

COURT OF APPEALS OF VIRGINIA

Record No. 0989-25-2

CALVIN SHERROD LATTANY
v.
COMMONWEALTH OF VIRGINIA

Present: Judges AtLee, Ortiz and Senior Judge Humphreys

Argued at Richmond, Virginia

Opinion Issued August 25, 2026*

FROM THE CIRCUIT COURT OF MIDDLESEX COUNTY

William H. Shaw, III, Judge Designate¹

Charles E. Haden for appellant.

Kelly L. Sturman, Assistant Attorney General (Jason S. Miyares,² Attorney General, on brief),
for appellee.

MEMORANDUM OPINION BY JUDGE DANIEL E. ORTIZ

Following a jury trial, the trial court found Calvin Sherrod Lattany guilty of two counts of assault and battery under Code §§ 18.2-57 and -57.2. On appeal, Lattany argues that the trial court erred in (1) denying his motion to strike both counts, (2) denying his proposed with-fault self-defense instruction, and (3) allowing the introduction of hearsay statements made by the victim to a medical provider. Finding no error, we affirm his convictions.

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

¹ Judge Joshua DeFord presided over the hearing on the Commonwealth's motion *in limine*. Judge Shaw presided over the jury trial and entered the sentencing order that is the subject of the instant appeal.

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

BACKGROUND³

On the evening of February 11, 2024, police responded to a report of domestic violence at Lattany's residence in Urbanna. At the time, Tauheeddah Thompson, Lattany's girlfriend, and T.L., Thompson's daughter, lived with Lattany. That evening, Lattany told Thompson that he was going to go watch the Super Bowl at a friend's house and asked if he could use her vehicle to drive himself there. She said no because he had been drinking what "looked like a fifth of Hennessy straight . . . [t]he whole fifth."⁴ Lattany's friend later gave him a ride to the watch party. While Lattany was out of the house, Thompson, who was recovering from recent surgery on her right rotator cuff, went to bed for the night, as did T.L.

Thompson awoke to loud music playing downstairs upon Lattany's return to the home. When she realized Lattany could not hear her calling for him to turn it down, she went downstairs and asked again, but he "just . . . laughed it off," so she unplugged the computer that was playing the music. In response, Lattany moved towards the front door, and Thompson, worried he was going to "do something" to her car, "kind of stood to try to go over there, and he hit [her]." Lattany struck her in the face and hit her injured right shoulder. She tried to retreat upstairs because she "knew [her] shoulder was hurting," but Lattany followed her, "cussing [her] out and everything . . . He was just screaming like, '[y]ou stupid.'" When Thompson reached her room, Lattany began "breaking stuff in the room" and throwing things at her "in [her] face, fighting on [her]." He continued to "scream[] and yell[]" with "spit flying out of his mouth" as Thompson attempted to "get away from him." When Lattany went into another room, Thompson "took that

³ Under familiar principles, we recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party below." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In so doing, we discard any evidence conflicting with the Commonwealth's evidence and take all inferences that can fairly be drawn from that evidence. *Cady*, 300 Va. at 329.

⁴ At trial, Lattany testified that he had not been drinking at all on the night in question.

chance to give the phone to [T.L.]” because she “didn’t feel safe.” Thompson “tried to do it inconspicuously” and instructed her daughter to go back into her room, lock the door, and call the police. T.L. called 911 from the closet of her room and could hear the altercation resume “as soon as [she] got in the closet . . . [it sounded like] stuff being thrown around again and then . . . [Thompson] being in pain.”

Upon arrival, the responding Middlesex County deputies “could tell something had taken place.” Thompson answered the door looking “dishevelled” and “in distress . . . She did appear in pain.” The deputies called for medics due to her visible facial abrasions and concerns about re-injury to her shoulder so soon after surgery. Lattany appeared to the deputies “to be under the influence.” He was “very standoffish and then got angry . . . that [police] were there.” He denied any wrongdoing, telling the deputies that “Thompson pulled out his computer cord while he was trying to do school [work] and that she had hit him,” but that “he did not put his hands on her.” When Thompson was transported to Riverside Walter Reed Hospital for treatment of her injuries, she told medical staff that Lattany had choked her during the incident. As a result, Amanda Totten, a sexual assault nurse examiner (SANE) and forensic nurse, was called in to examine Thompson in the emergency department. Thompson was fully examined and treated before being released the following day.

Lattany was charged with strangulation in violation of Code § 18.2-51.6 and with assault and battery against a family or household member under Code § 18.2-57.2. He was tried before a jury on March 18, 2025. The jury heard the details of the incident as discussed above. Totten appeared to testify and qualified as an expert in forensic nurse examinations regarding strangulation. Totten explained that she evaluated Thompson for symptoms “relat[ing] to having pressure applied to the[] airway” and resulting medical concerns. Over objection, Totten testified to Thompson’s description of the incident as documented by photographs and in Thompson’s

witness statement and indicated that determining the origin and extent of Thompson's injuries was "important for her medical treatment."

Testifying in his own defense, Lattany recalled that after he returned home for the night on the date in question, he played music on his computer and then prepared to take a test. He stated that "[t]he music wasn't that loud. You're talking about a computer system on a Bluetooth. . . . I didn't think I was playing the music that long either, [but] . . . it might have woken them up." When Thompson came downstairs to ask him to turn the music down so that she and her daughter could sleep, Lattany remembered "giggling" and telling her he would turn it off "in a minute," but that Thompson "just ripp[ed]" the cords out of the computer terminal. At that point, "we're both upset, honestly. . . . Then all of a sudden, she just attacked me." He also stated that they had "already started scuffling" and that Thompson knew that "she hit me first . . . upside the head" with a broomstick. Lattany denied pushing Thompson in the face, hitting her with a closed fist, throwing things at her, or ever choking her. When asked if he had slapped Thompson, Lattany confirmed that he had.

Lattany moved to strike both charges on the ground that Thompson was not a credible witness. He renewed the motion after presenting his own evidence, arguing that the Commonwealth failed to disprove Lattany's alternative theory that Thompson, not Lattany, was the instigator. The court again denied his motion. The parties proffered multiple jury instructions; Lattany proposed Virginia's model self-defense with fault instruction, which was denied. The jury was then instructed on strangulation under Code § 18.2-51.6 and assault and battery against a family or household member under Code § 18.2-57.2. The jury found Lattany guilty of two counts of misdemeanor assault and battery under Code §§ 18.2-57 and -57.2, the first of which was the

lesser-included offense for the strangulation charge.⁵ The trial court sentenced him to twenty-four months of incarceration with twelve months suspended, along with anger management and substance abuse treatment. He now appeals.

ANALYSIS

I. Motion to Strike

Lattany was convicted of violations of two different assault and battery charges: “simple assault and battery,” as defined under Code § 18.2-57(A), and “assault and battery against a family or household member” under Code § 18.2-57.2. He contends that the trial court committed legal error in denying his motion to strike both charges. The framework under which we evaluate an appeal from the denial of a motion to strike is well established.

A motion to strike challenges whether the evidence is sufficient to submit the case to the jury. . . . Whether the evidence adduced is sufficient to prove each of those elements is a factual finding, which will not be set aside on appeal *unless it is plainly wrong*. In reviewing that factual finding, we consider the evidence in the light most favorable to the Commonwealth and give it the benefit of all reasonable inferences fairly deducible therefrom. After so viewing the evidence, the question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In sum, if there is evidence to support the conviction, the reviewing court is not permitted to substitute its judgment, even if its view of the evidence might differ from the conclusions reached by the finder of fact at the trial.

Linnon v. Commonwealth, 287 Va. 92, 98 (2014) (emphasis added).

⁵ The jury returned guilty verdicts for two charges: assault and battery of a family or household member (Code § 18.2-57.2) and assault and battery (Code § 18.2-57). However, the sentencing order entered in this case incorrectly labeled both offenses as Code § 18.2-57 violations. We have held that “[a] court speaks only through its orders” and presume that those orders accurately reflect what transpired below. *Jones v. Commonwealth*, 24 Va. App. 636, 640 (1997) (quoting *Cunningham v. Smith*, 205 Va. 205, 208 (1964)). But if “the record unquestionably refutes the order’s recital,” the order is not binding. *Id.* We therefore remand to the trial court to correct the sentencing order to reflect the jury’s actual convictions under Code §§ 18.2-57 and -57.2.

Code § 18.2-57 provides that “[a]ny person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor.” Under Code § 18.2-57.2, “[a]ny person who commits an assault and battery *against a family or household member* is guilty of a Class 1 misdemeanor,” and “[t]he definition of ‘family or household member’ in § 16.1-228 applies to this section.” Code § 18.2-57(A), (D) (emphasis added). Under the version of Code § 16.1-228 applicable to these proceedings, a “family or household member” includes “any individual who cohabits.”

On appeal, Lattany argues that the trial court should have granted his motion to strike both charges because Thompson, the only eyewitness, was not a credible witness. But we defer to the fact finder to weigh a witness’s credibility: “[t]he fact finder, who has the opportunity to see and hear the witnesses, has the sole responsibility to determine their credibility.” *Kelley v. Commonwealth*, 69 Va. App. 617, 626 (2019) (quoting *Hamilton v. Commonwealth*, 279 Va. 94, 105 (2010)). This Court may, however, disturb the credibility determinations made by the jury if we find that a witness’s testimony was “inherently incredible, or so contrary to human experience as to render it unworthy of belief.” *Id.* (quoting *Johnson v. Commonwealth*, 58 Va. App. 303, 315 (2011)). “To be ‘incredible,’ testimony ‘must be either so manifestly false that reasonable men ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ.’” *Id.* (quoting *Juniper v. Commonwealth*, 271 Va. 362, 415 (2006)).

The evidence presented at trial established that Thompson received shoulder surgery three days prior to the night in question and she went to bed early but was awoken by Lattany’s loud music upon his return home. Both Lattany and Thompson testified that Thompson’s confrontation about the volume of the music resulted in a scuffle, after which she retreated upstairs. Thompson testified that Lattany struck her multiple times—including a blow dealt to her injured shoulder—

and that she received injuries noticeable to first responders and hospital staff. Deputy Andrews, who responded to the 911 call, testified that Thompson was very concerned that the attack re-injured her shoulder and that she sought medical attention at the hospital.

Lattany argues that Thompson's testimony was incredible and that the Commonwealth therefore failed to exclude his hypothesis of innocence. But there is nothing in the record that suggests that Thompson's account of the incident, which was corroborated by first responders and medical staff, could be characterized as "so contrary to human experience as to render it unworthy of belief." *Id.* (quoting *Johnson*, 58 Va. App. at 315). That Thompson was the only witness is not a fact which makes her testimony manifestly false. Further, the record is replete with other evidence upon which the jury was able to determine the credibility of the accused and accuser. Any inconsistencies between the testimony of Thompson and Lattany were issues properly "resolved by the fact finder," not by this Court. *Towler v. Commonwealth*, 59 Va. App. 284, 292 (2011). Thus, we cannot say that the trial court's denial of Lattany's motion was "plainly wrong." Code § 8.01-680. Because we find that the trial court correctly denied Lattany's motion, we turn to his other assignments of error.

II. The trial court was within its discretion to admit the hearsay statements Thompson made at the hospital.

Lattany next challenges the trial court's admission of Thompson's statement to Totten, the forensic nurse and SANE who examined Thompson at the hospital. He argues that Totten's trial testimony revealed that she did not actually provide Thompson with medical treatment and that her testimony relaying the contents of the statement was therefore inadmissible hearsay.⁶ We disagree.

⁶ On brief, Lattany also argues that Thompson's statement to the SANE was testimonial hearsay and that its admission was thereby a violation of his Sixth Amendment right to confrontation. This argument is unfit for our consideration because Lattany objected below on hearsay grounds alone. "No ruling of the trial court . . . will be considered as a basis for reversal

“The admissibility of evidence is within the broad discretion of the trial court, and a ruling will not be disturbed on appeal in the absence of an abuse of discretion.” *Lynch v. Commonwealth*, 46 Va. App. 342, 348 (2005) (quoting *Gonzales v. Commonwealth*, 45 Va. App. 375, 380 (2005)). Hearsay is an “out-of-court statement offered to prove the truth of the matter asserted.” *Garcia v. Commonwealth*, 21 Va. App. 445, 450 (1995) (en banc). “A statement offered for any other purpose is not hearsay and is, therefore, governed by the other rules of admissibility.” *Id.* (citing *Eckhart v. Commonwealth*, 222 Va. 213, 216 (1981)). Hearsay is inadmissible unless it “come[s] within one of the many established exceptions to [this] general prohibition.” *Hanson v. Commonwealth*, 14 Va. App. 173, 187 (1992). One exception includes “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.” Va. R. Evid. 2:803(4). Thompson’s statements to Totten fall within this exception.

At trial, Totten was qualified as an expert in “forensic examinations regarding strangulation.” She testified that she was called to the hospital after Thompson’s initial treatment because Thompson reported to the medical staff that she had been strangled. Totten explained that her role was to “observe, document, assess[], and ask [the victim] specific questions related to strangulation . . . such as symptoms that they were having related to having pressure applied to their airway.” Totten stated that this examination enabled her to establish and document injuries to advise medical staff on further treatment. She explained that she took notes throughout the exam and that asking victims to relay their version of events helped Totten to understand “how severe it was and what areas to look for.” Totten testified that Thompson gave her an account of what

unless an objection was stated with reasonable certainty at the time of ruling, except for good cause shown or to enable this Court to attain the ends of justice.” Rule 5A:18. Thus, Lattany’s Confrontation Clause argument is waived under Rule 5A:18, and we decline to address it.

happened—which was recorded in her witness statement—before Totten began to ask more specific questions concerning the alleged strangulation. Totten read Thompson’s statement into evidence, as well as her strangulation questions and Thompson’s answers to the jury. Lattany objected to Totten’s testimony, arguing that she examined Thompson for forensic, rather than medical, purposes.

“[T]he reason statements made for the purpose of medical diagnosis or treatment are admissible despite their nature as hearsay is that patients making such statements recognize that they must provide accurate information to the physician in order to receive effective treatment.” *Campos v. Commonwealth*, 67 Va. App. 690, 711-12 (2017). Totten was called into the hospital to examine Thompson because of her training and experience with strangulation injuries. Thompson gave her statement during the examination so that Totten could determine the severity and location of her potential injuries.

Though he never challenged Totten’s qualifications as an expert in strangulation examination, Lattany argues that Totten’s trial testimony revealed that she did not act as a medical professional when she examined Thompson at the hospital. He asserts that her repetition of Thompson’s hearsay statements thus constituted testimonial hearsay evidence. But the evidence introduced at trial clearly established that Totten was a medical provider and that Thompson made her statement to seek treatment for her injuries.

III. The trial court properly denied Lattany’s proposed with-fault self-defense instruction.

The decision to grant or deny a proffered jury instruction “rest[s] in the sound discretion of the trial court.” *Cooper v. Commonwealth*, 277 Va. 377, 381 (2009). We review a trial court’s refusal of a jury instruction for abuse of discretion. *Dandridge v. Commonwealth*, 72 Va. App. 669, 679 (2021). In undertaking that inquiry, “[i]t is immaterial that the jury could have reached contrary conclusions. If a proffered instruction finds any support in credible

evidence, its refusal is reversible error.” *McClung v. Commonwealth*, 215 Va. 654, 657 (1975).

Our “responsibility in reviewing jury instructions is ‘to see that the law has been clearly stated and that the instructions cover all issues which the evidence fairly raises.’” *Fahringer v. Commonwealth*, 70 Va. App. 208, 211 (2019) (quoting *Darnell v. Commonwealth*, 6 Va. App. 485, 488 (1988)).

On appeal, Lattany argues that he was entitled to an instruction on self-defense with fault because it was supported by the evidence. He argues that his testimony that Thompson initiated the attack and that Lattany repelled it with a singular slap entitled him to such an instruction. The Commonwealth asserts that Lattany received the most consistent instruction with his testimony and that any exclusionary error was harmless because the trial was fair on the merits.

At trial, Lattany requested two self-defense instructions: “with fault” and “without fault.” He ultimately received only the faultless self-defense instruction over his counsel’s objection. The rejected model instruction for self-defense with fault reads:

If you believe that the defendant was to some degree at fault in provoking or bringing on the fight, but you further believe that:

1. he retreated as far as he safely could under the circumstances in a good faith attempt to abandon the fight; and
2. made known his desire for peace by word or act; and
3. he reasonably feared, under the circumstances as they appeared to him, that he was in imminent danger of being killed or that he was in imminent danger of great bodily harm; and
4. he used no more force, under the circumstances as they appeared to him than was reasonably necessary to protect himself from the perceived harm,

then the defendant acted in self-defense, and you shall find the defendant not guilty.

Model Jury Instr.—Crim. No. 52.510.

We must determine whether the denied instruction was supported by the evidence. We conduct this inquiry “in the light most favorable to [Lattany as] the proponent of the instruction.” *Williams v. Commonwealth*, 64 Va. App. 240, 244 (2015) (quoting *Commonwealth v. Vaughn*, 263 Va. 31, 33 (2002)).

To be entitled to a particular instruction, “[t]he evidence presented in support . . . ‘must amount to more than a scintilla.’” *Schlimmer v. Poverty Hunt Club*, 268 Va. 74, 78 (2004) (quoting *Justus v. Commonwealth*, 222 Va. 667, 678 (1981)). Although the term “scintilla” has “a generally accepted meaning of ‘a spark’ or ‘the least particle,’ [its] precise limitations . . . must necessarily be determined in the factual context of a particular case.” *Brandau v. Commonwealth*, 16 Va. App. 408, 411 (1993) (internal citation omitted).

According to Lattany’s own testimony, he was without fault in the fight he had with Thompson, as she initiated and then reinitiated their struggle. He admitted that he slapped Thompson once and that he did so “after she hit me in the head with a broomstick.” He testified that the scuffle began anew when “all of a sudden, [Thompson] just attacked me . . . [s]he came up from behind me and grabbed me.” He also testified that he dealt her a second, accidental blow when attempting to extricate himself after she reinitiated the fight. He claimed to have inflicted no intentional injuries to Thompson.

Lattany never—not on the night of the incident,⁷ nor to police later,⁸ nor in his trial testimony—claimed to be “to some degree at fault in provoking or bringing on the fight,” as

⁷ Deputy Andrews testified that Lattany told the responding officers that “[n]othing happened,” and said so “a few times.” Lattany, however, claimed that this was false and that he said “[s]he [Thompson] know what’s happened.”

⁸ Lattany took out a criminal complaint against Thompson based on the Super Bowl incident. At that time, he did not allege that any physical altercation took place. Rather, his only allegation against her was that, upon his return home, “Ms. Thompson came downstairs and immediately began yelling at me for leaving the house to watch the game. She was saying I

would warrant a with-fault instruction. In fact, he claimed the opposite: that his “music wasn’t that loud . . . and I didn’t think I was playing the music that long either,” but that “all of a sudden, [Thompson] just attacked” him. Of course, the jury as factfinder was “entitled to disbelieve the self-serving testimony” as a dishonest attempt “to conceal his guilt.” *Washington v. Commonwealth*, 75 Va. App. 606, 616 (2022) (quoting *Flanagan v. Commonwealth*, 58 Va. App. 681, 702 (2011)). While his proposed instruction was an accurate statement of the law, it was directly contrary to Lattany’s theory of defense and was not fairly raised by the evidence. *Fahringer*, 70 Va. App. at 211. There is not a scintilla of evidence in the record to support a finding that Lattany retreated, nor that he made known his desire for peace. In Virginia, “[n]o litigant can successfully ask a court or jury to believe that he has not told the truth. His statements of fact and the necessary inferences therefrom are binding upon him.” *Patterson v. Patterson*, 257 Va. 558, 563 (1999) (quoting *Massie v. Firmstone*, 134 Va. 450, 462 (1922)).⁹ Lattany’s own evidence contradicts any assertion that he was partially at fault, so the trial court properly denied the proposed with-fault self-defense instruction.

CONCLUSION

Lattany’s appeal highlights no errors below which would warrant reversal for either of his convictions. The trial court correctly exercised its discretion to deny Lattany’s proposed with-fault instruction and to admit Thompson’s statements made to the SANE during treatment. Further, the

didn’t love her because I left without making sure she had something to eat and Ice [sic] prepared so she could put on her sling.”

⁹ “The *Massie* doctrine is not to be read as a rule of thumb, categorical, absolute, and universally applicable. By definition, it applies only to ‘statements of fact’ made by the litigant, to statements of facts ‘within his own knowledge’, and to ‘the necessary inferences therefrom.’” *Baines v. Parker*, 217 Va. 100, 104 (1976). Based on the issue before us on appeal, it is proper to apply *Massie* in our consideration of Lattany’s statements as a whole.

evidence introduced at trial was sufficient. For these reasons, we affirm his convictions and remand for correction of the sentencing order.

Affirmed and remanded.