

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 14th day of May, 2020.*

Present: All the Justices

Ruben Edward Moore,

Appellant,

against

Record No. 190856  
Court of Appeals No. 1068-18-1

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 the opinion that there is no reversible error in the judgment of the Court of Appeals.

### I. BACKGROUND

Ruben Edward Moore (“Moore”) was convicted of the second degree murder of Olivia D. Christian (“Christian”) following a jury trial in the Circuit Court of the City of Hampton (“trial court”). Moore appealed to the Court of Appeals, which denied the petition for appeal by unpublished, per curiam order, finding that the circumstantial evidence was sufficient for the jury to convict Moore. Moore asks the Court to reverse the judgment of the Court of Appeals and argues that the evidence was not sufficient to convict him of Christian’s murder. We review the evidence “in the light most favorable to the Commonwealth,” the prevailing party below. *Commonwealth v. Moseley*, 293 Va. 455, 463 (2017).

So viewed, the evidence established that Christian, an elementary school teacher in Hampton, was beaten with a clock radio and strangled with the cord in her Ivy Hill Road apartment on September 4, 1981. On that day, Christian was scheduled to attend various workshops and finish preparing her classroom for the September 5 start of school. When Christian failed to show up at the elementary school, a fellow teacher called Christian’s father in the afternoon. Christian’s father went to her apartment and discovered her body on the floor of her bedroom. He called the police.

At trial, Hampton Police Detective J. Stavely estimated that he arrived at Christian's apartment between 7:00 and 8:00 a.m. Detective Stavely testified that Christian's body was still warm when he arrived. A clock radio reading "7:30" was on the floor near her body, with the cord wrapped around her neck.<sup>1</sup> Detective Stavely noted that there were no signs of forced entry on the apartment door, however, there were several broken items in the kitchen and living room. Christian's purse, containing money, was found on a living room chair.

#### A. Witnesses

At the time of Christian's murder, Anita Purcells Michaels ("Michaels") was 16 years old and lived with her mother and sister in the apartment across from Christian. On the morning of September 4, Michaels was making breakfast and saw Christian walking with her cat near the apartment complex playground. Michaels also saw a man she did not recognize backing his car into a parking spot. Michaels next saw the unknown man wearing a blue or black hat walking quickly down the sidewalk towards Christian's apartment. She saw him walk in front of Christian's apartment and peek into her window. The man then stood at the lobby door of Christian's building, with the lobby door ajar, and leaned with his head toward Christian's apartment door with "one foot in the door and one slightly out the door." Michaels did not see the man enter the building or Christian's apartment. Michaels also did not see Christian return to her apartment from the playground. Michaels saw the man again later that morning as he was driving away. She "locked" eyes with the man and later testified at trial that "I will never forget them eyes."

Shortly after Christian's murder, the police interviewed Michaels several times. She stated that she told the police what she had seen, but after being interviewed for over eight hours without lunch, she felt like the police were "beating [her] up." She recanted her statements to the police because she stated that the police seemed like they did not believe her.

On October 25, 2013, Officer B. Powers showed Michaels a six photograph lineup. Officer Powers "explained to [Michaels] that the person may or may not be in the photos." Michaels "looked at each one individually, and . . . put one hand over the forehead of the photo

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<sup>1</sup> The autopsy report listed Christian's time of death as 7:30 a.m. on September 4, 1981. The cause of death was given as "[a]sphyxia by ligature strangulation; acute head injury from blows to the head." The report concluded that Christian did not show any signs of sexual assault beyond her shirt being pulled up to expose her bra.

and then the other hand below the nose area of the photo.” Michaels told Officer Powers that she “would know who he was by his eyes.” “On the next to the last one she kind of jumped and she said, that’s him . . . and she became upset.” At trial, Michaels identified Moore in photographs from 1982 and in the courtroom as the unidentified man she saw in the apartment complex.

In 1981, Michaels had identified the car she saw the man driving as an “aqua green Chrysler bearing Virginia plates, license plates. . . . Four door, possibly green and white . . . the year and model was the early 70s.” At trial, Michaels identified the photograph of the 1965 aqua green Ford Galaxy, that Moore was stopped in nine months after Christian’s murder, as the car she saw the man driving. Michaels acknowledged that in her 1981 interview she told police that the vehicle was a Chrysler from the early 70s, but noted that “I don’t know my cars.”

Another witness testified at trial that she saw Moore driving the 1965 aqua green Ford Galaxy in the fall of 1981 and June of 1982. The witness also testified that Moore wore a blue baseball hat.

Tammie Boyd testified at trial that she lived in the apartment above Christian’s. She was 16 years old in 1981. Boyd’s mother would wake her between 6:00 and 6:30 a.m. and Boyd would wait to get up until after she heard the newspaper hit her apartment door between 6:45 and 7:00 a.m. After hearing what she believed to be the newspaper, Boyd got ready for the day. Boyd then heard a “[n]oise hitting the wall” and “voices raised.” “A little after 7:00 but before 7:30, Boyd heard a female voice say “help me, stop.”

#### B. Moore’s Interviews

In 2011, Detective Randy Mayer reviewed Christian’s murder file while on a cold case assignment. Mayer interviewed Boyd in 2011 and in 2011 or 2012 he spoke to Michaels. As a result of his interviews with Boyd and Michaels, Mayer asked to meet with Moore on December 31, 2012. Mayer informed Moore that he was investigating a 1981 murder and it led him to Moore. Mayer testified that he “explained to [Moore] what a witness observed and I actually had a photograph of his vehicle [a 1965 aqua green Ford Galaxy] that he was stopped in nine

months later I believe it was, and I slid the photo in front of him and he looked at it and he said that's not my car." Moore denied having ever been to Christian's apartment complex.<sup>2</sup>

During the interview, Mayer told Moore, "[I]t's not like you sat at home saying, you know what I'm going to do tonight. I'm going to \*\*\*\* somebody over and just kill them. That's not you." Moore responded, "I don't even have the mindset anymore. If you rush out there and try to get a conviction on me, this is ridiculous, because I'm trying to move past my past." Moore first stated that he would have been asleep at 7:30 a.m. on September 4, 1981, but then stated that he would have worked a night shift until 7:00 a.m. He then began referring to himself in the third person, saying "Ruben wouldn't have killed nobody. I know that." When Mayer told Moore that a witness had seen him at Christian's apartment complex the morning of her murder, Moore immediately responded, "I don't remember seeing nobody."

Moore continued to refer to himself in the third person throughout the interview and began referencing demons. "[T]he only reason you can say whatever the past was — it was driven by demons. I don't have them demons no more. I admit I was mean as hell one time." He said that he was "driven by demons." He further said that he "did what I wanted to do. . . . I was rebellious because of the system. The system was dirty. You know blacks have always caught hell, but if there was something I thought I could get away with, I'd do it. I could do whatever I wanted to do. I just did it."

In January 2014, Mayer again interviewed Moore. During this interview, Moore told Mayer, "sooner or later I'm going to croak anyway. You follow what I'm saying? I've been living a quiet life. What's in the past is in the past." Moore admitted that he was actually off work the day of Christian's murder. He also told Mayer that his "life was back then that spirit don't drive me no more. I'm in my own world. I found my way out. I found my way out of my hatred." Moore continued to deny that he murdered Christian.

An FBI Special Agent, L. Ludovico, reviewed Mayer's interviews with Moore and conducted her own research into Moore's history and behaviors. Ludovico and Special Agent J.

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<sup>2</sup> At trial, the Commonwealth produced a jail telephone call, recorded in 2016, between Moore and his sister. During the call, Moore told his sister that in the past he had been in the area of the apartment complex and that he had washed his clothes at a nearby laundromat.

Farr interviewed Moore on December 11, 2015. Ludovico read him his *Miranda*<sup>3</sup> rights and arrested him for murder. Moore had “no reaction. No emotion.” Ludovico then showed Moore photos of himself from 1965 through 1982. Referencing that time period, Moore told Ludovico that, “I was just mean” and “I just didn’t care.”

Moore “became upset and asked why now” when Ludovico specifically asked him about Christian’s murder. He also said “what car” and immediately asked for a bathroom break when Ludovico referenced a photograph of the Ford Galaxy. However, Moore admitted to Farr that he had owned the car in the photograph.

Ludovico discussed Moore’s faith with him and asked Moore what he, “King David, the Apostle Paul, and Moses [had] in common,” Moore stated that they were murderers.<sup>4</sup> Ludovico testified that when she asked Moore whether he believed “God fixed situations,” Moore said to himself, “[I]f God fixed this I might die in jail.” Moore also told Ludovico that demons “come in, they do the act, and then he described the aftermath. It’s scary. You don’t know what happened and then he mentioned that shame and being ashamed comes in on the back end, because the demons leave and they leave you.”

## II. ANALYSIS

“When considering on appeal whether the evidence was sufficient to support a criminal conviction, ‘we review factfinding with the highest degree of appellate deference.’” *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (citation omitted).

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<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>4</sup> When questioned by the trial court as to whether Moore actually used the term “murderer”, Ludovico clarified:

He did not use the word. Well, technically, he said Moses murdered the Egyptian. David murdered Uriah, which was Bathsheba’s husband, and then he needed help remembering who the third person was. He said Joshua. And I said, no, the Apostle Paul. And then in the interview I jumped in and I’m, like, they all murdered someone. The point of my saying that was God using things that people have done in order to help them help other people. That was the point of where I was going in that line of questioning.

The Court “does not ‘ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.’” *Williams v. Commonwealth*, 278 Va. 190, 193 (2009) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). “‘Rather, the relevant question is,’ upon review of the evidence in the light most favorable to the prosecution, ‘whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Dietz v. Commonwealth*, 294 Va. 123, 132 (2017) (quoting *Bowman*, 290 Va. at 496) (emphasis in original).

*Id.* “The issue [on appeal] is whether a reasonable jury, upon consideration of all the evidence, could have rejected [Moore’s] theories in his defense and found him guilty.” *Commonwealth v. Hudson*, 265 Va. 505, 513 (2003). The judgment of the jury will not be disturbed on appeal unless it is “plainly wrong or without evidence to support it.” Code § 8.01-680.

“Where, as here, the Commonwealth relies wholly on circumstantial evidence to carry its burden of proof beyond a reasonable doubt, ‘all necessary circumstances proved must be consistent with guilt and inconsistent with innocence.’” *Moseley*, 293 Va. at 463 (citations omitted). However,

[c]ircumstantial evidence is not viewed in isolation. “While no single piece of evidence may be sufficient, the ‘combined force of many concurrent and related circumstances, each insufficient in itself, may lead a reasonable mind irresistibly to a conclusion.’” *Derr [v. Commonwealth]*, 242 Va. [413,] 425 [(1991)] (citations omitted). It is the province of the jury to evaluate the credibility of witnesses. It is “within the province of the jury to determine what inferences are to be drawn from proved facts, provided the inferences are reasonably related to those facts.” *Inge [v. Commonwealth]*, 217 Va. [360,] 366 [(1976)].

*Id.* at 514 (citations omitted).

Moore argues that the evidence was insufficient because the Commonwealth failed to present evidence that created more than a suspicion of guilt. He also points to the unreliability of Michaels’ identification of him and her testimony. However, the circumstantial evidence presented by the Commonwealth supports the jury’s finding of guilt.

When identifying Moore at trial, Michaels testified that the man she saw in the parking lot caught her eye because he was unfamiliar to her. Her memories of the man wearing a blue or black baseball hat and driving a blueish green car were consistent with other testimony and

evidence of Moore's hat and car that he owned at the time of Christian's murder. She also did not waver in her identification of him during the show up. Michaels testified that she had made eye contact with the man in the parking lot and would "never forget them eyes."

Moore's interactions with police during Mayer's investigation also tended to prove his guilt. He first denied owning the 1965 aqua green Ford Galaxy in which he had been arrested nine months after the murder, however later admitted that the car was his. When Mayer told Moore that a witness had seen him at Christian's apartment complex the morning of her murder, Moore immediately responded, "I don't remember seeing nobody." Moore blamed demons for his past and stated that he "did what he could get away with." He denied knowledge of the apartment complex but later was recorded telling his sister that he used the apartment complex as a cut through to get to the laundromat. Moore also told Mayer several variations of what he would have been doing on the day of the murder.

Despite the passage of time since Christian's murder, the weight of the circumstantial evidence was consistent with Moore's guilt. The judgment of the jury was not "plainly wrong or without evidence to support it." Code § 8.01-680.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Hampton.

A Copy,

Teste:



Clerk