COURT OF APPEALS OF VIRGINIA

Record No. 1091-25-3

MATTHEW ALLYN HOFFMAN
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Causey, Raphael and Duffan

Opinion Issued October 13, 2026*

FROM THE CIRCUIT COURT OF HIGHLAND COUNTY
Edward K. Stein, Judge

(James V. Doss, III, on brief), for appellant.

(Jason S. Miyares,[1] Attorney General; Melanie D. Edge, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

The trial court convicted Matthew Allyn Hoffman of strangulation and domestic assault and battery, in violation of Code §§ 18.2-51.6 and -57.2, respectively. It sentenced Hoffman to 5 years and 60 days of incarceration, with 3 years and 60 days suspended. On appeal, Hoffman argues that his right to a speedy trial was violated. He also challenges the sufficiency of the evidence to sustain his conviction for strangulation. He further claims that the trial court erred in denying his *pro se*, post-trial motions. Finally, he asserts that he received ineffective assistance

* 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.

of counsel while also assigning error to the trial court's permitting the successive withdrawal of attorneys appointed to him. Finding no error, we affirm the trial court's judgment.[2]

BACKGROUND[3]

In April 2024, Hoffman and Kimberly Ann Cole had been dating for "around a year" and had been living together for about "seven or eight months." They were residing in a house with a friend but were planning to move to their own property (the property). The property they were considering had a "tiny house" constructed on it.[4]

Hoffman went to visit the property one evening. Cole went there to meet Hoffman after she got off work. It was dark when Cole arrived. Hoffman and Cole interacted for a bit, but she was exhausted from work, so she went to sleep in the back of her "Durango" SUV shortly after she arrived. When Hoffman woke her up "a couple hours later," he was screaming at her "because [she] did not wash his dishes."

Cole told Hoffman to go stay in the house and said she was going to stay in her car. Cole "climbed up" into the driver's seat of the SUV with her "tablet."[5] Hoffman got into the

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[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).

[3] "In accordance with familiar principles of appellate review, the facts will be stated in the light most favorable to the Commonwealth, the prevailing party at trial." *Stillwell v. Commonwealth*, 80 Va. App. 278, 280 n.1 (2024) (quoting *Gerald v. Commonwealth*, 295 Va. 469, 472 (2018)). "On appeal, we discard any of appellant's conflicting evidence, and regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence." *Id.*

[4] Cole referred to the structure as a "tiny house," or "shed." Hoffman referred to it as a "small building."

[5] "[A] couple of days prior" to the subject incident here, Hoffman had "broken" Cole's cell phone. So, at the time of this incident, she was using a tablet "for communication" purposes.

passenger's seat. He took the key fob, "put it in his pocket," and got out of the vehicle.[6] Still holding her tablet, Cole followed him trying to retrieve the key. Hoffman "slapped [her] tablet out of [her] hand and stomped on it." He "threw [her] keys into the woods [in] one direction," then threw her broken tablet in the other direction.[7]

As a result, Cole was locked out of her SUV and, with her tablet smashed, unable to communicate with anyone else. She "went into" the house and locked herself "away from" Hoffman for the night.

Hoffman "tormented" Cole "all night long." "[H]e drove [Cole's] [SUV] back and forth on the property." He was shining "the headlights into" the house, "[b]umping into the house, banging on the walls, screaming, yelling, hollering," and threatening "to ditch" Cole. Cole "stayed in" the house, "quietly locked away."

The next morning, Cole exited the house and approached the SUV, which Hoffman had parked a distance from the house. Hoffman was asleep in the back of the SUV. Cole opened the front door and said, "Hey, it's just me, okay." Hoffman did not respond. Cole got in the driver's seat and started the SUV.[8] As she drove back toward the house, "without any kind of warning at all," Hoffman "came over the seats," got into the passenger seat, and put Cole into a "headlock." He put his "left arm" around her "neck" and "pull[ed] [her] into the passenger seat." Hoffman "choked" Cole. She attempted to defend herself, but she lost consciousness. When she awoke, she was lying on the ground outside of the SUV. Hoffman drove away, leaving her there on the ground.

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[6] Cole described the SUV key as a "key fob." The SUV was a "keyless start car. You push a button. [The SUV] just needs the fob near it and it starts."

[7] Hoffman had removed the SUV key from Cole's key ring; he threw her remaining keys into the woods.

[8] The key was somewhere inside the SUV, thus enabling Cole to start it.

Cole walked about "a mile and a half down the road to the closest neighbor" and called the police. Virginia State Trooper Timothy May arrived at the neighbor's house and spoke with Cole about the assault. May took photos of Cole's injuries. She was transported to the Bath County hospital. About a week after the incident, Cole went to Augusta Health hospital where forensic nurse examiner, Lisa Fracher, examined Cole's "strangulation" injuries.

Forensic nurse Fracher testified that Cole had "hemorrhag[ing]" in her eyes. Cole presented "pain and tenderness [in] her neck" and "had some bruising to her neck." Fracher concluded that Cole's injuries were "consistent with . . . strangulation" and "assault." The Commonwealth entered into evidence Fracher's "strangulation worksheet" which documented and detailed her examination of Cole's injuries. The Commonwealth also entered into evidence the photos Trooper May took of Cole's injuries.

Trooper May testified that he went to the neighbor's house in response to Cole's call to the police. When he arrived, Cole 's face was "red[]" with "marks" and was "somewhat swollen." Her neck was also "red" and "somewhat swollen." Cole's report to May on the day of the assault was substantially similar to her testimony about the incident. May's "field notes," however, reflected that she reported Hoffman had "punched" her.

Hoffman testified that the evening before he assaulted Cole, she fell asleep in the SUV while he was cooking food. He awoke Cole to "get her to eat." According to Hoffman, this led to an argument and Cole became "irate." Following the argument, Cole went into the house, and Hoffman got in the SUV and drove it to "the bottom of the property." He drove back and forth to the house a few times, continuing to argue with Cole, and eventually "went to sleep" in the SUV. The following morning, he awoke in the SUV to Cole "screaming . . . and driving erratically . . . towards" the house. "As she drove off the property," she was "screaming at [him] to get out of the [SUV]." He refused; then Cole "cracked" him "across the nose." She "came

over the console," and Hoffman "tried to fend her off." He "opened up the passenger door" and "pulled her out" of the SUV. Then he "jumped into the driver seat" and "pulled the truck up about ten feet." She attempted to retreat into a nearby business, but it was closed. When she returned, she refused to get into the SUV so Hoffman "left her." Hoffman claimed he never grabbed Cole around the neck and supposed her injuries were a result of the struggle in which he "push[ed] her out of the doorway."

Hoffman was arrested two days after the assault. At his preliminary hearing on June 26, the Highland County combined general district and juvenile and domestic relations district court found probable cause to certify the charge of strangulation to the grand jury.[9] He remained in custody thereafter. On July 9, at Hoffman's request, defense counsel moved to withdraw. The following day, the trial court granted Hoffman's motion and then appointed him new counsel. Hoffman, through counsel, agreed to set his trial date for December 17, 2024. Before trial, Hoffman filed a series of *pro se* motions, including a motion to dismiss the indictments for lack of speedy trial.

Also, before trial, Hoffman's counsel alerted the trial court that Hoffman "would like to argue" his motion to dismiss for lack of a speedy trial. Because Hoffman was represented by counsel, the trial court ruled that it was "not going to allow him to argue a motion *pro se*" and asked if defense counsel would care to argue the motion on Hoffman's behalf. Hoffman, through counsel, stated his "belie[f] that there was a speedy trial issue and that he . . . invok[ed] his right [to] a speedy trial." The trial court found that "there was delay" attributed to Hoffman for his "need to get . . . a new attorney." It also found that Hoffman "was offered a November date to try this case . . . and that he declined that offer" through counsel. There was an

[9] The combined court also certified the charge of misdemeanor assault and battery to the trial court.

"agreement of the parties" to set the case in "December . . . with the consent of defense . . . counsel," so the trial court denied Hoffman's motion to dismiss for lack of a speedy trial.

At the close of all testimony, the presentation of all evidence and closing arguments, the trial court found Cole "to be more credible than" Hoffman. "While there are some inconsistencies in her statements to Trooper May," the trial court found Cole's testimony to be "very consistent with what she told the forensic nurse." The trial court found that Hoffman's testimony "confirm[ed]" much of Cole's testimony. Hoffman conceded he broke Cole's tablet. He pulled her out of the passenger side door. The trial court convicted Hoffman of strangulation and domestic assault and battery. This appeal followed.

ANALYSIS

I. Hoffman consented to setting his trial beyond the speedy trial period.

"Proper assessment and determination of the merits of a statutory speedy trial claim 'involve a review of the whole record and a consideration of the trial court orders in the context of the record that comes before' the court." *Brown v. Commonwealth*, 57 Va. App. 381, 389-90 (2010) (quoting *Baity v. Commonwealth*, 16 Va. App. 497, 503 (1993) (en banc)). "[A] statutory speedy trial challenge presents a mixed question of law and fact." *Ali v. Commonwealth*, 75 Va. App. 16, 29 (2022) (alteration in original) (quoting *Young v. Commonwealth*, 297 Va. 443, 450 (2019)). We defer "to the trial court's factual findings but review[] legal issues *de novo*." *Id.*

A criminal defendant has the right to a speedy trial under both the United States and Virginia Constitutions. U.S. Const. amend. VI; Va. Const. art. 1, § 8. A defendant also has a statutory right to a speedy trial. Code § 19.2-243. Virginia's speedy trial statute provides "a specific time limit within which an accused must be tried, absent tolling or other statutory exceptions." *Brown v. Commonwealth*, 75 Va. App. 388, 406 (2022). If a defendant stands

accused of a felony and is continuously held in custody from the time he was indicted, he "shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months." Code § 19.2-243; *Young*, 297 Va. at 451. The statutory period, "however, is 'not absolute.'" *Ali*, 75 Va. App. at 30 (quoting *Young*, 297 Va. at 451). "[T]he time period for commencing the trial will be tolled for time attributed to a continuance granted on a motion made by the Commonwealth in which the defendant or his counsel concurred or did not make a timely objection." *Young*, 297 Va. at 451-52 (citing Code § 19.2-243). "When a defendant . . . agrees to, or acquiesces in an order that effectively continues a case, the five-month speedy trial period" is waived. *Heath v. Commonwealth*, 261 Va. 389, 393 (2001).

Hoffman argues that the trial court should have granted his motion to dismiss because his right to a speedy trial was denied. But the record demonstrates that Hoffman's right to a speedy trial was not violated. Hoffman's preliminary hearing was on June 26, 2024. His trial was set for September 17, 2024. Hoffman, through counsel, agreed to reset his trial date to December 17, 2024.[10] At the hearing on Hoffman's motion to dismiss for lack of speedy trial, he simply argued that "there was a speedy trial issue and that he . . . invok[ed] his right [to] a speedy trial." The Commonwealth argued that the delays in Hoffman's trial were attributed to his "motions" in which he "requested a new attorney" and "requested a trial date" beyond the statutory speedy trial period. The trial court agreed with the Commonwealth, finding that "there was delay" attributed to Hoffman for his "need to get . . . a new attorney." He "was offered a November date" and "he declined that offer." And there was an "agreement of the parties" to set the case on December 17, 2024, with his "consent" through counsel. The record supports the trial court's

[10] The record indicates that on September 11, 2024, the case was set for trial on December 17, 2024, by agreement of the parties and with no objection from the defense. *See Hudson v. Commonwealth*, 267 Va. 36, 42 (2004) (holding that Code § 19.2-243 does not require a trial court to "enter an order specifying the trial date" and therefore a trial court is "free to memorialize the trial date by its chosen method").

finding that Hoffman agreed to continue the case beyond the five-month speedy trial period, thus it properly ruled that he waived his speedy trial claim up to the December 17, 2024 trial. *Ali*, 75 Va. App. at 29; *Heath*, 261 Va. at 393.

Hoffman's bare assertion on appeal that his speedy trial claim implicates constitutional issues is insufficient to "merit appellate consideration." *Bartley v. Commonwealth*, 67 Va. App. 740, 744 (2017) (quoting *Jones v. Commonwealth*, 51 Va. App. 730, 734 (2008)). "Rule 5A:20(e) requires that an appellant's opening brief contain '[t]he principles of law, the argument, and the authorities relating to each question presented.'" *Id.* (alteration in original). Likewise, "[s]ettled principles provide that appellant's brief reference to the constitutional issue in his written motion [is] insufficient to preserve this aspect of the claim for appeal." *Howard v. Commonwealth*, 55 Va. App. 417, 425 (2009). "Pursuant to Rule 5A:18, absent good cause or to attain the ends of justice, we will not consider on appeal an argument that was not presented to the trial court, even if it involves constitutional claims." *Id.* Hoffman does not assert the good cause or ends of justice exceptions to Rule 5A:18, and we will not do so sua sponte. *Jacks v. Commonwealth*, 73 Va. App. 473, 479 n.3 (2021). "[T]he Rules of the Supreme Court are rules and not suggestions; we expect litigants before this Court to abide by them." *Bartley*, 67 Va. App. at 746 (quoting *Eaton v. Wash. Cnty. Dep't of Soc. Servs.*, 66 Va. App. 317, 320 n.1 (2016)). Accordingly, any constitutional aspect to Hoffman's speedy trial claim is waived.

II. Sufficiency of the Evidence

"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)).

Hoffman's challenge to the sufficiency of the evidence to convict him for strangulation rests solely on his challenge to Cole's credibility. He argues that "there were so many inconsistencies in [Cole's] testimony as to render her completely incredible." He claims that she made inconsistent statements "to the investigating officer and to the forensic nurse examiner."

"The fact finder, who has the opportunity to see and hear the witnesses, has the *sole* responsibility to determine their credibility, the weight to be given their testimony, and the inferences to be drawn from proven facts." *Commonwealth v. McNeal*, 282 Va. 16, 22 (2011) (emphasis added) (quoting *Commonwealth v. Taylor*, 256 Va. 514, 518 (1998)). "The trier of fact is not required to accept a party's evidence in its entirety, but is free to believe or disbelieve, in whole or in part, the testimony of any witness." *English v. Commonwealth*, 43 Va. App. 370, 371 (2004) (citations omitted).

Cole testified that Hoffman "choked" her and she "couldn't breathe." She thought that she was "going to die." Trooper May saw "redness" and "swelling" on her face and neck.

Fracher testified that Cole's injuries were "consistent with . . . strangulation" and "assault." The trial court found Cole "to be more credible than" Hoffman. Though there were some inconsistencies with her report to Trooper May, the trial court found Cole's testimony to be "very consistent with what she told the forensic nurse." Furthermore, the trial court found that Hoffman's own testimony "confirm[ed]" Cole's testimony. "When the law says that it is for triers of the facts to judge the credibility of a witness, the issue is not a matter of degree." *Towler v. Commonwealth*, 59 Va. App. 284, 291 (2011) (quoting *Swanson v. Commonwealth*, 8 Va. App. 376, 379 (1989)). The trial court's judgment was supported by competent evidence; thus, we find that it exercised proper discretion. *McGowan*, 72 Va. App. at 521.

III. Hoffman's remaining arguments are waived

A. Rule 5A:20(e)

An appellant's brief must contain "[t]he standard of review and the argument (including principles of law and authorities) relating to each assignment of error." Rule 5A:20(e). If an appellant's "'failure to strictly adhere to the requirements of Rule 5A:20(e)' is significant, this Court may treat the question as waived." *Bartley*, 67 Va. App. at 744 (quoting *Parks v. Parks*, 52 Va. App. 663, 664 (2008)).

Hoffman argues that the trial court erred in denying his *pro se* motions. But he presents no principles of law or authorities to support his claim. "[T]he Rules of the Supreme Court are rules and not suggestions; we expect litigants before this Court to abide by them." *Id.* at 746 (quoting *Eaton*, 66 Va. App. at 320 n.1). This Court will not "research or construct a litigant's case or arguments." *Id.* (quoting *Sneed v. Bd. of Pro. Resp. of the Sup. Ct. of Tenn.*, 301 S.W.3d 603, 615 (Tenn. 2010)). Hoffman "fails to develop an argument in support" of his contention, thus "the issue is waived" under Rule 5A:20(e). *Id.*

B. Permitting Counsel's Withdrawal[11]

Hoffman's claim that the trial court abused its discretion in allowing Hoffman's attorney to withdraw "fail[s] to strictly adhere to the requirements of Rule 5A:20(e)" and this Court "may," and should, "treat the question as waived." *Bartley*, 67 Va. App. at 744.

Hoffman's brief offers no argument as to why the trial court should not have allowed his initial defense counsel, Eric Swortzel, to withdraw; Hoffman does, however, declare Swortzel as "clearly deficient." Prior to Swortzel's motion to withdraw—supported by his representation that Hoffman threatened to file a bar complaint alleging counsel's failure to "follow[] Defendant's trial strategy"—Hoffman had filed multiple *pro se* letters seeking Swortzel's dismissal from his case. Thus, as Hoffman was the one who requested counsel's dismissal due to his dissatisfaction, and Hoffman obtained new counsel after, the trial court did not abuse its discretion in allowing Swortzel to withdraw. Thus, Hoffman's claim here is barred by the approbate and reprobate doctrine.[12]

C. Ineffective Assistance of Counsel

Finally, Hoffman's claims that he received ineffective assistance of counsel "are not properly raised on direct appeal and must be raised in a separate habeas petition to the Supreme Court or the circuit court." *Kenner v. Commonwealth*, 71 Va. App. 279, 297 (2019) (citing Code § 8.01-654(A)(1)). Thus, we will not consider Hoffman's arguments that he received ineffective

[11] Though Hoffman's assignment of error refers to "attorneys," his brief refers only to Eric Swortzel.

[12] "A litigant cannot 'approbate and reprobate by taking successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory,' or else such arguments are waived." *AV Auto., L.L.C. v. Bavely*, 85 Va. App. 559, 577 (2025) (quoting *Amazon Logistics, Inc. v. Va. Emp. Comm'n*, 304 Va. 107, 114-15 (2025) (per curiam)). "This estoppel doctrine has been a 'longstanding component of our jurisprudence' and applies whenever a litigant 'has affirmatively staked out a position or asked the court to act.'" *Page v. Portsmouth Redev. & Hous. Auth.*, 303 Va. 259, 267 (2024) (quoting *Commonwealth v. Holman*, 303 Va. 62, 71-72 (2024)).

assistance of counsel because such claims "are not cognizable on direct appeal." *Lenz v. Commonwealth*, 261 Va. 451, 460 (2001); *see also Sigmon v. Dir. of the Dep't of Corr.*, 285 Va. 526, 533 (2013) ("claims of ineffective assistance of counsel are not reviewable on direct appeal and thus can be raised only in a habeas corpus proceeding").

CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed.

Affirmed.