COURT OF APPEALS OF VIRGINIA

Record No. 1299-25-2

JOSHUA BOHANNON
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Malveaux, Friedman and Bernhard
Argued by videoconference

Opinion Issued October 20, 2026[*]

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND
Bradley B. Cavedo, Judge

Gregory R. Sheldon (BainSheldon, PLC, on brief), for appellant.

Israel-David J.J. Healy, Assistant Attorney General (Jason S. Miyares,[1] Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE MARY BENNETT MALVEAUX

The trial court convicted Joshua Bohannon of felony reckless handling of a firearm, in violation of Code § 18.2-56.1(A1). On appeal, he challenges the sufficiency of the evidence to "prove that [his] actions were so gross, wanton, and culpable as to show a reckless disregard for human life." For the following reasons, we affirm the trial court's judgment.

BACKGROUND

"We recite the facts in the light most favorable to the Commonwealth, the prevailing party below." *Williams v. Commonwealth*, 85 Va. App. 718, 726 (2025). In doing so, we also "regard as true . . . all fair inferences to be drawn" from the credible evidence. *Cappe v.*

[*] 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.

Commonwealth, 304 Va. 86, 87 (2025) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 324 (2018)).

In December 2021, Markell Bailey drove to meet his friend, Tajon Olmo. Bailey and Olmo then drove to a motel to pick up Olmo's friend, Bohannon, before returning to Olmo's house. While parked outside Olmo's house, they "were hanging out in [Bailey's] car"; Bailey and Olmo were "smoking marijuana" while Bohannon drank alcohol. The men stayed in the car for about 45 minutes. Bailey was in the driver's seat; Olmo was in the front passenger seat; and Bohannon was in the back seat, sitting directly behind Bailey.

Bohannon began talking to a woman on the phone. The men then decided to drive to her apartment complex so Bailey could drop off Olmo and Bohannon. On the way, they stopped at a convenience store, where Bohannon purchased alcohol. As they resumed their drive to the apartment complex, Bohannon began smoking a cigarette. Bailey told him to "put . . . out" the cigarette, but Bohannon did not want to do so and the two "started . . . arguing."

After they arrived at the apartment complex, Bailey stopped his car and told Bohannon to "get out" because he wanted to "exchange words" with him. Bohannon, however, did not move. When Bailey, still sitting in the driver's seat, opened his door, he "heard a bang" and realized he had been "shot in the back." The bullet entered the middle of his back, to the right of his spine, passed through his liver and diaphragm, broke his ribcage, and exited through his stomach. Bailey was "paralyzed instantly" and remained in the driver's seat. Neither Bailey nor Olmo had seen Bohannon with a gun before hearing the shot.

Bohannon got out of the car and called 911. He told the 911 operator that his "gun dropped and it went off," and his friend "[wa]s shot." An ambulance took Bailey to the hospital. His injury resulted in additional medical complications and hospital visits, and he was permanently wheelchair-bound.

Richmond City Police Officer James Devaul drove to the apartment complex and found Bailey's car parked at the entrance. Bailey was in the driver's seat, Olmo was in the passenger seat comforting Bailey, and Bohannon was "just outside of the vehicle on the driver's side." Bohannon was "pacing around" and "seemed to be nervous and upset." While pacing, he made statements to police, including "I know what's going on" and "I'm going to jail."

Officer Devaul found a loaded handgun on the car's rear seat, directly behind the driver's seat. Bohannon told Devaul that his "gun dropped, and it just went off, and it hit [Bailey]" through the seat.

Forensic Investigator Kathleen O'Connell examined Bailey's car for evidence. The driver's seat was tilted back, leaving little room for a back seat occupant's legs. O'Connell found a bullet on the floorboard in front of the driver's seat but did not initially find a cartridge case. She inserted a "trajectory rod" through the holes in the front and back of the driver's seat to determine "where an individual might have been sitting . . . to cause that hole," and then "trace[d] back to where the cartridge casing was." When she did so, she found the cartridge case on the back floorboard. When extended through the two holes in the driver's seat, the trajectory rod was roughly parallel with the car's floorboard, not angled up from the floorboard.

Stephen Atkinson, a firearms and tool marks examiner for the Virginia Department of Forensic Science, examined the handgun, bullet, and cartridge case found in Bailey's car. He determined that the handgun, a nine-millimeter semi-automatic pistol, had fired the bullet and cartridge case. The gun was "in operating condition," and its three "safety features were functioning properly." First, a "trigger safety . . . on the front of the face of the trigger" prevented "the trigger from being pulled unless it was held with a finger or object on the front of the trigger." Second, a "manual safety," when engaged, prevented "the trigger from being

pulled." And third, a "disconnect safety feature" prevented the gun from discharging if the slide was not fully forward.

The gun also had an internal hammer that was recessed under the slide so it could not "be manually manipulated." If the hammer was "cocked," and a sturdy object inserted into a "rather small" gap and "struck" with enough force to "overcome the tension of the firing pin," replicating "the operation that the normal hammer would do," the firearm could discharge. Atkinson further explained that "a sturdy thin object" would have to precisely enter that small hole and strike the firing pin, overcoming the "substantial amount of spring tension," in order for the handgun to discharge. In the laboratory, he tried to "cause the hammer to fire" by striking the firearm with "two different hammers," with the manual safety both engaged and disengaged, but "[i]t didn't, accident[ally], discharge." Atkinson acknowledged that the firearm's manual warned the handgun could discharge if dropped.

After the Commonwealth rested, Bohannon moved to strike the evidence, arguing that the evidence did not show the firearm was "handled in a manner gross, and willful, wanton, and reckless to show disregard for human life." The trial court denied the motion.

Olmo testified for the defense that there was no alcohol in Bailey's car until after Bohannon bought it at the convenience store, though he acknowledged that Bohannon could have been drinking earlier in the day. He also stated that Bohannon purchased beers at the grocery store for all three men. Olmo did not remember Bailey and Bohannon arguing about a cigarette. In reference to the shooting, he testified that they were driving "over the speed bump and bang." Olmo claimed that Bailey then stopped the car and stated that he had been shot. Olmo discarded the beer and marijuana, looked back, and saw the handgun on the floorboard.

After the close of all the evidence, Bohannon renewed his motion to strike. The trial court denied the motion and convicted Bohannon of felony reckless handling of a firearm. The

trial court found based on Olmo's testimony that the gun discharged as the car hit a speed bump. Considering Olmo's testimony in conjunction with the forensic evidence, the trial court determined that the gun was in Bohannon's hand when it discharged, and it did not fall to the floorboard until afterwards. The trial court "presum[ed]" that the driver's seat had not been moved after the gunshot as there was no evidence that it had been moved. The trial court further found that the trajectory rod undermined Bohannon's claim that the gun accidentally discharged from striking the car's floorboard.

This appeal followed.

ANALYSIS

Bohannon challenges the sufficiency of the evidence to support his felony reckless handling of a firearm conviction. He contends the trial court erred in rejecting his reasonable hypothesis of innocence that the firearm accidentally discharged when he dropped it in the back of the car.

"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)). Additionally, "[i]t is firmly established that '[c]ircumstantial evidence is competent and is entitled to as much weight as direct evidence provided that the circumstantial evidence is sufficiently convincing to exclude every reasonable hypothesis except that of guilt.'" *Kelley v. Commonwealth*, 69 Va. App. 617, 629 (2019) (second alteration in original) (quoting *Pijor*, 294 Va. at 512).

The "'reasonable hypothesis of innocence' principle is 'simply another way of stating that the Commonwealth has the burden of proof beyond a reasonable doubt.'" *Commonwealth v. Wilkerson*, 304 Va. 92, 101-02 (2025) (quoting *Commonwealth v. Moseley*, 293 Va. 455, 464 (2017)). "[W]here circumstantial evidence is sufficient to exclude every [proffered] reasonable hypothesis of innocence, it is sufficient to support a conviction." *Id.* at 102 (second alteration in original) (quoting *Cook v. Commonwealth*, 226 Va. 427, 433 (1983)). The hypotheses of innocence "which must be thus excluded are those which flow from the evidence itself, and not from the imaginations of defense counsel." *Id.* The issue on appeal "is not whether 'there is some evidence to support'" a defendant's hypothesis of innocence. *Commonwealth v. Hudson*, 265 Va. 505, 513 (2003). "The issue is whether a reasonable [factfinder], upon consideration of all the evidence, could have rejected [the defense's] theories" and found guilt beyond a reasonable doubt. *Id.* "Moreover, whether a defendant's hypothesis is reasonable is a question of fact." *Kelley*, 69 Va. App. at 629.

Recklessly handling a firearm "so as to endanger the life, limb or property of any person" is a Class 1 misdemeanor. Code § 18.2-56.1(A). If, however, a person handles a "firearm in a manner so gross, wanton, and culpable as to show a reckless disregard for human life and causes the serious bodily injury of another person resulting in permanent and significant physical impairment," he is

guilty of a Class 6 felony. Code § 18.2-56.1(A1). Although there are few cases addressing "gross, wanton, and culpable" conduct that "show[s] a reckless disregard for human life" under Code § 18.2-56.1(A1), in other contexts our Supreme Court has held that this standard "is synonymous with 'criminal negligence.'" *Riley v. Commonwealth*, 277 Va. 467, 483 (2009) (quoting *Jones v. Commonwealth*, 272 Va. 692, 701 (2006)) (addressing the standard under the "maiming" statute); *see also Noakes v. Commonwealth*, 280 Va. 338 (2010) (felony involuntary manslaughter); *Jones*, 272 Va. at 701 (felony child neglect). "Criminal negligence is judged under an objective standard and, therefore, may be found to exist where the offender either knew or should have known the probable results of his acts." *Riley*, 277 Va. at 483-84 (quoting *Jones*, 272 Va. at 701). And our Supreme Court has defined criminal negligence in terms of gross negligence:

> "Gross negligence" is culpable or criminal when accompanied by acts of commission or omission of a wanton or wilful nature, showing a reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows, or is charged with the knowledge of, the probable result of his acts.

Id. at 484 (quoting *Cable v. Commonwealth*, 243 Va. 236, 240 (1992)).

Bohannon argues the trial court erred in relying on impermissible assumptions and mistakes in fact in finding he handled the gun in a manner so gross, wanton, and culpable as to show a reckless disregard for human life. He points to the lack of direct evidence showing he was handling or playing with the firearm when it was discharged. In the absence of such evidence, he contends, the trial court could not exclude his hypothesis of innocence because it was "consistent with [his] statement, Olmo's testimony, and the firearm's owner's manual." We disagree.

Bohannon's argument fails to consider the competency of circumstantial evidence to establish guilt beyond a reasonable doubt. "Circumstantial evidence is as acceptable to prove guilt as direct evidence . . . ." *Austin v. Commonwealth*, 60 Va. App. 60, 66 (2012) (quoting *Parks v.*

Commonwealth, 221 Va. 492, 498 (1980)). Moreover, the trial court, sitting as factfinder, was permitted to "draw reasonable inferences from basic facts to ultimate facts." *Perkins*, 295 Va. at 332 (quoting *Bowman v. Commonwealth*, 290 Va. 492, 500 (2015)). Further, the factfinder decides "*which* reasonable inferences" to draw from evidence "and whether to reject as unreasonable the hypotheses of innocence advanced by a defendant." *Young v. Commonwealth*, 70 Va. App. 646, 654 (2019) (emphasis added) (quoting *Moseley*, 293 Va. at 464). The record here supports the conclusion that the trial court's ultimate finding was based on reasonable inferences, not assumptions.

The evidence established that Bohannon sat directly behind Bailey with little separation as they drove to an apartment complex together. Bailey got into an argument with Bohannon about smoking cigarettes in his car. The car went over a small speed bump and the gun fired, hitting the middle of Bailey's back. The trajectory of the bullet was parallel to the ground, angled from right to left, and at the height of just above the right knee.[2]

From the facts presented, the trial court reasonably concluded that Bohannon was sitting directly behind Bailey, in a moving vehicle, pointing an unsecured and loaded firearm at Bailey with his finger on the trigger, such that going over a small speed bump caused him to pull the trigger and shoot Bailey. Bohannon "knew or should have known the probable results of"

[2] Bohannon emphasizes that the trial court "presum[ed]" that the driver's seat had not been moved, to argue that the court's finding was based on erroneous assumptions. The trial court's finding, however, was a reasonable inference from the evidence, which included pictures of the driver's seat in a normal position, and no evidence that it had been adjusted after the gunshot. Bohannon also points to the trial court's statement that Olmo's testimony "tells us is that the gun was in [his] hand when it went off" as a factual error. However, that statement is taken out of context. *See Groves v. Commonwealth*, 50 Va. App. 57, 62 (2007) ("[W]e will not 'fix upon isolated statements of the trial judge taken out of the full context in which they were made, and use them as a predicate for holding the law has been misapplied.'" (quoting *Bullock v. Commonwealth*, 48 Va. App. 359, 368 (2006))). In context, this statement indicated the inferences drawn from Olmo's testimony rather than recounting Olmo's actual testimony.

pointing his loaded handgun at another person a few feet away while driving. *Riley*, 277 Va. at 483-84 (quoting *Jones*, 272 Va. at 701).[3]

Further, the evidence sufficiently dispelled Bohannon's hypothesis of innocence. Only Bohannon saw the handgun discharge. And he told Officer Devaul it went off when he dropped it. For Bohannon's dropped gun theory to be accurate, his handgun would have had to bounce over a foot in the air after he dropped it, aim at chest-height on Bailey's seat, and then discharge while in the air rather than when it contacted the floor. Atkinson testified that he unsuccessfully tried to cause the handgun to "accident[ally]" discharge by striking it with hammers. Atkinson acknowledged that the gun could discharge if a thin and sturdy object precisely entered a small hole on the back of the firearm. However, that circumstance was unlikely as the thin object would still have to overcome the significant "spring tension" on the firing pin for the gun to discharge. The trial court was not bound by Bohannon's self-serving statements to the 911 operator and Officer Devaul but could instead conclude that he was lying to conceal his guilt. *See Vasquez v. Commonwealth*, 291 Va. 232, 250-51 (2016) ("When considering the statements of a suspect, a factfinder 'may believe them in whole or in part, as reason may decide.'" (quoting *Durham v. Commonwealth*, 214 Va. 166, 169 (1973))).

Under the applicable standard of review, we will not "upend[]" a factfinder's inferences unless they are "so attenuated that they 'push "into the realm of *non sequitur*."'" *Perkins*, 295 Va. at 332 (quoting *Bowman*, 290 Va. at 500). The record here sufficiently established that the firearm was handled in "a manner so gross, wanton, and culpable as to show a reckless disregard

[3] The parties argue on brief whether Bohannon was intoxicated during the offense. While evidence of a defendant's intoxication would be relevant to culpability, *see Essex v. Commonwealth*, 228 Va. 273, 283 (1984), the trial court did not make a finding that Bohannon was intoxicated. Rather, the trial court found his handling of the firearm was sufficient under Code § 18.2-56.1(A1) regardless of his level of intoxication.

for human life," Code § 18.2-56.1(A1), and thus we hold that the trial court did not err in finding the evidence sufficient to support Bohannon's conviction.

CONCLUSION

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

Affirmed.