COURT OF APPEALS OF VIRGINIA

Record No. 0744-25-1

EMPRESS JOHNSON
v.
COMMONWEALTH OF VIRGINIA

Present: Judges O'Brien, Athey and White

Opinion Issued October 27, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
Douglas B. Ottinger, Judge[1]

(Lauren E. Brice, Assistant Public Defender; Virginia Indigent Defense Commission, on briefs), for appellant.

(Jason S. Miyares,[2] Attorney General; Andrew T. Hull, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

A jury convicted Empress Johnson of assault and battery. On appeal, Johnson argues that the circuit court erred by excluding testimony that the complaining witness had previously tried to break into her home. Finding no error, we affirm.[3]

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

[1] The Honorable Kenneth R. Melvin ruled on the motion *in limine*.

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

[3] Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the appeal is wholly without merit." *See* Code § 17.1-403(ii)(a); Rule 5A:27(a).

BACKGROUND[4]

In October 2023, Johnson and Kavis Baker became romantically involved. On February 9, 2024, Johnson and Baker got into an argument while driving to Johnson's house. Johnson pulled over and told Baker to "get the fuck out" of her car; he complied. While driving away, Johnson threw chicken wings at Baker.

Baker walked to Johnson's home, where he had parked his truck. When he got there, Johnson approached Baker, who hurried to get into his truck. At Johnson's request, Baker rolled down his window, and Johnson threw her cellphone at him, hitting him in the face. Johnson began hitting Baker as he tried to retrieve the phone and continued hitting him after he returned it. Johnson then "asked for a kiss." When he refused, she leaned into the truck, punched Baker in the mouth, and spit in his face.

Bobby Ward, Johnson's neighbor, witnessed the incident. He saw Baker hurry to get into his truck and watched as Johnson stood on the driver's side running board and "launche[d] herself into the window." Ward recalled that Johnson was "throwing her arms up" and appeared upset. He could not remember how long Johnson leaned through the window. Ward did not see Baker "do anything to" Johnson. When Baker left, he was visibly upset.

Johnson was convicted of assault and battery in general district court in March 2024. After appealing the conviction, Johnson filed a police report that Baker had tried to enter her home without permission in December 2023.

[4] We recite the facts "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)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

Before the circuit court trial, the Commonwealth moved to exclude any reference to Baker's attempted burglary of Johnson's home. The Commonwealth noted that the burglary complaint was not filed with the police until after Johnson's conviction and argued that it was inadmissible character evidence. Johnson responded that Baker's unwanted entry into her home was not character evidence but explained her fear of Baker, showing that she acted in self-defense on the date of the altercation. The court granted the Commonwealth's motion *in limine*.

On the day of trial, which was held before a different judge, Johnson moved the court to reconsider the ruling on the Commonwealth's motion. The parties reargued the motion on the same grounds originally raised.

Johnson proffered that in December 2023 she was lying in her bed with Joseph Gomez, when Gomez heard someone "punching the code" to unlock Johnson's back door and "ji[g]gling" the doorknob. Johnson saw Baker trying to open the glass screen on her front door. She asked Baker to leave, which he did after another houseguest "started yelling" at him. Although the police report showed that Johnson did not file the complaint until June 2024, Johnson claimed that the officer was "lying" and that she filed the report back in December, the day after the incident.

The court found that the alleged December 2023 burglary was still pending, irrelevant in time and circumstance, and the prejudicial impact of the evidence outweighed its probative value. The court prohibited Johnson from introducing any evidence of Baker's attempted burglary.

At trial, Baker and Ward testified about the confrontation on February 9. Johnson also testified. According to Johnson, at that time, she and Baker were no longer dating, but Baker had shown up at her house and "jumped in" her car uninvited as she was leaving. She allowed him to come with her to "keep the peace," but told him to get out of the car on the way home. When she got home, she gathered Baker's things, met him at the end of her driveway, and handed him his belongings. Baker took the items and left. Johnson admitted that she shouted at Baker but denied

striking him, throwing her phone at him, or spitting on him. Contrary to Ward's testimony, she also denied standing on the running board of Baker's truck.

The jury convicted Johnson of assault and battery. The circuit court sentenced her to 365 days of incarceration, suspending 360 days. Johnson appeals.

ANALYSIS

"[W]e review a trial court's decision to admit or exclude evidence using an abuse of discretion standard and, on appeal, will not disturb a trial court's decision . . . absent a finding of abuse of that discretion." *Griffin v. Commonwealth*, 78 Va. App. 116, 139-40 (2023) (first alteration in original) (quoting *Avent v. Commonwealth*, 279 Va. 175, 197 (2010)). "In evaluating whether a trial court abused its discretion, . . . 'we consider only whether the record fairly supports the trial court's action.'" *Carter v. Commonwealth*, 293 Va. 537, 543 (2017) (quoting *Grattan v. Commonwealth*, 278 Va. 602, 620 (2009)). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Bista v. Commonwealth*, 303 Va. 354, 370 (2024) (quoting *Commonwealth v. Swann*, 290 Va. 194, 197 (2015)).

Generally, "[e]vidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Va. R. Evid. 2:404(a). Even so, Virginia Rule of Evidence 2:404(a)(2) permits an accused to offer evidence of the purported victim's "pertinent character trait or acts of violence." Rule 2:404(a)(2). Character evidence concerning the victim "is admissible only when the defendant has interposed a plea of self-defense . . . and when a proper foundation is laid by proof of some overt act justifying such defense." *Jones v. Commonwealth*, 71 Va. App. 70, 89 (2019) (alteration in original) (quoting *Burford v. Commonwealth*, 179 Va. 752, 767 (1942)).

"[T]o establish self-defense, a defendant must show that . . . she 'reasonably believed that . . . she was in danger of serious bodily harm or death.'" *Jones*, 71 Va. App. at 86 (quoting

Commonwealth v. Sands, 262 Va. 724, 730 (2001)). She must also establish "'that [s]he was in imminent danger of harm' by showing 'an overt act or other circumstance that affords an immediate threat to safety.'" *Id.* (quoting *Carter*, 293 Va. at 544). "An overt act is an act suggesting present danger which 'afford[s] a reasonable ground for believing there is a design . . . to do some serious bodily harm, and imminent danger of carrying such design into immediate execution.'" *Id.* (alterations in original) (quoting *Sands*, 262 Va. at 729).

Johnson argues that evidence of Baker's alleged burglary attempt was admissible because it showed that she feared Baker and proved she acted in self-defense on February 9. She contends that the court's ruling prevented her from fully presenting a self-defense claim.

But Johson never presented any evidence that she acted in self-defense. Before trial, Johnson proffered that in December 2023 Baker tried to enter her home by "punching the code" to unlock her back door and "ji[g]gling" the doorknob. Johnson went to the front door, saw Baker trying to open her door, and asked him to leave, which he did. Johnson did not say that Baker threatened her or committed any act other than unsuccessfully trying to enter her home.

At trial, Johnson testified that she told him to get out of her car. Johnson did not testify that she feared Baker at any time. She was the aggressor—she threw food at him as she drove away after he agreed to get out. Johnson did not identify any overt acts by Baker that caused her to fear for her safety. Indeed, Johnson did not claim that she believed she was in danger of serious bodily harm or death while interacting with Baker. In addition, Ward's testimony that Baker was hurrying away from Johnson, attempting to leave, contradicted Johnson's testimony. According to Baker and Ward, she followed him. And settled precedent makes clear that a defendant who pursues a victim may not claim self-defense because they are not without fault in bringing on the affray. *Avent*, 279 Va. at 199. Thus, the court did not err when it excluded evidence of Baker's alleged attempted burglary.

CONCLUSION

For the foregoing reasons, we affirm the circuit court's judgment.

Affirmed.