

COURT OF APPEALS OF VIRGINIA

Record No. 0490-25-1

JA'RON RUSSULL TURNER

v.

COMMONWEALTH OF VIRGINIA

Present: Judges O'Brien, Chaney and Raphael

Argued at Williamsburg, Virginia

Opinion Issued September 1, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

Gary A. Mills, Judge

(Joshua A. Goff; Goff Voltin, PLLC, on brief), for appellant. Appellant submitting on brief.

Ramy R. Simpson, Assistant Attorney General (Jason S. Miyares,¹ Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE STUART A. RAPHAEL

Appealing his conviction for felony failure to appear, Ja'Ron Russull Turner challenges the sufficiency of the evidence. The Commonwealth invites us to affirm Turner's conviction on the ground that Turner's brief failed to cite enough "principles of law and authorities," Rule 5A:20(e), to show that he was wrongly convicted. Still, the Commonwealth concedes that if we reach the merits, the conviction cannot stand. Because Turner raised the winning argument on brief, we decline to find his appeal procedurally defaulted. And with that hurdle cleared, we agree that Turner's conviction must be vacated.

* 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.

BACKGROUND

We recite the facts in the light most favorable to the Commonwealth, the party that prevailed at trial. *Camann v. Commonwealth*, 79 Va. App. 427, 431 (2024) (en banc). “Doing so requires that we ‘discard’ the defendant’s evidence when it conflicts with the Commonwealth’s evidence, ‘regard as true all the credible evidence favorable to the Commonwealth,’ and read ‘all fair inferences’ in the Commonwealth’s favor.” *Id.* (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)).

In July 2022, Newport News Police Officer Hughes arrested Turner for possessing a firearm as a convicted felon, resisting arrest, and providing a false identity to a law enforcement officer. The docket call for Turner’s charges was February 29, 2024; Hughes was called as a witness, but Turner was not present. Turner was then also charged with felony failure to appear.

In the jury trial that followed, the Commonwealth’s evidence for the failure-to-appear charge was Hughes’s testimony summarized above. At the conclusion of the Commonwealth’s evidence, Turner moved to strike the charges, which the circuit court granted on the charges of resisting arrest and providing a false identity to police.² As for the failure to appear, Turner argued that Hughes’s testimony did not establish that Turner received notice of the February 2024 hearing. He also contended that the Commonwealth must prove that a defendant intentionally and willfully failed to appear. In response, the Commonwealth argued that Turner was required to appear as a defendant in a criminal case, and Hughes’s testimony showed there was a court date that required Turner’s attendance. The court denied Turner’s motion to strike the failure-to-appear charge but noted that it would have been “cleaner” if the Commonwealth had introduced the continuance order.

² The court denied Turner’s motion to strike the felon-in-possession-of-a-firearm charge.

Turner's evidence addressed only the events underlying his initial arrest. Afterward, Turner renewed his motion to strike, contending that the Commonwealth failed to prove that he was "under a judicial obligation" to appear in court in February 2024. The circuit court asked whether it could take judicial notice of its own records.³ Turner's counsel responded that because the court had not informed the jury about any records requiring Turner to appear in February 2024, it could not take judicial notice of those records outside the presence of the jury. The Commonwealth argued that Hughes's testimony was sufficient to prove that Turner had a court date and that judicial notice is unnecessary for something that was "common knowledge," like a criminal defendant's requirement to appear in court. The court denied Turner's motion to strike and sent both felony charges to the jury.

The jury acquitted Turner of the felon-in-possession charge but convicted him of felony failure to appear. He was sentenced to five years' incarceration with four years suspended. Turner noted a timely appeal.

ANALYSIS

Turner argues that the evidence was insufficient under Code § 19.2-128(B) to convict him of failure to appear in court for a felony offense. When the sufficiency of the evidence is challenged on appeal, "[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.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). "The only 'relevant question is, after reviewing 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.'"

³ The circuit court indicated that the continuance order was available as a computer and paper record. That order does not appear in the record transmitted to this Court.

Commonwealth v. Barney, 302 Va. 84, 97 (2023) (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)).

Under Code § 19.2-128(B), a person “charged with a felony offense . . . who willfully fails to appear before any court as required is guilty of a Class 6 felony.” As used in Code § 19.2-128(B), willfully means “purposely, intentionally, or designedly.” *Chavez v. Commonwealth*, 69 Va. App. 149, 162 (2018) (quoting *Williams v. Commonwealth*, 57 Va. App. 750, 763 (2011)). “[The] correct application [of willfully] in a particular case will generally depend upon the character of the act involved and the attending circumstances.” *Id.* (alterations in original) (quoting *Hunter v. Commonwealth*, 15 Va. App. 717, 722 (1993)).

Code § 19.2-128(B) “does not include timely notice as an element of felony failure to appear—only willful failure to appear.” *Harper v. Commonwealth*, 77 Va. App. 231, 250 (2023) (quoting *Chavez*, 69 Va. App. at 157). The “proof of timely notice simply provides a prima facie basis for finding that the element of willful failure to appear has been proven; that is, timely notice is but one mechanism for proving willfulness.” *Id.* (quoting *Chavez*, 69 Va. App. at 159).

Willfulness may also be proven by showing that the defendant engaged in conduct “designed to prevent him from receiving notice.” *Chavez*, 69 Va. App. at 162; *see Harper*, 77 Va. App. at 250 (defendant’s “years of avoiding apprehension” demonstrated a willful failure to appear); *Hunter*, 15 Va. App. at 723 (finding willfulness where the defendant knew of the trial date, changed his address, and left the State). A defendant with notice of an original appearance date “is charged with notice of” a continuance “when such action is duly recorded in the order of the court.” *Chavez*, 69 Va. App. at 162 (quoting *Hunter*, 15 Va. App. at 722). And when a defendant’s attorney had notice of the appearance date, a jury may infer that the lawyer communicated that information to the client. *Id.* at 163; *Hunter*, 15 Va. App. at 722-23.

Officer Hughes testified that he was subpoenaed to appear for Turner’s bench trial in February 2024 on the charges of possessing a firearm as a convicted felon, resisting arrest, and providing a false identity to a law enforcement officer. Hughes stated that Turner was not present when the case was called. But there was no evidence that Turner knew of that hearing or knowingly failed to appear.

The Commonwealth concedes that if we reach the merits, we should reverse Turner’s conviction because the prosecution failed to prove that Turner’s failure to appear was willful.⁴ We are not bound by the Commonwealth’s “concessions of law . . . on appeal,” *Copeland v. Commonwealth*, 52 Va. App. 529, 531-32 (2008), but we agree with the Commonwealth’s assessment.

We reversed the conviction on similar grounds in *Edmonds v. Commonwealth*, 43 Va. App. 197 (2004). The officer there testified that “Edmonds did not appear when the ‘cases were scheduled.’” *Id.* at 199. We held that the Commonwealth failed to prove that the defendant’s failure to appear was willful because the “evidence fail[ed] to establish that [she] had notice of the date and time of the hearing.” *Id.* at 200. Here, as in *Edmonds*, Hughes’s testimony did not show that Turner received notice of when and where he was required to appear. So the prosecution did not establish a prima facie case that Turner’s failure to appear was willful.

Likewise, the Commonwealth offered no evidence that Turner consciously avoided receiving notice to appear or that his trial counsel had notice of the continuance. *See Chavez*, 69 Va. App. at 162-63. Although the circuit court suggested that its records contained a continuance order—which could support the argument that Turner had constructive notice—that

⁴ We recognize that by making that concession, the Commonwealth was “properly performing its function as prosecutor.” *Merritt v. Commonwealth*, 69 Va. App. 452, 461 n.6 (2018). Still, we “commend the Commonwealth” for doing so. *Id.* The Commonwealth’s interest “in a criminal prosecution is not that it shall win a case, but that justice shall be done.” *Id.* (emphasis omitted) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

was discussed outside the presence of the jury. Because that fact was not conveyed to the jury, it “could not be used by the jury in arriving at its verdict.” *Thomas v. Commonwealth*, 48 Va. App. 605, 609 (2006) (quoting *State v. Jones*, 400 P.2d 524, 525 (Or. 1965)).

Although conceding that we should vacate the conviction if we reach the merits, the Commonwealth invites us to affirm the conviction on the ground that Turner’s appeal is procedurally defaulted under Rule 5A:20(e) because his brief did not contain sufficient authorities on the willfulness question. We decline that invitation.

Turner’s brief adequately argued that the Commonwealth failed to prove that he willfully failed to appear because it adduced no evidence that he had “any awareness of the court date” or that he “made a conscious and willful decision not to come to court.” To be sure, Turner’s brief is light on caselaw supporting his argument; his counsel failed to cite *Edmonds*, the best case for his position. It is true that when an appellant’s failure to comply with Rule 5A:20(e) is “significant,” we may treat the assignment of error as “defaulted.” *Moncrieffe v. Deno*, 76 Va. App. 488, 503 (2023). But given that his counsel made the winning argument on brief, we do not find Turner’s briefing deficiency significant enough to warrant defaulting his appeal and affirming a conviction that the Commonwealth concedes is not supported by the evidence.

CONCLUSION

As the Commonwealth acknowledges, the record does not contain evidence that would allow a rational factfinder to reasonably find that Turner willfully failed to appear. So the conviction cannot stand.

Reversed.