

COURT OF APPEALS OF VIRGINIA

Record No. 0324-25-2

KEYONTE LACOBY THOMPSON
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Callins, Duffan and Senior Judge Clements

Opinion Issued September 8, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF PETERSBURG

Dennis M. Martin, Sr., Judge

(Monica Tuck, Assistant Public Defender; Virginia Indigent Defense Commission, on briefs),
for appellant.

(Jason S. Miyares,¹ Attorney General; Tanner M. Russo, Assistant Attorney General, on brief), for
appellee.

MEMORANDUM OPINION BY JUDGE KEVIN M. DUFFAN

A Petersburg Circuit Court jury convicted Keyonte Lacoby Thompson of malicious wounding, use of a firearm in the commission of a malicious wounding, unlawful wounding while committing or attempting to commit a felony, and maliciously shooting at an occupied vehicle. Thompson was sentenced to 20 years' incarceration, with 17 years suspended, for an active sentence of 3 years' incarceration. On appeal, Thompson argues that the circuit court erred in admitting lay opinion testimony from a law enforcement officer and erred in denying his motion to strike because

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

he acted in self-defense and without malice. We disagree with each contention and accordingly affirm the circuit court's judgment.²

BACKGROUND

On December 16, 2022, Ashley Herold, Thompson's girlfriend, drove her car to police headquarters where she was met by Officer James Kirkpatrick. After observing a gash on Herold's cheek and damage to her car, Officer Kirkpatrick went to Mingea Street, where Thompson's mother, Kursten Thompson, lived. Officer Kirkpatrick recovered a spent shell casing on the road in front of the house and an unfired bullet in the driveway. Thompson had already been detained in the house.

At trial, Herold testified that the driver's side window in her vehicle had been destroyed by a bullet, but that she could not say for certain who shot at the car due to it being dark. She further testified that Thompson's aunt tried to enter the passenger's seat of her car before she left the residence and that Thompson was "[o]n his front porch" to her left, facing the driver's side of her car, as she drove away. When asked about receiving any injuries from the window breaking, Herold testified that she developed scabs because she "guess[ed] broken glass hit [her] face."

When she drove away from the residence, Herold drove in the direction of the porch that Thompson was on because of a big dip at the front of the residence and because she "needed to turn the opposite way in order to get . . . back on the street." When asked whether there were other vehicles or any other objects between her car and the porch, Herold answered, "[y]es."

After the Commonwealth rested, Thompson moved to strike. The circuit court denied the motion after argument from counsel.

² Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument." *See* Code § 17.1-403(ii)(c); Rule 5A:27(c).

Kursten testified that Thompson and Herold agreed to go to the bank so that Herold could pay back Thompson for a broken window. When Kursten went to retrieve her keys: Thompson was “standing at the end of the driveway,” Herold was “still sitting in the car,” and Thompson’s aunt “was getting in the car.” Kursten testified that she was inside “very briefly” before she heard Thompson shout, “[s]he’s trying to hit me.” She returned outside and saw Thompson “moving out of the way from the vehicle, and [his] aunt [] kind of getting dragged and jumping out of the vehicle as [Herold] was pulling off.” She stated that Thompson “was standing in the street,” “trying to get [himself] together.” She admitted that she did not see the shooting.

Thompson testified that when Herold began to drive away from his mother’s house, he was standing “in front of [the] house in front of the cars,” “in the middle of the street, basically.” He testified that as Herold began to drive away, he heard “gravel like fast” and saw his aunt “getting dragged as [Herold] was pulling off.” Thompson stated that Herold’s vehicle “was coming towards [him],” that he was afraid that he “was going to get hit,” that he had fewer than “.2 seconds” to react, and that he “decided to try to shoot [Herold’s] tire out and stop the car.”

On cross-examination, Thompson further testified that the “right side of the headlight” on the passenger’s side of Herold’s car “almost took [him] out” and that Herold’s car came “almost to [his] kneecaps” before he shot his gun.³ He stated that by the time he fired his gun, his aunt was no longer being dragged by Herold’s vehicle. He testified that he shot at the tire because he believed that the car was about to hit him. Thompson further stated that he was “not able to go in the house when the car was coming towards” him at “lightning speed.” He acknowledged that he wanted Herold to pay him the \$200 she owed him to fix his car window.

³ When asked directly whether, at the time of the shooting, he was “in at the front of the car or [to] the side of the car[,]” Thompson simply stated, “It was very close, sir.”

After the court’s denial of Thompson’s renewed motion to strike at the conclusion of all evidence, the jury convicted him of malicious wounding, use of a firearm in the commission of malicious wounding, unlawful wounding while committing or attempting to commit a felony and maliciously shooting at an occupied vehicle. He was sentenced to 20 years’ incarceration, with 17 years suspended, for an active sentence of 3 years’ incarceration. Thompson appeals.

ANALYSIS

I. Sufficiency of the Evidence: Self-Defense and Malice⁴

Two of Thompson’s arguments on appeal are that the circuit court erred in denying his motions to strike because: (1) he presented sufficient evidence to prove that he acted in self-defense and (2) the Commonwealth did not present sufficient evidence to prove that he acted maliciously. We disagree.

“A motion to strike challenges whether the evidence is sufficient to submit the case to the jury.” *Linnon v. Commonwealth*, 287 Va. 92, 98 (2014) (quoting *Lawlor v. Commonwealth*, 285 Va. 187, 223 (2013)). An appellate court reviewing the sufficiency of the evidence is required to “review the evidence in the light most favorable to the Commonwealth, the prevailing party in the trial court.” *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 323 (2018)). “When reviewing the sufficiency of the evidence, [t]he judgment of the trial court is presumed correct and will not be disturbed unless it is plainly wrong or without evidence to support it.” *Washington v. Commonwealth*, 75 Va. App. 606, 615

⁴ A defendant may simultaneously claim both self-defense and provoked heat of passion. *Barrett v. Commonwealth*, 231 Va. 102, 106 (1986).

(2022) (alteration in original) (quoting *McGowan v. Commonwealth*, 72 Va. App. 513, 521 (2020)).

“[W]hether an alternate hypothesis of innocence is reasonable is a question of fact,” and is only reversible on appeal if “plainly wrong.” *Seat v. Commonwealth*, 81 Va. App. 752, 763 (2024) (quoting *Maust v. Commonwealth*, 77 Va. App. 687, 700 (2023) (en banc)). The only relevant question for the appellate court is whether any “reasonable [fact finder], upon consideration of all the evidence, could have rejected [the defendant’s] theories in his defense and found him guilty of [the charged crime] beyond a reasonable doubt.” *Commonwealth v. Hudson*, 265 Va. 505, 513 (2003).

A. Self-Defense

Whether a defendant has proven circumstances “of self-defense sufficient to ‘create a reasonable doubt’” of his guilt “is a question of fact.” *Washington*, 75 Va. App. at 617 (quoting *Smith v. Commonwealth*, 17 Va. App. 68, 71 (1993)). “A defendant bears the burden of introducing evidence supporting the affirmative defense of self-defense,” which requires that the “‘circumstance[s]’ of self-defense [are] sufficient to ‘create a reasonable doubt’ of his guilt.” *Id.* (quoting *Smith*, 17 Va. App. at 71).

To establish self-defense, “a defendant must show that he . . . ‘reasonably believed that [he] was in danger of serious bodily harm or death.’” *Id.* (alterations in original) (quoting *Jones v. Commonwealth*, 71 Va. App. 70, 86 (2019)). He must show “‘that he was in imminent danger of harm’ by showing ‘an overt act or other circumstance’ that constitutes ‘an immediate threat to safety.’” *Id.* (quoting *Jones*, 75 Va. at 86).

“Virginia law recognizes two forms of self-defense to criminal acts of violence: self-defense without fault (‘justifiable self-defense’) and self-defense with fault (‘excusable self-defense’).” *Jones*, 71 Va. App. at 94 (quoting *Bell v. Commonwealth*, 66 Va. App. 479, 487

(2016)). “Any form of conduct by the accused from which the fact finder may reasonably infer that the accused contributed to the affray constitutes ‘fault.’” *Id.* at 94-95 (quoting *Smith*, 17 Va. App. at 71). Excusable self-defense occurs where an accused, “although in some fault in the first instance in provoking or bringing on the difficulty, when attacked retreats as far as possible, announces his desire for peace, and [injures] his adversary from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm.” *Avent v. Commonwealth*, 279 Va. 175, 200 (2010) (quoting *Yarborough v. Commonwealth*, 217 Va. 971, 975 (1997)).

Here, the jury was given two separate model jury instructions regarding self-defense, commonly referred to as the “with fault” and “without fault” instructions. We find that a reasonable fact finder could have rejected Thompson’s self-defense theory, as the jury did here. In short, Thompson testified that there was an imminent threat to his safety when Herold sped towards him standing in the middle of the road, causing him to shoot at her tire. However, “[the] fact finder’s evaluations of credibility are not limited to choosing between competing accounts offered by different witnesses, but often include . . . resolving conflicts in a single witness’ testimony, accepting that part of the testimony it deems credible and rejecting the portion it deems incredible.” *Commonwealth v. McNeal*, 282 Va. 16, 22 (2011) (citation omitted).

Therefore, the jury could have reasonably credited Herold’s testimony that Thompson was “[o]n his front porch” and not in the middle of the road as he claimed. The jury could have also credited her testimony that although she drove in the direction of the porch, this was for the purpose of turning in “the opposite direction” rather than trying to strike Thompson. It could further accept her testimony that there were vehicles or other objects between her car and the porch, which would have made it difficult for her to strike Thompson with her car. Thompson himself testified, as did Officer Kirkpatrick and Kursten, that two cars were parked in front of the house.

Additionally, the jury was also entitled to disbelieve Thompson's testimony that he was standing in the middle of the street and that Herold was speeding towards him. *Flanagan v. Commonwealth*, 58 Va. App. 681, 702 (2011) ("In its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt" (quoting *Marable v. Commonwealth*, 27 Va. App. 505, 509-10 (1998))). Similarly, the jury could have rejected Kursten's testimony that she saw Thompson in the street and "moving out of the way" of Herold's car as it came towards him.

In sum, the jury could have reasonably determined that, at the time of shooting, Thompson was standing on the porch, with other cars between the porch and Herold's car, and so he did not reasonably believe that he was in imminent danger of serious bodily harm. The jury was entitled to resolve the credibility of the witnesses, and it did so here. *McNeal*, 282 Va. at 22. Therefore, the circuit court did not commit reversible error in denying Thompson's motion to strike based on the theory of self-defense.⁵

B. Malice

"Whether violence was completed in the heat of passion and due to a reasonable provocation is generally a question for the fact finder." *Washington*, 75 Va. App. at 619.

"Malice is evidenced either when the accused acted with a sedate, deliberate mind, and formed design, or committed any purposeful and cruel act without any or without great provocation."

Fletcher v. Commonwealth, 72 Va. App. 493, 507 (2020) (quoting *Branch v. Commonwealth*, 14 Va. App. 836, 841 (1992)).

⁵ Alternatively, Thompson argues—contrary to his own testimony—that even if he was standing on the porch, he still acted in self-defense because Herold's car "could have crashed into the porch and caused death or serious bodily injury to [Thompson] just as easily as if he been standing on the street." But Thompson never presented this alternative theory at trial and, as a result, this Court will not consider it. *Hudson*, 265 Va. at 514 ("[U]pon appellate review, the issue of exclusion of reasonable theories of innocence is limited to those theories advanced by the accused at trial.").

“Heat of passion is a defense based on a defendant’s lack of malice.” *Washington*, 75 Va. App. at 619 (citing *Rhodes v. Commonwealth*, 41 Va. App. 195, 200 (2003)). It “refers to the *furor brevis* which renders a [person] deaf to the voice of reason.” *Id.* (alteration in original) (quoting *Rhodes*, 41 Va. App. at 200). “[W]hen provocation reasonably produces fear’ or anger, causing ‘one to act on impulse without conscious reflection,’ no malice exists.” *Id.* (alteration in original) (quoting *Rhodes*, 41 Va. App. at 200). “Malice inheres in the ‘doing of a wrongful act intentionally, or without just cause or excuse, or as a result of ill will.’” *Tizon v. Commonwealth*, 60 Va. App. 1, 11 (2012) (quoting *Dawkins v. Commonwealth*, 186 Va. 55, 61 (1947)). “In other words, heat of passion and malice are mutually exclusive.” *Washington*, 75 Va. App. at 619. “Malice may be inferred ‘from the deliberate use of a deadly weapon unless, from all the evidence,’ there is reasonable doubt as to whether malice existed.” *Id.* at 621 (quoting *Avent*, 279 Va. at 201-02).

In this case, the Commonwealth had the burden to prove beyond a reasonable doubt that Thompson maliciously wounded Herold when he maliciously shot into her car. Code §§ 18.2-51, 18.2-154. Here, the jury could have reasonably rejected Thompson’s heat of passion defense because—as with Thompson’s self-defense argument—it was not required to accept his account of the shooting. *Washington*, 75 Va. App. at 616 (finding that “[t]he trier of fact is ‘free to believe or disbelieve, in part or in whole, the testimony of any witness’” and “[i]n its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt” (first quoting *Bazemore v. Commonwealth*, 42 Va. App. 203, 213 (2004); and then quoting *Flanagan*, 58 Va. App. at 681)). Specifically, a reasonable jury could have concluded that, at the time Thompson shot at Herold’s vehicle, he was standing on the porch, where there were cars

between himself and Herold's vehicle, thus, he did not act out of fear and without conscious reflection.

Similarly, although Thompson argues that the sight of "his aunt being dragged from the passenger side" of Herold's car as she drove away constituted "sufficient provocation to preclude malice," a jury was not required to accept this version of the events. *Id.* There was a factual dispute from the witnesses as to whether Thompson's aunt was "dragged" by a car in the first place. Herold testified that Thompson's aunt was trying to get into the passenger side of her car when attempting to leave Mingea Street. Officer Kirkpatrick testified that Thompson's aunt did not appear to have injuries consistent with being dragged from a vehicle. Even by Thompson's own account, his aunt was no longer being dragged from the car when he opened fire. If the jury rejected Thompson's claim that he observed his aunt being dragged from a moving car, it would follow that it rejected his theory of being sufficiently provoked to shoot at the vehicle.

Furthermore, the jury also could have reasonably found that Thompson shot at Herold's car out of ill will because she left Mingea Street without paying him for his broken car window. *Tizon*, 60 Va. App. at 11. Thompson stated that Herold could have "go[ne] about [her] business" if she had only "give[n] [him] the money"—insinuating that Herold was not free to go about her business if she did not pay him. *Caison v. Commonwealth*, 52 Va. App. 423, 441 (2000) (recognizing that the jury could have concluded that the appellant lied when he testified that he acted in self-defense).

Thompson is correct that convictions cannot rest upon "speculation and conjecture."⁶ But the record before this Court includes more than sufficient facts on which the jury could have inferred malice. Here, the jury was properly instructed on self-defense and heat of passion but

⁶ *Littlejohn v. Commonwealth*, 24 Va. App. 401, 415 (1997).

rejected these two theories based on its decision to convict Thompson. On the record before us, we cannot say that the jury's decision was plainly wrong or without evidence to support it.

II. Lay Testimony from the Officer

Thompson also argues on appeal that the circuit court erred in permitting Officer Fitzpatrick to opine on whether Thompson's aunt appeared to have injuries consistent with being dragged by a motor vehicle. We find that his argument is waived pursuant to Rule 5A:18.

At trial, the Commonwealth, Officer Fitzpatrick, and Thompson's counsel had the following exchange:

The Commonwealth: Did you see Mr. Thompson's aunt that night?

A: His aunt? Yes, sir. She was there.

The Commonwealth: Did you see any injuries consistent with how he described her being dragged?

A: No, sir.

Thompson's counsel: I'm going to object . . . to the conclusion of being consistent with anything.

The circuit court: Objection overruled.

Generally, a contemporaneous objection on stated specific grounds must be made in the trial court before an appellate court is authorized to review the question of admissibility of evidence. Rule 5A:18; *Ingram v. Commonwealth*, 1 Va. App. 335, 341 (1986). To be timely, an objection to the admissibility of evidence must be made when the occasion arises—that is, when the evidence is offered, the statement is made or the ruling is given. *Marlowe v. Commonwealth*, 2 Va. App. 619, 621 (1986).

Here, Thompson's counsel objected only *after* Officer Fitzpatrick answered the Commonwealth's question, and his reason for objecting, that Officer Fitzpatrick's answer was not "consistent with anything," was vague. On brief, Thompson explained that it "was clear that

this was another objection to Officer Kirkpatrick testifying to an opinion, or conclusion, that went beyond what he personally observed.” We find that argument unconvincing.

Rule 5A:18 of the Supreme Court of Virginia states, “[n]o ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling[.]” The purpose being “requir[ing] that objections be promptly brought to the attention of the trial court with sufficient specificity that the alleged error can be dealt with and timely addressed and corrected when necessary.” *Redman v. Commonwealth*, 25 Va. App. 215, 220 (1997).

Because Thompson’s objection was both untimely and vague, he has waived this argument on appeal.

CONCLUSION

For these reasons, we affirm the trial court’s judgment.

Affirmed.