COURT OF APPEALS OF VIRGINIA

Record No. 1303-25-1

LAKAVIOUS LAMOUNT CHARITY, SOMETIMES KNOWN AS
LAKAVIOUS LAMONT CHARITY
v.
COMMONWEALTH OF VIRGINIA

Present: Judges O'Brien, Chaney and Raphael

Argued at Williamsburg, Virginia

Opinion Issued September 29, 2026[*]

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
Matthew W. Hoffman, Judge

(Joshua A. Goff; Goff Voltin, PLLC, on brief), for appellant. Appellant submitting on brief.

Lauren C. Campbell, Assistant Attorney General (Jason S. Miyares,[1] Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE STUART A. RAPHAEL

Appealing his conviction for voluntary manslaughter, Lakavious Lamount Charity challenges the sufficiency of the evidence and the defense-of-property jury instruction. Finding no reversible error, we affirm.

BACKGROUND

We recite the facts in the light most favorable to the Commonwealth, the party that prevailed at trial. *Camann v. Commonwealth*, 79 Va. App. 427, 431 (2024) (en banc). "Doing so requires that we 'discard' the defendant's evidence when it conflicts with the

[*] 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's evidence, 'regard as true all the credible evidence favorable to the Commonwealth,' and read 'all fair inferences' in the Commonwealth's favor." *Id.* (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)).

A. QB's murder and the police investigation

The victim in this case was Quandrell Williams, who was known by his nickname "QB." QB was the father of one of Justice Williams's two children. QB and Justice's relationship was fraught, and Justice was in an intermittent romantic relationship with Charity.

On October 14, 2023, QB visited Justice at her townhouse and later departed. That evening, Justice's sister, Shiquora Vinston, visited Justice at the townhouse. The sisters decided to go out to a "hookah spot." Charity joined them, and the group drove to other bars around Hampton and Newport News before returning to Justice's townhouse after 2:00 a.m.

Justice and QB argued over the phone throughout the night. A few hours later, Justice and Charity went upstairs to sleep while Vinston called for an Uber and waited for it to arrive.

Around 5:30 a.m., Vinston heard QB yelling outside the townhouse and banging on the front door. Justice's neighbor, Teshawna Butler, heard QB yelling that he wanted his clothes back. "I just want to get my clothes," he pleaded. Vinston roused Justice and Charity, and the group went downstairs.

Vinston saw that Charity had a gun in his hand. He paced back and forth in the dining room while the group waited for more banging. After a few minutes of silence, and believing that QB had left, Charity and Vinston prepared to leave through the back door.

But as Charity went to open the door, QB "bum-rushed" it, trying to use his body weight to get inside. Justice and Vinston ran upstairs, while Charity held the door against QB. A few seconds later, Vinston heard gunshots, and when she went back downstairs, there was a bullet hole in the door that exited to the outside and QB was outside on the back stoop; he had been

shot three times and was gasping and bleeding. Charity was gone. The gun he used was left on the kitchen counter.

The gunshots were detected by the city's ShotSpotter system,[2] and officers from the Newport News Police Department arrived at the townhouse a short time later. QB lay on the ground with gunshot wounds to his arm and head. He was transported to a hospital but died from his injuries.

A forensic team recovered the .40-caliber handgun and three cartridge cases, among other evidence. A holster and men's clothing were found in Justice's bedroom. Investigators determined that the recovered gun had been fired three times, consistent with QB's three gunshot wounds. Charity and Justice both contributed to the DNA mixture recovered from the gun.

Detective Brittany Beggs spoke with Justice, Vinston, and Charity. During his first interview, Charity denied that he knew Justice and Vinston, denied that he was at Justice's house that evening, and denied that he shot QB. Beggs executed a search warrant for Charity's phone and location data, which showed that Charity's phone traveled through Hampton and Newport News on the night of the shooting before arriving at Justice's house. When Beggs confronted Charity with the phone location data, Charity claimed that Justice stole his phone and that he had already replaced it.

When asked whether he carried a firearm, Charity said that he usually did. Charity continued:

> I hope I never have to shoot nobody because then you gotta go through that[.] [I]f I shot somebody, I ain't going to shoot you to kill you, I'm going to shoot you because I need you to talk because one thing about it in Virginia it's no self defense. If you kill somebody then he can't talk.

[2] ShotSpotter is a gunshot-detection system using microphones to detect the sound of gunfire and to identify the location from which the shots originated.

Charity was indicted in July 2024 on charges of second-degree murder and using a firearm to commit a felony.

B. The trial below

At the jury trial that followed, the Commonwealth's witnesses testified to the facts set forth above. At the end of the Commonwealth's case, Charity moved to strike, arguing that the Commonwealth had not proven that Charity had acted with malice. The court denied the motion, reasoning that Charity's use of a deadly weapon created an "inference of malice" and that the jury had to resolve the factual question.

In the defense case, Charity admitted that he had joined Justice and Vinston that evening and returned with them to Justice's townhouse, where he and Justice went upstairs to bed in the early morning hours. Charity awoke when Vinston entered the bedroom and told them that QB was outside. Charity said that he knew that QB was in a gang and carried a gun. Charity claimed that Justice was scared and gave him her gun. When the group went back downstairs, it was so dark that they could not see if QB was still outside. Charity and Vinston collected their belongings and planned to leave through the back door. When Charity opened the door, QB forced it open, reportedly saying, "I'm going to kill you, bitch." Charity claimed that when QB was "on" him, Charity "let the gun go off." Charity then pushed QB out the door and fled. Charity said he ran away because he feared that QB had brought others with him. Charity admitted that he had lied to Detective Beggs but said he was scared and did not have an attorney with him during his interviews. He admitted that he waived his *Miranda*[3] rights when speaking with Beggs.

Charity renewed his motion to strike, arguing that it was undisputed that QB forced his way into the residence and that whether Charity could properly use deadly force presented a

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

question of law for the court. The court denied the motion, stating that credibility determinations belonged to the jury.

The parties agreed to almost all the jury instructions, including the following self-defense instruction:

> If you believe that the defendant was without fault in provoking or bringing on the fight or difficulty, and you further believe that:
>
> (1) 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
>
> (2) 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.

Over Charity's objection, the trial court also gave the Commonwealth's proposed defense-of-property instruction:

> A person is entitled to use force for the protection of his property, but the force used must be reasonable in relation to the harm threatened. Force that endangers human life or does great bodily harm is an unreasonable use of force when used in defense of property.

Charity claimed that there was no evidence to support giving the instruction. The Commonwealth responded that because QB was at the house to retrieve his clothes, Charity's use of deadly force was unreasonable. The court found enough evidence to support the instruction.

The jury acquitted Charity of second-degree murder and use of a firearm in the commission of a felony but found him guilty of voluntary manslaughter. Charity was sentenced to ten years of incarceration with four years and two months suspended. Charity noted a timely appeal.

ANALYSIS

Charity challenges the sufficiency of the evidence, arguing that the Commonwealth failed to rebut his testimony that he killed QB in self-defense. He also claims that the trial court erred by overruling his objection to the defense-of-property instruction.

A. The trial court properly denied Charity's motions to strike (Assignment of Error I).

When the sufficiency of the evidence is challenged on appeal, "[t]he 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). "The only 'relevant question 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.'" *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)).

Charity admitted to intentionally shooting QB but claimed that he did so in self-defense. "Self-defense is an affirmative defense" where the "'defendant implicitly admits the killing was intentional and assumes the burden of introducing evidence of justification or excuse that raises a reasonable doubt in the minds of the jurors.'" *Jones v. Commonwealth*, 71 Va. App. 70, 86 (2019) (quoting *Commonwealth v. Sands*, 262 Va. 724, 729 (2001)). A court is required to strike the Commonwealth's evidence only if "undisputed facts . . . establish self-defense as a matter of law." *Taylor v. Commonwealth*, 77 Va. App. 149, 171 (2023) (quoting *Lynn v. Commonwealth*, 27 Va. App. 336, 353 (1998), *aff'd*, 257 Va. 239 (1999)).

For Charity to prevail on his self-defense claim, the jury needed to find (1) that Charity "reasonably believed that [he] was in danger of serious bodily harm or death," *Jones*, 71 Va. App. at 86 (quoting *Sands*, 262 Va. at 730); and (2) that Charity was "confronted with deadly force" and had to use "deadly force in return," *Foote v. Commonwealth*, 11 Va. App. 61,

69 (1990). To show reasonable fear, Charity had to show that QB made an "overt act" that seriously threatened his safety. *Jones*, 71 Va. App. at 86. "'[B]are fear that a person intends to inflict serious bodily injury on the accused, however well-grounded,' is insufficient without an overt act." *Id.* (alteration in original) (quoting *Yarborough v. Commonwealth*, 217 Va. 971, 975 (1977)). In addition, "the amount of force used must be reasonable in relation to the harm threatened." *Foote*, 11 Va. App. at 69 (quoting *Diffendal v. Commonwealth*, 8 Va. App. 417, 421 (1989)). When considering whether self-defense was justified, it is a question for the "jury, not the trial court," to weigh "the evidence and assess the credibility of the" witnesses to determine whether a defendant's actions were reasonable. *Dandridge v. Commonwealth*, 72 Va. App. 669, 684 (2021) (quoting *Witherow v. Commonwealth*, 65 Va. App. 557, 569 n.4 (2015)).

The jury here could properly find that Charity's fear of QB was unreasonable or that QB had not threatened Charity's safety. To be sure, Charity claimed that he took Justice's gun because he believed that QB was in a gang and carried a gun. Charity also claimed that QB said "I'm going to kill you" while rushing into the house. But we must view the evidence in the light most favorable to the Commonwealth. *Camann*, 79 Va. App. at 431.

Charity responded to QB's attempted entry with deadly force, even though QB had not confronted Charity with deadly force. Charity fired the gun three times, shooting QB in the head and arm before fleeing. Charity admitted that it was so dark that he could not see whether QB was armed. And although Charity claimed that he shot QB only after QB came inside and attacked him, his account was refuted by the bullet hole through the back door that exited to the outside. The jury could reasonably infer that Charity shot QB through the door, that QB never made it inside, and that Charity lied in his trial testimony.

Moreover, the jury's voluntary-manslaughter verdict—which rejected Charity's self-defense claim—was not plainly wrong. "[T]o reduce a homicide from murder to voluntary manslaughter, the killing must have been done in the heat of passion and upon reasonable provocation." *Dandridge*, 72 Va. App. at 681 (quoting *Canipe v. Commonwealth*, 25 Va. App. 629, 643 (1997)). In other words, the killing must have been done without malice. "[Heat of passion] excludes malice when provocation reasonably produces fear that causes one to act on impulse without conscious reflection." *Id.* (alteration in original) (quoting *Witherow*, 65 Va. App. at 567). Provocation and malice are factual questions for the jury to decide. *Id.* at 682 (quoting *Woods v. Commonwealth*, 66 Va. App. 123, 131-32 (2016)).

The evidence was sufficient to convict Charity of voluntary manslaughter. After being told that QB was outside, Charity armed himself. Although Charity claims that he was afraid for his life because QB was an armed gang member, the jury was not required to believe him. The jury could consider that Charity fled the crime scene and lied at first to Detective Beggs, claiming that he had not been there, did not shoot QB, and did not even know Justice. "Such acts of flight from a crime scene, or of deceitful behavior immediately following the commission of a crime, are acts that generally cannot be explained in terms of innocent human behavior." *Jones v. Commonwealth*, 279 Va. 52, 58 (2010). So "when a defendant affirmatively acts in such a manner, [the factfinder] may consider those acts in the context of all the facts presented as evidence tending to show the defendant's consciousness of guilt of the crime committed." *Id.*

And even if the jury believed Charity's testimony that he feared QB, fear alone is "insufficient for self defense." *Dandridge*, 72 Va. App. at 684 (quoting *Witherow*, 65 Va. App. at 569 n.4). "[I]f fear was adequately and in fact provoked, but is insufficient for self defense, the resultant killing is voluntary manslaughter." *Id.* at 683 (quoting *Couture v. Commonwealth*,

51 Va. App. 239, 249 (2008)). Thus, the jury could reasonably reject Charity's self-defense claim and find him guilty of voluntary manslaughter.

B. It was not reversible error to give the defense-of-property instruction (Assignment of Error II).

Charity argues that the trial court erred in admitting the Commonwealth's defense-of-property instruction because it was cumulative and duplicative. Assuming without deciding that it was error to give the defense-of-property instruction, the error was harmless.

A non-constitutional error is "harmless when [this Court] 'can conclude that the error did not influence the jury or had but slight effect.'" *Shaw v. Commonwealth*, 304 Va. 217, 234 (2025) (quoting *Commonwealth v. Kilpatrick*, 301 Va. 214, 216 (2022)). To reach that conclusion, "'the evidence of guilt must be so overwhelming that it renders the error insignificant by comparison such that the error could not have affected the' outcome." *Id.* (quoting *Kilpatrick*, 301 Va. at 217). "In a criminal case, [this Court] must be able to conclude that if the error had not occurred, the jury still would have convicted the defendant." *Id.* And "harmless error analysis is appropriate" when reviewing jury instructions. *Kil v. Commonwealth*, 12 Va. App. 802, 812 (1991).

Based on our examination of the record, we find that the defense-of-property instruction did not affect the jury's verdict. Charity conceded that the remaining jury instructions correctly stated the law governing self-defense. The jury was therefore properly instructed on the standard for determining whether his use of force was reasonable under the circumstances. By finding Charity guilty of voluntary manslaughter, the jury necessarily rejected his claim that he acted in reasonable self-defense and determined that his use of force was not legally justified. Because that determination was made under the given self-defense instructions, the additional defense-of-property instruction, even if erroneously given, did not affect the jury's verdict. Accordingly, any error in giving the defense-of-property instruction was harmless.

CONCLUSION

We find no basis to disturb the conviction.

Affirmed.

Chaney, J., concurring in part and dissenting in part.

The majority assumes without deciding that the trial court erred in giving Instruction 19 and resolves Charity's challenge on harmless error grounds. This record does not support that disposition. Under Code § 8.01-678, a judgment may stand notwithstanding error only when it "plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached." Here, Instruction 19 bore on the central contested issue of legal justification, the Commonwealth expressly relied on the instruction in closing argument, and the jury deadlocked before returning a verdict on the lesser offense. Given those circumstances, it does not plainly appear from this record that substantial justice was reached notwithstanding the challenged instruction.[1]

At the outset, Charity's second assignment of error is broader than the majority's characterization of his argument. The majority states that "Charity argues that the trial court erred in admitting the Commonwealth's defense-of-property instruction because it was cumulative and duplicative." Maj. Op. at 9. Although Charity makes that argument in the body of his brief, his second assignment of error states that the circuit court erred in overruling his objection to Instruction 19 "where there was no evidence that anyone was acting in defense of property and the instruction was irrelevant and confused the issues before the jury." Op. Br. 18. Thus, the assignment of error challenges not merely whether Instruction 19 was duplicative, but also whether the evidence supported giving the instruction at all and whether the instruction confused the issues before the jury.

The objection at trial tracked that broader framing. Charity objected that Instruction 19 was irrelevant and that there was "no evidence anyone was defending property," explaining that

[1] The evidence was sufficient to sustain Charity's conviction for voluntary manslaughter. The disagreement is limited to the majority's conclusion that the assumed error in giving Instruction 19 was harmless.

he was "arguing self defense and defense of others," and that no testimony showed he was concerned about damage to the apartment or to any property inside it. R. 524-25. The Commonwealth responded that the instruction was proper because QB was at the residence to retrieve his clothes, and the circuit court gave the instruction over Charity's objection. R. 525-27.

The majority proceeds on the premise that giving Instruction 19 was error and resolves the issue on harmless error grounds. On that premise, the record does not support a finding of harmlessness. In applying Code § 8.01-678 to an improper jury instruction, "we must review the record and the evidence and evaluate the effect the error may have had on how the finder of fact resolved the contested issues." *Becker v. Commonwealth*, 64 Va. App. 481, 497 (2015) (quoting *Lavinder v. Commonwealth*, 12 Va. App. 1003, 1007 (1991) (en banc)); *see Kil v. Commonwealth*, 12 Va. App. 802, 812 (1991).

We may uphold a judgment on harmless error grounds only if we can conclude, "without usurping the jury's fact-finding function," that "the error did not influence the jury[] or had but slight effect." *Davis v. Commonwealth*, 79 Va. App. 123, 146 (2023) (alteration in original) (quoting *Graves v. Commonwealth*, 65 Va. App. 702, 712 (2016)). That standard is demanding. To reach that conclusion, "'the evidence of guilt must be so overwhelming that it renders the error insignificant by comparison such that the error could not have affected the' outcome." *Shaw v. Commonwealth*, 304 Va. 217, 234 (2025) (quoting *Commonwealth v. Kilpatrick*, 301 Va. 214, 217 (2022)). "In a criminal case, [this Court] must be able to conclude that if the error had not occurred, the jury still would have convicted the defendant." *Id.*

Turman v. Commonwealth, 276 Va. 558 (2008), provides further guidance. There, the Supreme Court explained that if a reviewing court cannot say, "with fair assurance, after pondering all that happened without stripping the erroneous action from the whole," that the

judgment "was not substantially swayed by the error," then it cannot conclude that the defendant's substantial rights were unaffected. *Id.* at 567 (quoting *Clay v. Commonwealth*, 262 Va. 253, 260 (2001)). "[I]f one is left in grave doubt, the conviction cannot stand." *Id.* The *Turman* framework confirms that harmless error review is not satisfied by asking whether the jury could have convicted without the error; it requires assurance that the jury would have done so.

Applying those principles, the record does not supply the required assurance. Instruction 19 directly addresses the central contested issue at trial—whether Charity's use of deadly force was legally justified. Instruction 18 required the jury to acquit if Charity was without fault, reasonably feared imminent death or great bodily harm, and used no more force than was reasonably necessary "to protect himself from the perceived harm." Maj. Op. at 5; R. 117, 540-41. Instruction 19, read to the jury immediately afterward, stated that "[f]orce that endangers human life or does great bodily harm is an unreasonable use of force when used in defense of property." Maj. Op. at 5; R. 118, 540-41. The two instructions were read consecutively.[2] Instruction 18 addressed force reasonably necessary "to protect himself" while Instruction 19 then stated that deadly force is unreasonable when used in defense of property. R. 117-18, 540-41.

The risk of confusion was heightened because the jury received no separate instruction on defense of others. Instruction 18 addressed only force used "to protect himself." R. 117. It did not separately address force used to protect Justice, Vinston, or the other occupants of the apartment, or force used to prevent a forced entry into the residence. Instruction 19 provided a separate limiting rule: deadly force is unreasonable when used in defense of property. The

[2] The consecutive sequence of the jury instructions mattered. A juror hearing the defense-of-property instruction immediately after the self-defense instruction could reasonably understand Instruction 19 as a limitation on the justification defense it had just been given.

parties' competing theories turned on why Charity used force—whether to protect himself and others from a perceived threat or, as the Commonwealth argued, to prevent QB from entering to retrieve property. Instruction 19, therefore, did not concern a collateral issue outside the jury's assessment of Charity's criminal liability.

The Commonwealth did not merely obtain Instruction 19 and leave it unexplained or unused. The Commonwealth expressly invoked the instruction during closing argument to explain that the jury should reject Charity's justification for the shooting. The prosecutor told the jury: "By definition, if you believe [QB] was unlawfully at the home while trying to get his property, the defendant cannot use deadly force in that scenario either. You have that instruction, and that's just what the law is, and he was not allowed to do that." R. 547. The Commonwealth then linked that proposition to Charity's testimony, arguing that "it didn't matter whether [QB] was actually armed or not" because, in the Commonwealth's view, Charity intended to prevent QB from entering and "was going to use that deadly force regardless." R. 547.

The defense recognized the significance of Instruction 19 and sought to neutralize it. Defense counsel responded directly, characterizing Instruction 19 as a "red herring." Counsel told the jury that "[t]his case is not about using force to defend property," argued that Charity "was defending himself and people in the apartment," and emphasized that "[h]e was defending people, not property." R. 561. Counsel then directed the jury to the competing self-defense instruction: "That's not this case. What is this case is Instruction 18." R. 562.

The parties therefore squarely placed the applicability of Instruction 19 before the jury. The Commonwealth urged the jury to apply the instruction in deciding whether Charity could lawfully employ deadly force; the defense urged the jury to disregard that theory and decide the

case under Instruction 18. On this record, Instruction 19 was not an abstract instruction that could have had no meaningful effect on the jury's decision.

The majority reasons that because the jury received a correct self-defense instruction and nevertheless convicted Charity of voluntary manslaughter, the jury "necessarily rejected his claim that he acted in reasonable self-defense." Maj. Op. at 9. The verdict demonstrates that the jury ultimately rejected Charity's claim of complete justification. However, that conclusion does not answer the harmless error question. The question is not whether the jury rejected self-defense; it is whether Instruction 19 may have contributed to that rejection. *Becker*, 64 Va. App. at 497.

A verdict reached under multiple instructions—one correct, one assumed to be erroneous—cannot establish which instruction the jury applied. The verdict shows only that the jury rejected complete justification. It does not show whether the jury disbelieved Charity's testimony, found his fear unreasonable, found his use of force excessive under Instruction 18, or applied Instruction 19 because it viewed Charity's force as used in defense of property. Since the verdict is consistent with both a proper route and, on the majority's premise, an improper one, the verdict itself cannot establish that Instruction 19 played no role.

Bell v. Commonwealth, 66 Va. App. 479 (2016), is instructive on this point. There, the circuit court refused an instruction on justifiable self-defense. *See id.* at 485. The Commonwealth argued that any error was harmless because the jury had been instructed on excusable self-defense and "no rational jury could have accepted appellant's contention of justifiable self-defense." *Id.* at 488-89. This Court rejected that argument, explaining that the instruction the jury received required the defendant to establish two elements not contained in the instruction that was refused. *See id.* at 489 ("[T]hat form of self-defense requires the defendant to establish two additional elements for the jury to acquit him[.] . . . These requirements are not

included in the jury instruction on justifiable self-defense."). Because "[s]ignificant portions of the evidence were in controversy," and because a properly instructed jury "could have found appellant not guilty," the error was not harmless. *Id.*

Bell involved an instruction wrongly refused rather than one wrongly given, but the principle is the same. The presence of one accurate instruction on self-defense does not establish that the jury's rejection of justification was unaffected by what the instructions, taken together, told it about the lawful use of force.

The majority's reasoning effectively infers harmlessness from the very verdict that Instruction 19 may have influenced. However, harmless error review requires us to examine the possible effect of the error on "the contested issues" that the jury resolved and to do so "without usurping the jury's fact finding function." *Smith v. Commonwealth*, 72 Va. App. 523, 543 (2020); *Davis*, 79 Va. App. at 146.

The Supreme Court of Virginia made the point directly in *Welsh v. Commonwealth*, 304 Va. 118 (2025). "[T]he question is not whether the members of the appellate court would have convicted absent the error, but rather, whether the jurors involved in the decision would have done so," and because "the appellate court does not know what motivated the actual jurors, the inquiry becomes hypothetical." *Id.* at 142. We therefore cannot strip Instruction 19 from the trial, presume that the jury reached its verdict solely through the proper self-defense instruction, and then rely on that presumed route to the verdict as proof of harmlessness. *See Turman*, 276 Va. at 567.

Although the evidence was sufficient to sustain Charity's conviction, that does not resolve the harmless error inquiry. "Determining whether an error is harmless differs from reviewing whether the evidence was sufficient to support a conviction." *Curry v. Commonwealth*, 84 Va. App. 339, 356 (2025); *see Williams v. Commonwealth*, 32 Va. App. 395,

400 (2000) (en banc); *Welsh*, 304 Va. at 141. The sufficiency question is whether the evidence permitted the jury to convict. To find an error harmless, however, "we must be able to conclude that if the error had not occurred, the jury still would have convicted the defendant." *Shaw*, 304 Va. at 234. Thus, it is not enough that the jury could have convicted Charity without Instruction 19. The record must support the conclusion that the jury still would have done so. This record does not.

The evidence concerning legal justification was not so overwhelming that Instruction 19 becomes "insignificant by comparison." *Id.* There was certainly evidence from which the jury could reject Charity's account. As the majority explains, the jury could consider Charity's flight, his false statements to law enforcement, and the physical evidence concerning the back door. Maj. Op. at 7-8. Those facts gave the jury substantial reason to disbelieve Charity's account of the shooting. However, the harmless error standard requires more than evidence sufficient to support that disbelief. The critical question is whether the evidence on justification was so overwhelming that Instruction 19 could not have affected the outcome. Here, the circumstances bearing on justification remained contested, not overwhelming.

Evidence supported the defense theory that QB presented an immediate threat. Vinston testified that QB "bum-rushed" the back door, and she confirmed that Charity was "trying to use his body weight to keep the door closed." R. 309, 326. Charity testified that he knew QB to be in a gang and to carry a firearm, that Justice gave Charity a gun because she was afraid, and that QB "forced his way in" through the door while threatening, "I'm going to kill you, bitch." R. 495-97, 500-01. Whether the jury believed that account was for the jury to decide. However, evidence sufficient to permit the jury to reject Charity's account is not the same as evidence so overwhelming that Instruction 19, which bore directly on the justification defense, could not have affected the verdict.

The majority's harmless error analysis does not explain why the evidence on justification was so overwhelming that Instruction 19 was insignificant by comparison. Rather, it reasons that because the jury received the correct self-defense instruction and nevertheless convicted Charity, Instruction 19 did not affect the verdict. Maj. Op. at 9. That reasoning does not engage the standard the majority recites, which requires the evidence of guilt to be "so overwhelming that it renders the error insignificant by comparison." *Kilpatrick*, 301 Va. at 217.

A jury deadlock does not, by itself, establish prejudice. The deadlock bears instead on the characterization of the record that a finding of harmlessness would require. The jury was deadlocked and returned a verdict only after a further instruction, which is difficult to reconcile with the conclusion that the record of evidence was so overwhelming that Instruction 19 was insignificant by comparison.

Turman is instructive. There, the Supreme Court emphasized that "the facts at trial were vigorously contested" and that "the jury did not convict the defendant of forcible anal sodomy but instead convicted him of sexual battery." *Turman*, 276 Va. at 568. In view of those circumstances, the Court could not say that the conviction "was not substantially swayed" by the erroneous instruction and therefore could not "conclude with fair assurance that the substantial rights of the defendant were not affected." *Id.*

Although the disputed factual issues differ, *Turman* is relevant because the Supreme Court assessed the erroneous instruction in light of the "strongly disputed testimony," the importance of witness credibility, and the jury's decision to convict on a lesser offense. *Id.* *Turman* does not hold that a lesser-offense verdict independently establishes prejudice. Rather, *Turman* instructs us to consider those circumstances as part of the trial as a whole when deciding whether the required "fair assurance" exists. *Id.* at 567-68. The same features are present here. The instruction bore directly on a central issue the jury had to resolve, and the jury—rejecting

the Commonwealth's second-degree murder theory—convicted Charity of the lesser voluntary manslaughter offense.[3] That lesser-offense verdict forms part of "all that happened" in assessing whether the required fair assurance exists.

The risk of prejudice here was not speculative. Instruction 19 told the jury that deadly force is unreasonable when used in defense of property. The Commonwealth argued that QB was at the residence to retrieve property and then told the jury that Charity "was not allowed" to use deadly force in that scenario. R. 547. If the jury accepted the Commonwealth's premise and applied Instruction 19 to the doorway confrontation, it could have treated Charity's use of deadly force as unreasonable on a property defense rationale rather than resolving justification solely under Instruction 18.

No single circumstance compels the conclusion that the assumed error was not harmless. A jury deadlock alone would not necessarily defeat harmlessness. A lesser-offense verdict alone would not necessarily defeat harmlessness, and reliance on an instruction in closing argument would not always establish prejudice. However, the combination of circumstances here—the instruction's centrality to the justification issue, the absence of a separate instruction on defense of others, the Commonwealth's express reliance on Instruction 19 in closing argument, the contested evidence on justification, the jury deadlock, and the lesser-offense verdict—precludes the required assurance.

Considering "all that happened," the record does not permit a conclusion with "fair assurance" that Instruction 19 "did not influence the jury, or had but slight effect." *Clay*, 262 Va. at 260. Instead, the record leaves "grave doubt" about whether Instruction 19 affected the

[3] The jury also acquitted Charity of using a firearm while committing murder. R. 585. That acquittal followed from the jury's rejection of the murder charge, as Instruction 15 required the Commonwealth to prove that the use of the firearm "was while committing murder." R. 114. The verdict on the homicide charge, however, shows that the jury did not accept the Commonwealth's theory wholesale, and it too forms part of the whole of what happened at trial.

verdict. *See Turman*, 276 Va. at 567. Under Code § 8.01-678 and *Turman*, that doubt precludes a finding of harmless error. Accordingly, the conviction should be reversed. I respectfully dissent from the majority's resolution of the second assignment of error.