No. _____

In The
Supreme Court of the United States

JAMES WESLEY AMONETT, JR.,
Petitioner,

V.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

APPENDIX

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APPENDIX:

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of September, 2019.

Record No. 190363
Court of Appeals No. 1613-17-4

James Wesley Amonett, Jr.,
Appellant,
against

Commonwealth ofVirginia,
Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

Justice Chafin took no part in the resolution of the petition.

A Copy,

Teste:

By: /s/ Douglas B. Robelen, Clerk

PUBLISHED

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Decker, Judges Humphreys and Huff
Argued at Alexandria, Virginia

OPINION BY JUDGE ROBERT J. HUMPHREYS
FEBRUARY 19, 2019

Record No. 1613-17-4

JAMES WESLEY AMONETT, JR.
v.
COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Bruce D. White, Judge

Alan J. Cilman for appellant.

Liam A. Curry, Assistant Attorney General (Mark R. Herring, Attorney General, on brief), for appellee.

This appeal primarily involves three questions: 1) the degree to which promises of leniency made by police officers render statements by the accused "involuntary," or constitute a grant of immunity from a criminal conviction; 2) whether it is the court or a jury that makes that determination, and 3) the effect at trial of a forensic witness' failure to appear and testify at a preliminary hearing.

James Wesley Amonett, Jr., ("Amonett") appeals the March 15, 2017 jury verdict of the Circuit Court of Fairfax County ("circuit court") convicting him of two counts of possession with intent to distribute marijuana in violation of Code § 18.2-248.1.

I. BACKGROUND

On July 27, 2015, Corporal Andrew Perry ("Officer Perry") of the Herndon Police Department stopped Amonett's vehicle. When Officer Perry approached the vehicle, he smelled marijuana. Officer Perry observed that Amonett appeared to be breathing heavily and was nervous. Investigating the odor of marijuana, Officer Perry searched Amonett's vehicle's center console, where he found marijuana and associated paraphernalia. Officer Perry also found a backpack on the passenger side floor containing a safe which gave off a strong odor of marijuana. Detective James Passmore ("Detective Passmore") of the Herndon Police Department arrived at the scene to assist Officer Perry. Officer Perry and Detective Passmore told Amonett that "if he cooperated further he would possibly be able to go home that night without being arrested or charged." Detective Passmore presented Amonett with a consent to search form for the safe in the backpack, which Amonett signed. Inside the safe the officers found half a pound of marijuana. The officers transported Amonett to the Herndon police station.

At the police station, Amonett was appraised of his Miranda rights and was interviewed. During the interview, Amonett stated that he had received a two-pound parcel of marijuana from California, that the half pound found in the safe had been part of

this shipment, and that the remainder of the shipment was at his residence. Amonett signed another consent to search form related to his residence where they secured the remaining marijuana along with a scale, paraphernalia, and $270 in cash.

Amonett was released and was not arrested and charged until October 2015. Amonett filed a written motion to suppress his statements to police. A hearing on that motion was held on February 24, 2017. No transcript of that hearing or statement of facts has been provided on appeal. On March 10, 2017, Amonett filed a written motion *in limine* to bar the testimony of Dr. Eugene Reichenbecher ("Dr. Reichenbecher") or in the alternative to dismiss the indictment based upon Dr. Reichenbecher's failure to appear and testify at the preliminary hearing. A hearing on that motion took place immediately before trial began on March 14, 2017, and the motion was denied. Amonett was tried by a jury on March 14-15, 2017. During the trial, Amonett testified that he made purchases of marijuana from California, receiving them through the mail and distributed them, and that he had been in the process of distributing the most recent shipment when stopped by Officer Perry. Dr Reichenbecher, a forensic scientist, testified that he had chemically tested the seized material to verify that it was marijuana. The jury convicted Amonett, recommending a sentence of fourteen days in jail and a fine of $3,000. The circuit court sentenced Amonett accordingly on July 7, 2017. This appeal follows.

II. ANALYSIS

A. Assignments of Error

Although his arguments are convoluted and overlapping, Amonett assigns four errors to the circuit court. First, he asserts that the circuit court erred by failing to dismiss the indictments on the grounds that he had been granted immunity by the police; second, that the circuit court erred in failing to instruct the jury that they should acquit Amonett if they determine that the police had made a promise that he would not be prosecuted; third, that the circuit court erred in failing to suppress his statements to the police on the grounds that they were involuntary in that they were the product of an agreement that he would not be prosecuted; and fourth, that the circuit court erred in allowing the testimony of a chemist as an expert witness in the circuit court when that witness had failed to appear pursuant to a subpoena to testify at the preliminary hearing in the general district court.

B. Whether Amonett's Errors Were Properly Preserved

Three of Amonett's four assignments of error concern an alleged "deal" not to prosecute between Amonett and the police. Following his indictment, Amonett made a motion to suppress the statements he made to Detective Passmore and Officer Perry as involuntarily obtained. At a pre-trial hearing regarding this motion, Amonett apparently argued, as he does on appeal, that the statements made by the police, "if he cooperated further he would

possibly be able to go home that night without being arrested or charged," constituted an agreement not to prosecute.

However, while Amonett provided a transcript of the trial, he did not provide a transcript of the suppression hearing. The responsibility to provide a transcript rests with the appellant, and "[w]hen the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered." Rule 5A:8(b)(4)(ii). Without the benefit of a transcript or an agreed upon statement of facts, we cannot say that the circuit court erred in failing to suppress Amonett's statements. While the statement made by the officers to Amonett was discussed at trial, at that point the issue was the admissibility of Amonett's replies, not whether the officer's statements constituted a grant of immunity—an issue that should have been, and presumably was, decided in the pre-trial suppression hearing. We have no way of knowing what specific legal arguments were advanced nor what additional evidence was presented at the pre-trial hearing that formed the basis for the circuit court's decision. Moreover, although Amonett's first assignment of error alleges error on the part of the circuit court for failing to dismiss the indictment, the written motion filed in the circuit court only seeks suppression of the statements, not dismissal of the indictment. For these reasons, in the absence of a record of the pre-trial hearing, Rule 5A:18 bars our consideration of that assignment of error.

Regarding Amonett's third assignment of error, a fatal flaw emerges from Amonett's argument.

Amonett is correct that "cooperation/immunity agreements can be somewhat analogous to plea agreements." Lampkins v. Commonwealth, 44 Va. App. 709, 724 (2005). However, Amonett fails to recognize the fact that cooperation/immunity agreements and plea agreements are entered into by *prosecutors*, not the police.

Amonett does not cite any authority extending the rules governing plea bargaining or grants of immunity to interactions with the police, instead he simply conflates police with prosecutors in his argument. The respective roles of police and prosecutors are distinct, and they serve different functions and observe different restrictions.
In Rodgers v. Commonwealth, 227 Va. 605 (1984), similarly to the present case, the defendant claimed that his confession was involuntary as it had been procured by the police through a "promise of leniency." Id. at 616. Our Supreme Court noted that voluntariness must be examined through a consideration of the totality of the circumstances and whether the statement in question was "the product of an essentially free and unconstrained choice by its maker, or whether the maker's will has been overborne and his capacity for self-determination critically impaired." Id. at 609. The Court in Rodgers further noted that "the [United States] Supreme Court [has] made clear that even an outright falsehood by a police interrogator is but another factor to be considered in evaluating the totality of the circumstances." Id. at 616 (citing Frazier v. Cupp, 394 U.S. 731 (1969)). The promise of leniency our Supreme Court found no fault with in Rodgers was "[w]e're gonna [sic] submit this to the Commonwealth Attorney and then he makes the

decision." Id. Here, there was no mention of the Commonwealth Attorney, but simply a statement that if Amonett cooperated he could possibly go home that night without being arrested. A statement, we note, that was strictly adhered to by the police officers who made it—Amonett did in fact go home that night without being arrested or charged.

Rodgers illustrates the fact that while police have discretion whether to make an arrest or not, it is the Commonwealth Attorney that makes the decision whether to prosecute. In the absence of clear evidence that a police officer is acting as an agent of the prosecution, an exercise of discretion by a police officer to forego an arrest does not control a prosecutor's discretion whether to prosecute any more than an arrest by police would.

The only scenario in which the police could have granted Amonett immunity from prosecution is if they were acting as agents of the Commonwealth Attorney. Agency is "a fiduciary relationship resulting from one person's manifestation of consent to another person that the other shall act on his behalf and subject to his control, and the other person's manifestation of consent so to act." Acordia of Virginia Ins. Agency, Inc. v. Genito Glenn, L.P., 263 Va. 377, 384 (2002) (quoting Reistroffer v. Person, 247 Va. 45, 48 (1994)). While police and prosecutors work together and ideally do so smoothly and cooperatively, they are separate, independent governmental entities with differing missions and responsibilities. The police officers in this case were clearly not express agents of the prosecution, as there is nothing in the record before us to indicate that they were authorized by the Commonwealth

Attorney to negotiate an immunity agreement on behalf of that office. Neither were the police officers apparent agents of the prosecution. "'[A]pparent or ostensible agency' . . . means '[a]n agency created by operation of law and established by a principal's actions that would reasonably lead a third person to conclude that an agency exists.'" Sanchez v. Medicorp Health Sys., 270 Va. 299, 304 (2005) (quoting Black's Law Dictionary 67 (8th ed. 2004)). There is no indication that Amonett interacted with the Commonwealth Attorney's office prior to his interaction with the police, and therefore did not have any basis for believing that the officers were acting as the prosecution's agents.

C. Whether the Circuit Court Erred in Denying Amonett's Jury Instruction

Amonett's second assignment of error is essentially that the jury should have been instructed to return a verdict of "not guilty" if they determined that he had been granted immunity by the police. Determining whether such immunity agreements exist is "generally governed by the law of contracts." Hood v. Commonwealth, 269 Va. 176, 181 (2005) (citations omitted). "The question of whether [a valid] contract exists is a pure question of law." Spectra-4, LLP v. Uniwest Commercial Realty, Inc., 290 Va. 36, 42 (2015). As a question of law, the existence of a contract is not a proper question for submission to the jury. "It is fundamental that the court must respond to questions of law and the jury to questions of fact." Gottlieb v. Commonwealth, 126 Va. 807, 812 (1920). Amonett, then, is at an impasse.

If an agreement not to prosecute existed between himself and police, it was a contract, the existence of which was a matter of law properly resolved only by the circuit court at the pre-trial hearing, of which there is no record before us. In any event, it was not error for the circuit court to refuse to instruct the jury on that question.

D. Whether the Circuit Court Erred by Allowing Dr. Reichenbecher to Testify

Amonett's final assignment of error asserts that the circuit court erred by allowing Dr. Reichenbecher to testify at trial because he did not appear at a preliminary hearing despite multiple subpoenas from Amonett.

"The admissibility of evidence is within the broad discretion of the trial court, and a ruling will not be disturbed on appeal in the absence of an abuse of discretion." Abdo v. Commonwealth, 64 Va. App. 468, 473 (2015) (quoting Blain v. Commonwealth, 7 Va. App. 10, 16 (1988)). In this context, an abuse of discretion occurs where the circuit court makes an error of law in admitting evidence. See Taylor v. Commonwealth, 28 Va. App. 1, 9 (1998).

Prior to trial, Amonett was presented with a certificate of analysis regarding the testing Dr. Reichenbecher had performed on the seized marijuana. Amonett subpoenaed Dr. Reichenbecher to appear at a preliminary hearing held in General District Court of Fairfax County on April 26, 2016. Dr. Reichenbecher did not appear, and the hearing was continued until July 26, 2016. Dr. Reichenbecher was again subpoenaed and again

failed to appear. The hearing was continued a third time, to November 1, 2016, where Dr. Reichenbecher again failed to appear, at which point the hearing was conducted over Amonett's objection. Despite ignoring these subpoenas, Dr. Reichenbecher appeared as a witness for the Commonwealth at trial. Amonett filed a motion *in limine* when Dr. Reichenbecher was called, objecting that he was not able to challenge the evidence at the preliminary hearing, per Code § 19.2-187.1(F), which provides, in pertinent part, that

> [t]he accused in any hearing or trial in which a certificate of analysis is offered into evidence shall have the right to call the person performing such analysis or examination or involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness.

Addressing this argument requires us to engage in statutory interpretation. In doing so, we "have but one object, to which all rules of construction are subservient, and that is to ascertain the will of the legislature, the true intent and meaning of the statute, which are to be gathered by giving to all the words used their plain meaning." Lucy v. Cty. of Albemarle, 258 Va. 118, 129-30 (1999) (quoting Tyson v. Scott, 116 Va. 243, 253 (1914)). Further, we "construe[] all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation." Id.

Initially we note that Amonett alleges no procedural fault with respect to Code § 19.2-187.1(F) regarding the testimony of Dr. Reichenbecher at his *trial*. He essentially argues that Dr. Reichenbecher should not have been permitted to testify in his circuit court trial because of error he alleges occurred during his preliminary hearing in a different court. The criminal appellate jurisdiction of this Court is limited to reviewing error in the circuit courts of the Commonwealth. See Code § 17.1-405(1). Moreover, despite its inclusive phrasing, the language "in any hearing or trial," found in Code § 19.2-187.1 is inapplicable to a preliminary hearing. Code § 19.2-187.1(A) begins "[i]n any trial and in any hearing *other than a preliminary hearing*, in which the attorney for the Commonwealth intends to offer a certificate of analysis." That this caveat was intended to apply to Code § 19.2-187.1(F) is obvious from an *in pari materia* reading of other related statutes. For example, Code § 19.2-187(A) provides a different procedure for introducing a certificate of analysis in a preliminary hearing, and then refers the reader to Code § 19.2-187.1(A) as an alternative means of validation:

> In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided that (i) the certificate of analysis is filed with

> the clerk of the court hearing the case at least seven days prior to the proceeding *if the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing* or the accused intends to offer it into evidence in any hearing or trial, *or (ii) the requirements of subsection A of § 19.2-187.1 have been satisfied* and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1.

Code § 19.2-187(A).

The disjunctive "or" as used in the statute provides the Commonwealth with the opportunity of filing the certificate seven days prior to a preliminary hearing *or* satisfying the Code § 19.2-187.1(A) requirements. Likewise, Code § 19.2-183(D), discussing procedure during preliminary hearings, states that "[a]t any preliminary hearing under this section, certificates of analysis and reports prepared pursuant to §§ 19.2-187 and 19.2-188 shall be admissible without the testimony of the person preparing such certificate or report." Read together, these statutes clearly indicate that at a preliminary hearing the Commonwealth may introduce the certificate itself.[1]

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[1] Code § 19.2-187.1(F) prescribes no remedy for its violation. It is a directory statute stating that the accused "shall" have the right to call the scientist performing the analysis. "[A] 'shall' command in a directory statute carries no specific, exclusive remedy. Instead, it empowers the court to exercise discretion in fashioning a tailored remedy, if one is called for at all." Rickman v. Commonwealth, 294 Va. 531, 537 (2017). As such, exclusion of evidence is not the only remedy, nor even the most obvious remedy, for a breach of this statutory right.

Amonett does not assert that the certificate was not filed seven days in advance of the preliminary hearing.

Moreover, ample other evidence also showed that the substance confiscated was marijuana—indeed Amonett himself testified that it was "high quality" marijuana. The jury, in its fact-finding capacity, could certainly have taken Amonett at his own word in the absence of Dr. Reichenbecher's testimony and found that the substance was marijuana, rendering the same verdict and any potential error necessarily harmless. For all of these reasons, we find no merit to this assignment of error.

III. CONCLUSION

Amonett provides neither case law nor, crucially, a sufficient record to support his proposition that promises of leniency made by the police constitute a binding immunity agreement requiring dismissal of the indictment or rendering Amonett's incriminating statements involuntary or otherwise subject to suppression. We also hold that the circuit court correctly concluded that the existence of such an agreement is not a proper question for the jury. Finally, we discern no error in the admission of Dr. Reichenbecher's testimony, which substantively echoed Amonett's own on the key point that the substance seized by police was marijuana. For these reasons, the judgment of the circuit court is affirmed.

Affirmed.

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 18th day of September, 2018

Record No. 1613-17-4
Circuit Court No. FE-2016-1157

James Wesley Amonett, Jr.,
Appellant,
against

Commonwealth of Virginia,
Appellee.

From the Circuit Court of Fairfax County
Before Judges Alston, O'Brien and AtLee

This petition for appeal is granted in part and denied in part. And an appeal is awarded to the appellant from a judgment of the Circuit Court of Fairfax County, dated July 10, 2017, with respect to the additional assignment of error:

> III. The trial court erred by admitting Appellant James Wesley Amonett, Jr.'s in custodial statements because: b) Those statements were induced by and were the product of multiple promises by the police to Amonett, that if he cooperated and provided the information and the permissions that the police were requesting, he would not be prosecuted.

No additional bond is required. The clerk is directed to certify this action to the trial court and to all counsel of record.

Pursuant to Rule 5A:25, an appendix is required in this appeal and shall be filed by the appellant at the time of the filing of the opening brief.

The remainder of the petition for appeal in this case remains denied for the reasons set forth in the order of this Court dated May 3, 2018.

This Court's records reflect that Alan J. Cilman, Esquire, is counsel of record for appellant in this matter.

A Copy,

Teste:
Cynthia L. McCoy, Clerk

/s/ Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 3rd day of May, 2018

Record No. 1613-17-4
Circuit Court No. FE-2016-1157

James Wesley Amonett, Jr.,
Appellant,
against

Commonwealth of Virginia,
Appellee.

From the Circuit Court of Fairfax County
Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is granted in part and denied in part. An appeal is awarded to the appellant from a judgment of the Circuit Court of Fairfax County, dated July 10, 2017, with respect to the following assignments of error:

I. The trial court erred by refusing to dismiss the case when the police promised that if appellant cooperated and worked for them, which he did, he would not be charged with the two counts of possession with the intent to distribute marijuana;

II. The trial court erred by refusing to give jury instruction T, which would have allowed

the jury to determine the factual issue of whether the police had made a deal with appellant; and

V. The trial court erred by denying his "Motion *in Limine*, or in the Alternative Motion to Dismiss, Motion to Remand" and allowing the Commonwealth's chemist, who appellant had twice subpoenaed for preliminary hearing but did not appear, to testify at trial, or refusing to remand for a new preliminary hearing, or to dismiss the charges.

Appeal bond or an irrevocable letter of credit in the amount of $500 shall be posted as required by Code § 8.01-676.1(B). The clerk is directed to certify this action to the trial court and to all counsel of record.

Pursuant to Rule 5A:25, an appendix is required in this appeal and shall be filed by the appellant at the time of the filing of the opening brief.

The remainder of the petition for appeal is denied for the following reasons:

III. and IV. Appellant contends that the trial court erred by admitting his statements in violation of Miranda v. Arizona, 384 U.S. 436 (1966), and because they were induced by the promise that he would not be prosecuted in return for his cooperation. Appellant also argues that the trial court erred by denying his motion to suppress all the evidence obtained as a result of an illegal stop of his vehicle. Appellant filed written motions to suppress his statements and the recovered evidence on these grounds, and the trial court denied the motions

following a hearing on February 24, 2017. The record does not contain a transcript or written statement of facts of the suppression hearing. See Rule 5A:8(a) and (c).

We have reviewed the record and the petition for appeal. We conclude that a transcript or written statement of facts of the suppression hearing is indispensable to a determination of these assignments of error. See Smith v. Commonwealth, 32 Va. App. 766, 772, 531 S.E.2d 11, 14 (2000); Turner v. Commonwealth, 2 Va. App. 96, 99-100, 341 S.E.2d 400, 402 (1986). "When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered." Rule 5A:8(4)(ii). Appellant failed to ensure that the record contains a transcript or written statement of facts necessary to permit us to resolve whether the trial court erred by denying the motions to suppress. Therefore, we will not consider these issues on appeal. Rule 5A:8(4)(ii).

VI. Appellant asserts that the Commonwealth failed to establish an unbroken chain of custody because two sets of unknown and unexplained initials were on each of the packages of evidence. Officer J.J. Passmore testified that he sealed two packages of seized marijuana in two separate evidence bags, marking each evidence bag with his initials. Passmore secured the two evidence bags in an evidence locker. Passmore also placed a request form with the secured evidence, for the Department of Forensic Science (DFS) to perform a lab analysis of the seized marijuana.

Officer Garrett Daniel Polowey testified that he obtained the two evidence bags from the secured evidence locker to transfer them to a secured drug locker to await transport to the DFS lab for testing. Polowey confirmed that the two evidence bags were sealed, and he placed his initials and the date on the evidence bags. When Polowey returned to transport the evidence bags to DFS, he confirmed they were still sealed and he delivered them to Steven Delfino at DFS. Polowey signed the request form as the submitting officer, as did C. Debruhl, the person who accompanied Polowey to DFS, and Delfino signed it as the person who received the bags. Polowey acknowledged that there were other initials on the evidence bags, but he could only account for his, Passmore's, and Delfino's initials. Polowey opined that the additional initials were placed on the bags after he had delivered them to DFS based on the sequence and placement of the initials.

Eugene Reichenbecher testified that he worked at DFS and conducted the analysis on the suspected marijuana. Reichenbecher confirmed that his initials were on the submitted evidence bags. Reichenbecher explained that he examined the two bags to ensure the seals were intact, and he made notes about their contents. He then performed tests that confirmed the suspected marijuana was in fact marijuana as indicated on the certificate of analysis.

"The purpose of the chain of custody rule is to establish that the evidence obtained by the police was the same evidence tested." Jeter v. Commonwealth, 44 Va. App. 733, 737, 607 S.E.2d 734, 735 (2005) (quoting Robertson v. Commonwealth, 12 Va. App. 854, 857, 406 S.E.2d 417, 419 (1991)). "[T]o satisfy the chain of custody requirement, the proponent of the evidence must

show 'with reasonable certainty that the item [has] not been altered, substituted, or contaminated prior to analysis, in any way that would affect the results of the analysis.'" Id. at 737, 607 S.E.2d at 736 (quoting Crews v. Commonwealth, 18 Va. App. 115, 119, 442 S.E.2d 407, 409 (1994)). A certificate of analysis "by . . . the Division of Forensic Science . . . shall be prima facie evidence in a criminal . . . proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination." Code § 19.2-187.01. Further, Code § 19.2-187.01 deems the receiving person's signature on the request form to be prima facie evidence that that person is an authorized agent. "A court need not hear . . . from every witness who physically handled the samples for the certificate [of analysis] to be admissible. Nor must the Commonwealth's evidence 'exclude every conceivable possibility of substitution, alteration, or tampering.'" Hargrove v. Commonwealth, 53 Va. App. 545, 554-55, 673 S.E.2d 896, 900-01 (2009) (quoting Anderson v. Commonwealth, 48 Va. App. 704, 717, 634 S.E.2d 372, 378 (2006)). "Where there is mere speculation that contamination or tampering could have occurred, it is not an abuse of discretion to admit the evidence and let what doubt there may be go to the weight to be given the evidence." Brown v. Commonwealth, 21 Va. App. 552, 556, 466 S.E.2d 116, 117 (1996) (quoting Reedy v. Commonwealth, 9 Va. App. 386, 391, 388 S.E.2d 650, 652 (1990)).

Appellant claims that the unidentified initials on the two evidence bags prove there was a break in the chain of custody. However, Passmore and Polowey testified that the bags were secured in evidence lockers before Polowey transported the bags to DFS

and that the seals had not been broken. Polowey, and the person who accompanied him to DFS, tendered the bags to Delfino, an authorized agent of DFS. Polowey asserted that the initials in question were placed on the evidence bags after he delivered them to DFS. Further, Reichenbecher inspected the bags to ensure the seals were intact before he conducted the tests. This evidence, taken in its entirety, provides reasonable certainty that the evidence seized was the same evidence Reichenbecher tested and found to be marijuana. Any speculation of contamination or tampering suggested by the unidentified initials went to the weight of the evidence, not its admissibility. Id. Accordingly, the trial court did not err by finding that the Commonwealth established a proper chain of custody to allow admission of the marijuana and the certificate of analysis.

This order is final unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D), and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

This Court's records reflect that Alan J. Cilman, Esquire, is counsel of record for appellant in this matter.

A Copy,
Teste:
Cynthia L. McCoy, Clerk

By /s/ Deputy Clerk