COURT OF APPEALS OF VIRGINIA

Record No. 1222-25-1

LEROY FRANK KING
v.
COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges Malveaux and Causey
Argued at Williamsburg, Virginia

Opinion Issued October 20, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
Tasha D. Scott, Judge

Jennifer L. Gebler (Inman & Strickler, P.L.C., on briefs), for appellant.

Shelly R. James, Senior Assistant Attorney General (Jay Jones, Attorney General; Brooke I. Hettig, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
CHIEF JUDGE MARLA GRAFF DECKER

Leroy Frank King appeals his convictions for murder in the second degree and use of a firearm in the commission of a felony in violation of Code §§ 18.2-32 and -53.1. King argues that the trial court erred by not instructing the jury on his theory of excusable self-defense. For the reasons that follow, we hold the trial court did not abuse its discretion by declining to give the instruction. Accordingly, the convictions are affirmed.

BACKGROUND

On June 20, 2023, King shot and killed Albert Johnson, his neighbor. King was charged with murder and use of a firearm in the commission of a felony.

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

At King's jury trial, the Commonwealth presented testimony from Jonathan Etheridge, who lived next door to King. Etheridge testified that as he and Johnson stood outside King's apartment door, King opened his door and yelled, "Didn't I tell you to get the eff away from my door?" According to Etheridge, King then shot Johnson twice while remaining in his home.

King testified on his own behalf, giving a very different version of events. He explained that as he played Scrabble with his wife in his kitchen, he heard a knock and a kick on his door. Before opening his door, King asked what the person wanted. According to King, the person outside his door responded, "To kick your ass." King opened the front door and saw Johnson. After the two exchanged words, King "eased back" into his apartment, closing the door and locking it. Noticing that he did not hear the usual footsteps outside his apartment of people passing, King retrieved his revolver from his bedroom. He then opened his front door to see "whether the threat was over." King testified that when he opened his door that second time, Johnson immediately threw mulch into his face. According to King, mulch got into one of his eyes, temporarily blinding it. King saw Johnson "sizing [him] up," and he yelled at Johnson to leave. At seventy-three years old, King was afraid of being attacked. He felt there was "absolutely nothing else [he] could do," so he "discharged the firearm to protect [his] life[,] . . . to avoid serious bodily harm[,] and to protect [his] wife."

After the close of the evidence, counsel discussed jury instructions with the trial court. The Commonwealth's attorney told the court that he disagreed on the appropriateness of instructions for both justifiable and excusable self-defense. Defense counsel said he had suggested the model instructions for both types of self-defense and thought both should be given. The court said that one of the instructions would be allowed "but not both." It asked defense counsel which one he was "arguing for." Counsel noted that "a lot" of "case law . . . allows

both" and again asked for both instructions. Ultimately, however, defense counsel asked to have the jury instructed on justifiable self-defense.

The trial court instructed the jury on second-degree murder and malice. The jury also received an instruction on justifiable self-defense, sometimes referred to as self-defense without fault. The trial court told the jury that if "a defendant is even slightly at fault, the killing is not justifiable homicide." It did not instruct the jury on excusable self-defense.

The jury found King guilty of second-degree murder and use of a firearm in the commission of a felony. He was sentenced to forty-three years of incarceration, with eighteen years suspended.

ANALYSIS

In this appeal, King challenges the trial court's refusal to instruct the jury on excusable self-defense. The Commonwealth counters that the facts here did not support the instruction.[1]

Well-established principles guide the Court's analysis of the merits of King's claim. "When reviewing a trial court's refusal to give a proffered jury instruction," the appellate court "view[s] the evidence in the light most favorable" to the instruction's proponent, in this case King. *Pena Pinedo v. Commonwealth*, 300 Va. 116, 118 (2021) (quoting *Commonwealth v. Vaughn*, 263 Va. 31, 33 (2002)); *see Barnes v. Commonwealth*, 81 Va. App. 737, 746 (2024). But "[t]he evidence presented in support of a particular instruction 'must amount to more than a scintilla.'" *Schlimmer v. Poverty Hunt Club*, 268 Va. 74, 78 (2004) (quoting *Justus v.*

[1] The Commonwealth additionally raises two possible procedural bars. First, it argues that King waived the jury-instruction issue because he did not proffer a proposed instruction at trial. In the alternative, the Commonwealth suggests that King's argument that the trial court erred by limiting him to one theory of self-defense is barred by Rule 5A:18 because he did not adequately present it to the trial court. We assume without deciding that King's argument is properly before us and decide the appeal on the merits. *See, e.g.*, *McGinnis v. Commonwealth*, 296 Va. 489, 501 (2018) (assuming without deciding that an issue was suitably before the Court because addressing it on the merits provided the best and narrowest ground for resolution).

Commonwealth, 222 Va. 667, 678 (1981)); *accord Commonwealth v. Kartozia*, 304 Va. 321, 332 (2025). As such, "it is not error to refuse an instruction when there is no evidence to support it." *Northcraft v. Commonwealth*, 78 Va. App. 563, 605 (2023) (quoting *Commonwealth v. Sands*, 262 Va. 724, 729 (2001)).

At the same time, we review a trial court's decision to deny a requested jury instruction for an abuse of discretion. *See Kartozia*, 304 Va. at 331. Underpinning this review is a "bell-shaped curve of reasonability," which "rests on the venerable belief that the judge closest to the contest is the judge best able to discern where the equities lie." *Commonwealth v. Barney*, 302 Va. 84, 94 (2023) (quoting *Sauder v. Ferguson*, 289 Va. 449, 459 (2015)). "An abuse of discretion occurs only when 'reasonable jurists' could not disagree as to the proper decision." *Warren v. Commonwealth*, 76 Va. App. 788, 799 (2023) (quoting *Thomas v. Commonwealth*, 62 Va. App. 104, 111 (2013)), *aff'd*, 303 Va. 60 (2024).

Stated simply, a "reviewing court must determine whether 'the law has been clearly stated and . . . the instructions cover all issues [that] the evidence fairly raises.'" *Barnes*, 81 Va. App. at 746 (second alteration in original) (quoting *Holmes v. Commonwealth*, 76 Va. App. 34, 52 (2022)). After all, "[t]he purpose of jury instructions 'is to fully and fairly inform the jury as to the law of the case applicable to the particular facts, and not to confuse them.'" *Kartozia*, 304 Va. at 332 (quoting *Honsinger v. Egan*, 266 Va. 269, 274 (2003)).

Against this legal framework, our analysis turns to the particular self-defense instruction at issue here. The model jury instruction requested by King provides as follows:

> If you believe that the defendant was to some degree at fault in provoking or bringing on the [fight; difficulty], 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) he 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 killing was in self-defense, and you shall find the defendant not guilty.

Model Jury Instrs.—Crim. No. 33.810.

This instruction correctly states the law. "In order to establish self-defense, a defendant must show that he . . . 'reasonably believed that [he] . . . was in danger of serious bodily harm or death.'" *Jones v. Commonwealth*, 71 Va. App. 70, 86 (2019) (quoting *Sands*, 262 Va. at 730). In addition, he "must . . . demonstrate 'that he was in imminent danger of harm' by showing 'an overt act or other circumstance'" that constitutes "'an immediate threat to safety.'" *Id.* (quoting *Carter v. Commonwealth*, 293 Va. 537, 544 (2017)).

Virginia recognizes two types of self-defense: justifiable and excusable. Justifiable self-defense occurs when the accused was "*without any fault on his part in provoking or bringing on the difficulty*." *Washington v. Commonwealth*, 75 Va. App. 606, 617 (2022) (quoting *Avent v. Commonwealth*, 279 Va. 175, 199 (2010)). Excusable self-defense, also known as self-defense with fault, "occurs when the accused is at 'some fault in the first instance in provoking or bringing on the difficulty' but, when attacked, he 'retreats as far as possible, announces his desire for peace,' and acts 'from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm.'" *Id.* (quoting *Bell v. Commonwealth*, 66 Va. App. 479, 487 (2016)).

Viewing the evidence in the light most favorable to King, as required by the applicable legal framework, the chain of events leading to Johnson's death began when Johnson knocked on King's door and threatened "[t]o kick [his] ass." After a heated verbal exchange, King closed his apartment door and locked it. Rather than staying ensconced in the safety of his locked apartment, he got his revolver and opened his door again. At that time, Johnson threw mulch in his face. King yelled at Johnson to leave, but Johnson refused. King felt his only option was to shoot Johnson twice, killing him.

This evidence simply failed to show by a scintilla that King "retreat[ed] as far as possible." *See Washington*, 75 Va. App. at 617 (quoting *Bell*, 66 Va. App. at 487). He suggests that he met the retreat element by going into his apartment. Although King retreated at first, he negated this retreat by "open[ing] up the door" to his apartment with his gun in hand and re-engaging with Johnson. When he abandoned a position of safety, King abandoned his right to claim excusable self-defense. *See Huffman v. Commonwealth*, 185 Va. 524, 528 (1946) (holding that the defendant was not entitled to any claim of self-defense where, after the initial provocation, he "left a place of safety . . . and resumed the argument"); *Jones*, 71 Va. App. at 95 (holding that the defendant's act of returning to his car to arm himself did not qualify as retreating). Accordingly, the trial court did not abuse its discretion by denying the request for a jury instruction on this theory of self-defense.[2] *See Lynn v. Commonwealth*, 27 Va. App. 336, 350 (1998) (holding that the defendant was not entitled to an instruction on excusable self-defense because according to his own testimony he neither retreated nor abandoned the fight).

[2] In light of this holding, we do not address whether the evidence, when viewed in the light most favorable to King, showed by a scintilla that he was at "some fault *in the first instance* in provoking or bringing on the difficulty." *See Taylor v. Commonwealth*, 77 Va. App. 149, 171 (2023) (emphasis added) (quoting *Yarborough v. Commonwealth*, 217 Va. 971, 975 (1977)). *See generally McGinnis*, 296 Va. at 501 (recognizing the best-and-narrowest principle).

Last, we address King's argument that the court erred by "limit[ing him] to a singular theory of self-defense." The Commonwealth "agrees that there are circumstances in which it is appropriate to instruct the jury on both excusable and justifiable self-defense." *See, e.g.*, *Bell*, 66 Va. App. at 487 (holding that the appellant was entitled to instruct the jury on both theories of self-defense). We presume a trial court properly applied the law absent clear evidence to the contrary. *See Commonwealth v. Moncrea*, ___ Va. ___, ___ (Apr. 2, 2026); *Suffolk City Sch. Bd. v. Wahlstrom*, 302 Va. 188, 217-18 (2023) (cautioning against isolating statements of a trial judge and taking them out of context). To any extent that the trial court declined to instruct the jury on excusable self-defense based on the erroneous proposition that one theory of self-defense automatically precludes the other, we hold that, regardless, the trial court's ultimate ruling was correct. Because the trial court's conclusion was correct even though a different reason may have been given, we affirm the judgment. *See Reed v. Commonwealth*, 85 Va. App. 196, 211 n.6 (2025) (applying "the 'right-result-different-reason principle'" (quoting *Vandyke v. Commonwealth*, 71 Va. App. 723, 731 (2020))); *see Highlander v. Va. Dep't of Wildlife Res.*, 84 Va. App. 404, 425 (2025) (explaining that the doctrine can apply only if no additional findings of fact are necessary). *See generally Rickman v. Commonwealth*, 294 Va. 531, 542 (2017) (noting that this concept is "often called the right-result-wrong-reason doctrine").

CONCLUSION

The trial court did not abuse its discretion by declining to instruct the jury on excusable self-defense. Consequently, we affirm the convictions.

Affirmed.