

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 30th day of May, 2019.*

Present: All the Justices

Robert Boyd Stokes, Appellant,

against Record No. 180510  
Court of Appeals No. 1365-17-1

Commonwealth of Virginia, Appellee.

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

A jury convicted Robert Boyd Stokes of rape, second offense, and abduction. On appeal, Stokes argues the Court of Appeals erred in affirming the trial court's rejection of his motion to dismiss the charge of rape, second offense, on the alleged ground that he was denied, in violation of Code § 19.2-218, a preliminary hearing on this charge prior to his direct indictment on it. The Court of Appeals held that Stokes had no such statutory right as to this indicted charge. We agree with the Court of Appeals and affirm.

Stokes was arrested on a warrant charging him with rape in violation of Code § 18.2-61 (i.e., not a charge of rape, second offense). After conducting a preliminary hearing on that charge, the General District Court of Gloucester County found probable cause to believe that Stokes had committed a rape and certified the matter to the grand jury.

The grand jury subsequently returned an indictment against Stokes charging him with rape, second offense, in violation of Code §§ 18.2-61 and 18.2-67.5:3 (along with indictments on charges of abduction and strangulation). At the beginning of his jury trial on these charges, Stokes moved the trial court to dismiss the charge of rape, second offense, asserting that he had been denied "his statutory protection of a preliminary hearing" under Code § 19.2-218 as to this

specific charge. The trial court denied the motion. The jury ultimately found Stokes guilty of rape, second offense, as charged in the indictment, and sentenced him to life in prison on this offense. The trial court entered a final judgment consistent with the jury's sentence.

On appeal to the Court of Appeals, Stokes asserted, *inter alia*, that the trial court erred in denying his motion to dismiss the indicted charge of rape, second offense. In a per curiam order, one judge of the Court of Appeals denied Stokes's petition for appeal. *Stokes v. Commonwealth*, Record No. 1365-17-1 (December 29, 2017). As to the motion to dismiss, the Court of Appeals there held that Stokes had no right to a preliminary hearing under Code § 19.2-218 because he was not initially arrested on the charge of rape, second offense, but rather was first directly indicted on it. *Id.* at 2. Stokes' petition for appeal was again denied by an unpublished order of a three-judge panel of the Court of Appeals for the reasons stated in the per curiam order. *Stokes v. Commonwealth*, Record No. 1365-17-1 (April 10, 2018). We subsequently awarded Stokes this appeal challenging the denial of his motion to dismiss.

Code § 19.2-218 states: "No person who is *arrested* on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused." (Emphasis added.) Whether Stokes was wrongly denied a preliminary hearing under this statute on the charge of rape, second offense, "presents a pure question of law and is accordingly subject to de novo review by this Court." *Jones v. Commonwealth*, 296 Va. 412, 414–15 (2018) (quoting *Washington v. Commonwealth*, 272 Va. 449, 455 (2006)).

"We must presume that the General Assembly chose, with care, the words that appear in a statute, and must apply the statute in a manner faithful to that choice." *Id.* at 415 (quoting

*Johnson v. Commonwealth*, 292 Va. 738, 742 (2016)). Accordingly, “[w]hen the language of a statute is plain and unambiguous, we are bound by the plain meaning of that statutory language.” *Id.* (quoting *Alston v. Commonwealth*, 274 Va. 759, 769 (2007)).

Code § 19.2-218 plainly provides that the right to a preliminary hearing for a particular felony charge is triggered solely by an *arrest* on that charge. As evident from the language of the statute, “[t]he primary purpose of a preliminary hearing is to ascertain whether there is reasonable ground to believe that a crime has been committed and the person charged is the one who has committed it.” *Webb v. Commonwealth*, 204 Va. 24, 31 (1963) (interpreting former Code § 19.1-163.1, the predecessor to Code § 19.2-218, containing nearly identical language) (citations omitted). Absent prior arrest on a particular felony charge, the grand jury’s “action” to indict, after undertaking the same type of inquiry, “preempt[s] the defendant’s right to a preliminary hearing” on that charge. *Id.*

Citing *Webb*, this Court in *Waye v. Commonwealth*, 219 Va. 683, 689 (1979), held that there was no “circumvent[ion]” or “denial of any statutory right to which the defendant was entitled” under Code § 19.2-218 when (i) he was granted a preliminary hearing on the charge of first degree murder for which he was arrested; (ii) the charge of first degree murder was certified to the grand jury; and (iii) the Commonwealth then obtained indictments against him for both capital murder and first degree murder, but proceeded to trial only on the charge of capital murder. The defendant was not entitled to a preliminary hearing on the capital murder charge because he “was not arrested on [that] charge” prior to his indictment on it. *Id.* See *Armel v. Commonwealth*, 28 Va. App. 407, 411 (1998) (“[D]irect indictment of an accused not then arrested *for such offense* is neither ‘manipulative [nor] . . . a denial of any statutory right to which the defendant was entitled.’” (quoting *Waye*, 219 Va. at 689) (emphasis and first alteration

added).

Stokes has repeatedly asserted, both in the trial court and on appeal, that the indictment for rape, second offense, constituted a new offense—separate and distinct from the charge of rape for which he was arrested and the charge then certified to the grand jury by the general district court. Having conceded that the charge of rape, second offense, on which he claims the right to a preliminary hearing was not initiated by an arrest, Stokes argues that *Waye* was wrongly decided in its interpretation of Code § 19.2-218 and urges us to overturn it. We reject Stokes' reading of Code § 19.2-218 and adhere to what we reaffirmed in *Waye* to be the plain meaning of the statute: a defendant's right to a preliminary hearing under the statute is limited to the particular felony charge(s) upon which the defendant was arrested, if any, prior to indictment on the same. Stokes' contentions to the contrary notwithstanding, it matters not that, as occurred in this case, the charge of rape, second offense, which was initiated by a grand jury indictment and not by an arrest (thus negating the implication of Code § 19.2-218), superseded the original charge of rape upon which the defendant was arrested and provided a preliminary hearing.

Accordingly, we affirm the judgment of the Court of Appeals.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Gloucester County.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:



Deputy Clerk