

COURT OF APPEALS OF VIRGINIA

Record No. 0598-25-1

DESZIEREEN MCKENZIE-GARY

v.

COMMONWEALTH OF VIRGINIA

Present: Judges Beales, White and Duffan

Opinion Issued September 15, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK

Matthew A. Glassman, Judge

(Dorian L. Dalton, Senior Appellate Attorney; Virginia Indigent Defense Commission, on briefs),
for appellant.

(Jason S. Miyares,¹ Attorney General; David A. Stock, Senior Assistant Attorney General, on brief),
for appellee.

MEMORANDUM OPINION PER CURIAM

Following a jury trial, the trial court convicted Desziereen McKenzie-Gary of violating a protective order—a misdemeanor in violation of Code § 16.1-253.2.² The trial court sentenced McKenzie-Gary to 90 days in jail with 89 days suspended. On appeal, McKenzie-Gary challenges the sufficiency of the evidence to sustain her conviction.³

* 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.

² The jury acquitted McKenzie-Gary of assault and battery on a law enforcement officer.

³ Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because “the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.” *See* Code § 17.1-403(ii)(b); Rule 5A:27(b).

BACKGROUND⁴

On December 27, 2023, James E. Gary, McKenzie-Gary's husband, obtained a preliminary protective order (PPO) against her in the Juvenile and Domestic Relations District Court of the City of Suffolk. The order required McKenzie-Gary to "have no contact of any kind" with Gary. McKenzie-Gary and Gary had been married for 20 years, and they lived in Suffolk. In the PPO, the address of their shared home was handwritten beside the printed statement that Gary was "granted possession of the residence occupied by the parties to the exclusion of" McKenzie-Gary. However, the printed box beside that portion of the order was not checked. The PPO reflected that the matter was scheduled for a full hearing on Gary's request for a protective order on January 11, 2024.

On the night of December 27, 2023, Suffolk Police Officers Charles Lauster and Brandon Pruitt went to the residence in Suffolk to serve McKenzie-Gary with the PPO. Gary and his 12-year-old son were outside at a neighbor's house. Officer Lauster knocked on the door of the home multiple times, rang the doorbell, and announced his presence. Eventually, McKenzie-Gary appeared at a small window beside the door but did not open the door. Officer Lauster asked, "I need to speak to Ms. McKenzie-Gary, is that you?" Through the window, she responded, "Yes." Officer Lauster explained that he was there to serve her with a preliminary protective order and asked her to open the door. She refused to open the door and asked for a female police officer. When Officer Lauster said that no female officer was available,

⁴ "Consistent with the standard of review when a criminal appellant challenges the sufficiency of the evidence, we recite the evidence below 'in the "light most favorable" to the Commonwealth, the prevailing party in the trial court.'" *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). This standard "requires us to 'discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom.'" *Cady*, 300 Va. at 329 (quoting *Commonwealth v. Perkins*, 295 Va. 323, 324 (2018)).

McKenzie-Gary asked for a supervising officer. Officer Pruitt placed a call for a supervisor.

Inside the house, McKenzie-Gary walked away from the door.

McKenzie-Gary returned a few minutes later and opened the door. Officer Lauster confirmed that McKenzie-Gary was the person named as the respondent in that order and then read aloud the terms and conditions of the PPO.⁵ Officer Lauster told her that one of the conditions of the PPO was, “You are not allowed to have contact of any kind with the petitioner, Mr. James Gary.” Officer Lauster read aloud another term, stating, “The petitioner, Mr. James Gary, is also granted the residence at [the address.]” McKenzie-Gary was in a bathrobe, so Officer Lauster told McKenzie-Gary, “if you have any emergency provisions that you need, you can gather them, but at this time, you do need to vacate the residence.” McKenzie-Gary objected several times, stating, “I’m on this lease.” Officer Lauster advised her multiple times that the protective order required her to leave the home and that if she refused, she would be arrested. She objected and said she had nowhere else to go. McKenzie-Gary said twice, “I’m not leaving my house.” She then said, “You’re gonna have to arrest me because I’m not leaving my house,” and tried to close the door.

Officer Lauster then attempted to arrest her for violating the PPO in his presence. Officers Lauster and Pruitt pushed their way into the home to arrest McKenzie-Gary, but she refused to let them handcuff her. During the struggle, McKenzie-Gary’s bathrobe came undone, but the officers eventually handcuffed McKenzie-Gary. After she had been handcuffed, Officer Lauster offered to get clothing and shoes for her, but she continued to argue and would not say

⁵ Officer Lauster testified that the PPO contained “boxes that are checked or have writing next to it” and that he “read all the ones that apply that have been either checked or have writing next to them to explain . . . clearly and precisely what the order lays out . . . so that there is no confusion.”

where her things could be found in the house. After she refused clothes and shoes, an officer retied her bathrobe around her before leading her out of the house.

As the officers were leading her to the police cruiser, McKenzie-Gary began yelling at Gary, who was across the street with multiple other people. Officer Lauster told her to stop addressing Gary because “it’s a violation of the protective order.” After she continued yelling across the street, Officer Lauster said, “Stop talking to him or I’m going to charge you again.” McKenzie-Gary responded, “charge me,” and continued yelling at Gary. Addressing Gary, McKenzie-Gary repeatedly yelled, “Don’t be a punk,” and yelled that she hoped that Gary would “fucking rot in hell and die slow.” After McKenzie-Gary was put inside the police car, officers returned to the house and, with Gary’s help, obtained clothing and shoes for her.

In a motion to strike at the end of the Commonwealth’s evidence, defense counsel stated, “the box not being checked [on the protective order] is a red herring because the protective order introduced into evidence, clearly, the officer says no doing what you did when you came out of the house, yelling and contact with him. So I’ll submit that one.” In denying the motion to strike, the trial court stated that it did not understand McKenzie-Gary to be challenging the sufficiency of the evidence for the protective order violation and that “the defense has basically conceded that.” Defense counsel confirmed that he “submitted” the charge without conceding it.

The jury convicted McKenzie-Gary of violating a protective order. McKenzie-Gary now appeals to this Court.

ANALYSIS

On appeal, McKenzie-Gary argues, “The evidence was insufficient to prove that Ms. McKenzie-Gary violated the protective order.” She asserts two grounds in support of her argument. First, she argues that because the box on the protective order was unchecked, the order did not grant Gary exclusive access to the home. Thus, she maintains, she did not violate

the protective order by refusing to leave the house.⁶ Secondly, she argues that she “did not violate any other provision of the protective order.”

“When an appellate court reviews the sufficiency of the evidence underlying a criminal conviction, its role is a limited one.” *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024). “The 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). “Thus, ‘it is not for this [C]ourt to say that the evidence does or does not establish [the defendant’s] guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion.’” *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (alterations in original) (quoting *Cobb v. Commonwealth*, 152 Va. 941, 953 (1929)).

The only relevant question for this Court on review “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.” *Id.* (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). “If there is evidentiary support for the conviction, ‘the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.’” *McGowan v. Commonwealth*, 72 Va. App. 513, 521 (2020) (quoting *Chavez v. Commonwealth*, 69 Va. App. 149, 161 (2018)).

Virginia law permits a juvenile and domestic relations district court to “issue a preliminary protective order against an allegedly abusing person in order to protect the health

⁶ We acknowledge the Commonwealth’s argument that this issue is procedurally defaulted under Rule 5A:18. As an appellate court, we seek “‘the best and narrowest ground available’ for our decision.” *Harvey v. Commonwealth*, 65 Va. App. 280, 285 n.2 (2015) (quoting *Armstead v. Commonwealth*, 56 Va. App. 569, 576 (2010)). We conclude that resolving the merits of the question presented constitutes the narrowest and best ground for resolution of this appeal.

and safety of the petitioner or any family or household member of the petitioner.” Code § 16.1-253.1(A). The PPO must set a date for a full hearing on whether to grant a final protective order, which must be held within 15 days of the issuance of the PPO, barring some exceptions. Code § 16.1-253.1(B). A PPO must “be served forthwith on the allegedly abusing person in person as provided in [Code] § 16.1-264 and due return made to the court.” Code § 16.1-253.1(B). The statute further specifies that “[t]he preliminary order is effective upon personal service on the allegedly abusing person.” Code § 16.1-253.1(C).

A person is guilty of violating a PPO “when such violation involves a provision of the protective order that prohibits . . . contacts by the respondent with the allegedly abused person.” Code § 16.1-253.2(A). “‘Contact,’ in pertinent part, means ‘an instance of establishing communication with someone.’” *Green v. Commonwealth*, 72 Va. App. 193, 203 (2020) (quoting *Contact, Webster’s Third New International Dictionary* (2002)). “‘Contacts’ prohibited by protective orders ‘are intentional acts . . . that intentionally pierce the protective barrier between the petitioner and the respondent fashioned by the protective order.’” *Id.* at 203 (alteration in original) (quoting *Elliott v. Commonwealth*, 277 Va. 457, 464 (2009)).

Here, Officer Lauster confirmed twice with McKenzie-Gary that she was the respondent named in the PPO. He told her that he was there to serve her with the PPO, and read its terms aloud to her, including, “You are not allowed to have contact of any kind with the petitioner, Mr. James Gary.” After the police removed her from the house, McKenzie-Gary saw Gary across the street and began yelling at him. Officer Lauster warned her that she was prohibited from contact with Gary, but she continued yelling at him. The officer warned her to stop speaking to Gary or he would charge her again with violating the protective order. McKenzie-Gary responded, “charge me,” and continued her disparaging comments to Gary, including that she hoped that Gary would “fucking rot in hell and die slow.” These comments

were clearly “intentional acts . . . that intentionally pierce[d] the protective barrier between the petitioner and the respondent fashioned by the protective order.” *Green*, 72 Va. App. at 203 (first alteration in original) (quoting *Elliott*, 277 Va. at 464). In other words, McKenzie-Gary’s conduct fell squarely within the ambit of what the PPO prohibited.

Thus, regardless of whether McKenzie-Gary violated the protective order by refusing to leave the house, she violated the “no contact” provision when she repeatedly yelled at Gary outside the house, even after she was told to have no contact with him. As a result, the evidence supported the jury’s decision to convict McKenzie-Gary under Code § 16.1-253.2, and we cannot say that no rational trier of fact could have found McKenzie-Gary guilty of violating a protective order.

CONCLUSION

For all of the foregoing reasons, we do not disturb the trial court’s judgment.

Affirmed.