

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Frank and Senior Judge Overton
Argued by teleconference

JOHN LESTER SCOTT

v. Record No. 0831-04-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
MARCH 29, 2005

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
Jerome James, Judge

James O. Broccoletti (Zoby & Broccoletti, P.C., on brief), for
appellant.

Kathleen B. Martin, Assistant Attorney General (Jerry W. Kilgore,
Attorney General, on brief), for appellee.

A jury found John Lester Scott guilty of first-degree murder, as well as other crimes. On appeal, Scott challenges only his murder conviction and claims his short-form indictment, patterned after the language of Code § 19.2-221, charged him with second-degree, but not first-degree, murder. Scott contends the holding of the Supreme Court of the United States in Apprendi v. New Jersey, 530 U.S. 466 (2000), required the indictment to charge all the elements of the offense. Because the indictment did not specifically state all the elements of first-degree murder, Scott maintains, the trial court erred in refusing to amend the charge to second-degree murder.

In Walshaw v. Commonwealth, 44 Va. App. 103, 113, 603 S.E.2d 633, 638 (2004), this Court rejected arguments identical to those advanced by Scott in this case and found the statutory short-form indictment “clearly charged first-degree murder.” This Court further concluded that Apprendi did not require a murder indictment to state the killing was done with malice or

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

premeditation in order to constitute a valid first-degree indictment under Virginia law, which requires proof of both elements of the offense for conviction. Id.

Because our decision in Walshaw governs this case, we reject Scott's claim that the trial court erred in refusing to amend the indictment to charge second-degree murder. Accordingly, appellant's conviction is affirmed.

Affirmed.