

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 5th day of December, 2014.*

Everette F. Coates,
s/k/a Everette Franklin Coates, Jr., Appellant,

against Record No. 140376
Court of Appeals No. 1042-13-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no error in the
judgment of the Court of Appeals.

Everette F. Coates was convicted in the Circuit Court of the
City of Williamsburg and County of James City of misdemeanor peeping
in violation of Code § 18.2-130(B) and sentenced to an active term
of incarceration for a period of nine months. A judge of the Court
of Appeals denied Coates' petition for appeal in a per curiam order.
Coates v. Commonwealth, Record No. 1042-13-1 (November 20, 2013)
(unpublished). Thereafter, a three-judge panel also denied his
appeal. Coates v. Commonwealth, Record No. 1042-13-1 (February 6,
2014) (unpublished). On appeal to this Court, Coates argues that
the evidence was insufficient to establish that he acted "secretly
or furtively" as required by Code § 18.2-130(B) because he announced
his presence to the victim prior to peeping beneath a partition that
separated stalls in a public restroom.

In considering the sufficiency of the evidence, we view the
evidence in the light most favorable to the Commonwealth, the

prevailing party below, and grant it "all reasonable inferences fairly deducible therefrom." Jordan v. Commonwealth, 286 Va. 153, 156, 747 S.E.2d 799, 800 (2013). The Court "will only reverse the judgment of the trial court if the judgment is plainly wrong or without evidence to support it." Id.

Code § 18.2-130(B) states:

It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom . . . or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

According to the evidence introduced at trial, Coates entered a public restroom stall adjacent to a stall where the victim sat on a toilet with his pants and underwear pulled down. After closing the stall's door, Coates sat down on the toilet, unbuckled his pants, reached his arm underneath the partition separating the stalls, and rubbed the victim's bare leg. The victim kicked Coates' hand away, but Coates again touched the victim's leg. The victim once again kicked Coates' hand away. Coates then got on the floor, extended his head under the partition, peered into the victim's stall, and stated that he wanted to engage in a particular sexual activity with the victim.

This evidence is sufficient to establish beyond a reasonable doubt that Coates' peeping was done "furtively" and thus violated Code § 18.2-130(B). See Calloway v. Commonwealth, 62 Va. App. 253,

261, 746 S.E.2d 72, 76 (2013) (interpreting the term "furtively" as used in Code § 16.1-253.2 as "surreptitiously, slyly, or sneakily"). The circuit court's judgment therefore was not plainly wrong or without evidence to support it. See Code § 8.01-680.

For these reasons, the judgment of the Court of Appeals is affirmed. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Williamsburg and James City County.

JUSTICE POWELL dissents.

A Copy,

Teste:

Debra L. Hamington

Clerk