

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Tuesday *the* 19th *day of* January, 2010.

Donna L. Blanton, Appellant,

against Record No. 091878
Court of Appeals No. 2389-08-2

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon the petition of Donna L. Blanton, an appeal is awarded her from a judgment rendered by the Court of Appeals of Virginia; no security being required.

This appeal, however, is limited to the consideration of assignments of error Nos. 1, 2, 3 and 4, which read as follows:

1. The circuit court erred in allowing the prosecution to argue to the jury, during rebuttal closing argument, that "You better believe that if there were one shred of evidence in all of this that proved that the defendant was not guilty that [the defense] would have presented it to [the jury], and [the defense] didn't."
2. The Court of Appeals erred in ruling that the prosecutor's "statement that the defense did not produce any evidence to contradict the Commonwealth's evidence was a fair response and did not mislead the jury"; in fact, it is not unique for the defense to "question[] the Commonwealth's evidence and its witnesses," and zealous advocacy, which challenges the beliefs of the Commonwealth, does not open the door for the Commonwealth to argue to the jury that a defendant

did not prove his or her innocence.

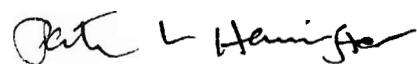
3. The circuit court erred in failing to grant a mistrial when the prosecution argued to the jury, during rebuttal closing arguments, that the defendant was in jail after her arrest and therefore did not "get one penny" and did not "get the house" as a result of the death of defendant's husband.
4. The ruling of the Court of Appeals that the Commonwealth's comment about the defendant's being in jail "was not so prejudicial as to affect appellant's rights" was in error; indeed, the defendant was prejudiced when the jury was permitted to make the reasonable inference that the defendant was in jail because she was dangerous and the public needed protection, which presupposes that the defendant was guilty of the crime in the first place.

On further consideration whereof, it is ordered that the parts of the record to be printed or reproduced in the appendix are to be limited to those parts of the record germane to assignments of error Nos. 1, 2, 3 and 4, and the briefs to be filed shall be limited to such discussion as is relevant to those assignments of error.

The petition for appeal is refused as to assignment of error No. 5.

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Teste:

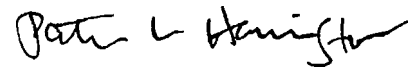
A handwritten signature in cursive script, appearing to read "Peter L. Hennigan".

Clerk

CERTIFICATE OF APPEAL

Pursuant to Rule 5:23, I, Patricia L. Harrington, Clerk of the Supreme Court of Virginia, do hereby certify that on January 19, 2010 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day mailed to the lower court indicated in the order and to all counsel of record.

Given under my hand this 19th day of January, 2010.



Clerk