IN THE COURT OF APPEALS OF VIRGINIA

Tuesday the 13th day of October, 2026.

Jamie Nicole Garrett, Appellant,

against

Commonwealth of Virginia, Appellee.

Record No. 1597-24-2

Upon a Petition for Rehearing En Banc

Before Chief Judge Decker, Judges Beales, O'Brien, AtLee, Malveaux, Athey, Ortiz, Causey, Friedman, Chaney, Raphael, Lorish, Callins, White, Frucci, Bernhard and Duffan

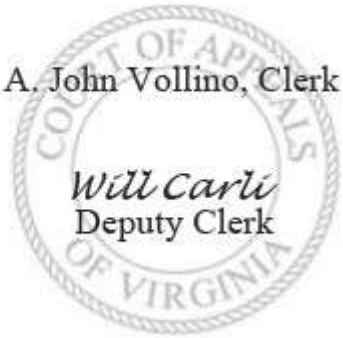
On September 29, 2026, the appellant, by court-appointed counsel, filed a petition requesting that the Court set aside the judgment rendered on September 15, 2026, and grant a rehearing en banc on the issue(s) raised in the petition.

On consideration whereof and pursuant to Rule 5A:35 of the Rules of the Supreme Court of Virginia, the Court grants the petition for rehearing en banc and reinstates the appeal of those issues on the docket. The Court stays the mandate previously entered in this case pending the Court's en banc decision.

The parties must file briefs in compliance with the schedule set forth in Rule 5A:35(b).

Teste: A. John Vollino, Clerk

Entered: Will Carli
Deputy Clerk



COURT OF APPEALS OF VIRGINIA

Record No. 1597-24-2

JAMIE NICOLE GARRETT
v.
COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges Beales and Athey

Argued at Richmond, Virginia

Opinion Issued September 15, 2026

FROM THE CIRCUIT COURT OF LOUISA COUNTY
Timothy K. Sanner, Judge

Peter A. Jenkins (Jenkins & Jenkins, on brief), for appellant.

Jason D. Reed, Senior Assistant Attorney General (Jason S. Miyares,[1] Attorney General, on brief), for appellee.

PUBLISHED OPINION BY
JUDGE CLIFFORD L. ATHEY, JR.

The Circuit Court of Louisa County ("trial court") denied Jamie Nicole Garrett's ("Garrett") motion to dismiss her indictment for possession of a Schedule II controlled substance. On appeal, Garrett contends that the trial court erred by denying her motion to dismiss because she satisfied all the conditions necessary for her to be found immune from prosecution for possession of a Schedule II controlled substance pursuant to Code § 18.2-251.03. Finding no error, we affirm.

[1] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

I. BACKGROUND[2]

On July 31, 2023, Brittany Koutek ("Koutek"), who was working as an employee of a 7-Eleven located in Louisa County, contacted emergency services to check on the welfare of Garrett. When law enforcement arrived, Garrett had been passed out for approximately 30 minutes while seated in her vehicle located in the 7-Eleven parking lot. Noticing evidence of narcotics use, an officer ordered her out of the vehicle and ultimately seized, among other items, 0.8 grams of methamphetamine inside Garrett's purse. As a result, officers arrested Garrett and charged her with possession of methamphetamine. A grand jury subsequently indicted Garrett for possession of a Schedule II controlled substance, in violation of Code § 18.2-250.

Prior to trial, Garrett moved the trial court to dismiss the indictment based upon the "'Good Samaritan' provision" contained in Code § 18.2-251.03(B)—which deems a defendant "immune from prosecution" for possession of a controlled substance if certain preconditions are met.[3] The

---

[2] "On appeal, we review the evidence in the 'light most favorable' to the Commonwealth." *Clanton v. Commonwealth*, 53 Va. App. 561, 564 (2009) (en banc) (quoting *Commonwealth v. Hudson*, 265 Va. 505, 514 (2003)). "Viewing the record through this evidentiary prism requires us to discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom." *Commonwealth v. Cady*, 300 Va. 325, 329 (2021) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 323-24 (2018)).

[3] Code § 18.2-251.03(B) provides that "[n]o individual shall be subject to arrest or prosecution for . . . possession of a controlled substance pursuant to [Code] § 18.2-250" if:

> 1. Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if he is experiencing an overdose, or (b) for another individual, if such other individual is experiencing an overdose; (ii) is experiencing an overdose and another individual, in good faith, seeks or obtains emergency medical attention for such individual, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system; or (iii) in good faith, renders emergency care or assistance, including cardiopulmonary resuscitation (CPR) or the administration of naloxone or other opioid antagonist for

Commonwealth opposed the motion to dismiss by contending that "[Garrett] was not experiencing an overdose and [Koutek] was not seeking emergency medical attention for [Garrett]" when she requested that emergency services perform a welfare check.

A hearing was held regarding the motion to dismiss on May 22, 2024. Garrett first called Koutek who testified that around midnight she observed Garrett in front of the 7-Eleven when arriving to begin her shift. She recalled "notic[ing that Garrett's] car was parked directly in front of the doors, and the car and stuff was on." Koutek also testified that "as [she] . . . approach[ed] the front doors, [she] noticed that [Garrett] had . . . slumped over," "had her head . . . against the door and the window," and "was sleeping." Koutek further recalled that "the interior lights were on and all, and . . . the car was running."

Koutek testified that she "knocked on the window," and, upon receiving "no response," she "knocked a little harder" and finally "smacked the side of the car door." Only then did Garrett "pop[] up." Koutek then testified that she asked Garrett, "[Y]ou okay, you good?" to which Garrett responded, "[Y]eah," and gave Koutek a thumbs up.

> overdose reversal, to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention in accordance with this subdivision;
>
> 2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;
>
> 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose; and
>
> 4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention or rendering emergency care or assistance.

Koutek recounted that after waking Garrett up, she went inside the 7-Eleven to begin her shift and instructed her co-worker to "keep an eye on the car." Garrett further testified that "maybe a half hour or better" later, her co-worker informed her that Garrett's vehicle was still parked in the same spot. Koutek testified that she then walked outside and verified that "the car was still running" and that "the lights were on." Koutek further observed that Garrett now "had her hand in [a] bag" and her head was "straight back" "against the door post and the headrest."

Koutek recalled that, at that moment, she thought, "[O]kay, so something is not right," and she "decided to call in." Koutek testified, "I don't . . . have experience with . . . drug stuff, or any of that, so I wouldn't know what that necessarily looked like. But I know that if [Garrett] were to have . . . thrown up or something . . . she would have possibly gagged and done something." Koutek explained that she had "seen TV shows where if their head[is] back, they could throw up and get sick or whatever." Koutek described Garrett's behavior as "kind of weird," because she expected Garrett to "move" after "be[ing] woken up the first time," but Garrett instead just "passed out differently." Koutek acknowledged that Garrett was not "convulsing" or making any gagging noises and that she did not observe "any syringes," "bags of drugs," or "blood" in Garrett's vehicle. Koutek stated, "I don't like to assume the worst of anybody, so it's like I don't know if she's sleeping or not." After being asked whether she would call 911 "if [she] thought [Garrett] was just tired," Koutek responded, "No."

Koutek explained that she had called 911, in part, because she "didn't want to wake her up again," noting that she "didn't want to risk [Garrett] getting hurt[,] or anyone else getting hurt for that matter." Koutek further testified that "it was late," and she believed that Garrett would "take off," from the 7-Eleven after being awoken a second time and "get into a wreck or something."

Koutek concluded her testimony by stating that her 911 call "was more of [a] someone should come look at [Garrett] type of thing." She noted that "[Garrett] wasn't . . . bleeding or

nothing" and "it did not look . . . life threatening." She later clarified that "the fact that [Garrett's] head was kicked back" meant, to her, that there was a risk that Garrett could choke on her own vomit, but she explained to the trial court that, during the call, she only told the dispatcher that she was "just worried about [Garrett]" and asked them to "send someone to . . . check her out."

Next, Garrett called Louisa County Sheriff's Office Detective Bryan Hager ("Detective Hager"), who testified that he was dispatched to the 7-Eleven for a "running" "vehicle that had been parked out in front of [a] 7-Eleven for an unknown amount of time" with "the driver . . . in the driver's seat." He testified that the dispatch made him aware that "[t]he female driver['s] . . . head was back and mouth open" and that "the caller advised they had made contact with the driver briefly, but the[] [driver] had fallen back asleep." He also confirmed that he was not "told of an overdose."

Detective Hager explained that "after going to the passenger side of the vehicle, [he] saw a cut straw" that, "based on [his] training and experience, [he] knew to be used for narcotics." He then testified that he observed "white powder inside of it" and clarified that the cut straw was "laying in front of the gear shifter in the vehicle." He also confirmed that the cut straw was "within the grasp of the driver."

Detective Hager further testified that after discovering the cut straw, he decided to search Garrett's vehicle. He stated that he ordered Garrett to exit the vehicle in order for him to conduct the search, and he observed that, as Garrett was exiting the vehicle, she was holding a gray clutch under her arm and a larger pink handbag in her hands. Detective Hager took the clutch from her and eventually "found a folded up yellow piece of paper and a folded up one dollar . . . bill," which he explained was "consistent with narcotics packaging." He further testified that he opened the folded items and they "both contained substances that appeared to be narcotics." Detective Hager then searched the pink handbag and found "a pill bottle" with an unknown third party's name on it

that contained a "plastic bag." He recalled that he removed the bag from the pill bottle and observed "a crystal-like substance in [the bag], which based on [his] training and experience, [he] knew to be methamphetamine."

Detective Hager described Garrett as having "slow speech" and "was kind of rambling on, kind of circling back to the same conversation." In addition, he recalled that her speech was "slurred," her eyes "were bloodshot and glassy," and "[h]er pupils were also very small and not reactive to [his] flashlight." He further recounted an interaction wherein other officers at the scene asked Garrett for her identification and she looked in her pink handbag for "two to three minutes" before failing to find any identification. However, he testified that another officer "subsequently located the I.D." "in that same pink bag."

Detective Hager said he did not administer "Narcan"[4] to Garrett because she "woke up when [officers] knocked on the window" of her car and "was breathing." Finally, he explained that although EMS offered medical services to Garrett, she declined treatment.

Garrett then testified on her own behalf, stating that earlier that night, she had been at "a Sheetz across the way" "to get narcotics," specifically methamphetamine. She explained that she "sample[d]" what she received from a dealer "to see if [she] liked it." She recalled that while she was sampling the methamphetamine, she was advised by the dealer that she had been given "the wrong bag" and the bag she had been given "might have [had] something [else] like fentanyl in it." She further explained that she "vaguely" remembered "pulling into the 7-[Eleven]" after sampling the narcotics. She also testified that she did not remember Koutek waking her up and she only remembered Detective Hager's face but "[didn't] really remember any of the conversation[s] [they]

[4] Narcan is a common term for naloxone, which is "a narcotic antagonist used to counter the central nervous system depression effects of opioids, including respiratory depression." *Justice v. Commonwealth*, 82 Va. App. 237, 243 n.4 (2024).

had." She further testified, "I did not even know . . . I had talked to medical treatment [sic]. I did not know I saw them. I have no recollection of that."

In addition, Garrett admitted that she had been a user of methamphetamine for three years and, over that time, had ingested methamphetamine 75 to 80 times. However, she explained that "whatever [she] took . . . at the Sheetz made [her] feel different." She also testified that she had never previously "passed out or fell unconscious for an extended period of time" after using methamphetamine.

Following Garrett's testimony, her counsel argued that she met all the preconditions for the application of Code § 18.2-251.03 and was therefore immune from prosecution for the charge contained in the indictment. Her counsel also contended that Garrett was "experiencing an overdose" when Koutek called 911 and further asserted that her being "unconscious" for a "full half hour" "[wa]s a clear signal of a life threatening condition" when officers were dispatched to the 7-Eleven. In support of Garrett's motion, her counsel also argued that she fell within the immunity provided by the statute because Koutek "reach[ed] out to . . . emergency 911 . . . based on a concern of a drug overdose." Garrett's counsel characterized Koutek's actions as a "classic Good Samaritan situation" because Koutek called emergency services out of her concern for Garrett's well-being.

In opposition to the motion, the Commonwealth contended that Garrett did not qualify for statutory immunity because there was "literally no evidence that . . . Garrett was suffering [from] a life threatening overdose." The Commonwealth acknowledged that Garrett "used narcotics" but further argued that this, in of itself, did not provide evidence that she was in a life-threatening condition. The Commonwealth also contended that since Koutek did not "specifically ask for emergency medical attention" in response to an overdose, statutory immunity was not available to her. Finally, the Commonwealth suggested that the evidence only established that Koutek asked

for "someone [to] come check on [Garrett]," which the prosecutor reasoned was akin to a welfare check rather than a request for emergency medical treatment to potentially save Garrett's life.

The trial court denied Garrett's motion to dismiss, finding that Garrett was not experiencing a life-threatening condition. The trial court noted that the text of the statute was "plainly understood" and required that Garrett be "in a condition where her life is being threatened by her consumption of [controlled] substances." The trial court then acknowledged that "[i]t's certainly plain that [Garrett] . . . had used and consumed controlled substances" and that "[i]t [didn't] sound like it was purely methamphetamine," inferring that "it was likely" laced with "[f]entanyl." However, the trial court further opined that it "d[id] not interpret the statute" to mean that "every time somebody is passed out that they would be having a life threatening condition." The trial court further noted that Garrett was "certainly under the influence at that time . . . but she[was] responsive" and that "[o]ne would think you would look for things" such as "some sort of . . . inability to wake the person up" in determining whether that person was experiencing an overdose. The trial court also noted that there was "no indication . . . whatsoever" of Garrett vomiting or even the "possibility of strangling on a regurgitated substance." The trial court also found that Koutek did not make the statutorily required request for emergency medical treatment when she called 911. As a result, the trial court denied Garrett's motion to dismiss.

Garrett subsequently entered a conditional plea of guilty to possession of a Schedule II controlled substance while reserving her right to appeal the trial court's denial of her motion to dismiss. The trial court sentenced Garrett, in accordance with the terms of her conditional-plea agreement, to three years' incarceration, all suspended. Garrett appealed.

II. ANALYSIS

A. *Standard of Review*

"The proper interpretation of Code § 18.2-251.03 is a question of law that we review de novo." *Morris v. Commonwealth*, 77 Va. App. 510, 514 (2023) (en banc). The trial court's factual findings, however, are "binding on appeal unless plainly wrong." *Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026) (quoting *Lucas v. Commonwealth*, 75 Va. App. 334, 348 (2022)).

B. *The proper standard under Code § 18.2-251.03(B)(1)*

Code § 18.2-251.03 grants a defendant "full immunity from 'arrest or prosecution'" for possession of a controlled substance provided that conditions in each of four subsections are satisfied. *Morris*, 77 Va. App. at 515 (quoting Code § 18.2-251.03(B)).[5] Under the first subsection, an individual may be immune if:

> Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if he is experiencing an overdose, or (b) for another individual, if such other individual is experiencing an overdose; (ii) *is experiencing an overdose and another individual, in good faith, seeks or obtains emergency medical attention for such individual*, . . .; or (iii) in good faith, renders emergency care or assistance . . . to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention.

Code § 18.2-251.03(B)(1) (emphasis added).[6] The statute defines an "overdose" as "a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances." Code § 18.2-251.03(A).

Although the statute defines "overdose," the parties disagree as to how courts should interpret the phrase, "*is experiencing* an overdose." Collectively, they propose three possible

[5] We have elsewhere called this statute the "overdose reporting statute." *Morris*, 77 Va. App. at 512.

[6] We confine our analysis to subsection (B)(1), as both parties agree on brief that subsections (B)(2) through (B)(4) are not in dispute.

standards. Garrett proposes that the Court should adopt either a reasonable-person standard that asks whether a reasonable person in the caller's position would have believed that the defendant was experiencing an overdose or a subjective standard that asks whether the caller subjectively believed (whether reasonable or not) that the defendant was experiencing an overdose. The Commonwealth contends that the Court should adopt a standard that asks whether the defendant was in fact experiencing "a life-threatening condition resulting from" her use of a controlled substance.

"In interpreting [a] statute, 'courts apply the plain meaning . . . unless the terms are ambiguous or applying the plain language would lead to an absurd result.'" *Harris v. Washington & Lee Univ.*, 82 Va. App. 175, 191 (2024) (quoting *Miller & Rhoads Bldg., L.L.C. v. City of Richmond*, 292 Va. 537, 541 (2016)). We may not "add[] language to or delet[e] language from a statute." *Appalachian Power Co. v. State Corp. Comm'n*, 284 Va. 695, 706 (2012). Rather, we "presume that the legislature chose, with care, the words it used when it enacted the relevant statute." *Cornell v. Benedict*, 301 Va. 342, 349 (2022) (quoting *Tvardek v. Powhatan Vill. Homeowners Ass'n, Inc.*, 291 Va. 269, 277 (2016)). If those words are not defined by statute, we give them their "ordinary meaning, given the context in which [they are] used." *Taylor v. Commonwealth*, 298 Va. 336, 342 (2020). "Only if a statute is found to be ambiguous may the Court consider other factors such as the purpose, reason, and spirit of the law" to discern the ordinary meaning of statutory text. *Eley v. Commonwealth*, 70 Va. App. 158, 164 (2019); *see Taylor*, 298 Va. at 341 (quoting *Lawlor v. Commonwealth*, 285 Va. 187, 237 (2013)).

With these well-established principles in mind, we turn to the phrase, "is experiencing an overdose." Code § 18.2-251.03(B)(1). The statute defines "overdose," but it does not define "is" or "experiencing." So, we must determine the ordinary meaning of those words by reference to

dictionary definitions, prior cases, and the context in which the words are used. *Green v. Commonwealth*, 72 Va. App. 193, 203 (2020).

"Is," a conjugation of "to be," means "that which is factual, empirical, actually the case, or spatiotemporal." *Is*, *Webster's Third New International Dictionary* (3d ed. 1993) ("Webster's"). "Experience" can mean "to have experience of : meet with," a "direct observation of or participation in events," or "an encountering, undergoing, or living through things in general as they take place in the course of time." *Experience*, *Webster's*, *supra*. And the use of the present participle in "experiencing" "denotes an ongoing process." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1030 (9th Cir. 2020) (quoting *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp.3d 1168, 1200 (S.D. Cal. 2019)). Together then, the phrase "is experiencing an overdose" requires that a person was "actually" "encounter[ing], undergo[ing], or liv[ing] through," *Webster's*, *supra*, "a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances" at the time she or another individual sought or obtained emergency medical services, Code § 18.2-251.03.

In other words, the question is one of objective fact. To attain Code § 18.2-251.03's protections, the defendant must actually have been overdosing. It is not sufficient that a hypothetical reasonable person would have believed that the defendant was overdosing, nor is it sufficient that the defendant or a third-party caller sincerely but mistakenly believed that the defendant was overdosing. The statute is satisfied only by an actual overdose, not one that is imagined or hypothetical.

Other sections of the Code support this conclusion. The General Assembly has repeatedly demonstrated the ability to codify a reasonable-person standard. For example, Code § 18.2-165.2(B) defines an "emergency" as "a condition or circumstance in which an individual *is or is reasonably believed* by [another] to be in imminent danger of death or serious bodily harm."

Code § 18.2-165.2(B).[7] Similarly, the General Assembly knows how to codify a subjective standard when it wants to, as in Code § 8.01-225(A)(20), which grants immunity from civil liability to someone who "administers naloxone . . . to an individual *who is believed to be* experiencing or about to experience a life-threatening opiate overdose."[8]

Code § 18.2-251.03, by contrast, contains no such language. "[W]hen the legislature omits language from one statute that it has included in another, courts may not construe the former statute to include that language." *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 428 (2012) (holding that, because the General Assembly had "demonstrated throughout the Code its ability to define the term 'person' to include governmental bodies when it so intended," the absence of such language in Code § 8.01-216.2 meant that the Commonwealth was not a "person" under that statute). We must presume that the General Assembly chose not to include "believes" or "reasonably believes" in Code § 18.2-251.03 when it included those terms in other statutes, and courts have no authority to add those words to the statute in contravention of the legislature's considered choice.

Garrett's contrary arguments are unpersuasive. First, her contention that we should consider the issue from Koutek's point of view finds no support in the statute. The statutory

---

[7] The Code contains many other examples. *See, e.g.*, Code § 18.2-186.6(M) (requiring notice of a breach of income-tax data when there is a "*reasonable belief* that an unencrypted and unredacted version of such information was accessed and acquired by an unauthorized person" (emphasis added)); Code § 18.2-371.1(C)(3) (creating an affirmative defense for abuse and neglect of a child where a parent caused a child to possess a firearm "because of a *reasonable belief* that he or such child was in imminent danger of bodily injury" (emphasis added)).

[8] Again, there are many other examples. *See, e.g.*, Code § 2.2-2833 (providing that state agencies must possess naloxone or "other opioid antagonists used for overdose reversal to a person *who is believed to be* experiencing or about to experience a life-threatening opioid overdose" (emphasis added)); Code § 22.1-274.4:1 (granting immunity to school officials who "administer[] an opioid antagonist . . . to any individual *who is believed to be* experiencing or about to experience a life-threatening opioid overdose" (emphasis added)); Code § 54.1-3408(Y)-(AA) (generally permitting persons to "administer naloxone . . . to a person *who is believed to be* experiencing or about to experience a life-threatening opioid overdose" (emphasis added)).

question is whether *Garrett* was "experiencing an overdose." That is a question for the factfinder, not for Koutek, as the third-party caller. True, the statute requires that the caller—whether the overdosing person or a third party—seek or obtain emergency medical attention "in good faith." Code § 18.2-251.03(B)(1). But the question of whether Koutek acted in good faith is separate from the question of whether Garrett was "experiencing an overdose." Koutek could act in good faith and be wrong about the underlying facts. *See, e.g.*, *Pallas v. Zaharopoulos*, 219 Va. 751, 755 (1979) (explaining that someone "acts in good faith upon the advice of reputable counsel . . . even if the advice given by the attorney is wrong"). Facts, however, are verifiable and "capable of being proven true or false"—no amount of subjective belief can will a fact to be true. *Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 133 (2003); *cf. King v. Commonwealth*, 39 Va. App. 306, 311-12 (2002) (explaining that the officer's "subjective view . . . does not substitute for objective facts"). Garrett's life either was or was not in danger, and that fact is not dependent on the belief of Koutek or the hypothetical reasonable person.

"The role of the judiciary is a restrained one" and "is not to judge the advisability or wisdom of policy choices." *Taylor v. Northam*, 300 Va. 230, 252-53 (2021) (quoting *Howell v. McAuliffe*, 292 Va. 320, 326 (2016)). Our duty is only "to construe the law as it is written." *McKellar v. Northrop Grumman Shipbuilding, Inc.*, 290 Va. 349, 354 (2015) (quoting *Danville Radiologists, Inc. v. Perkins*, 22 Va. App. 454, 458 (1996)). And "[w]hen the language of a statute is unambiguous, [courts] are bound by its plain meaning." *Taylor*, 298 Va. at 341 (quoting *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007)). Here, the text unambiguously requires an actual overdose.[9]

[9] Because the text of the statute is unambiguous, Garrett's references to the rule of lenity fail. *See De'Armond v. Commonwealth*, 51 Va. App. 26, 34 (2007) ("Only when a 'penal statute is unclear' do courts apply the rule of lenity and strictly construe the statute in the criminal defendant's favor." (quoting *Waldrop v. Commonwealth*, 255 Va. 210, 214 (1998))).

To the extent Garrett argues that applying the statute's plain meaning produces absurd results, she is mistaken. "'[A]bsurd' in this context does not mean 'bad policy' or 'a result a litigant really, really does not like.'" *Loch Levan Land Ltd. P'ship v. Bd. of Supervisors*, 297 Va. 674, 686 (2019). It describes only those "situations in which the law would be internally inconsistent or otherwise incapable of operation." *Id.* (quoting *Cook v. Commonwealth*, 268 Va. 111, 116 (2004)). "The fact that some, but not all, who" suffer from the effects of controlled substances "are granted immunity by [statute] does not render the statute internally inconsistent and certainly does not preclude its operation." *Cupp v. Delta Air Lines, Inc.*, ___ Va. ___, ___ (Apr. 2, 2026). "The General Assembly, exercising its policy prerogatives, struck a balance" with Code § 18.2-251.03 to afford immunity to certain criminal defendants, and "[t]he absurdity canon simply does not permit this or any other court to alter that balance under the guise of statutory construction." *Id.*; *see* 2A *Sutherland Statutory Construction* § 46:7 (7th ed. 2025) ("[T]he absurd results doctrine must be used sparingly because judicial speculation that a legislature could not have meant what it unmistakably said risks corrupting the separation of powers doctrine.").

Finally, in light of Garrett's other arguments, it is important to make clear what this opinion does not mean. It does not mean that a *defendant* must prove as a "medical certainty" that he or she was experiencing an overdose. Recognizing that the parties have not briefed what burden of proof applies to Code § 18.2-251.03, we leave that question for another day and assume without deciding that the defendant bears the burden by a preponderance of the evidence.[10]

[10] Garrett conceded below that she bore the burden. She does not argue otherwise on appeal. When a concession of law acts as a waiver, "we may accept arguendo the concession—*not as a basis for deciding the contested issue of law, but as a basis for not deciding it*." *Butcher v. Commonwealth*, 298 Va. 392, 395 (2020) (quoting *Simms v. Van Son*, No. 150191, 2016 Va. Unpub. LEXIS 1, at *4 n.4 (Feb. 12, 2016)); *see also Burkholder v. Palisades Park Owners Ass'n*, 76 Va. App. 577, 587 (2023).

Nor does our opinion per se require defendants to present expert medical testimony in support of their motion for immunity. All types of evidence—including lay-witness testimony, circumstantial evidence, and illustrative evidence—can be "presented . . . to persuade the trier of fact that [this] proposition should be taken as established or 'proved.'" Kent Sinclair, *The Law of Evidence in Virginia* § 1-3(d) (8th ed. 2023). Indeed, it has long been recognized that a similar condition—intoxication—may be proven without medical testimony and "may be evidenced circumstantially in the same general modes that are available . . . for mental capacity or condition in general," including "the person's conduct," "predisposing circumstances, i.e., by the drinking of intoxicating liquor," and "prior or subsequent condition of intoxication." John Henry Wigmore, *Evidence in the Trials at Common Law* § 235 (4th ed. 2026); *cf. Oliphant v. Snyder*, 206 Va. 932, 934-36 (1966) (identifying similar evidence as instructive for establishing intoxication). The same is true of whether someone "is experiencing an overdose." Code § 18.2-251.03(B)(1).

In sum, instead of reading an unstated reasonable-person or subjective-belief standard into the text of Code § 18.2-251.03(B)(1), we follow the lodestar of statutory interpretation that "a legislature says in a statute what it means and means in a statute what it says there." *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). Garrett's arguments ask this Court to stray from our presumption "that the legislature chose, with care, the words it used when it enacted the relevant statute." *Cornell*, 301 Va. at 349. Accordingly, we reject her alternative interpretations of the phrase "is experiencing an overdose" and conclude that whether someone "is experiencing an overdose" is a question of objective fact reserved for the factfinder.

C. *The trial court correctly denied Garrett immunity.*

Having determined the applicable standard, we now turn to whether the trial court correctly applied that standard and whether its factual findings were plainly wrong. "The trial

court's rulings come to us with a presumption of correctness." *Cornelius v. Commonwealth*, 80 Va. App. 29, 47 (2024) (quoting *Rainey v. Rainey*, 74 Va. App. 359, 377 (2022)). And the trial court "is presumed to know and correctly apply the law 'absent clear evidence to the contrary in the record.'" *Id.* (quoting *Rainey*, 74 Va. App. at 377).

The record does not contain evidence to defeat that presumption. The court explained that the statute's words were "plainly understood" and required that Garrett be "in a condition where her life is being threatened by her consumption of [controlled] substances." That is a correct articulation of the standard.

Moreover, the trial court concluded that Garrett was "certainly under the influence at th[e] time" of Koutek's call but that the evidence demonstrated "the lack of [a] life threatening condition." Those factual findings were not plainly wrong. *Emerson v. Commonwealth*, 43 Va. App. 263, 277 (2004). Garrett awoke when Koutek knocked on the window of her car and responded with a "thumbs up" when Koutek asked if she was "good." She fell back asleep but woke up again when the officers knocked on her car window, got out of her vehicle on her own, and answered the questions asked by the police and medical personnel, albeit in a slow, rambling fashion. According to Detective Hager, she did not appear to be having any trouble breathing. Most notably, she refused medical treatment, including overdose-reversal medication. That evidence supports the trial court's conclusion that Garrett was not "experiencing an overdose."[11] Code § 18.2-251.03(B)(1). Accordingly, the trial court did not err in denying Garrett's motion to dismiss.

[11] The trial court was not required to credit Garrett's testimony that the drugs she ingested "made [her] feel different" than her previous experiences with controlled substances. *See Carosi v. Commonwealth*, 280 Va. 545, 554-55 (2010) ("A [factfinder] is not required to accept the self-serving testimony of the defendant . . . but may rely on such testimony in whole, in part, or reject it completely."). But even if it did, such testimony hardly proves a life-threatening condition.

III. CONCLUSION

Under Code § 18.2-251.03(B)(1), a defendant must show that they were in fact "experiencing an overdose" to be eligible for "full immunity" from prosecution for certain offenses, including possession of a Schedule II controlled substance. Because the trial court's conclusion that Garrett was not "experiencing an overdose" was not plainly wrong, we affirm the trial court's judgment.

Affirmed.