

# COURT OF APPEALS OF VIRGINIA

---

**Record No. 1124-25-4**

---

ANTHONY BLACKMON SMITH  
v.  
COMMONWEALTH OF VIRGINIA

---

Present: Chief Judge Decker, Judges AtLee and Callins

Argued at Fredericksburg, Virginia

Opinion Issued October 20, 2026\*

---

## FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

Daniel T. Lopez, Judge

Meghan Shapiro (Law Office of Meghan Shapiro, on briefs), for appellant.

Liam A. Curry, Assistant Attorney General (Jason S. Miyares,<sup>1</sup> Attorney General, on brief), for appellee.

---

### **MEMORANDUM OPINION BY JUDGE RICHARD Y. ATLEE, JR.**

Anthony Blackmon Smith appeals his convictions for abduction, use of a firearm in the commission of a felony, felon in possession of a firearm, and brandishing. He raises four issues on appeal. First, he challenges the sentences he received for his use of a firearm conviction and his felon in possession of a firearm conviction. Second, he challenges aspects of the trial court's rulings during the jury selection process. Next, he challenges the trial court's denial of his proffered jury instructions and the trial court's answers to certain jury questions. Finally, he argues that the trial court erred by denying his request for a continuance. For the following reasons, we reverse in part and affirm in part.

---

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

<sup>1</sup> Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

## BACKGROUND<sup>2</sup>

### A. *The Incident*

On September 14, 2023, Smith entered the townhome of Ariel Smith,<sup>3</sup> his ex-girlfriend, in the middle of the night while she was asleep in her upstairs bedroom. Smith and Ariel had dated for around nine months, but they broke up in July 2023, shortly before they were supposed to move into the townhouse together. Smith was on the lease, and he entered using his keys, though they had previously agreed that Smith would not enter without Ariel's permission.

Ariel woke up to find Smith standing over her, wearing a blue latex glove on his right hand, and holding a firearm. Smith checked to make sure no one else was in the home, and he later told Ariel that if he had seen someone, "he would've shot them." He took Ariel's phone and threw it down the stairs, and he also hid her keys from her. At some point, Smith pointed the gun at Ariel's head. She buried her head in the mattress and begged him to stop. When she raised her head, Smith cocked the firearm, and she buried her head back in the mattress.

Eventually, Smith started questioning Ariel about their relationship and breakup. He demanded answers and told her that "neither one of [them] were going to leave th[e] room." She interpreted this as a threat to kill them both. They spoke about their relationship "for hours," with him constantly questioning her and being "unsatisfied" with her answers. When she tried to move, he would tell her to stop, and sometimes he would point the gun at her again.

Ariel eventually agreed to resume the relationship, and she told Smith that she "needed to go to work." Smith retrieved Ariel's phone so that she could set an alarm. Because there were

---

<sup>2</sup> "On appeal, 'we review the evidence in the "light most favorable" to the Commonwealth,' the prevailing party below." *Diaz v. Commonwealth*, 80 Va. App. 286, 295 (2024) (quoting *Clanton v. Commonwealth*, 53 Va. App. 561, 564 (2009) (en banc)).

<sup>3</sup> Smith and Ariel share a last name, but it is simply a coincidence. We refer to Ariel by her first name to avoid confusion.

still a couple of hours before Ariel needed to get ready for work, Smith said they should go to sleep until her alarm went off. They laid on the bed, with Smith holding her, until the alarm went off. When it did, Ariel went through the motions of getting ready, and Smith let her leave.

Ariel did not go to work; instead, she drove to a friend's house in Maryland. Smith sent Ariel a text message later that day. When she confronted him with her fear that he was "either going to shoot [her] or shoot [himself] in front of" her, he did not deny his actions and instead told her he "really would never hurt" her. Ariel went to the police station later that day and reported the incident.

#### *B. The Motion for a Continuance*

Smith appeared for trial on July 17, 2024. Before starting, however, the court called attention to an ex parte communication that Smith filed with the court on July 15. In the letter, Smith claimed that he had had minimal contact with his attorney and he was not prepared for trial considering the lack of communication. The court permitted Smith to address the court about his concerns. Although he had since spoken with his lawyer, he told the court it felt rushed and he still felt he had not been able to address his concerns. He also explained that there were a couple of witnesses he wanted to discuss, though they were out of town at the time of trial. He reiterated that his discussion with counsel had been rushed and he did not feel as if he had been able to thoroughly discuss everything. Smith's counsel informed the court that she did not "intend to call the witnesses and never intended to call the witnesses." She added that she had no intention of "calling the witnesses this week or at a future date."

Counsel did request a continuance, however, based on Smith's lack of comfort in his trial preparation. The Commonwealth opposed the motion, noting that it was prepared for trial and had arranged for out-of-jurisdiction law enforcement officers to appear at trial. The trial court denied the motion, noting that whether to call witnesses was "trial strategy," and it was in

counsel's strategic judgment. It also acknowledged the difficulty in arranging the appearances of the out-of-jurisdiction officers.

### *C. Voir Dire*

During voir dire, the Commonwealth asked if anyone would "be unable or unwilling to convict" based solely on "verbal testimony evidence." Juror 20 responded "that in today's society we should have some type of video or audio recording, and verbal testimony only is not sufficient for a conviction." Juror 23 agreed, noting that it "was a good point." When informed that witness testimony alone was sufficient for a conviction and asked if she could follow those instructions, juror 23 responded that "if that is how jury instructions are, if that's how our law is," she was "fine to obey and kind of follow those rules." But she explained that it would be hard for her to make such a big decision about someone's life off of a "he said she said" situation, she would "[o]bviously" prefer more evidence, and she had not been aware that someone could be convicted solely based on witness testimony. Still, she indicated that she would not disregard the testimony and was happy to follow the court's guidance.

The Commonwealth moved to strike juror 23 for cause, arguing that she had prejudged the case and could not be impartial. Smith opposed the motion, noting that, after being educated on the state of the law, juror 23 had agreed to follow the court's instructions. The trial court, having observed her demeanor and responses to the questions, believed that juror 23 had prejudged the case, seeing it as a "he said she said issue," and the court was not confident that she would follow its instructions. The trial court therefore granted the motion to strike.

Juror 37 also indicated that he did not "know if witness evidence would be enough to convince [him] beyond a reasonable doubt of guilt." Defense counsel asked if juror 37 was saying that there was "absolutely no circumstance" where he would find someone guilty based on the testimony of a single witness. Juror 37 responded,

You know, just in the job that I work, I'm in accounting. Typically you have to perform multiple procedures to verify that the outcome is appropriate, so one's inquiry and then you have to observe something or inspect something.

We're never allowed to conclude on the admissibility of what's going on there via inquiry alone for a financial statement audit. And I don't think that would be enough to convict someone to be a felon, which we all know what that brings. So that's my view on it.

Counsel then asked whether he would follow the rule if it were different in a court of law and testimony alone was sufficient. He stated that it "would be ideal if there were additional information" but he would "respect" the court and do what the judge ordered.

The Commonwealth asked the court to strike juror 37 for cause, and Smith opposed the motion. Noting juror 37's demeanor and manner, the trial court found that he was of a "fixed belief" and would apply his own standard, elevating the Commonwealth's burden. Therefore, the trial court granted the motion to strike juror 37 for cause.

Smith also asked whether any jurors "have a strong reaction to the allegation of alcohol use [or] experience with people who have used alcohol." Juror 9 indicated that her partner struggled with "alcohol abuse issues," and it was something she had "an emotional response to." When asked about how it would affect her duties, she stated that she would "have some reaction potentially," but she "certainly would endeavor to keep that separate from influencing [her] decision or how [she] viewed any of the evidence." When asked whether she would bring her opinions into the case, she said that she thought she "would try to hear the evidence and sort of the information and try to view it separately from any of [her] own experiences." Smith also asked, hypothetically, whether juror 9 would align more with either the female member of a relationship or the male member that uses alcohol. Juror 9 stated that "it would probably depend on the testimony and the situation," but she reiterated that she "would do [her] best to compartmentalize anything in [her] own background and view everything objectively."

Smith asked the court to strike juror 9 for cause, arguing that juror 9 had indicated that “she would require additional information about testimony before being able to decide whether she has a bias” and she did not know if she would be able to put it aside. The trial court denied the motion, noting that juror 9 was “calm and reasonable in her explanation.” It found that juror 9 did not indicate a bias for or against Smith or for a female complaining witness, and it sounded to the court like juror 9 “would use her common sense in trying to arrive at what the facts were.”

Later, Smith asked the jury pool whether any of them had feelings about gun control or whether they had participated in any kind of activism or advocacy for gun control. Juror 18 responded that she had “participated in marches for gun control.” She acknowledged that crimes involving firearms give her “some feelings,” but she did not believe those feelings would bias her against Smith. She explained that the mere fact that he had a firearm does not make him “a bad person.” While she did not think people “should own firearms in the home,” she “would need more information” than the simple fact that Smith owned a firearm before completely judging him. She did acknowledge, though, that that fact made her partially judge him.

Smith sought to strike juror 18, arguing that she revealed some bias and that her answers were “more equivocal.” He argued that juror 18 articulated “partial bias” and “partial bias is still a bias.” The Commonwealth objected, arguing that the juror said “partial judgment” rather than partial bias, and it emphasized that the juror had said she could be objective. The court denied the motion, finding that the juror simply said that she needed to hear more before making a judgment.

#### *D. Jury Instructions*

When it came time to instruct the jury, the Commonwealth proffered jury instruction 13, which stated: “You may infer that every person intends the natural and probable consequences of his acts.” Smith objected, arguing that the language does not properly instruct the jury because it

makes unclear whether it creates a permissive inference or a mandatory presumption.

Alternatively, he asked the court to grant instruction B, which stated: “You may infer, but are not required to infer, that every person intends the natural and probable consequences of his acts.”

The trial court granted instruction 13 and denied instruction B, finding that instruction B was “too granular,” and it noted the parties were free to argue the meaning of “may.”

Smith also proffered instruction A, which stated: “If you believe Mr. Smith’s intent was made in pursuit of another reason and not with the intent to deprive Ms. Smith of her personal liberty, you shall find Mr. Smith not guilty.” The Commonwealth objected, arguing that the proffered instruction “unfairly highlights [Smith’s] theory of the case” and that it was duplicative of another instruction. The trial court denied the instruction, finding that the “gist” of the proffered instruction was contained in instruction 8.<sup>4</sup> It also noted that the instruction did not refer to the abduction charge to which it applied.

---

<sup>4</sup> Instruction 8 provided:

Mr. Smith is charged with the crime of abduction. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That Mr. Smith by force, intimidation, or deception did seize, take, transport, detain, or hide Ariel Smith; and

(2) That Mr. Smith did so with the intent to deprive Ariel Smith of her personal liberty; and

(3) That Mr. Smith acted without legal justification or excuse.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find Mr. Smith guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find . . . Mr. Smith not guilty.

#### *E. Questions from the Jury*

After the case had been submitted to the jury, the jury asked three questions of the court. In question 1, the jury asked for the “[l]egal definition of intent.” In question 2, it asked, “can mental state impact intent?” Finally, in question 3, the jury asked, “Is intent spontaneous?”

The parties discussed with the trial court how to answer the questions. For question 1, Smith noted that he “would love to send my proposed jury instruction [A]” back, but both parties agreed that the court should tell the jury that it has “the instructions of law.” Regarding question 2, the trial court expressed concern because there was “no defense of a mental state” raised in the case. The parties and the court considered whether the jury used “mental state” in the legal sense or the colloquial sense. The court ultimately referred the jury back to the instructions already given. On the third question, the court answered the jury, “yes, the intent to commit a crime may be formed at any moment prior to the commission of the criminal act.”

#### *F. Sentencing*

The jury convicted Smith of abduction, brandishing a firearm, and use of a firearm in the commission of an abduction. Additionally, Smith separately entered into a plea agreement, pleading guilty to a charge of possession of a firearm by a nonviolent felon, arising from the same facts. The trial court sentenced Smith on all four charges at the same sentencing hearing. For the abduction conviction, the trial court sentenced Smith to ten years of incarceration, with two years suspended for a period of ten years. On the use of a firearm offense, the court sentenced Smith to five years, with two years suspended for a period of ten years. For the brandishing offense, the court sentenced Smith to 12 months. Finally, on the possession of a firearm offense, the trial court sentenced Smith to five years, with all five years suspended for a period of ten years. Smith now appeals.

## ANALYSIS

### A. Sentencing

#### 1. Smith's sentence for his use of a firearm conviction is void ab initio.

The trial court sentenced Smith to five years, with two years suspended, for his use of a firearm in the commission of a felony conviction. Smith argues, and the Commonwealth concedes, that the sentence is void ab initio because it exceeds the statutory maximum of three years. We agree.

Code § 18.2-53.1, the use of a firearm statute, has a mandatory minimum sentence of three years of imprisonment. Based on the relevant statutory language, both this Court and the Supreme Court have determined that the three-year mandatory minimum sentence “constitutes both the mandatory minimum and the statutory maximum.” *Graves v. Commonwealth*, 294 Va. 196, 199-200 (2017); *see also Hines v. Commonwealth*, 59 Va. App. 567, 575-80 (2012) (same). Thus, the only permissible sentence under the statute is a sentence of three years of imprisonment. Because three years was the only permissible sentence, the trial court erred when it sentenced Smith to five years, with two years suspended. *See Graves*, 294 Va. at 198 (finding a sentence of five years, with two years suspended, void). We therefore reverse and remand to the trial court for entry of an order consistent with this opinion.

#### 2. Smith's sentence for felon in possession of a firearm is voidable, not void, and the exceptions to Rule 5A:18 do not apply.

Smith next challenges the sentence he received for his conviction for felon in possession of a firearm in violation of Code § 18.2-308.2. The trial court suspended his sentence for a period of ten years, and Smith argues that the period of suspension exceeds the maximum time allowed under Code § 19.2-303.1. Smith's challenge, however, is complicated by his failure to make this argument in the court below. He concedes that he did not preserve this issue, but he contends that the sentence is void ab initio. Alternatively, he asks the Court to apply the ends of

justice and good cause exceptions to Rule 5A:18. We turn first to whether his sentence is void ab initio.

“A judgment which is void ab initio is a judgment so affected by a fundamental infirmity that it is no judgment at all.” *Hannah v. Commonwealth*, 303 Va. 106, 119 (2024). Challenges “to void ab initio judgments may be raised by any party in the case at any point during a valid direct or collateral proceeding where the voidness of the order is properly at issue, including by a court for the first time on appeal.” *Manley v. Commonwealth*, 86 Va. App. 308, 318 (2025) (quoting *Hannah*, 303 Va. at 120). A voidable order, on the other hand, is an “action[] taken by a court in error but within the bounds of its authority.” *Hannah*, 303 Va. at 120. “Voidable judgments are more common.” *Hilliard v. Commonwealth*, 86 Va. App. 118, 140 (2025) (quoting *Hannah*, 303 Va. at 120). “Like any ordinary legal error in a proceeding below, objections to voidable errors must be preserved and brought before courts of appeal pursuant to our procedural rules.” *Id.* (quoting *Hannah*, 303 Va. at 120).

“[E]rrors in the application of Code § 19.2-303.1 do not create a fundamental infirmity which would strip a court’s jurisdiction to preside over certain suspended sentences.” *Hannah*, 303 Va. at 124. Because courts already have jurisdiction over criminal matters, and “[n]othing within the text of Code § 19.2-303.1 purports to modify or shrink this general jurisdictional grant,” any errors in its application “render a judgment voidable at most.” *Id.*

We recognize that *Hannah* dealt with a period of *resuspension* exceeding the statutory maximum, while here we consider a period of suspension exceeding the statutory maximum during an initial act of sentencing. *See Hannah*, 303 Va. at 121 n.5 (recognizing the difference between a period of resuspension and the initial sentencing following conviction). The distinction between sentencing following a probation revocation and an initial sentencing event is based upon *Rawls v. Commonwealth*, 278 Va. 213, 221 (2009), where the Supreme Court held

that a sentence in excess of a prescribed statutory range of punishment is void ab initio. But this distinction does not change the outcome here.

This Court considered a similar issue in *Hilliard*, where—at the initial sentencing event—the trial court sentenced the defendant to a period of supervised probation that exceeded the maximum time allowed under Code § 19.2-303. 86 Va. App. at 141. We recognized the principle in *Rawls*, but we noted that “[t]he key distinction from the rule in *Rawls* is that the *punishment* was outside the bounds of the court’s authority, whereas” in *Hilliard* it was the trial “court’s imposition of probation [that] was outside the statutory parameters.” *Id.* “[P]robation is ‘an act of grace . . . to one who has been convicted and sentenced to a term of confinement.’” *Id.* (second alteration in original) (quoting *Price v. Commonwealth*, 51 Va. App. 443, 448 (2008)). We thus found that *Rawls* did not apply, and we held that where a trial court exceeded the statutory parameters in imposing supervised probation, even at the initial sentencing event, the order was “voidable, rather than void ab initio.” *Id.* at 142; *see also Manley*, 86 Va. App. 308 (period of indefinite probation exceeding the maximum time allowed under Code § 19.2-303 does not render the order void ab initio).

That same reasoning applies here. Like a period of supervised probation, a “suspension of incarceration is a judicial ‘act of grace’ with the ‘remedial purpose’ of ‘affording courts the latitude to rehabilitate the offenders before them.’” *Commonwealth v. Jackson*, 304 Va. 515, 526 (2025) (quoting *Hannah*, 303 Va. at 119). A period of suspension then, like the period of probation in *Hilliard*, is distinct from the punishment, and the rule in *Rawls* does not apply. Any error in the period of suspension thus renders the sentencing order voidable rather than void ab initio, which requires Smith to follow ordinary procedural rules to challenge the issue on appeal. *Hannah*, 303 Va. at 120.

Although Smith concedes he did not contemporaneously object in the trial court as required by Rule 5A:18, he invokes the ends of justice exception to the Rule. “‘The ends of justice exception is narrow and is to be used sparingly,’ and applies only in the extraordinary situation where a miscarriage of justice has occurred.” *Conley v. Commonwealth*, 74 Va. App. 658, 682 (2022) (quoting *Holt v. Commonwealth*, 66 Va. App. 199, 209 (2016) (en banc)). We “consider[] two questions when deciding whether to apply the ends of justice exception: (1) whether there is error as contended by the appellant; and (2) whether the failure to apply the ends of justice provision would result in a grave injustice.” *Williams v. Commonwealth*, 294 Va. 25, 27-28 (2017) (quoting *Commonwealth v. Bass*, 292 Va. 19, 27 (2016)).

Here, Smith has not established that the trial court committed an error.<sup>5</sup> Code § 19.2-303.1 permits the court to “fix the period of suspension for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned.” And “this Court has already recognized that a trial court may combine the maximum potential sentences from a defendant’s multiple underlying convictions in order to calculate the period of suspension when all of those convictions arose out of the same case.” *Hamilton v. Commonwealth*, 79 Va. App. 699, 708 (2024). Each of Smith’s four convictions arose out of the

---

<sup>5</sup> Smith also invokes the good cause exception, which creates an exception to the contemporaneous objection requirement when the defendant did not have an opportunity to object to the alleged error below. *Flanagan v. Commonwealth*, 58 Va. App. 681, 694 (2011). Because Smith has not established that an error occurred, even if we applied the good cause exception, it would not change the outcome in this appeal.

Smith also argues that the period of suspension for this charge exceeded the sentence agreed to in his plea agreement. He did not make this argument, however, until his reply brief. “[A]n appellant’s failure to raise a specific argument in [his or] her opening brief results in a waiver of that argument.” *Doe v. Green*, 304 Va. 536, 545 (2025) (applying Rule 5:27(d), which has the same requirements as Rule 5A:20(e) that applies in the Court of Appeals); *see also Jeter v. Commonwealth*, 44 Va. App. 733, 740-41 (2005) (“Permitting an appellant to sidestep the provisions of Rule 5A:20(e) by citing authorities only in his reply brief would . . . deprive the appellee of the opportunity to meaningfully respond to the appellant’s argument.”). Because Smith did not raise this argument until his reply brief, it is waived.

same incident, and they were sentenced together. Thus, the trial court was permitted to combine the maximum possible sentence from each of the four charges to calculate the period of suspension. Smith's abduction charge alone permitted a maximum sentence of ten years, and the "maximum period for which [Smith] might originally have been sentenced to be imprisoned" is 18 years and 12 months of imprisonment. Code § 19.2-303.1; *see also* Code § 18.2-47 (ten years for abduction); Code § 18.2-308.2 (five years for felony firearm possession); Code § 18.2-53.1 (three years for use of a firearm); Code § 18.2-282 (twelve months for brandishing). Accordingly, because the period of suspension was less than the maximum, Smith has not established that the trial court erred, and the ends of justice exception does not apply.

#### B. *Jury Selection*

Smith also challenges the trial court's rulings on motions to strike certain jurors. Specifically, he challenges the court's decision to grant the Commonwealth's motions to strike jurors 23 and 37 for cause and its decision to deny his motions to strike jurors 9 and 18 for cause. Finding no abuse of discretion, we affirm.

We review a trial court's decision to grant or deny a motion to strike for an abuse of discretion. *Harvey v. Commonwealth*, 76 Va. App. 436, 454 (2023). "An underlying question of juror impartiality is one of fact, and the trial court's determination on the subject is "entitled to great deference on appeal" unless 'plainly wrong or unsupported by the record.'" *Id.* (quoting *Huguely v. Commonwealth*, 63 Va. App. 92, 121 (2014)).

"Every defendant has the right to trial by an impartial jury." *Id.* "Exclusion may be required if a juror has 'formed any opinion[] or is sensible of any bias or prejudice.'" *Id.* (alteration in original) (quoting *Keepers v. Commonwealth*, 72 Va. App. 17, 42 (2020)). "If a prospective juror 'does not stand indifferent to the cause, he is not competent. If he has any interest in the cause, or is related to either party, or has expressed or formed any opinion, or is

sensible of any bias or prejudice, he is excluded by the law.”” *Taylor v. Commonwealth*, 67 Va. App. 448, 454 (2017) (quoting *Spangler v. Ashwell*, 116 Va. 992, 996-97 (1914)). But “jurors are not required to be totally ignorant of the facts and issues involved in a case on which they sit.” *Id.* (quoting *Justus v. Commonwealth*, 220 Va. 971, 977 (1980)). “The opinion entertained by a juror, which disqualifies him, is an opinion of that fixed character which repels the presumption of innocence in a criminal case, and in whose mind the accused stands condemned already.” *Id.* (quoting *Justus*, 220 Va. at 976). The trial court is in the best position to “weigh the meaning of the answers given in light of the phrasing of the questions posed, the inflections, tone, and tenor of the dialogue, and the general demeanor of the prospective juror.” *Id.* at 455 (quoting *Smith v. Commonwealth*, 219 Va. 455, 464-65 (1978)).

1. Jurors 23 and 37

Both juror 23 and juror 37 indicated an initial opinion that witness testimony alone would not be sufficient to convict someone of a crime. Smith argues that the trial court should not have granted the Commonwealth’s motion to strike the jurors because, despite any initial feeling, both jurors indicated that they would follow the law and instructions from the court. We see no manifest error in the trial court’s decision to grant the motion to strike the jurors for cause.

Although juror 23 did agree that she would follow the trial court’s instructions, she repeatedly indicated that she would “find it difficult to make a judgment based off a he said she said, or a she said she said conversation.” She also felt that something more than “he said she said” evidence should be required, such as video or audio evidence. Based on juror 23’s “demeanor and her response to the question[s],” the court found that juror 23 had “pre-judged” the case and “would require an additional burden of the Commonwealth that is higher than what’s required as a matter of law.” *See Bennett v. Commonwealth*, 236 Va. 448, 469 (1988) (“Deference must be paid to trial judges in deciding which juror will be unable to apply the law

faithfully and impartially.”). Given juror 23’s comments and the trial court’s ability to observe her inflection, tone, and general demeanor, we cannot say that the trial court erred by granting the Commonwealth’s motion to strike.

As to juror 37, he explained that his job required multiple stages of review and verification, and because of that, he did not feel that a single witness’s testimony would be enough to convict someone of a felony, with all the punishment such conviction entails. Though he said he would do what the judge ordered, he reiterated that “[i]t would be ideal if there were additional information.” Given juror 37’s demeanor and manner, the trial court was concerned that he would “apply his own standard and his own rule, and thus elevate the Commonwealth’s burden.” The trial court had the ability, “which we lack, to observe and evaluate the apparent sincerity, conscientiousness, intelligence, and demeanor” of juror 37 firsthand, and nothing in the record suggests that the trial court abused its discretion in granting the motion to strike. *Taylor*, 67 Va. App. at 455 (quoting *Jackson v. Commonwealth*, 267 Va. 178, 191 (2004)).

## 2. Jurors 9 and 18

Smith next argues that the trial court erred by denying his motions to strike jurors 9 and 18 for cause. He contends that neither juror “was able to state that they could overcome their bias.” We disagree.

Juror 9 indicated that her boyfriend struggled with alcohol issues. Though she acknowledged having personal opinions about his alcohol use, when asked if that would affect her duties as a juror, she stated multiple times that she would hear the evidence and “try to view it separately from any of [her] own experiences” and she would “do [her] best to compartmentalize anything in [her] own background and view everything objectively.” The trial court heard her responses and took into account her “very calm” demeanor. It found her “reasonable in her explanation of why she’s bringing [the issue] to the [c]ourt’s attention,” and it

concluded that she could be a fair and impartial juror. That finding was not plainly wrong, and the court did not abuse its discretion by refusing to strike the juror for cause.

Juror 18 informed the court that she had participated in marches for stricter gun control and that gun crimes give her “some feelings.” Although she suggested that hearing someone owned a gun would cause her to make a “partial judgment,” she explained that if that was the only fact she knew, she would want to hear more because it was not possible for her to hear one fact about an individual and come to a complete judgment. *See Goodwin v. Commonwealth*, 71 Va. App. 125, 142-43 (2019) (holding past protests with Antifa and Black Lives Matter did not disqualify a juror who indicated said beliefs would not affect ability to be fair or impartial). She explicitly stated that she would not be biased against a person who had a gun in their home, and she did not think someone was a “bad person” simply for possessing a gun. *See Vay v. Commonwealth*, 67 Va. App. 236, 246, 262 (2017) (holding professor associated with the Women and Gender Studies Department and who had researched sexual assault was not biased where the juror was “unwavering and very credible” when questioned about ability to remain impartial). Given these responses, the trial court did not abuse its discretion in finding that juror 18 was not biased. Accordingly, the trial court did not err by denying the motion to strike the juror for cause.

### *C. Jury Instructions and Questions*

Smith next challenges the trial court’s instructions to the jury. He also challenges the court’s answer to a question from the jury.

“The responsibility of properly instructing a jury ‘rest[s] in the sound discretion of the trial court.’” *Holmes v. Commonwealth*, 76 Va. App. 34, 52 (2022) (alteration in original) (quoting *Cooper v. Commonwealth*, 277 Va. 377, 381 (2009)). It is the reviewing court’s responsibility to “to see that the law has been clearly stated and that the instructions cover all

issues which the evidence fairly raises.” *Id.* (quoting *Fahringer v. Commonwealth*, 70 Va. App. 208, 211 (2019)). “We review a circuit court’s decision to grant or deny a proposed jury instruction for an abuse of discretion.” *Commonwealth v. Kartoza*, 304 Va. 321, 331 (2025). But we determine “whether an instruction ‘accurately states the relevant law’” de novo. *Graves v. Commonwealth*, 65 Va. App. 702, 707 (2016) (quoting *Sarafin v. Commonwealth*, 288 Va. 320, 325 (2014)).

1. Instruction 13 and Instruction B

Smith argues that the trial court should have denied instruction 13 and granted his alternative instruction B. He acknowledges that instruction 13 is a correct statement of the law, but he argues that instruction B was “a more-accurate statement” as it clarifies that the inference is permissive.

Instruction 13 is a correct statement of law, and the trial court did not err by granting it. Both this Court and the Supreme Court have approved of the use of this instruction. *See Harris v. Commonwealth*, 83 Va. App. 571, 590 (2025); *Schmitt v. Commonwealth*, 262 Va. 127, 145 (2001). The language of instruction 13 permits but “d[oes] not require the jurors to draw any inference.” *Schmitt*, 262 Va. at 145. Although instruction B was also a correct statement of the law, “a court may properly exclude an instruction that both correctly states the law and is supported by the evidence as long as other granted instructions ‘fully and fairly cover the relevant principle of law.’” *Watson v. Commonwealth*, 298 Va. 197, 210 (2019) (quoting *Payne v. Commonwealth*, 292 Va. 855, 869 (2016)). Instruction 13 was a correct statement of law, and the trial court did not abuse its discretion by granting it over proffered instruction B.

2. Instruction A and Jury Question 1

Smith argues that the trial court first erred by not initially providing instruction A and then again by not giving instruction A in response to jury question 1. We disagree.

Instruction A provided, “If you believe Mr. Smith’s intent was made in pursuit of another reason and not with the intent to deprive Ms. Smith of her personal liberty, you shall find Mr. Smith not guilty.” The trial court denied instruction A because it had already granted instruction 8, which set out the elements of abduction, including that the Commonwealth had to prove that Smith acted “with the intent to deprive Ariel Smith of her personal liberty.”

The trial court properly denied instruction A because it had already granted instruction 8, which is a full and correct statement of the law. “When granted instructions fully and fairly cover a principle of law, a trial court does not abuse its discretion in refusing another instruction relating to the same legal principle.” *Hilton v. Commonwealth*, 293 Va. 293, 302 (2017) (quoting *Daniels v. Commonwealth*, 275 Va. 460, 466 (2008)). Smith’s requested instruction was simply an inverse statement of the intent requirement in instruction 8. “Parties are not entitled to redundant instructions covering principles of law already addressed in other instructions.” *Payne v. Commonwealth*, 65 Va. App. 194, 213 (2015), *aff’d*, 292 Va. 855 (2016).

Smith argues that his proffered instruction should have been given because he testified to an alternative intent and because it would have assisted with the jury’s first question.<sup>6</sup> But in addition to instruction 8 being a full and complete statement of the law, the trial court properly denied instruction A because it had the potential to confuse and mislead the jury. *See Graves*, 65 Va. App. at 708 (noting that a trial court should reject an instruction that “would be confusing or misleading to the jury” (quoting *Mouberry v. Commonwealth*, 39 Va. App. 576, 582 (2003))). Smith was charged with multiple offenses with different intent requirements.<sup>7</sup> The intent requirement in instruction A applied only to the abduction charge, but the instruction itself did

---

<sup>6</sup> In question 1, the jury asked for the legal definition of intent.

<sup>7</sup> Smith was also charged with brandishing a firearm, which, as set out in jury instruction 11, required that he acted “in such a manner as to reasonably induce fear or apprehension of bodily harm in the mind of another person.”

not contain any language so limiting it. Thus, instruction A had the potential to confuse or mislead the jury about whether it applied to one or both offenses. Accordingly, the trial court did not err in denying instruction A.

### 3. Jury Question 2

Smith next argues that the trial court erred in its response to the jury's second question.<sup>8</sup> He contends that the trial court did not give a "direct and correct" response to the jury question because the jury was using "mental state" in its "lay-person/common meaning."

"A judicial response to a jury question is considered a legal instruction," and we apply the same principles in reviewing the court's answer to a jury question as we do in reviewing a court's decision to grant or deny jury instructions. *Ludwig v. Commonwealth*, 52 Va. App. 1, 11 (2008).

In question 2, the jury asked: "Can mental state impact intent[?]" The trial court expressed concern, as it noted that there was no mental state defense presented, and the parties discussed whether the jury used "mental state" in the legal sense or the colloquial sense. Ultimately, the trial court decided that the best answer was to instruct the jury that it had been given all the instructions necessary to decide the case.<sup>9</sup> Nothing in the record suggests that this decision was an abuse of discretion. "It is entirely proper for the court to refer the jury back to the court's original charge." *Couture v. Commonwealth*, 51 Va. App. 239, 246 (2008) (quoting *United States v. Barsanti*, 943 F.2d 428, 438 (4th Cir. 1991)). The instructions already provided by the trial court in instructions 8, 9, 11, 13, and 17 were correct statements of the law. *See*

---

<sup>8</sup> Smith also assigns error to the trial court's response to jury question 3. But neither his opening brief nor his reply brief address how the trial court erred in its response to jury question 3. "Failure to adequately brief an assignment of error is considered a waiver." *Muhammad v. Commonwealth*, 269 Va. 451, 478 (2005). Accordingly, we consider only the trial court's answer to jury question 2.

<sup>9</sup> And Smith's counsel ultimately agreed that this instruction was "fine."

*Griffin v. Commonwealth*, 78 Va. App. 116, 145 (2023) (“[W]hen reviewing jury instructions on appeal, we read the instructions together and consider them as a whole.” (quoting *Supervalu, Inc. v. Johnson*, 276 Va. 356, 366 (2008))). Any other answer would have required the court to speculate about how the jury was using the term “mental state” and provide a potentially misleading answer. Accordingly, the trial court did not err by instructing the jury that it had all the instructions necessary to decide the case.

#### D. *Motion for a Continuance*

Smith argues that the trial court should have granted his request for a continuance because he needed more time to prepare for trial. He argues that he needed more time to decide whether to testify and because he had two witnesses that he wanted his counsel to contact.

“The decision to grant a motion for a continuance is within the sound discretion of the circuit court and must be considered in view of the circumstances unique to each case.” *Reyes v. Commonwealth*, 68 Va. App. 379, 385 (2018) (quoting *Haugen v. Shenandoah Valley Dep’t of Soc. Servs.*, 274 Va. 27, 34 (2007)). “A trial judge’s denial of a continuance will not be reversed on appeal absent an abuse of discretion and prejudice to the defendant.” *Id.* “While justice, not speed, should be paramount in determining whether a continuance will be granted, the court is not obligated to grant a continuance based on mere speculation.” *Smith v. Commonwealth*, 16 Va. App. 630, 634-35 (1993).

As to his claims about the two witnesses, Smith did not identify the witnesses on the record, nor did he proffer any evidence to establish that the witness would be able to present evidence favorable to him. *See Stewart v. Commonwealth*, 10 Va. App. 563, 569 (1990) (affirming a trial court’s denial of a continuance where the defendant could not tell the court that the unavailable witness would present evidence favorable to defendant). “[T]he court was not obligated to grant his request for a continuance based on mere speculation” that the witnesses

may help his case. *Smith*, 16 Va. App. at 635. Furthermore, his arguments on appeal about the witnesses are undermined by his counsel's statements to the court below. Smith's counsel told the court that she did not intend to call the witnesses, never intended to call the witnesses, and would not call the witnesses "at a future date" if a continuance was granted. *See Quintana v. Commonwealth*, 224 Va. 127, 135 (1982) (holding that a defendant is not entitled to a continuance if he could not establish any expectation of obtaining evidence if the continuance was granted). Thus, Smith cannot establish any prejudice because of the denial of the continuance.

As to Smith's claims that he needed more time to decide whether to testify, the record does not establish an abuse of discretion. At the end of the Commonwealth's case-in-chief, the trial court took a recess to allow Smith time to discuss with his counsel whether he should testify. The court also asked Smith how much time he felt he needed, and it granted Smith the time requested. Following the recess, the trial court conducted a colloquy, and Smith told the court that he was making an informed decision to testify at trial. Accordingly, he has not established any abuse of discretion or prejudice. Thus, the trial court did not err in denying Smith's request for a continuance.

## CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed in part, reversed in part, and remanded for entry of a new sentencing order consistent with this opinion.<sup>10</sup>

*Affirmed in part, reversed in part, and remanded.*

---

<sup>10</sup> Smith's sentencing order for the felon in possession of a firearm offense indicates that he was "previously found 'Guilty' by a jury on July 19, 2024." Though he was sentenced on that offense at the same time as his other offenses, the record indicates that Smith pled guilty to the felon in possession offense, and the circuit court accepted his guilty plea to that offense on December 5, 2024. On remand, we instruct the circuit court to correct that clerical error. *See* Code § 8.01-428(B) (governing the correction of clerical errors by the trial court).