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Corbin v. Commonwealth

564 S.E.2d 147 (Va. Ct. App. 2002)

I. Facts

Harold Corbin ("Corbin") was indicted by a grand jury in Essex County, Virginia, for capital murder, attempted capital murder, and robbery. Prior to Corbin's trial, the Essex County jury commissioners compiled a master jury list from the county's voter registration list. The voter registration list represented about seventy-two percent of the eligible jury population in Essex County; the commission did not consult any other materials. Corbin's attorney filed a pre-trial motion to strike the master jury list because it did not comply with the statutory requirements. The trial judge denied the motion because Corbin could not offer any factual evidence to demonstrate that the commissioners had violated the statute. A jury convicted Corbin of robbery, first-degree murder, and attempted first-degree murder. Corbin appealed the trial court's denial of his pre-trial motion.¹

II. Holding

The Court of Appeals of Virginia affirmed the trial court's order to deny Corbin's pre-trial motion.² The court held that there was insufficient evidence to indicate that the jury commission violated Virginia law when it compiled the master jury list.³

III. Analysis / Application in Virginia

Virginia Code Section 8.01-345 requires jury commissioners to use a list of registered voters when compiling a master jury list.⁴ In addition, Section 8.01-345 states that the commission should utilize "where feasible, a list of persons issued a driver's license as defined in Section 46.2-100 from the Department of Motor Vehicles, city or county directories, telephone books, personal property tax rolls, and other such lists . . . to select the jurors representative of the broad community interests."⁵ Corbin argued that the commission violated the statute

1. Corbin v. Commonwealth, 564 S.E.2d 147, 148 (Va. Ct. App. 2002).

2. *Id.* at 150.

3. *Id.*

4. See VA. CODE ANN. § 8.01-345 (Michie 2000) (defining the random selection process used in compiling a list of qualified persons for jury service).

5. *Id.*

because it only used the voter registration lists.⁶ The trial judge focused upon the meaning of the term "where feasible," and considered whether the term was mandatory or directory.⁷ The trial judge concluded the term was directory, because the statute would not have used the term "where feasible" if the legislature had intended to require a broad range of lists.⁸

The Court of Appeals of Virginia explained that the term "feasible" means that something is "capable of being done."⁹ The term provided a discernible standard for the court to review the facts and circumstances on which the jury commission based its decision.¹⁰ The court was insistent that the key element of the term "feasible" was that it allowed for a matter of fact to be raised and proved at trial.¹¹ The court determined that Corbin faced a rebuttable presumption; he could succeed only by offering evidence demonstrating that the commission did not consider using other sources and did not legitimately choose to limit its selection to the voter registration list.¹² In short, without evidence or testimony illustrating how the commission made its feasibility determination, the court presumed the master list to have been properly compiled.

On a practical level, this ruling makes a challenge to the jury list under Section 8.01-345 all but impossible to prove because of the difficulty the defense would face in accessing any evidence. The jury commission is under no obligation to justify its decision in any way, or even to demonstrate that it made a decision. The defense must put on evidence that reveals the commission's selection process and its flaws; without this evidence, the court will assume that the facts are in the commission's favor.

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6. *Corbin*, 564 S.E.2d at 148.

7. *Id.*

8. *Id.*

9. *Id.* at 149 (citing *Bell v. Dorey Elec. Co.*, 448 S.E.2d 622, 624 (Va. 1994), (quoting *American Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 508-09 (1981) (stating that the term feasible means that which is "capable of being done"))).

10. *Id.*

11. *Id.*

12. *Corbin*, 564 S.E.2d at 149-50.