge Duff

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY, Paul F. Sheridan, Judge

Affirmed.

COUNSEL

David Bernhard (Bernhard & Gardner, on brief), for appellant.

H. Elizabeth Shaffer, Assistant Attorney General (James S. Gilmore, III, Attorney General, on brief), for appellee.

MEMORANDUM OPINION* BY JUDGE CHARLES H. DUFF:

Appellant, Jose Nicolas Vasquez, was convicted of robbery and use of a firearm in the commission of a felony. On appeal, Vasquez contends that because he was under eighteen years of age at the time of the offenses, the circuit court did not have subject matter jurisdiction to try and convict him. Finding sufficient evidence in the record to prove that appellant was an adult at the time of the offenses, we affirm.

On January 24, 1992, a convenience store was robbed at gunpoint by three men. Appellant was identified as one of the robbers. Testifying for the Commonwealth, Detective Hanrahan, the arresting officer, stated on cross-examination that he issued two juvenile petitions against appellant on January 27, 1992. Hanrahan explained that the juvenile charges were initially brought based on a false name and date of birth given by appellant. Those charges were withdrawn and adult charges brought on January 28, 1992, after Hanrahan received "information" that appellant "was an adult."

Appellant testified that he was born on January 25, 1974, which would have made him one day shy of eighteen at the time of the robbery. He identified Defense Exhibit A as his "identification."¹ Appellant

called Detective Hanrahan as a witness and questioned him about Defense Exhibits B through E, the two January 27, 1992 juvenile petitions, later withdrawn, and the two adult warrants. Specifically, defense counsel asked Hanrahan about the alias “Jose Vasquez” and the “1/25/74” birth date handwritten on the adult warrants above the 4-25-65 birth date typed in the space on the warrant for the birth date. The defense exhibits were made a part of the record for the limited purpose of assisting the trial judge in determining appellant's true age.

Appellant called Hanrahan as a defense witness and asked him about the discrepancy between the birth dates. On cross-examination, the Commonwealth's attorney asked Hanrahan about his basis for determining appellant's age. Finding that appellant had opened the door to such inquiry, the trial court overruled appellant's hearsay objection and allowed Hanrahan to testify that he ultimately determined that appellant was an adult at the time of the offenses based on birth date information contained in “various criminal court records pertaining to convictions as an adult in Fairfax County.” These “various criminal court records” were proffered as the Commonwealth's (first) Exhibit 10.² Although before the court and intended to be a part of the record, the Commonwealth's (first) Exhibit 10, like all of the defense exhibits, was not sent to this Court for us to review and are not before us.

“The Virginia Supreme Court has held that subject matter jurisdiction ‘must affirmatively appear on the face of the record, that is the record must show affirmatively that the case is one of a class of which the court rendering the judgment was given cognizance.’” *Owusu v. Commonwealth*, 11 Va. App. 671, 673, 401 S.E.2d 431, 432 (1991) (sole issue before Court was whether record contained *sufficient evidence*, either direct or circumstantial, to support trial court's finding that it had subject matter jurisdiction). “The question whether a person is within the age prescribed for the court's jurisdiction is exclusively within the province of the court to determine.” *See People v. Chin Min Foo*, 144 Misc. 2d 589, 594, 545 N.Y.S.2d 55, 59 (1989).

“On appeal, we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom.” *Martin v. Commonwealth*, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987). “On appeal, the judgment of the trial court is presumed correct. The burden is on the party who alleges reversible error to show *by the record* that reversal is the remedy to which he is entitled.” *Johnson v. Commonwealth*, 12 Va. App. 391, 396, 404 S.E.2d 384, 387 (1991) (emphasis added) (citations omitted).

In *Jewell v. Commonwealth*, 8 Va. App. 353, 382 S.E.2d 259 (1989), relied upon by appellant, an element of the crime for which the defendant was charged required that the offender be eighteen years of age or older. *See* Code § 18.2-370.A majority of this Court reversed the conviction because no evidence was offered or admitted regarding appellant's age. *See Jewell*, 8 Va. App. at 355, 382 S.E.2d at 261.

In contrast, considerable evidence regarding appellant's age was presented to the circuit court during appellant's trial. During the Commonwealth's case, Detective Hanrahan testified without objection that he conducted an investigation to determine appellant's birth date, and, as a result, he received information of appellant's true date of birth. After gaining access to that information, Hanrahan withdrew the juvenile petitions that were issued based on appellant's false representations as to his name

and birth date. He then issued adult criminal warrants typing appellant's true birth date in the space provided.

“The weight which should be given to evidence and whether the testimony of a witness is credible are questions which the fact finder must decide.” *Bridgeman v. Commonwealth*, 3 Va. App. 523, 528, 351 S.E.2d 598, 601 (1986).

The trial court believed Detective Hanrahan and rejected the testimony of appellant, who had at least one felony conviction and at least one misdemeanor conviction involving moral turpitude. Hanrahan's testimony was competent, was not inherently incredible, and was sufficient to prove that appellant was over eighteen at the time of the offenses. The trial court, therefore, had subject matter jurisdiction.

Because sufficient evidence was before the trial judge establishing that appellant was over eighteen at the time of the offenses and, therefore, within the jurisdiction of the circuit court, we affirm the trial court's decision.

Affirmed.

FOOTNOTES

* Pursuant to Code § 17-116.010 this opinion is not designated for publication.

¹ The joint appendix refers to Defense Exhibit A as Jose Vasquez's Birth Certificate, “located in the clerk's office of Arlington County.” However, no such document was sent to this Court. Therefore, the document is not available for us to review.

² The Commonwealth's (second) Exhibit 10 was a signed waiver of *Miranda* rights in Spanish. This was the only Commonwealth's Exhibit 10 contained in the record.