

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
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## **Granted Appeal Summary**

### **Case**

SH'KISE FAZION CAPPE v. COMMONWEALTH OF VIRGINIA  
(Record Number 240055)

### **From**

The Court of Appeals of Virginia.

### **Counsel**

Charles E. Haden (Law Office of Charles E. Haden) for appellant.

Elizabeth Kiernan Fitzgerald (Office of the Attorney General) for appellee.

### **Assignments of Error**

1. The Court of Appeals erred in affirming the trial court's denial of Cappe's motion to strike the charges of first-degree murder, use of a firearm in the commission of murder, and conspiracy to commit murder where: 1) the evidence was insufficient as a matter of law to prove that Cappe committed those offenses; and 2) with regard to the conspiracy charge, there was no evidence of any sort of agreement, collusion, discussion in advance, or premeditation, and that that killing may have been the result of a sudden argument or a spontaneous action in the absence of any agreement.
2. The Court of Appeals erred in ruling that the trial court's decision precluding the defense from offering lay opinion testimony from Lakesha Kirkendall was harmless error, even though she was a person having long familiarity with the presumed subject of a video, such that she was qualified to offer a lay opinion concerning the identity or non-identity of the person depicted in the video, in accordance with the holding in Bowman v. Commonwealth, 30 Va. App. 298, 300, 516 S.E.2d 705, 706 (1999).