COURT OF APPEALS OF VIRGINIA

Record No. 1967-25-3

ADRIAN RASHAD SCALES
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, Lorish and Duffan

Opinion Issued November 17, 2026*

FROM THE CIRCUIT COURT OF PATRICK COUNTY
Marcus A. Brinks, Judge

(Lauren E. Brice, Assistant Public Defender; Virginia Indigent Defense Commission, on briefs), for appellant.

(Jay Jones, Attorney General; Justin B. Hill, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE KEVIN M. DUFFAN

Following a bench trial, the circuit court convicted Adrian Rashad Scales of felony child endangerment, in violation of Code § 18.2-371.1(B), and misdemeanor driving while intoxicated, in violation of Code § 18.2-266. On appeal, Scales contends that the evidence is insufficient to support his child endangerment charge. He also argues that the circuit court abused its discretion by "admitting the certificate of analysis from the chemical breath test." We disagree and affirm the circuit court's judgment.[1]

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

[1] Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument." *See* Code § 17.1-403(ii)(c); Rule 5A:27(c).

BACKGROUND

"In accordance with familiar principles of appellate review, the facts will be stated in the light most favorable to the Commonwealth, the prevailing party at trial." *Hilliard v. Commonwealth*, 86 Va. App. 118, 126 (2025) (quoting *Meade v. Commonwealth*, 74 Va. App. 796, 802 (2022)). "Accordingly, we regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence." *Id.* (quoting *Meade*, 74 Va. App. at 802).

On November 7, 2024, Scales was driving with his 22-month-old child in the rear seat when he struck a truck driven by Landis Turner. Scales and Turner were both driving westbound on Highway 57, a main throughfare through Patrick County. Turner was preparing to make a left turn and slowed down with his turn signal on. As Turner began turning, Scales attempted to pass on the left and struck Turner's truck. Turner explained that Scales was driving without his headlights on and Turner "wouldn't have turned off" when he did had he seen lights behind him. Turner's truck was "destroyed," and Turner suffered a broken vertebra from the crash. Scales's car was also heavily damaged.

Virginia State Senior Trooper Ryan Lawson arrived at the crash scene around 7:10 p.m. Scales was in the back of an ambulance with his child. Trooper Lawson did not see any skid marks from applying brakes before the site of impact. The only braking marks Trooper Lawson saw occurred after Scales's car struck Turner's truck. Trooper Lawson saw a bottle of liquor and a partially empty six-pack of beer on the passenger side floorboard of Scales's car.

When Trooper Lawson first spoke with Scales, Scales was disoriented and did not know where he was. Trooper Lawson noted a strong odor of alcohol emanating from Scales's breath and person and his speech was slurred. Scales admitted he had consumed alcohol several hours earlier and denied having had anything to drink after the accident. Scales agreed to perform three field

sobriety tests and exhibited signs consistent with impairment on each test. Based on his investigation, Trooper Lawson arrested Scales for driving under the influence at 8:10 p.m.

At the jail, Scales consented to taking a breath test. The results showed that at 9:15 p.m., his blood alcohol content (BAC) was 0.17 grams per 210 liters of breath.

At trial, Scales objected to the admission of the breath test results. He argued that the Commonwealth failed to prove that he had been driving within three hours of the test. The court overruled the objection, concluding that the Commonwealth had proven the three-hour period through circumstantial evidence. Turner testified that it was dark when the accident occurred. Trooper Lawson testified that the sun set on the day of the accident around 6:00 p.m. Trooper Lawson was dispatched to the scene of the accident at 6:48 p.m. and when he arrived, Scales told him that the collision occurred just "a few minutes" earlier.

Scales testified that his brother had been in the car with him at the time of the incident. He stated that his brother asked him to drive him to Bassett. Scales says that he initially refused because he had been drinking and had his young child with him. He then claims that his brother hit him. Scales felt afraid and felt that he had to comply with his brother's demand. During the drive, Scales's brother started punching him repeatedly. Scales asserted that he had lost consciousness while driving and his brother woke him up immediately before the collision. Scales claimed that his brother fled the scene on foot after the crash.

Upon convicting Scales of the offenses, the circuit court noted that it did not "believe a single word of" Scales's version of the events. The court concluded that Scales was driving the car while intoxicated in a way that endangered his child. Scales appeals.

ANALYSIS

"When an appellate court reviews the sufficiency of the evidence underlying a criminal conviction, its role is a limited one." *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024). "The

judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). "Thus, 'it is not for this [C]ourt to say that the evidence does or does not establish [the defendant's] guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion.'" *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (alterations in original) (quoting *Cobb v. Commonwealth*, 152 Va. 941, 953 (1929)).

The only relevant question for this Court on review "is, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). "If there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" *McGowan v. Commonwealth*, 72 Va. App. 513, 521 (2020) (quoting *Chavez v. Commonwealth*, 69 Va. App. 149, 161 (2018)).

I. Sufficiency of the Evidence

Scales argues that a "court must often look to more than intoxication to determine criminal negligence." Code § 18.2-371.1(B)(1) provides that "[a]ny parent . . . responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony." The question before us on appeal is whether the evidence established that Scales committed a "willful act or omission in the care of such child [that] was so gross, wanton, and culpable as to show a reckless disregard for human life." *Id.*

"In interpreting Code § 18.2-371.1(B)(1)'s willfulness requirement, the Supreme Court has held that '[t]he term "willful act" imports knowledge and consciousness that injury will result from

the act done.'" *Camp v. Commonwealth*, 68 Va. App. 694, 702 (2018) (alteration in original) (quoting *Barrett v. Commonwealth*, 268 Va. 170, 183 (2004)). "The act done must be intended or it must involve a reckless disregard for the rights of another and will probably result in an injury." *Id.* (quoting *Barrett*, 268 Va. at 183). "Thus, to fall within the scope of the statute, a parent's act or omission must be such that 'an objectively reasonable person would understand that injury to the child is likely to result' from the act or omission." *Id.* (quoting *Hannon v. Commonwealth*, 68 Va. App. 87, 94 (2017)).

"Similarly, Code § 18.2-371.1(B)(1)'s requirement that the act or omission be 'so gross, wanton, and culpable as to show a reckless disregard for human life' also implicates whether injury 'is likely to occur as a result of the act or omission.'" *Id.* (quoting *Hannon*, 68 Va. App. at 94).

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

Camp, 68 Va. App. at 702-03 (quoting *Barrett*, 268 Va. at 183). Accordingly, to sustain Scales's conviction, the evidence must be sufficient to allow the factfinder to conclude that his actions exposed his child to more than a mere possibility of injury; the factfinder must be able to conclude from the evidence that injuries were likely. *See id.* at 703.

In *Stevens v. Commonwealth*, 272 Va. 481, 487-88 (2006), the Supreme Court analyzed facts in which the driver's BAC was nearly three times the legal limit. Although it reviewed other evidence pertaining to the driver, the Supreme Court expressly stated that the defendant's "high level of intoxication, approximately three times the legal limit . . . *alone* justifies a finding that Stevens' conduct was gross, wanton, and culpable[,]" and thus, met the standard for criminal negligence. *Id.* at 488 (emphasis added).

Similarly, here, Scales's BAC was 0.17—over twice the legal limit. Code § 18.2-266. "[A]lthough a level of intoxication at or near the legal limit, in and of itself, may be insufficient to allow a factfinder to conclude that injury is probable, the same is not true at higher levels of intoxication." *Camp*, 68 Va. App. at 705. "[D]riving with a BAC far above the legal standard for driving while intoxicated can be sufficient to allow a rational factfinder to conclude that the risk of injury is probable . . . ." *Id.*

The evidence also proved that Scales had been driving at a high speed in the dark without his headlights on. In his attempt to pass Turner, Scales struck Turner's truck with enough force to heavily damage both vehicles and injure Turner. After the accident, Scales smelled of alcohol and had slurred speech. The field sobriety tests revealed further evidence of Scales's impairment. While a defendant's "inability to complete . . . field sobriety tests" is one factor in determining the probability of harm, combined with Scales's BAC and his unsafe driving, there was more than sufficient evidence to allow a rational factfinder to conclude that he exposed his child to probable injury. *Id.* at 703 n.4. Accordingly, the evidence was sufficient to support Scales's conviction for felony child endangerment under Code § 18.2-371.1(B)(1).

II. Admission of the Certificate of Analysis from the Chemical Breath Test

"It is well-settled that decisions regarding the admissibility of evidence lie within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of discretion." *Rodriguez v. Commonwealth*, 85 Va. App. 664, 682 (2025) (quoting *Shahan v. Commonwealth*, 76 Va. App. 246, 255 (2022)). "An abuse of discretion occurs 'when a relevant factor that should have been given significant weight is not considered' or 'when an irrelevant or improper factor is considered and given significant weight.'" *Diaz v. Commonwealth*, 80 Va. App. 286, 304 (2024) (quoting *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011)). "In evaluating whether a trial court abused its discretion, . . . '[this Court does] not

substitute [its] judgment for that of the trial court. Rather, [this Court] consider[s] only whether the record fairly supports the trial court's action.'" *Id.* at 304-05 (alterations in original) (quoting *Carter v. Commonwealth*, 293 Va. 537, 543 (2017)). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Id.* at 305 (quoting *Lambert v. Commonwealth*, 70 Va. App. 740, 749 (2019)).

Scales argues that "Virginia's implied consent law only allows for admission of a certificate of analysis from a breath test at trial if the suspect is arrested within three hours of the driving behavior."[2] He concludes that the Commonwealth failed to establish that he was arrested within that time frame. Under Code § 18.2-268.2(A), a person "who operates a motor vehicle on a highway in Virginia is deemed to consent to have a sample of his blood or breath taken for chemical analysis if he is arrested for a violation of Code § 18.2-266 or certain other related statutes within three hours of the alleged offense." *Bristol v. Commonwealth*, 272 Va. 568, 574 (2006).

"Elements of a crime may be proved by direct or circumstantial evidence." *Lambert v. Commonwealth*, 70 Va. App. 54, 65 (2019). "[C]ircumstantial evidence is competent and is entitled to as much weight as direct evidence provided that the circumstantial evidence is sufficiently convincing to exclude every reasonable hypothesis except that of guilt." *Pijor*, 294 Va. at 512 (alteration in original) (quoting *Dowden v. Commonwealth*, 260 Va. 459, 468 (2000)). "And the hypotheses which must be reasonably excluded are those which flow from the evidence itself, and not from the imagination of defendant's counsel." *Id.* (quoting *Turner v. Commonwealth*, 218 Va. 141, 148 (1977)). "Indeed, in some cases circumstantial evidence may

[2] Scales acknowledges that at trial, he incorrectly argued that the test needed to be performed within three hours of the accident. In response, the Commonwealth announced the correct standard, which the court considered, that the arrest must happen within three hours of the alleged offense.

be the only type of evidence which can possibly be produced." *Id.* (quoting *Stamper v. Commonwealth*, 220 Va. 260, 272 (1979)). "While no single piece of evidence may be sufficient, the combined force of many concurrent and related circumstances . . . may lead a reasonable mind irresistibly to a conclusion." *Id.* at 512-13 (alteration in original) (quoting *Muhammad v. Commonwealth*, 269 Va. 451, 479 (2005)).

Here, Scales was arrested at 8:10 p.m. Thus, for the breath analysis results to have been admitted, Scales must have been driving intoxicated at or after 5:10 p.m. Turner testified that it was dark when the accident occurred, and Trooper Lawson stated that he believed the sun set around 6:00 p.m. that day. Further, Trooper Lawson was dispatched to the scene at 6:48 p.m., and Scales stated that the accident had occurred just minutes before. The circuit court expressly rejected Scales's alternative explanation of the timing and sequence of events leading up to the accident and accepted the Commonwealth's witnesses as credible. The totality of the circumstantial evidence fully supports the circuit court's conclusion that Scales was arrested within the three-hour time period. As a result, we find no abuse of discretion with the circuit court's admission of the certificate of analysis.

CONCLUSION

For these reasons, we affirm the circuit court's judgment.

Affirmed.